

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF  
MASSACHUSETTS,

Petitioner,

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION,

Respondent.

**No. 19-1198**

**MOTION OF ENTERGY NUCLEAR OPERATIONS, INC., HOLTEC  
INTERNATIONAL, HOLTEC DECOMMISSIONING INTERNATIONAL,  
LLC, AND HOLTEC PIGLRIM, LLC (f/k/a ENTERGY NUCLEAR  
GENERATION COMPANY, LLC) FOR LEAVE TO INTERVENE**

Pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(b), Entergy Nuclear Operations, Inc. (“ENOI”), Holtec International (“Holtec”), Holtec Decommissioning International, LLC (“HDI”), and Holtec Pilgrim, LLC (formerly known as Entergy Nuclear Generation Company, LLC (“ENGCG”)) (the Holtec entities, together with ENOI, “Movants”) respectfully move for leave to intervene as party-respondents in the above-captioned matter. Respondent U.S. Nuclear Regulatory Commission (“NRC”), by its counsel Justin D. Heminger, Esq., has indicated that the NRC does not oppose Movants’ intervention. Petitioner Commonwealth of Massachusetts, by its counsel, Seth Schofield, Esq., has indicated that the Commonwealth takes no position on the motion.

In support of the motion, Movants state as follows:

**Introduction**

1. Pilgrim Nuclear Power Station (“Pilgrim”) is a single-unit boiling water nuclear reactor located in Plymouth, Massachusetts, and licensed by the NRC.

2. As a nuclear power plant located in the United States, Pilgrim is subject to extensive regulation by the NRC.

3. Pilgrim received a Construction Permit on August 26, 1968, and an Operating License on June 8, 1972. Pilgrim began operations on December 1, 1972.

4. On November 10, 2015, ENOI notified the NRC that it planned permanently to cease power-generation operations at Pilgrim no later than June 1, 2019.

5. On June 10, 2019, ENOI certified that it had permanently ceased operations at Pilgrim and that all nuclear fuel had been permanently removed from the reactor.

6. In order to effectuate expedited decommissioning of Pilgrim, on November 16, 2018, Movants filed a License Transfer Application (“LTA”) with the NRC. The LTA sought approval of: the direct transfer of ENOI’s authority to conduct licensed activities under the facility license for Pilgrim and the general license for the Pilgrim Independent Spent Fuel Storage Installation to HDI, a wholly-owned subsidiary of Holtec International formed to decommission nuclear plants;

the indirect transfer of control of those licenses to Holtec International; and a conforming administrative amendment to the facility license to reflect the transfer of ENOI's licensed authority to HDI, the proposed name change of the entity that owns Pilgrim from ENGC to Holtec Pilgrim, LLC, and the deletion of certain license conditions no longer applicable as a result of the license transfers.

7. On August 22, 2019, the NRC staff issued an order approving the LTA, subject to the NRC's authority to rescind, to modify, or to condition the transfer. *See* Pet., Ex. A; *In the Matter of Entergy Nuclear Generation Company, Entergy Nuclear Operations, Inc., Holtec Pilgrim, LLC, Holtec Decommissioning International, LLC, and Pilgrim Nuclear Power Station*, 84 Fed. Reg. 45176-01 (Aug. 28, 2019); *see also* 10 C.F.R. § 2.1327.

8. Pursuant to the NRC staff's order, on August 26, 2019, authority to conduct activities under the Pilgrim licenses was transferred to HDI, and indirect control of the licenses was transferred to Holtec International.

9. On September 25, 2019, the Commonwealth of Massachusetts petitioned this Court for review of NRC staff's order, which, as noted above, had approved the transfer pending disposition of requests for certain review by the NRC Commissioners, and certain other ancillary approvals and findings.

10. This Court has permitted intervention by the owners and operators of a nuclear power plant in cases where petitioners seek to challenge NRC actions

concerning the plant. *See, e.g., Safe Energy Coalition of Mich. v. U.S. Nuclear Regulatory Comm’n*, 866 F.2d 1473 (D.C. Cir. 1989); *see also In re: Friends of the Earth, et al.*, No. 16-1189, Order Granting Mot. to Intervene, ECF No. 1620139 (D.C. Cir. 2016). Movants respectfully request that they be allowed to intervene here.

### **Background**

11. The NRC was created to regulate the activities addressed in the Atomic Energy Act (“AEA”) and to “to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment.” United States Nuclear Regulatory Commission, *About NRC* (Sept. 30, 2019), <https://www.nrc.gov/about-nrc.html>. In this role, the NRC issues, amends, and oversees licenses for nuclear plant owners and operators. Owners and operators, along with prospective owners and operators, are important stakeholders in the safe promulgation of nuclear power.

12. Pilgrim operated for more than 46 years prior to its permanent shutdown on May 31, 2019. ENGEC had acquired ownership of Pilgrim in 1999 from Boston Edison, and it owned the plant and ENOI operated the plant for twenty years before the shutdown. *See In the Matter of Bos. Edison Co. & Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, 49 N.R.C. 372, 373 (Apr. 26, 1999).

13. Decommissioning a nuclear power plant is a process that commences at the end of the plant's power generation life and concludes with the restoration of the site for future use. *See generally* 10 C.F.R. § 50.2. In a broad sense, the process of decommissioning the site includes permanently removing the plant from power generation service, defueling the reactor, transferring spent nuclear fuel to dry cask storage, decontaminating the site, and site restoration.

14. ENOI submitted to the NRC a Post-Shutdown Decommissioning Activities Report ("PSDAR") based on ENOI's plan to utilize "SAFSTOR," a decommissioning approach that involves maintaining the plant for many years in a state of dormancy, followed by active decommissioning. ENOI anticipated that active decommissioning would not begin prior to the 2070s. *See* Decommissioning, Pilgrim Nuclear Power Station (Sept. 30, 2019), <http://www.pilgrimpower.com/decommissioning.html>.

15. HDI plans to decommission Pilgrim utilizing the "DECON" approach, which will allow decommissioning to begin in the near-term and to proceed on an expedited basis, completing the process for the vast majority of the Pilgrim site in 2027, years before ENOI would even begin active decommissioning. *See* Decommissioning, Pilgrim Nuclear Power Station (Sept. 30, 2019), <http://www.pilgrimpower.com/decommissioning.html>.

16. Movants applied to the NRC on November 16, 2018 for approval of transfers of the requisite licenses from the Entergy entities to the Holtec entities (and ancillary approvals). The transaction contemplated a transfer of ownership of the entity that owns the physical plant—ENGCC—from an Entergy entity to a Holtec entity, after which ENGCC would be renamed Holtec Pilgrim, LLC.

17. Shortly thereafter, on February 20, 2019, the Commonwealth of Massachusetts and Pilgrim Watch filed petitions with the NRC seeking to intervene and requesting the NRC to hold a hearing on certain contentions relating to the proposed transaction and approvals.

18. Specifically, Massachusetts and Pilgrim Watch filed contentions challenging the transaction on the grounds that Movants had failed to demonstrate that the transfer would result in reasonable financial assurance for adequate protection for public health and safety, and that the LTA had not been subjected to sufficient environmental review under the National Environmental Policy Act.

19. Movants filed responses with the NRC on March 18, 2019. Further briefing followed. On July 16, 2019, Pilgrim Watch sought to add a new contention to its hearing request, asserting that the NRC staff had not properly investigated whether the Holtec companies and other companies to be involved in the decommissioning as contractors were trustworthy or reliable. Movants opposed the

addition of the contention. The requests for hearing have not been ruled on by the NRC and are still pending.

20. On August 1, 2019, Massachusetts sought to stay all NRC actions on the LTA pending settlement discussions with the Entergy and Holtec entities. Movants opposed the motion, and the NRC denied it on August 14, 2019.

21. On August 13, 2019, NRC staff notified the parties that staff intended to issue an order approving the LTA on or about August 21, 2019.

22. An order of the NRC staff on a license transfer is immediately effective, absent a stay, notwithstanding the pendency of hearing requests, subject to the continuing authority of the NRC Commissioners to rescind, to modify, or to condition the transfer, based on the outcome of any post-effectiveness hearing. *See* 10 C.F.R. § 2.1327; *see also In the Matter of Entergy Nuclear Generation Company, Entergy Nuclear Operations, Inc., Holtec Pilgrim, LLC, Holtec Decommissioning International, LLC, and Pilgrim Nuclear Power Station*, 84 Fed. Reg. 45176-01 (Aug. 28, 2019).

23. On August 15, 2019, Massachusetts sought an enlargement of time to file an application to stay the expected NRC staff order approving the LTA. Movants opposed the extension. The NRC granted a five-day extension for Massachusetts to file an application to stay the NRC staff order.

24. On August 22, 2019, the NRC's Director for the Office of Nuclear Reactor Regulation issued NRC staff's Order Approving Direct and Indirect Transfer of License and Conforming Amendment in *In the Matter of Entergy Nuclear Generation Company, Entergy Nuclear Operations, Inc.* See Pet., Ex. A.

25. On August 26, 2019, Movants closed on the transaction.

26. Massachusetts filed a motion to stay the effectiveness of NRC staff's order on September 4, 2019. Movants opposed the stay. The motion has not been ruled on by the NRC and is still pending.

27. Massachusetts filed its petition for review in this Court on September 25, 2019.

### **Grounds for Intervention**

28. Rule 15(d) states that a motion to intervene "must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention." Fed. R. App. P. 15(d). To satisfy this rule, a prospective intervenor must "simply . . . file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Fin. Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991). Since Rule 15(d) "provides no standard for resolving intervention questions," appellate courts have identified two considerations: "first, the statutory design of the act and second, the policies underlying intervention in the trial courts pursuant



to Fed. R. Civ. P. 24.” *State of Tex. v. U.S. Dep't of Energy*, 754 F.2d 550, 551 (5th Cir. 1985) (internal citation omitted); *see also Sierra Club, Inc. v. E.P.A.*, 358 F.3d 516, 517-18 (7th Cir. 2004).

29. Under Federal Rule of Civil Procedure 24, this Court has held that “qualification for intervention as of right depends on the following four factors: (1) the timeliness of the motion; (2) whether the applicant ‘claims an interest relating to the property or transaction which is the subject of the action’; (3) whether ‘the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest’; and (4) whether ‘the applicant’s interest is adequately represented by existing parties.’” *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) (quoting Fed. R. Civ. P. 24(a)(2)); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233-34 (D.C. Cir. 2003). Movants satisfy these requirements, as explained below.

### **The Motion Is Timely**

30. This motion is timely because it has been filed within “30 days after the petition for review [was] filed.” Fed. R. App. P. 15(d); *see also Ala. Power Co. v. I.C.C.*, 852 F.2d 1361, 1367 (D.C. Cir. 1988).

### **Movants Have A Significant Interest In The Transaction That Is The Subject Of The Petition**

31. Movants are the entities that asked for, and received, NRC approval to transfer ownership and operating authority (and ancillary approvals) from Entergy

entities to Holtec entities, for the purpose of expedited decommissioning and a return to beneficial use of the site and its resources. Movants have substantial interests in whether the transfers are allowed to stand.

32. The closing of the transaction enabled the Movants to proceed with executing Holtec's expedited decommissioning plan for Pilgrim and to begin realizing the respective benefits from aligning the risks and potential benefits associated with that decommissioning with their respective business goals and expertise. As a result, Movants clearly have a significant interest in the transaction that is the subject of Petitioner's challenge.

**Disposition Of The Petition May As A Practical Matter Impair Or Impede the Movants' Ability to Protect That Interest**

33. Massachusetts seeks, in its petition, a review of NRC staff's rulings and processes relating to the transfers. If this Court were to overturn or forestall these actions or find the NRC's processes improper, the transfers would be affected.

34. As discussed above, if this Court were to grant the relief Petitioner seeks, it would, as a practical matter, adversely affect the benefits that Movants have already realized and expect to realize in the future as a result of the Pilgrim transaction.

**The Federal Agency Respondent May Be Unable To Represent The Movants' Unique Interests Adequately**

35. A prospective intervenor's burden of showing inadequate representation "is not onerous," as it "need only show that representation of [its] interest 'may be' inadequate, not that representation will in fact be inadequate." *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

36. While Movants would expect to be aligned with NRC in the event the NRC Commissioners deny Massachusetts' request for a hearing in whole or in part (or grant the request for a hearing but agree with NRC staff on the merits), the NRC hearing process remains pending. And even once it concludes, Movants may have a unique perspective to offer beyond that of the NRC insofar as they are (or have been) the operating and owning entities with respect to Pilgrim. Movants may have different interests from the NRC in this litigation, beyond the shared interest of preserving the NRC regulatory framework and decision-making process, particularly with respect to which party remains the owner and licensee of Pilgrim and the regulatory conditions imposed in connection with the same. As a result, the NRC may not adequately represent Movants' interests.

37. To ensure that Movants' participation as intervenors is helpful to the Court, Movants will endeavor to coordinate with the NRC to avoid duplicative

briefing and to ensure that Movants focus on arguments and/or background facts that the NRC may not address.

WHEREFORE, Movants respectfully request that the Court grant Movants' leave to intervene as parties-respondents.

Dated: October 16, 2019

Respectfully submitted,

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**ADDENDUM--CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appeal Procedure 26.1 and D.C. Circuit Rule 26.1, counsel for Entergy Nuclear Operations, Inc. certifies as follows:

Entergy Nuclear Operations, Inc. is a Delaware corporation engaged principally in the business of operating nuclear power facilities owned by its affiliates in the northeastern United States. Entergy Nuclear Operations, Inc. is a direct, wholly-owned subsidiary of Entergy Nuclear Holding Company #2. Entergy Nuclear Holding Company #2 is an indirect wholly-owned subsidiary of Entergy Corporation (NYSE: ETR). No other publicly-held company directly or indirectly holds a 10 percent or more equity interest in Entergy Nuclear Operations, Inc.

**ADDENDUM--CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appeal Procedure 26.1 and D.C. Circuit Rule 26.1, counsel for Holtec International, Holtec Decommissioning International, LLC, and Holtec Pilgrim, LLC certifies as follows:

Holtec International is a Delaware corporation engaged principally in the business of providing equipment, systems, and services to the nuclear industry throughout the world. Holtec International has no parent company, and no publicly-held company directly or indirectly holds a 10 percent or more equity interest in Holtec International.

Holtec Decommissioning International, LLC is a Delaware limited liability company engaged principally in the business of operating and decommissioning shutdown nuclear power plants. Holtec Decommissioning International, LLC is a direct, wholly-owned subsidiary of Holtec Power, Inc., which in turn is a direct, wholly-owned subsidiary of Holtec International.

Holtec Pilgrim, LLC (f/k/a Entergy Nuclear Generation Company, LLC), is a Massachusetts limited liability company engaged principally in the business of owning the shutdown Pilgrim Nuclear Power Station in Plymouth, Massachusetts. Holtec Pilgrim, LLC is a direct, wholly-owned subsidiary of Nuclear Asset

Management Company, LLC, which in turn is a indirect, wholly-owned subsidiary of Holtec International.



**CERTIFICATE OF SERVICE**

I, Sanford I. Weisburst, a member of the Bar of this Court, hereby certify that on October 16, 2019, I electronically filed the foregoing “MOTION OF ENTERGY NUCLEAR OPERATIONS, INC., HOLTEC INTERNATIONAL, HOLTEC DECOMMISSIONING INTERNATIONAL, LLC, AND HOLTEC PIGLRIM, LLC (f/k/a ENTERGY NUCLEAR GENERATION COMPANY, LLC) FOR LEAVE TO INTERVENE” with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate ECF system.

/s/ Sanford I. Weisburst  
Sanford I. Weisburst

Dated: October 16, 2019