

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

In the Matter of

Docket No. 50-293 & 72-1044 LT

Entergy Corporation

Pilgrim Nuclear Power Station

License Transfer Agreement Application

**PILGRIM WATCH MOTION UNDER 10 C.F.R §2.1327 TO STAY STAFF ORDER OF
AUGUST 22, 2019**

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Cited Documents

“AGO Petition” – February 20, 2019, Commonwealth of Massachusetts’ Petition for Leave to Intervene and Hearing Request, ML 19051A114

“Entergy PSDAR Comments” - March 21, 2019, Comments Relative to Entergy Nuclear Operation, Inc PSDAR, ML19081A023

“Exemption” - August 22, 2019, Holtec Decommissioning International, LLC, Nuclear Power Station Exemption, ML 19234A366

Holtec PSDAR Comments” - March 3, 2019, Comments Relative to PSDAR of Holtec Decommissioning International, ML19064B330

“Holtec Opposition to PW New Contention” – August 12, 2019, Applicants’ Answer Opposing Pilgrim Watch’s Motion to File a New Contention, ML 19224C424

“Holtec Opposition to PW Petition” - March 18, 2019, Applicants’ Answer Opposing Pilgrim Watch Petition for Leave to Intervene and Hearing Request, ML 19077A235

“LTA” - November 16, 2018 Letter from Entergy, to NRC, Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and Approving Conforming License Amendment; and Request for Exemption from 10 CFR 50.82(a)(8)(i)(A); Pilgrim Nuclear Power Station; Docket Nos. 50-293 & 72-1044; License No. DPR-35 (Nov. 16, 2018), ML18320A031.

“Staff Order” - August 22, 2019 NRC Staff Order Approving Direct and Indirect Transfer of License and Conforming Amendment, ML19170A101

“PW New Contention” - July 16, 2019, Pilgrim Watch Motion to File a New Contention, ML 19197A330

“PW New Contention Reply” – August 19, 2019, Pilgrim Watch Reply to Applicants’ Answer Opposing Pilgrim Watch’s Motion to File a New Contention, ML 19231A154

“PW Petition - February 20, 2019, Pilgrim Watch Petition to Intervene and Hearing Request ML 19051A019.

“PW Petition Reply” - April 1, 2109, Pilgrim Watch Reply to Applicant’s Answer Opposing Pilgrim Watch Petition for Leave to Intervene and Hearing Request, ML 19091A189

“SE” - August 22, 2019, Safety Evaluation by the Office of Nuclear Reactor Regulation, License Transfer Safety Evaluation, Attachment 4, ML 19234A364

Pilgrim Watch (“PW”) moves to stay the Staff Order granting the LTA until the issues raised in the PW Petition, the PW New Contention, and the Petition of The Office of the Attorney General of the Commonwealth of Massachusetts (“AGO”) have been finally determined.

A party seeking or opposing a stay must show that it is likely to prevail, *or* that it will be irreparably harmed. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), CLI-82-11, 15 NRC 1383, 1384 (1982). Pilgrim Watch and the AGO *are likely to prevail*. PW, the Commonwealth and the public and its interests *will be irreparably harmed* if no stay is granted. Holtec’s and Entergy’s oppositions are likely to fail; and neither Holtec nor Entergy will suffer any significant harm if the Order is stayed.

Pilgrim Watch recognizes that the Staff’s August 23, 2019 Order, Exemption, and Safety Evaluation say that the DTF is adequately funded. However, there is no indication that the Staff considered the facts set forth in the PW Petition, the PW New Contention, the PW Petition Reply, the PW New Contention Reply or the AGO Petition, facts that PW will prove at hearing.

A. Pilgrim Watch is Likely to Prevail on the Merits of its Contentions.¹

Contention 1 – Holtec Pilgrim and Holtec Decommissioning International (“HDI”) Have Not demonstrated the required Financial Assurance.

Holtec Pilgrim is “organized as a separate company or subsidiary of a holding company to isolate the risks and rewards” (76 Federal Register 35517). Its only significant asset is the Pilgrim DTF (PW Petition, 17, 126). HDI has no apparent assets. Holtec International is not a licensee, is “protected by limited liability” (*Id.*), and has refused either to provide a parental company guarantee or to agree to use any spent fuel expenses recovered from DOE to replenish the DTF (PW Petition, 17-18; PW Petition Reply, 4-7; Opposition to PW, 65).

¹ Contentions 1 and 2 are the subject of the PW Petition. Contention 3 is the subject of the PW New Contention. The Commonwealth’s two contentions are essentially the same as Pilgrim Watch Contentions 1 and 2.

Holtec's assertion that Holtec Pilgrim "will have the ability" to seek recovery from DOE' and "to make additional contributions to the NDT" conveniently forgets these refusals. The Staff's statements that the NRC has "the ability to take action on any actual or potential funding deficiencies" (Exemption, 10) is wrong and ignores reality. *If the DTF runs short, no one is legally required, or can be forced, to supply more money.* NRC regulations may say that a licensee must make-up the balance of any shortfall (10 CFR 72.30(g)), but the reality is that a bankrupt licensee cannot "make-up" anything; and the NRC has no legal ability or power to require a non-licensee to pay anything. (See PW Petition Reply, 4-7)

At hearing, Pilgrim Watch will show that Holtec Pilgrim and HDI are *not* financially responsible. PW will prove, among others, the facts listed on pp 20-21 (see also pp 124-129) of the PW Petition and the substantial evidence (*Id.*, pp 22-82) supporting them. None of these facts and evidence are considered or addressed in the Staff Order, Exemption, or Safety Evaluation.

For example, Holtec (DCE, p.55) and the NRC agree that an accurate cost estimate is necessary for a safe and timely plant decommissioning (DCE, 55; ML1119500310: "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"). But the Staff ignored, and Holtec nowhere disputes, that Holtec assumed that decommissioning costs would not increase faster than inflation (See PW Petition, 22-24; Opposition to PW Petition, 33-35; PW Petition Reply, 11). Holtec has presented no evidence to contradict the NRC and Callan Associates contrary statements (See PW Petition, 22-24; PW Petition Reply, 10-12). Neither has Holtec disputed that a greater-than-general-inflation increase in decommissioning costs could result in a billion-dollar deficit in the DTF. (See PW Petition, 24-26; PW Petition Reply, 11).

Holtec's cost estimates also assume, contrary to fact (see PW Petition, 30-54) and ignored in the Staff Order, that there is no significant radioactive or hazardous contamination on the Pilgrim site. (See Holtec DCE, 22). Holtec says that it based its estimate of site conditions on "extensive due diligence," but that is simply not so (PW Petition, 31- 34); PW Petition Reply, 16 - 18). Less than a month and a half ago, a Holtec representative told NDCAP that the "environmental studies have not happened yet."² Holtec still does not know what contamination is on site at Pilgrim or what it will cost to remove it and remediate the site. The Federal Register Notice establishing the NRC Decommissioning Rule is clear that "To adequately assure that a decommissioning fund will cover the costs of decommissioning, the owner of a facility must have a reasonably accurate estimate of the extent to which residual radioactivity is present at the facility." 76 Federal Register 33514

Holtec argues that its contingency allowance is sufficient, but admits that its "Contingency Allowance is expected to be fully consumed [and] does not account for inflation or escalation of the price of goods and services" (Holtec PSDAR, Sec. 4.5; Petition 22; PW Petition Reply, 12; Opposition to PW Petition, 31). None of the "contingency allowance" will be available to cover decommissioning costs that increase faster than inflation, spent fuel management costs incurred after 2062, or any site restoration costs resulting from unknown (at least to Holtec) site contamination. (See PW Petition, 21-22; PW Petition Reply, 13)

Holtec estimates that its annual spent fuel management costs will be about \$7.2 million, but its PSDAR say that they will be no such costs after 2062. (PSAR, 60-61). The only reasonable assumption is that spent fuel will remain on-site long after that date. (PW Petition, 26-30; PW Petition Reply, 13-14). Holtec's own PSDAR estimates show that is no money in the

² NDCAP Draft Minutes of June 19, 2019 Meeting.

DTE to pay post-2062 spent fuel management costs. It is Holtec's burden to show that DOE's already-delayed strategy will be achieved; it has done nothing to do so.

Contention 2 - The LTA Does Not Include the Environmental Review
and Report Required by NRC regulations and NEPA.

At hearing, PW will prove that environmental impacts of decommissioning are *not* bounded by the previous NUREG-0586, the GEIS (2002); NUREG-1496 (1997); NUREG-1437, Pilgrim's SEIS (2007); NUREG-1437, or GEIS for License renewal. The facts that PW will prove at hearing include those set forth and discussed at pp. 36-61, 65-80, 93-95, 97-109, 111-118 and 121-123 of the Pilgrim Petition, and pp 29, 33 and 35 of the Pilgrim Petition Reply. These facts show that the previous environmental impact statements are inaccurate and incomplete, ignore previous important information about contamination at Pilgrim, and do not consider any new and significant information since the GEIS and SEIS were published. Holtec's opposition to Contention 2 did not try to show that these facts were considered in previous environmental statements. Rather, it argued (incorrectly and irrelevantly) that these facts related only to Holtec's PSDAR and for that reason were outside the scope of this proceeding (Holtec Opposition to PW Petition, 24-26, 28, 69, 71). In doing so, Holtec again overlooked that Pilgrim Watch does not challenge any of the rules relating to PSDARs. Rather, PW will prove that, because previous environmental impact statements do not consider these (and other) facts, they do not bound the environmental impacts associated with Holtec's decommissioning plan. (See Pilgrim Petition, 91)

This being so, a NEPA review is required (PW Petition, 82-86; PW Petition Reply, 22-23). The NRC agrees. 10 C.F.R §2.51.53(d) requires a supplemental environmental report

to reflect information that it new or has not previously been considered (PW Petition, 85; PW Petition Reply, 22), i.e., when, as here, potential environmental impacts fall outside previous analyses.

The principal thrust of Holtec’s opposition to Contention 2 is that it impermissibly challenges 10 C.F.R. §51.22(c)(21).³ (Holtec Opposition to PW Motion, 61). Pilgrim Watch does not challenge this rule. More important, §51.22(c)(21) does not apply to this license transfer. Holtec’s assertions that it does ignores both the words and the purpose of the rule.

The rule applies only to license amendments that are “required to reflect the approval of a ... transfer of an NRC license.” As shown in footnote 5, Holtec’s amendment goes far beyond what might be “required.” In addition, the intent of the rule was not to exempt any license amendment involved in any kind of transfer. Rather, it was intended only to make it unnecessary for the NRC to conduct a hearing when all the change sought to do was to reflect some corporate reorganization, i.e., make changes in ownership or partial ownership of facilities at a corporate level. (63 Fed. Reg. 66722; See PW Petition Reply, 25-26). That is not what the LTA does here.

Contention 3- The NRC Has Not Conducted the Character Review that is Prerequisite to Granting the LTA

There have been numerous public reports that Holtec and SNCL have a long and recent history of corruption, fraud, bribery, lying, and underbidding projects (PW New Contention, 10-18, 40; PW New Contention Reply, 13) The NRC knew about many of these *before* PW filed its

³ Although for different reasons, Pilgrim Watch and Holtec agree that 10 C.F.R. § 2.1315 is not applicable. Holtec says the generic finding of no significant hazards ... does not govern the environmental review” (Holtec Opposition to PW Petition, 63). The Pilgrim Watch Petition said that the proposed license amendment would do far “more than confirm the [prior] License to reflect the transfer action, and the amended license of August 27, 2019 did far more. It deleted all the provisions that were included in the prior license “[f]or purposes of ensuring public health and safety;” it deleted the significant financial provisions intended “to assure that adequate funds will remain available in the plant’s separate decommissioning funds(s); and it also licensed a new company (HDI) unrelated to any previous licensee and made the new finding that HDI is technical and financially qualified.

New Contention (*Id.*, 10). It knew about all of the more than 30 reports detailed in PW's New Contention *before* the Staff Order was issued on August 22, 2019.⁴

The crux of Pilgrim Watch's contention 3 is that, particularly given what the NRC knew, the NRC had a duty – before granting the License Transfer Application - to investigate Holtec and SNC-Lavalin, and to determine whether they, and the new companies they own and control, can be trusted to decommission Pilgrim in a way that will protect the public health and safety, the environment, and out pocket books. *The NRC did not do so.* “The NRC staff reviewed the revised PSDAR *only* to determine whether Holtec Pilgrim and HDI are financially and technically qualified” (SE, 3, italics added). The SE nowhere mentions character, trustworthiness or reliability.

At hearing, Pilgrim Watch will prove that the NRC has not met its duty to make the necessary investigation and, as a prerequisite to granting the LTA, to determine that Holtec International, SNC-Lavalin, Holtec Decommissioning International, and Comprehensive Decommissioning International are trustworthy and reliable. PW New Contention, 1-3, 10, 18-22.

B. Pilgrim Watch and the Public will be Irreparable Harmed Unless a Stay is Granted.

Pilgrim Watch is a non-profit citizens' organization. It and its members are part of the larger public that will irreparably harmed if the Staff Order is not stayed. The public interest requires that the Order not become effective until all pending contentions have been resolved. If no stay is granted, the harm threatening the public will be irreparable. It cannot be rectified.

The Atomic Energy Act requires the NRC to ensure protection of public health, safety and the environment (AEA, Sec. 2(d)). The NRC's official position is that trustworthiness and

⁴ Holtec agrees that the information in these reports had long been known. (See Pilgrim Watch New Contention Reply, 5).

reliability are important to protect the public health, safety and security; and agrees that a shortfall in decommissioning funding would place public health, safety, and the environment at risk (PW Petition, 16). Holtec admits that an up-to-date site assessment is necessary so that “radiological, regulated, and hazardous wastes are identified, categorized and quantified to support decommissioning and waste management planning.” (PW Petition, 94) Holtec’s and SNC-Lavalin’s reported past behavior clearly bring into question the companies’ character and willingness to abide by regulatory requirements and to protect public health and safety.

Any thought that the NRC could roll back the clock and eliminate the irreparable harm to the public health, safety and pocketbook that Holtec is likely to cause between now and then is pure fantasy. We know of no instance in which the NRC has done so in the past. We see no way in which it could do so here.

The known and likely risks of allowing the license transfer are legion: shoddy work by companies with a reported history of corruption, underestimating costs and cutting corners to save money. Holtec has never decommissioned a plant. Holtec International, SNC-Lavalin, Holtec Pilgrim, HDI and CDI do not know how much radiological or non-radiological contamination there is on the Pilgrim site, or where it is (See, e.g., PW Petition, 31-34; PW Petition Reply, 14-17). Neither do they know, or have they reasonably estimated, what costs they will actually incur (even over the next few year) in decommissioning Pilgrim and restoring the Pilgrim site. (See, e.g., PW Petition, 34-35, PW Petition Reply, 17)

Between now and when the issues raised in the PW and AGO contentions are finally resolved, the threatened irreparable harm to Pilgrim Watch and the rest of the public includes:

- Significant remaining radiological and hazardous contamination in portions of the Pilgrim site that Holtec thinks it has already decommissioned and remediated. This is

the unavoidable result of Holtec not having the up-to-date information prerequisite to planning work or knowing when necessary work has been completed.

- Leakage, resulting from lack of knowledge and poor or incomplete work, of contaminants into Cape Cod Bay and Massachusetts' second largest aquifer. See LLTF Executive Summary, PW Petition, 103-104: "the potential exists for unplanned and unmonitored releases of radioactive liquids to migrate offsite into the public domain undetected." Planned or unplanned, no such leakage can be remediated.
- Airborne contamination from parts of site that, because no site analysis was conducted, Holtec did not know were contaminated, impacting workers onsite and public offsite.
- Exhaustion of the DTF, leaving insufficient money to properly complete the job and passing the bill on to the public. Holtec expects to spend more than 95% of the money it says will be available to pay "License Termination Costs" in 2019-2024 (ML 19210E470). PW has shown that actual costs, even over the next six years, will be more than \$100 million more than Holtec estimates (PW Petition, 24-25; PW Petition Reply, 11-12, 14). Once the money in the DTF has been spent, it cannot be recouped. Holtec will not provide more money, and the NRC cannot force it to do so. The public will have to cover not only post-2024 costs but also the likely shortfall between now and then.
- In Massachusetts and the rest of the country (particularly states with plants that Holtec plans to decommission), a large decrease in whatever remaining confidence the public might have that the NRC will protect the public rather than only the nuclear industry. Public trust should be important to the NRC (See NRC mission: <https://www.nrc.gov/about-nrc.html>), but the NRC has given the public very little reason to believe that the NRC's will do much to protect public health and safety and the environment. A transfer

of Pilgrim’s licenses to Holtec, despite and in the face of extensive and properly filed petitions challenging it, could well be the final proof that the NRC does not intend to give the public any real ability to protect itself.

C. Neither Holtec nor Entergy will be Significantly Harmed by a Stay

Neither Holtec nor Entergy will be harmed in any significant way if the Staff Order is stayed until the issues raised by the PW Petition, the PW New Contention and the AGO Petition are resolved. They will recover all spent fuel management costs from DOE.

In opposing the Commonwealth’s motion to stay pending settlement negotiations, Holtec and Entergy referred to “the impact such delay would have on the nearly 270 individuals who work at Pilgrim,” and said that “any delay in the license transfer would necessitate further expenditure by Entergy prior to the transfer,” and “could impact the sequencing of decommissioning activities.”

Pilgrim was sold to Holtec on August 26, 2019 (ML 19239A037). The “270 individuals [still] work at Pilgrim,” but as employees of CDI rather than Entergy; the only thing that has changed, or would be different had there been no transfer, is who pays them. The number of Pilgrim employees has already been reduced from about 600 to about 270, and by 2026 only about 26 will remain. (Holtec PSDAR, Table 4) PW agrees that Pilgrim employees have faced and will have to face what Holtec and Entergy call “a significant impact on their personal and professional lives.” This unfortunate harm is simply the result of Pilgrim closing. It has nothing to do with whether the Staff Order should be stayed.

Entergy and Holtec also say “any delay in the license transfer would necessitate further expenditures by Entergy prior to the transfer.” In fact, *a delay in transfer would have reduced costs*. Without a license transfer, Entergy’s PSDAR projected costs totaling about \$490 million

for 2019-2023 (Table 1 to Enclosure 2 of Entergy's Request for Exemption), about \$250 million *less* than Holtec's estimated about \$735 million for the same period (Holtec PSDAR, Table 5-1).

Finally, Holtec and Entergy speculate, with no specifics, that delay would have a possible "impact [on] the sequencing of decommissioning activities." What "sequencing" might possibly be impacted, or what the costs or other impacts of any change in sequencing might be, is never mentioned. A delay in when some decommissioning activities might take place is not "irreparable." Neither is a delay in when Holtec might begin to see as much as \$800 million in decommissioning profits.⁵

D. Conclusion

Pilgrim Watch is likely to prevail on its Contentions 1-3. Not staying the Staff Order would cause no harm of any significant to Holtec or Entergy. Not to stay the Staff Order would ignore the public interest, and would result in irreparable harm to PW and the public

The Staff Order should be stayed.

Respectfully submitted (Electronically signed),

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⁵ A Holtec representative told us that Holtec built profit (not less than 30-35% would be typical for a long-term project such as this) into its cost estimates. Holtec's profit will be further increased if it is allowed to pocket the about \$500 million in spent fuel management costs it will recover from DOE.

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CERTIFICATION OF SERVICE AND CONSULTATION

Pursuant to 10 C.F.R. § 2.305, I certify that copies of Pilgrim Watch Motion Under 10 C.F.R §2.1327 to Stay Staff Order of August 22, 2019 have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding, on September 3, 2019

Pursuant to 10 C.F.R. § 2.323, I also certify that PW contacted other parties in this Proceeding. Counsel for the Commonwealth of Massachusetts said that the Commonwealth supports Pilgrim Watch's request for a stay of the NRC Staff's approval of the license transfer application. Counsel for Holtec and Entergy said Holtec and Entergy oppose the motion.

Signed (electronically) by

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September 3, 2019