

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman  
Jeff Baran  
Annie Caputo  
David A. Wright

In the Matter of

EXELON GENERATION COMPANY, LLC

(Oyster Creek Nuclear Generating Station)

Docket Nos. 50-219-LT  
72-015-LT

**CLI-19-06**

**MEMORANDUM AND ORDER**

This license transfer proceeding concerns an application filed by Exelon Generation Company, LLC (Exelon), Oyster Creek Environmental Protection, LLC (OCEP), and Holtec Decommissioning International, LLC (HDI) (collectively, the Applicants).<sup>1</sup> The Applicants seek NRC approval of a direct transfer of the renewed facility operating license for the Oyster Creek Nuclear Generating Station and the general license for the Oyster Creek Independent Spent Fuel Storage Installation (ISFSI) from Exelon, the current license holder, to OCEP and HDI, the

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<sup>1</sup> See Application for Order Approving Direct Transfer of Renewed Facility Operating License and General License and Proposed Conforming License Amendment, at 1 (Application), attached (encl. 1) to Letter from J. Bradley Fewell, Senior Vice President Regulatory Affairs and General Counsel, Exelon, to NRC Document Control Desk (Aug. 31, 2018) (Cover Letter). The cover letter, attached license transfer application, and associated enclosures may be found at ADAMS accession no. ML18243A489.

proposed licensed owner and operator, respectively.<sup>2</sup> The Applicants also request that the NRC approve a conforming amendment to the operating license to reflect the proposed transfer.

We consider today the petition for leave to intervene and request for a hearing submitted by Lacey Township (the Township).<sup>3</sup> As we outline below, the petition does not include an admissible contention for hearing and we therefore deny the request. We also consider a letter submitted by the New Jersey Chapter of the Sierra Club (Sierra Club) requesting a “public hearing” regarding Oyster Creek.<sup>4</sup> To the extent that the Sierra Club seeks an adjudicatory hearing to contest the license transfer application, we deny the request because the letter does not include an admissible contention and does not demonstrate the Sierra Club’s standing to intervene.

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<sup>2</sup> OCEP and HDI are indirect, wholly-owned subsidiaries of Holtec International (Holtec). See Application at 1, 3. HDI was formed to assume the licensed operator responsibilities for decommissioning the nuclear power plant sites that Holtec acquires. See *id.*

<sup>3</sup> *Township of Lacey’s Petition for Leave to Intervene and Hearing Request* (Nov. 8, 2018) (Township Petition). The Applicants oppose the petition. See *Exelon Generation Company, LLC, Oyster Creek Environmental Protection, LLC and Holtec Decommissioning International, LLC’s Answer Opposing the Township of Lacey’s Petition for Leave to Intervene and Request for a Hearing on the Proposed License Transfer of the Oyster Creek Nuclear Generating Station* (Dec. 3, 2018).

<sup>4</sup> Letter from Jeff Tittel, Director, New Jersey Sierra Club, to NRC (Nov. 1, 2018), at 1 (ML18306A866) (Sierra Club Letter). The Applicants oppose the Sierra Club’s letter to the extent that it is intended to be read as a petition to intervene and request for an adjudicatory hearing. See *Exelon Generation Company, LLC, Oyster Creek Environmental Protection, LLC and Holtec Decommissioning International, LLC’s Answer Opposing Sierra Club’s Letter Requesting a Hearing on the Proposed License Transfer of the Oyster Creek Nuclear Generating Station* (Nov. 26, 2018), at 2-5 (Applicants’ Answer to Sierra Club). They also state that to the extent that the Sierra Club instead seeks a public meeting, they would not oppose such a request. See *id.* at 2.

## I. BACKGROUND

### A. Proposed License Transfer

Exelon, the current licensee, has permanently ceased power operations at Oyster Creek and removed all fuel from the reactor vessel.<sup>5</sup> Pursuant to our regulations, the Oyster Creek license “no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.”<sup>6</sup> In short, the reactor is permanently shut down.

Under the proposed license transfer, OCEP would become the licensed owner and HDI the licensed operator of Oyster Creek.<sup>7</sup> Contingent on the NRC’s approval of the proposed transfer, OCEP would purchase Oyster Creek from Exelon pursuant to an Asset Purchase and Sale Agreement.<sup>8</sup> Following the purchase, OCEP would own the Oyster Creek facility and its associated assets and real estate and would take title to the spent nuclear fuel.<sup>9</sup> At closing, Exelon also would transfer the assets in the Oyster Creek Nuclear Decommissioning Trust to OCEP, which would hold the assets in a trust separate from its other assets and outside of its administrative control.<sup>10</sup> OCEP intends to enter into a decommissioning operator services agreement with HDI, under which HDI, in the role of the licensed operator, would be responsible

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<sup>5</sup> See Letter from Michael P. Gallagher, Vice President, License Renewal & Decommissioning, Exelon, to NRC Document Control Desk, Certification of Permanent Removal of Fuel from the Reactor Vessel for Oyster Creek Nuclear Generating Station (Sept. 25, 2018), at 1 (ML18268A258).

<sup>6</sup> 10 C.F.R. § 50.82(a)(2).

<sup>7</sup> See Oyster Creek Nuclear Generating Station; Consideration of Approval of Transfer of License and Conforming Amendment, 83 Fed. Reg. 53,119, 53,120 (Oct. 19, 2018) (Notice).

<sup>8</sup> Application at 1-2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

for maintaining and decommissioning the facility. OCEP would pay HDI's costs of post-shutdown operations, including all decommissioning and spent fuel management costs.<sup>11</sup>

As described in the application, HDI intends to contract with Comprehensive Decommissioning International, LLC (CDI) to serve as the general contractor for decommissioning Oyster Creek.<sup>12</sup> CDI was formed by its joint owners, Holtec (through its subsidiary HDI) and SNC-Lavalin Group (through its subsidiary Kentz USA Inc.).<sup>13</sup> If the proposed transfer is approved, CDI would perform the licensed activities at Oyster Creek, subject to HDI's oversight and control as the licensed operator.<sup>14</sup>

If completed, the proposed transfer would significantly accelerate the current decommissioning schedule for Oyster Creek. Exelon's current decommissioning schedule, outlined in its Post-Shutdown Decommissioning Activities Report (PSDAR), states that the Oyster Creek license would be terminated in 2078 and the site restored by 2080.<sup>15</sup> Exelon's schedule is based on implementing the SAFSTOR decommissioning option. The SAFSTOR method "involves placing the facility in a safe, stable condition and maintaining that state for a period of time, followed by subsequent decontamination and dismantlement to levels that permit license termination."<sup>16</sup> After removal of reactor fuel and radioactive fluids, the facility is left

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<sup>11</sup> *Id.* at 1, 3.

<sup>12</sup> *Id.* at 1, 4.

<sup>13</sup> *See id.* at 4-5, 12. SNC-Lavalin is a company based in Montreal, Canada. *Id.* at 5.

<sup>14</sup> *See id.* at 1-2, 4 (HDI would "retain ultimate decision-making authority and provide direct governance and oversight of CDI's performance"); *see also id.* at 5, 12-14.

<sup>15</sup> *See* Post-Shutdown Decommissioning Activities Report, attached to Letter from Michael P. Gallagher, Vice President, License Renewal & Decommissioning, Exelon, to NRC Document Control Desk (May 21, 2018), at 8 (ML18141A775) (Exelon PSDAR); *see also* Application at 4.

<sup>16</sup> *See* "Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, Supplement 1 Regarding the Decommissioning of Nuclear Power Reactors" (Final Report), NUREG-0586, Supplement 1, vol. 1 (Nov. 2002), at 3-19 (ML023470304) (Decommissioning GEIS).

intact for a dormant period to allow for significant reductions in radioactivity levels due to radioactive decay. Following this safe storage period, the facility is decontaminated and dismantled to levels that permit license termination.

OCEP and HDI instead intend to implement an accelerated schedule for decommissioning Oyster Creek based on the DECON decommissioning approach. Under the DECON option, all “equipment, structures, and portions of the facility and site that contain radioactive contaminants are promptly removed or decontaminated to a level that permits termination of the license shortly after cessation of operations.”<sup>17</sup> HDI outlined its plans for the accelerated decommissioning of Oyster Creek in a Revised PSDAR, which is contingent on approval of the proposed license transfers and closure of the asset sale. HDI expects to complete radiological decommissioning and release the Oyster Creek site (except for the ISFSI portion) within 8 years of the license transfer and asset sale closure, and HDI expects to complete ISFSI decommissioning and final site restoration by 2035.<sup>18</sup> If the licenses are not transferred, Exelon’s current PSDAR and decommissioning schedule will remain in effect.<sup>19</sup>

## **B. License Transfer and Financial Qualifications**

Under the Atomic Energy Act of 1954, as amended (AEA), and our associated regulations, the NRC must provide prior written consent for a license transfer.<sup>20</sup> The NRC will

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<sup>17</sup> See *id.*, vol. 1, at 3-16.

<sup>18</sup> See Revised Post-Shutdown Decommissioning Activities Report, attached to Letter from Pamela B. Cowan, Sr. Vice President & Chief Operating Officer, HDI, to NRC Document Control Desk (Sept. 28, 2018) (ML18275A116), at 4-5, 17 (HDI PSDAR).

<sup>19</sup> See *id.* at 2.

<sup>20</sup> See AEA § 184, 42 U.S.C. § 2234 (providing that “[n]o license granted [under the AEA] shall be transferred . . . directly or indirectly, through transfer of control of any license to any person, unless the Commission shall . . . give its consent in writing”); 10 C.F.R. §§ 50.80(a), 72.50(a) (implementing the AEA provision as to power reactor and ISFSI licenses, respectively).

approve a license transfer application if it finds the proposed transferee to be qualified to hold the license and the transfer is otherwise consistent with applicable law, regulations, and Commission orders.<sup>21</sup> The license transfer review is limited to specific matters, including the financial and technical qualifications of the proposed transferee.<sup>22</sup>

As part of the financial qualifications showing, an applicant must provide reasonable assurance that sufficient funds will be available to decommission the facility and to carry out applicable activities under the license.<sup>23</sup> NRC regulations outline acceptable methods of demonstrating financial assurance for decommissioning.<sup>24</sup> For example, the “prepayment” method, referenced in the application, involves depositing funds into an account kept segregated from the licensee’s assets and outside of the licensee’s administrative control, in an amount that would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected.<sup>25</sup> A licensee that has set aside prepaid funds based on a site-specific decommissioning cost estimate may take credit for projected earnings on decommissioning funds, up to a 2% annual real rate of return, through the projected decommissioning period.<sup>26</sup> Other methods to demonstrate financial assurance for decommissioning include several methods, such as a surety bond, a letter of credit, insurance, or a parent company guarantee.<sup>27</sup>

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<sup>21</sup> 10 C.F.R. § 50.80(c).

<sup>22</sup> *See id.* § 50.80(b)(1)(i).

<sup>23</sup> *See id.* §§ 50.33(f), 50.33(k)(1), 50.75, 50.80(b)(1)(i), 50.82(a), 72.30(b)-(c). Because power operations have permanently ceased at Oyster Creek, the Applicants need not demonstrate financial qualifications to cover power reactor operating costs. *See id.* § 50.33(f)(2).

<sup>24</sup> *See id.* § 50.75(e).

<sup>25</sup> *See id.* § 50.75(e)(1)(i); Application at 18.

<sup>26</sup> 10 C.F.R. § 50.75(e)(1)(i).

<sup>27</sup> *See id.* § 50.75(e)(1)(iii).

## II. DISCUSSION

### A. Contention Requirements

To intervene in an NRC licensing proceeding, a petitioner must show standing to intervene and submit at least one admissible contention for hearing.<sup>28</sup> NRC regulations in 10 C.F.R. § 2.309(f) specify the contention admissibility requirements. These requirements are strict by design and intended to ensure that adjudicatory proceedings are triggered only by substantive safety or environmental issues, rooted in a “reasonably specific factual or legal basis.”<sup>29</sup> They require a petitioner to explain the basis for each contention, providing supporting facts or expert opinion on which the petitioner intends to rely in litigating the contention. The requirements serve to screen out ill-defined, speculative, or otherwise unsupported claims.

To be admissible, each contention also must fall within the scope of the proceeding and be material to the findings that the NRC must make regarding the proposed licensing action. A contention therefore must demonstrate a genuine dispute with the applicant on a material issue of law or fact.<sup>30</sup> As the contention rules make clear, the petitioner must identify the “specific portions of the application . . . that the petitioner disputes,” with the supporting reasons for each dispute; or, if a petitioner believes that an application fails altogether to contain information required by law, the petitioner must identify each failure and provide supporting reasons for the petitioner’s belief.<sup>31</sup>

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<sup>28</sup> See *id.* § 2.309(a), (d), (f); Notice, 83 Fed. Reg. at 53,120 (referencing contention requirements).

<sup>29</sup> See *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504 (2015) (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003) (citation omitted)).

<sup>30</sup> See 10 C.F.R. § 2.309(f)(1)(vi).

<sup>31</sup> *Id.*

## **B. Township's Petition to Intervene and Request for Hearing**

The Oyster Creek site is located within Lacey Township. Therefore, the Township's standing to intervene is established.<sup>32</sup> In its petition, the Township presents three contentions for hearing. None meet our contention admissibility requirements.

### *Contention 1*

Contention 1 concerns the funding for decommissioning Oyster Creek. In Contention 1, the Township claims that a "funding shortfall already exists."<sup>33</sup> Specifically, the Township states that decommissioning is projected to cost approximately \$1.4 billion, but that as of July 2018, the Oyster Creek decommissioning fund contained \$945 million. The Township claims that the disparity between these amounts reflects a "significant" and "well-known" shortfall in decommissioning funding, about which "little publicly available information" exists.<sup>34</sup> The Township goes on to argue that this asserted "gap in available funding" may further grow as a result of various potential events or circumstances, such as increases in overhead costs, radiological incidents, and the discovery of previously unknown contamination.<sup>35</sup> The Township states that it seeks a detailed plan "from OCEP and HDI as to how the [decommissioning] funds will be used and how they will be generated to meet the financial needs of decommissioning."<sup>36</sup>

Contention 1 lacks support and does not challenge the application. The Township's decommissioning shortfall claim is based on an asserted decommissioning cost of \$1.4 billion.

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<sup>32</sup> See *id.* § 2.309(h)(2); Township Petition at 2.

<sup>33</sup> Township Petition at 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



But the Township does not identify the source of this estimate, which is not in the application. The estimate appears to reflect decommissioning cost estimates that Exelon—the current licensee—provided in its PSDAR. Exelon’s estimated costs of radiological decommissioning (\$1,109,576,000), spent fuel management (\$290,116,000), and site restoration (\$60,202,000) together total approximately \$1.46 billion.<sup>37</sup> But Exelon’s cost estimates are rooted in its choice of the lengthier decommissioning approach under SAFSTOR.

The Applicants base their decommissioning cost estimates on the accelerated decommissioning that they intend to perform under the DECON option. As described in the application, the Applicants estimate the total decommissioning cost for Oyster Creek to be \$885 million (in 2018 dollars), including provisions for site restoration, and for the storage of spent fuel and Greater Than Class C waste until “acceptance by the Department of Energy.”<sup>38</sup> The Applicants state that the assets available in the Oyster Creek decommissioning trust fund will be sufficient to cover the estimated costs of radiological decommissioning, spent fuel management, and site restoration, assuming projected earnings at a 2 percent real rate of return on the trust funds.<sup>39</sup> They therefore conclude that the assets available in the Oyster Creek decommissioning trust are sufficient to satisfy the terms of the NRC’s “prepayment” method of demonstrating adequate financial assurance for decommissioning.<sup>40</sup>

The Township does not dispute or otherwise address the estimated \$885 million decommissioning cost described in the application. The Township also does not address the Applicants’ assertion that the funding in the decommissioning trust is sufficient to demonstrate

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<sup>37</sup> See Exelon PSDAR at 9.

<sup>38</sup> See Encl. 4 to Application, Schedule and Financial Information for Decommissioning, at 2 (Encl. 4).

<sup>39</sup> See Application at 18.

<sup>40</sup> See *id.* (also addressing funding assurance for spent fuel management).

financial assurance for decommissioning via the NRC's prepayment method. The contention does not include facts or expert opinion challenging the financial qualifications discussion in the application. Therefore, it does not raise a genuine material dispute with the application.

The Township additionally states that it seeks a plan from the Applicants showing how the decommissioning funds will be used and "generated to meet the financial needs of decommissioning."<sup>41</sup> The application includes, however, tables depicting how the Applicants intend to use the decommissioning funds to pay for various expenses. One table breaks the overall \$885 million decommissioning cost estimate down into separate cost categories, including "removal," "packaging," "disposal," "program management," "transportation," "insurance and regulatory fees," "energy," "characterization and licensing surveys," "property taxes," and "spent fuel."<sup>42</sup> Another table displays estimated decommissioning costs to be paid each year from 2018 through 2035 for each of the referenced cost categories.<sup>43</sup> The Township does not contest or otherwise specifically address the accuracy or sufficiency of any of the cost estimates or related payment schedules outlined in the application. In short, the Township's argument of a significant decommissioning funding shortfall lacks support and does not raise a genuine material dispute.

The Township also claims generally that the application presents insufficient information to "provide financial assurance to meet the regulatory requirements" for license transfer.<sup>44</sup> But the Township does not identify any particular financial data that it considers necessary yet finds missing from the application. A petitioner claiming that financial data are "either inaccurate or

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<sup>41</sup> See Township Petition at 3.

<sup>42</sup> See Application, Encl. 4, at 3 ("Decommissioning Cost Estimate Summary").

<sup>43</sup> See *id.*, Encl. 4, at 4 ("Decommissioning Cost Estimate Annualized").

<sup>44</sup> See Township Petition at 3.

insufficient” must “identify[] each failure and explain[] why the data are flawed.”<sup>45</sup> Unsupported claims of insufficient information do not establish a genuine, material dispute with the application.<sup>46</sup>

The Township also expresses generalized concerns about potential events, such as normal increased overhead costs due to delays and inflation, that it claims may further drain the decommissioning funds.<sup>47</sup> These general claims do not address or challenge the financial information in the application. Nevertheless, an additional point regarding the NRC’s review of a transfer applicant’s financial assurance warrants emphasis. For a power reactor license transfer, the NRC requires an applicant to demonstrate reasonable assurance of having, or being able to obtain, the necessary funding for decommissioning and spent fuel management.<sup>48</sup> These requirements are intended to ensure that a license is not turned over to an entity that is unable to satisfy applicable NRC financial assurance requirements. The NRC’s review of the adequacy of decommissioning and spent fuel management funding is not a one-time look but instead part of a continuous, long-term process.

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<sup>45</sup> See *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 205 (2003).

<sup>46</sup> See 10 C.F.R. § 2.309(f)(1)(vi) (if a petitioner believes that an application fails to contain information on a relevant matter required by law, the petitioner must identify each failure and the supporting reasons for the petitioner’s belief).

In the application, the Applicants additionally stated that HDI would submit a revised PSDAR containing, among other items, a description of the planned decommissioning activities under the DECON approach and an estimate of their expected costs. See Application at 21. HDI subsequently submitted its PSDAR, providing further information on the \$885 million cost estimate described in the application, along with a Revised Site-Specific Decommissioning Cost Estimate (Revised DCE), which includes an annual cash flow analysis of projected decommissioning trust fund withdrawals, earnings, and year-end balances for the years 2019 through 2035. See HDI PSDAR at 18-19, and associated enclosure, Revised DCE, at 19-46, 52-54. Both the revised DCE and revised PSDAR were submitted together under the same cover letter and may be found at ML18275A116.

<sup>47</sup> See Township Petition at 3.

<sup>48</sup> See 10 C.F.R. §§ 50.33(f), 50.33(k)(1), 50.80(b)(1)(i).

Throughout the license term, our regulations require licensees to plan financially for the eventual need to decommission a power reactor or ISFSI.<sup>49</sup> The NRC's oversight of decommissioning funding heightens as the time for decommissioning approaches. Within 2 years of permanently ceasing operations, the licensee must provide a site-specific decommissioning cost estimate if one has not already been submitted.<sup>50</sup> Thereafter, it must annually submit to the NRC a financial assurance status report for decommissioning.<sup>51</sup> NRC regulations also require status reports on the licensee's funding for spent fuel management.<sup>52</sup>

Our regulations account for the potential need to adjust projected decommissioning cost estimates, for any number of factors, including inflation. As NRC guidance describes, cost projections may need to be adjusted to account for "recent developments in decontamination, waste processing and disposal, or . . . other technology; updated information about the facility conditions, such as larger levels of contamination than anticipated; updated waste disposal conditions; updated residual radioactivity limits; and experience gained from the actual decommissioning of similar facilities."<sup>53</sup> After a licensee has submitted its site-specific

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<sup>49</sup> See *id.* §§ 50.75, 72.30(b)-(c).

<sup>50</sup> See *id.* § 50.82(a)(8)(iii); see also *id.* § 50.82(a)(4)(i) (the site-specific decommissioning cost estimate may be submitted with the PSDAR that the NRC requires be submitted before or within 2 years following permanent cessation of operations).

<sup>51</sup> See *id.* § 50.82(a)(8)(v). This obligation continues until the licensee completes its final radiation survey and demonstrates that residual radioactivity has been reduced to levels permitting license termination.

<sup>52</sup> See *id.* § 50.82(a)(8)(vii) (after submitting its site-specific cost estimate for decommissioning, the licensee must annually submit a report on the status of its funding for managing irradiated fuel); see also *id.* § 50.54(bb) (requiring submission for Commission review and preliminary approval the "program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor" following cessation of operations and until the fuel is transferred for its ultimate disposition in a repository).

<sup>53</sup> "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," Regulatory Guide 1.159, rev. 2 (Oct. 2011), at 12 (ML112160012).

decommissioning cost estimate, it must continue to provide to the NRC financial assurance status reports that revisit and update the decommissioning cost projections and funding status, and the spent fuel management cost projections and funding status.<sup>54</sup>

The NRC also performs onsite inspections of decommissioning activities and reviews plant information relevant to financial assurance. And a licensee must notify the NRC (in writing, with a copy sent to the affected state(s)) prior to performing any decommissioning activities that would significantly increase the facility's decommissioning cost.<sup>55</sup> If new developments point to a projected funding shortfall, the NRC requires additional financial assurance to cover the estimated cost to complete the decommissioning.<sup>56</sup> Consequently, unexpected cost increases, if they materially impact decommissioning costs, can be addressed in the periodic financial assurance status reports. In sum, the NRC's oversight of a licensee's decommissioning funding is an ongoing process that begins with licensing and continues through license termination.

### *Contention 2*

In Contention 2, the Township expresses concerns about HDI's intention to subcontract decommissioning work to CDI. As noted above, CDI is jointly owned by Holtec (through its

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<sup>54</sup> See 10 C.F.R. § 50.82(a)(8)(v)-(vii).

<sup>55</sup> See *id.* § 50.82(a)(7); see also *id.* § 50.82(a)(8)(i)(B)-(C).

<sup>56</sup> See, e.g., *id.* § 50.82(a)(8)(vi) (setting out the circumstances under which the licensee's financial assurance status report must provide additional funding assurance to cover the estimated cost of completing decommissioning); *id.* § 50.82(a)(8)(vii) (status report on funding for managing irradiated fuel must include a "plan to obtain additional funds to cover the cost" of any projected shortfall). In addition, a contingency allowance built into cost estimates helps offset the uncertainties in cost predictions. See, e.g., Revised DCE, enclosed with HDI PSDAR, at 45 (addressing contingency allowance incorporated in cost estimates). And licensees in decommissioning continue to carry onsite property damage insurance and offsite nuclear liability insurance, in amounts the NRC requires for a defueled plant. See 10 C.F.R. §§ 50.54(w), 140.11; Application at 20 (addressing insurance coverage and the Price-Anderson indemnity agreement for Oyster Creek).

subsidiary HDI) and SNC-Lavalin (through its subsidiary Kentz USA). The Township states that it is concerned about the “trustworthiness and . . . overall involvement in the decommissioning of Oyster Creek” of CDI’s parent company SNC-Lavalin, which “has been charged in Canada with corruption, fraud and bribery.”<sup>57</sup> The Township calls for the NRC to “host a local hearing” to address charges made against SNC-Lavalin.<sup>58</sup> The Township goes on to argue that unless SNC-Lavalin can “convince the NRC and [the] public of its innocence in connection with those charges” and of its “overall trustworthiness, the license transfer should not be approved.”<sup>59</sup> The Township further states that these claims of trustworthiness relate to the issue of “the NRC’s lack of assurances of financial stability.”<sup>60</sup>

The Township does not, however, tie its concerns about SNC-Lavalin to any material issue within the scope of this license transfer proceeding. SNC-Lavalin is not an Applicant. SNC-Lavalin is one of two parent companies that formed and own CDI, which the Applicants intend to engage to serve as the general contractor for the decommissioning work.<sup>61</sup> But the Township does not specify how SNC-Lavalin may adversely impact Oyster Creek decommissioning activities or their funding. If the transfer is completed, the licensed operator responsible for the direct oversight and control of licensed activities at Oyster Creek would be HDI, not SNC-Lavalin. More significantly, the Township has not linked its concerns about SNC-Lavalin, a general contractor’s co-parent, to the technical or financial qualifications of the Applicants, or to any other matter within the scope of this proceeding.

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<sup>57</sup> See Township Petition at 3-4.

<sup>58</sup> *Id.* at 4.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Holtec is the other parent, and the majority owner, of CDI. See Application at 4-5.

We have long held that to be admissible as a litigable matter in an adjudicatory proceeding, claims of poor character or integrity must have “some direct and obvious relationship between the character issues and the licensing action in dispute.”<sup>62</sup> When claims of prior violations or past events are raised for litigation, we “expect them to be directly germane to the challenged licensing action.”<sup>63</sup> Here, the Township does not describe the bribery or other charges it references and does not link them to any aspect of the technical or financial qualifications of the Applicants. It does not claim or provide any indication that individuals who may have been involved in the asserted wrongdoing remain at SNC-Lavalin or are likely to be involved in managing Oyster Creek’s decommissioning activities. The Township does not indicate when and where the referenced violations by SNC-Lavalin personnel occurred. The Township presents no connection between the referenced charges against SNC-Lavalin and the Applicants’ technical qualifications to safely carry out the necessary decommissioning and spent fuel management activities until license termination.<sup>64</sup>

The Township states that its claims regarding overall trustworthiness bear on assurances of financial stability.<sup>65</sup> But the Township does not connect the character claims about the general contractor’s co-parent to the Applicants’ financial qualifications. The application states that the Applicants meet the NRC’s *prepayment* method of demonstrating financial assurance for decommissioning—that sufficient funding exists in the decommissioning trust fund to cover the estimated costs (assuming a projected annual 2 percent real rate of

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<sup>62</sup> See *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365-66 (2001) (citation omitted).

<sup>63</sup> See *id.* at 366-67.

<sup>64</sup> The application addresses the technical qualifications of CDI, including the plans for its staffing. See Application at 12-15. The Township does not address or challenge that information.

<sup>65</sup> Township Petition at 4.

return). The application also states that CDI, the proposed general contractor, would have no direct access to the decommissioning trust funds.<sup>66</sup> The Township does not describe how its concerns about SNC-Lavalin call into question the financial qualifications of separate entities, the Applicants. Thus, the contention does not state a genuine material dispute, and we therefore find it inadmissible.<sup>67</sup>

### *Contention 3*

In Contention 3, the Township raises environmental claims. It states generally that it has “interest and concerns” regarding onsite spent fuel storage.<sup>68</sup> It further asserts that the Barnegat Bay, which is located near the Oyster Creek site, has an “already extremely sensitive” ecological system, and therefore “[a]ny mismanagement or mistake can result in significant negative impacts to this ecosystem.”<sup>69</sup>

The Township claims that the National Environmental Policy Act (NEPA) requires an environmental review of the proposed transfer—a “hard look” at potential environmental consequences—before the NRC may render a decision on the application.<sup>70</sup> It expresses concerns about the proposed management by HDI because HDI participated in the San Onofre

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<sup>66</sup> Application at 5; *see also id.* at 13 (“CDI will be subject to continuous oversight by HDI for regulatory and procedural compliance, as well as expenditure control.”).

<sup>67</sup> While the Township has not proffered an admissible contention for hearing regarding its concerns about SNC-Lavalin, various public comments submitted on the license transfer also raised particular concerns about SNC-Lavalin to the Staff. We expect that the Staff will respond as appropriate to the comments as part of its review of the application. *See, e.g.*, Comments on Oyster Creek Nuclear Plant License Transfer from Concerned Citizens for Lacey Coalition (Nov. 16, 2018) (ML18324A638) (referencing charges against SNC-Lavalin for corruption, fraud, and bribery relating to business operations in Libya); Comments of Alfred Decker (Nov. 18, 2018) (ML18324A776).

<sup>68</sup> Township Petition at 4.

<sup>69</sup> *See id.*

<sup>70</sup> *Id.*



nuclear power plant closing, which the Township asserts involved the discovery of “faulty casks.”<sup>71</sup> The Township argues that “HDI should be held accountable and confirm to the NRC and the public” that public health and safety and the environment are not at risk, and “that such [cask-related] mistakes will not occur” at Oyster Creek.<sup>72</sup> The Township states that it is “not satisfied that [NEPA] standards have been met” for the proposed license transfer.<sup>73</sup>

In Contention 3, the Township seeks a NEPA analysis for the proposed license transfer. Our environmental regulations, however, categorically exclude license transfer applications, and associated license amendments necessary to reflect approval of the transfers, from the requirement of an additional environmental review.<sup>74</sup> Unless the NRC determines that there are “special circumstances,” an environmental assessment or environmental impact statement is not required for an approval of a license transfer (and any associated administrative license amendments).<sup>75</sup>

After performing many environmental assessments for license transfers, which uniformly demonstrated no significant environmental effects linked to license transfers, the NRC determined by rule that direct and indirect transfers and their associated administrative license amendments comprise a category of actions that have no significant effect, either individually or cumulatively, on the human environment.<sup>76</sup> License transfers were found not to constitute “a

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *See id.*

<sup>74</sup> *See* 10 C.F.R. § 51.22(c)(21).

<sup>75</sup> *See id.* § 51.22(b), (c)(21).

<sup>76</sup> *See* Streamlined Hearing Process for NRC Approvals of License Transfers, Final Rule, 63 Fed. Reg. 66,721, 66,728 (Dec. 3, 1998).

major federal action significantly affecting the environment.”<sup>77</sup> As the NRC described, license transfers do not “in and of themselves permit the licensee to operate the facility” in a different manner than that allowed under the existing licenses, and consequently, a transfer would not usually raise environmental impact issues different from those already considered in generic or site-specific NEPA analyses.<sup>78</sup>

The Township does not address the categorical exclusion for license transfers and associated amendments, even though the application—in the section titled “Environmental Review”—explicitly references and relies on the exclusion.<sup>79</sup> The Township also does not suggest that the categorical exclusion is inapplicable here. Without more, the Township’s request for an environmental analysis under NEPA constitutes an impermissible challenge to the categorical exclusion rule and does not meet our contention standards.<sup>80</sup> The contention does not state a genuine material dispute within the scope of this proceeding, and we therefore find it inadmissible.

Separate from this license transfer proceeding, we note that HDI’s revised PSDAR addresses the environmental impacts of its planned site-specific decommissioning activities at Oyster Creek.<sup>81</sup> HDI concludes that the potential impacts are “less than and bounded by” the impacts described in previously issued environmental impact statements, including both the NRC’s Generic Environmental Impact Statement on the impacts of decommissioning, and

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.* If, however, a proposed license amendment “directly affect[s] the actual operation of a facility,” then the categorical exclusion would not apply. *Id.*

<sup>79</sup> Application at 22.

<sup>80</sup> See 10 C.F.R. § 2.335(a).

<sup>81</sup> See HDI PSDAR at 20-47.

site-specific environmental impact statements prepared in relation to the licensing of Oyster Creek.<sup>82</sup> Our regulations expressly prohibit a licensee from performing any decommissioning activity that results in “significant environmental impacts not previously reviewed.”<sup>83</sup> Any violation of this restriction is subject to NRC enforcement action. If the impacts of a planned decommissioning activity are not enveloped by previous environmental impacts analyses, a licensee seeking to undertake the activity should submit a license amendment request, together with a supplemental environmental report evaluating the additional impacts.<sup>84</sup> In evaluating such a license amendment request, the Staff would, as appropriate, prepare either an environmental assessment or an environmental impact statement.<sup>85</sup>

### **C. Letter from the New Jersey Chapter of the Sierra Club**

The New Jersey Chapter of the Sierra Club filed a letter expressing concerns about the proposed license transfer and requesting a “public hearing.”<sup>86</sup> The letter leaves unclear whether the Sierra Club seeks an adjudicatory hearing to contest the application or a public meeting to be able to pose questions and obtain additional information on the proposed transfer. To the extent that the Sierra Club seeks to intervene as a party in this adjudicatory proceeding, we deny the request because the Sierra Club neither demonstrated standing nor submitted an admissible contention.

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<sup>82</sup> See *id.* at 20.

<sup>83</sup> See 10 C.F.R. § 50.82(a)(6)(ii).

<sup>84</sup> See *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 123-24 (2016); Decommissioning GEIS, vol. 1, at 1-11, 2-3; Decommissioning of Nuclear Power Reactors, Final Rule, 61 Fed. Reg. 39,278, 39,286 (July 29, 1996).

<sup>85</sup> See *Vermont Yankee*, CLI-16-17, 84 NRC at 124.

<sup>86</sup> See Sierra Club Letter at 1.

As to standing, the notice of opportunity to request a hearing outlined the factors that must be addressed to show standing to intervene. The Sierra Club neither addressed these factors for itself nor claimed representational standing on behalf of any members.<sup>87</sup> The Sierra Club therefore has not established its standing to intervene.

The Sierra Club also has not satisfied the contention admissibility requirements.<sup>88</sup> It does not challenge or reference any part of the application. In fact, the Sierra Club states that it does not “have a position on the license transfer” but instead has “a lot of questions” that it seeks to have answered.<sup>89</sup> Sierra Club does not raise a genuine material dispute with the application. We therefore deny the Sierra Club’s request to the extent that it seeks to intervene in an adjudicatory hearing. In the event, however, that the Sierra Club instead seeks a public meeting or other opportunity to obtain additional particular information, we refer the Sierra Club’s letter to the Staff for consideration as comments on the license transfer and for action as the Staff may deem appropriate.<sup>90</sup>

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<sup>87</sup> See 10 C.F.R. § 2.309(d); Notice, 83 Fed. Reg. at 53,120. An organization invoking “representational” standing on behalf of members must show that “at least one of its members may be affected by the Commission’s approval of the [license] transfer,” which requires identifying the member(s) the organization purports to represent and providing written authorization of such representation. See, e.g., *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409-10 (2007); see also *id.* at 411 (organization that seeks to intervene based on its organizational purposes must satisfy the same standing requirements as individuals seeking to intervene).

<sup>88</sup> See 10 C.F.R. § 2.309(f)(1)(i)-(vi).

<sup>89</sup> See Sierra Club Letter at 1.

<sup>90</sup> We note that the Applicants do not oppose a public meeting on the license transfer. See Applicants’ Answer to Sierra Club, at 2. In addition, on June 7, 2019, the Concerned Citizens for Lacey Coalition submitted to the NRC a request that a decision on the license transfer application be held in abeyance until matters referenced in the request are resolved. We refer the Coalition’s request to the Staff for consideration with other comments that have been received. See E-mail from Paul Dressler, Concerned Citizens for Lacey Coalition, to NRC Hearing Docket (June 7, 2019).

### III. CONCLUSION

For the reasons outlined in this decision, we *deny* the Township's request for hearing and petition to intervene, and we *deny* the Sierra Club's request to the extent that it seeks an adjudicatory hearing on the license transfer application. We *refer* the Sierra Club's letter to the Staff for consideration as comments on the license transfer and for action as the Staff may deem appropriate. Finally, we *terminate* this adjudicatory proceeding.

IT IS SO ORDERED.

For the Commission

**NRC Seal**

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 18<sup>th</sup> day of June 2019.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
EXELON GENERATION COMPANY, LLC	)	Docket Nos. 50-219-LT and 72-15-LT
	)	
(Oyster Creek Nuclear Generating Station	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Commission Memorandum and Order (CLI-19-06)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission  
Office of Commission Appellate Adjudication  
Mail Stop: O-16B33  
Washington, DC 20555-0001  
E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop: O-16B33  
Washington, DC 20555-0001  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E. Roy Hawken, Chairman  
Joseph D. McManus, Law Clerk  
E-mail: [Roy.Hawken@nrc.gov](mailto:Roy.Hawken@nrc.gov)  
[Joseph.McManus@nrc.gov](mailto:Joseph.McManus@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop - O-14A44  
Washington, DC 20555-0001  
Anita G. Naber, Esq.  
Brian Harris, Esq.  
David E. Roth, Esq.  
E-mail: [Anita.Ghoshnaber@nrc.gov](mailto:Anita.Ghoshnaber@nrc.gov)  
[Brian.Harris@nrc.gov](mailto:Brian.Harris@nrc.gov)  
[David.Roth@nrc.gov](mailto:David.Roth@nrc.gov)

Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., N.W.  
Washington, DC 20004  
Grant W. Eskelsen, Esq.  
John E. Matthews, Esq.  
E-mail: [Grant.Eskelsen@morganlewis.com](mailto:Grant.Eskelsen@morganlewis.com)  
[John.Matthews@morganlewis.com](mailto:John.Matthews@morganlewis.com)

Oyster Creek Nuclear Generating Station Docket Nos. 50-219-LT and 72-15-LT  
**Commission Memorandum and Order (CLI-19-06)**

Pillsbury Winthrop Shaw Pittman  
1200 Seventeenth Street, NW  
Washington, DC 20036  
Anne R. Leidich, Esq.  
Jay Silberg, Esq.  
E-mail: [Anne.Leidich@pillsburylaw.com](mailto:Anne.Leidich@pillsburylaw.com)  
[Jay.Silberg@pillsburylaw.com](mailto:Jay.Silberg@pillsburylaw.com)

Counsel for Lacey Township:  
Lauren R. Staiger, Esq.  
Gilmore & Monahan, P.A.  
10 Allen Street  
P.O. Box 1540  
Toms River, NJ 08753  
E-mail: [lrs@gm.law.net](mailto:lrs@gm.law.net)

New Jersey Sierra Club  
145 West Hanover Street  
Trenton, NJ 08618  
E-mail: [Taylor.Mcfarland@sierraclub.org](mailto:Taylor.Mcfarland@sierraclub.org)

[Original signed by Krupskaya T. Castellon]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 18<sup>th</sup> day of June 2019