January 7, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
Entergy Nuclear Operations, Inc.,	)	
Entergy Nuclear Generation Company,	)	Docket Nos. 50-293-LT
Holtec International, and	)	72-1044-LT
Holtec Decommissioning International, LLC	)	
	)	
(Pilgrim Nuclear Power Station)	)	

Applicants' Answer Opposing the Motion of the Commonwealth of Massachusetts to Amend its Petition with New Information

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. ("ENOI"), Holtec International ("Holtec"), Holtec Pilgrim, LLC (formerly Entergy Nuclear Generation Company) ("Holtec Pilgrim"), and Holtec Decommissioning International, LLC ("HDI") (collectively, "Applicants") hereby answer and oppose the Commonwealth of Massachusetts' ("Commonwealth") late-filed motion to supplement its petition in the Pilgrim Nuclear Power Station ("Pilgrim") license transfer proceeding.[1]

The Commonwealth seeks to supplement its original petition based on a project update given by Comprehensive Decommissioning International, LLC ("CDI"), HDI's decommissioning

[1] Motion of the Commonwealth of Massachusetts to Amend its Petition with New Information (Dec. 13, 2019) (ADAMS Accession No. ML19347D415) ("Motion"). This is the Commonwealth's second late-filed motion to supplement in this proceeding. Previously, in April 2019, the Commonwealth moved to supplement its petition to argue that an alleged overlap in the Holtec entities' planned decommissioning of the Pilgrim and Indian Point nuclear power plants warranted rejection of the Pilgrim license transfer application.

general contractor, at a November 14, 2019 Pilgrim Nuclear Decommissioning Citizens Advisory Panel ("NDCAP") meeting in Plymouth, Massachusetts.[2] The update, which was provided at the request of the NDCAP, included a "rough timeline"[3] of major decommissioning activities showing partial site release[4] occurring in 2027—eight years after the license transfer in 2019. The Commonwealth contends that this NDCAP update constitutes new information showing that "a delay . . . is not only likely, but is now a reality" and will result in an additional $85 to $102 million in total project costs. Motion at 1, 4.

The Commonwealth's Motion should be denied for failure to meet the standard for late-filed contentions in 10 C.F.R. § 2.309(c)(1) and, even ignoring the unjustified lateness, for failure to meet the contention-admissibility standards in § 2.309(f)(1).

First, the information on which the Commonwealth relies is not new. All along, Applicants have referred to an eight-year objective for partial site release, including in the application that commenced this proceeding. The Commonwealth could have raised the exact same argument presented in the Motion in its original petition. It did not do so, and now belatedly tries to by mischaracterizing the project's 2027 goal as a new fact.

Second, even if the Commonwealth's late-filed amendment to its contention were considered despite being untimely, the Commonwealth has neither raised an adequately supported dispute with Applicants' financial qualifications nor disputed the substantial conservatisms

[2] The Commonwealth includes the presentation made at the November 14, 2019 NDCAP meeting ("NDCAP Presentation") as Exhibit 1 to the Motion. A full recording of the NDCAP meeting is available at https://youtu.be/gHLYS9NFiYk ("NDCAP Recording").

[3] NDCAP Recording at approximately 0.10.00 mark (statement by Patrick O'Brien, CDI). CDI presented the rough timeline in response to the NDCAP's request for an in-process look at CDI's working timeline in advance of HDI's official update that will be submitted to NRC in March 2020 pursuant to 10 C.F.R. § 50.82(a)(8)(v).

[4] Partial site release refers to the planned release for unrestricted use of all portions of the Pilgrim site except the Independent Spent Fuel Storage Installation ("ISFSI").

underlying the application. The Commonwealth's sole basis for the supposed $100+ million cost impact is its declarant's belief that certain categories of costs presented in the DCE will be incurred on a uniform average basis during the years 2025–27. Third Declaration of Warren Brewer at 4 (attached to Motion) ("Third Brewer Decl."). Mr. Brewer offers no justification for this approach, nor does he engage with any of the relevant information in the LTA, PSDAR, DCE, or NDCAP timeline that clearly contradict it. Unsupported theories, even those proffered by an expert, do not meet the Commission's strict contention-admissibility standard. Moreover, even accepting *arguendo* the Commonwealth's unfounded cost impact, the Commonwealth has still not disputed the substantial conservatisms in Applicants' financial analysis or explained why, with over a billion dollars in Nuclear Decommissioning Trust ("NDT") funds, substantial uncredited recoveries from the Department of Energy ("DOE") for spent nuclear fuel expenses, and ongoing Commission oversight of actual and to-go costs, Applicants have failed to provide reasonable assurance that funds will be available to decommission Pilgrim. Finally, the Commonwealth's allegations that HDI has violated 10 C.F.R. § 50.82(a)(6)(iii) and (a)(7) are beyond the scope of this proceeding and in any event lack merit. The Commonwealth has therefore failed to meet the requirements of 10 C.F.R. § 2.309(f)(1).

The Commission should reject the Commonwealth's late-filed Motion to amend its Contention 1. As previously set forth in Applicants' answer opposing the Commonwealth's original petition,[5] the Commission should reject the Commonwealth's contentions and deny its hearing request.

[5] Applicants' Answer Opposing the Commonwealth of Massachusetts' Petition for Leave to Intervene and Hearing Request (Mar. 18, 2019) (ADAMS Accession No. ML19077A232) ("Applicants' Answer").

II. THE COMMONWEALTH HAS FAILED TO SHOW GOOD CAUSE FOR ITS LATE FILING

For the same reasons set forth in the Applicants' answer opposing Pilgrim Watch's similar motion,[6] the Commission should dismiss the Commonwealth's Motion for failure to show that it is based on information that is new and materially different from information previously available, as required to meet the late-filed contention standard in 10 C.F.R. § 2.309(c)(1)(i)-(ii).

The fact that partial site release might not occur until 2027 (the only aspect of the NDCAP presentation on which the Commonwealth relies) is not new. The Commonwealth incorrectly states that the NDCAP presentation is "new information because it is the first [time] Holtec has publicly acknowledged that its license termination and site restoration schedule will be significantly delayed from the schedule set forth in its PSDAR." Motion at 3. However, Applicants have repeatedly and consistently stated that HDI's project goal is to reach partial site release in eight years (i.e., in 2027), including in the LTA, PSDAR, and DCE,[7] prior presentations to the NDCAP,[8] and at the public meeting on the PSDAR.[9]

The Commonwealth characterizes these multiple references to the eight-year goal as a single "stray reference," and then dismisses the eight-year goal on the grounds that "no one actually

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[6] Applicants' Answer Opposing Pilgrim Watch's Third Motion to Supplement its Motion to Intervene and Request for Hearing, at 3–7 (Dec. 9, 2019) (ADAMS Accession No. ML19343C692).

[7] *See*, respectively, 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), at 3 (Nov. 16, 2018) (ADAMS Accession No. ML18320A031) ("LTA"); Notification of Revised Post-Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost Estimate for Pilgrim Nuclear Power Station, at 5 (Nov. 16, 2018) (ADAMS Accession No. ML18320A040) ("PSDAR"); Pilgrim Nuclear Power Station DECON Site-Specific Decommissioning Cost Estimate, at 10 (Encl. 1 to the PSDAR) ("DCE").

[8] Holtec International et al., NDCAP Presentation at slide 18 (Aug. 15, 2018), Pilgrim Nuclear Decommissioning Citizens Advisory Panel Briefing, https://www.mass.gov/doc/entergyholtec-presentation-to-ndcap/download; Holtec International et al., Pilgrim Decommissioning Upcoming Milestones at slide 7, Pilgrim Nuclear Decommissioning Citizens Advisory Panel Briefing (Sept. 19, 2018), https://www.mass.gov/doc/ndcap-meeting-september-status-and-upcoming-submittals/download.

[9] *See infra* note 10.

relied on" it because the 2027 objective does not align with the project schedule in the PSDAR. Motion at 4. But this ignores the obvious intent of the eight-year goal and HDI's statements that the PSDAR schedule "reflects Holtec project goal to achieve Partial Site Release within 8 years"[10]—clearly indicating that eight years has always been the objective for reaching partial site release, and future schedule evolutions may shift toward that objective as the project progresses. The only relevance of the NDCAP presentation is its confirmation that HDI meant what it said in the LTA, PSDAR, and DCE. The fact that CDI provided the NDCAP with a rough timeline for meeting HDI's objective does not constitute information that is materially different from the original objective itself.

The Commonwealth's failure to justify its late filing is highlighted by the fact that the Commonwealth could have made the exact arguments offered in the present Motion in its original petition. The only fact the Commonwealth relies on in the present Motion is the 2027 partial site release date; the Commonwealth does not engage in any discussion or analysis with respect to intermediate milestones, specific activities or cost drivers leading up to partial site release, or any other information presented at the November 2019 NDCAP meeting. Brewer's simplistic cost analysis underlying the Motion (discussed below), which adds 2.5 to 3 years of what Brewer believes are fixed overhead and management costs, could have been conducted just as easily based on the allegedly "stray reference[s]" in the PSDAR, DCE, LTA, PSDAR meeting presentation, prior NDCAP meeting presentations, and every other public communication by the Applicants. The late-filed contention standard does not give the Commonwealth another bite at the apple when

[10] Holtec International, NRC Public Meeting Pilgrim Nuclear Power Station Holtec Post-Shutdown Activities Report, at slides 4–5 (Jan. 15, 2019) (ADAMS Accession No. ML19009A343); *see also* Corrected Transcript of Public Meeting on Pilgrim Post-Shutdown Decommissioning Activities Report at 22 (Feb. 7, 2019) (ADAMS Accession No. ML19031C835) ("The [PSDAR] schedule reflects the project goal to achieve partial site release within eight years." (statement by Ms. Andrea Sterdis of HDI)).

the Applicants provided, in their initial application, all of the information required for the Commonwealth to make the exact same argument it now belatedly offers.[11]

The Commonwealth's Motion should be denied for failing to meet the criteria of 10 C.F.R. § 2.309(c)(1).

III. THE COMMONWEALTH'S AMENDED CONTENTION IS INADMISSIBLE

Even if the Commonwealth had satisfied 10 C.F.R. § 2.309(c)(1) by identifying new and materially different information (which it has not), the Commonwealth's Motion should still be denied because the proposed amended contention does not meet the admissibility criteria of § 2.309(f)(1).[12] Specifically, the Commonwealth has failed to provide any reasoned expert opinion or factual basis to support its claims. § 2.309(f)(1)(v). And even if the claimed cost impact were accepted as fact, the Commonwealth has still not disputed any of the substantial conservatisms in the financial analysis or explained why, in light of those conservatisms and ongoing Commission oversight, there is not reasonable assurance that funding will be adequate. § 2.309(f)(1)(vi).

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[11] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-15-19, 81 N.R.C. 815, 826 (2015) (denying as untimely a new contention based on information that was available in the applicant's initial filing). The Commonwealth devoted a significant portion of its initial petition to intervene (and Brewer's initial declaration) to alleged cost impacts of unspecified delays. *See* Commonwealth of Massachusetts Petition for Leave to Intervene and Hearing Request, at 13-15, 19-21, 39-40, (Feb. 20, 2019) (ADAMS Accession No. ML19051A114) ("Petition to Intervene"); Declaration of Warren K. Brewer, at 9-11 (Attached to Petition to Intervene) ("First Brewer Decl."). At the time, neither the Commonwealth nor Brewer apparently thought it worthwhile to mention the supposed $34 million per year of fixed overhead now proffered in the immediate Motion, even though all the information Brewer used in arriving at that figure was available in the PSDAR and DCE. Such an assertion would have presumably been relevant to Brewer's generic assertions that "delay would lead to increased, currently unaccounted for, costs for overhead and project staffing and management [that] could be significant." First Brewer Decl. at 6. Nor, apparently, did the Commonwealth think it worthwhile to mention HDI's 2027 goal for partial site release in support of its argument that "a delay in a single activity would likely delay the overall decommissioning schedule, which would lead to a significant, unaccounted for increase in costs for overhead and project staffing and management." Petition to Intervene, at 13. The reality is either that the Commonwealth or its expert did not pay attention to HDI's eight-year goal or the Commonwealth strategically decided that arguments presented in the immediate Motion were not worth making in its Petition to Intervene. Needless to say, the § 2.309 framework does not give petitioners the right to supplement their filings simply because the passage of time or changes to a party's strategic position have made an argument that was once ignored or rejected more appealing after the filing deadline.

[12] 10 C.F.R. § 2.309(c)(4) provides, "[a] new or amended contention filed by a party or participant to the proceeding must also meet the applicable contention admissibility requirements in paragraph (f) of this section."

Finally, the Commonwealth's claims with respect to regulatory compliance are beyond the scope of this proceeding. § 2.309(f)(1)(iii).

A. The Proposed Amended Contention Lacks Factual or Expert Support

Section 2.309(f)(1)(v) requires petitioners and their experts to provide reasoned support for their claims, and 2.309(f)(1)(vi) requires the petitioner to provide sufficient information to demonstrate a genuine, material dispute with the application. These provisions require more than conclusory factual arguments in support of a contention, even when offered by an expert.[13] "'Bare assertions and speculation,' even by an expert, are insufficient to trigger a full adjudicatory proceeding."[14] "[A]n expert opinion that merely states a conclusion . . . *without providing a reasoned basis* or explanation for that conclusion is inadequate."[15]

The foundation of the Commonwealth's Motion is its declarant Mr. Brewer's invented premise that the project has an immutable hotel load of $34 million per year, and therefore, any extension of the partial site release date (independent of any changes to project scope, work activities, or direct costs—none of which has been postulated by the Commonwealth) results in a net increase to total project costs equal to $34 million per year. Third Brewer Decl. at 5. Brewer conjures up this annual figure by averaging *total costs* for Program Management, Insurance and Regulatory Fees, Energy, and Property Taxes (as categorized in DCE Table 3-3) across the years of active license termination and site restoration work. To do so, Brewer necessarily assumes,

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[13] *See USEC, Inc*. (Am. Centrifuge Plant), CLI-06-10, 63 N.R.C. 451, 472 (2006) (explaining that conclusory statements made by an expert do not provide sufficient support for a contention).

[14] *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 N.R.C. 704, 714 (2012) (footnote omitted).

[15] *USEC*, CLI-06-10, 63 N.R.C. at 472 (emphasis added) (quoting *Private Fuel Storage*, LBP-98-7, 47 N.R.C. 142, 181); *see also Power Auth. of N.Y.* (James A. Fitzpatrick Nuclear Power Plant and Indian Point, Unit 3), CLI-00-22, 52 N.R.C. 266, 315 (2000) ("Unsupported hypothetical theories or projections, even in the form of an affidavit, will not support invocation of the hearing process.").

without giving any justification, that all of these cost categories are (1) completely independent from work progress, direct scope, intermediate project milestones, step-down factors, or any other cost influencers, and (2) evenly distributed across every year during which active license termination and site restoration activities are being performed. This gross oversimplification defies common sense, industry practice, and NRC guidance,[16] and more importantly fails to engage with any of the relevant information in the PSDAR or DCE. Brewer's failure to provide any justification for the only thing that matters here—the cost impact—requires the Commonwealth's Motion to be rejected under § 2.309(f)(1)(v).

A closer examination of Brewer's approach only confirms that it is baseless speculation. Most of Brewer's buildup to the $34 million number consists of the omnibus "Program Management" category. As explained in the DCE, the Program Management category includes a variety of indirect labor and project support costs that are incurred across all decommissioning stages but are not readily subdivided for purposes of allocating the costs to individual periods. DCE at 14. DCE Tables 3-1, 3-2, and 6-1 provide various breakdowns of Program Management costs, including an annualized view broken down into detailed subcategories in Table 3-2.[17]

[16] *See generally* Reg. Guide 1.202, Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors, at 9–15 (Feb. 2005) (detailing cost-buildup factors for site-specific estimates); NUREG-1713, Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors (Dec. 2004); NUREG/CR-6174, Revised Analyses for the Reference Boiling Water Reactor Power Station (July 1996).

[17] Table 3-2 breaks down each of the categories Brewer selected from Table 3-3 into thirty WBS codes. WBS codes that roll up to "Program Management" in Table 3-3 are:
01.02.06.01.03 Security fencing and protection of remaining entrances against trespassing
01.02.06.01.04 Deployment of officers' forces
01.02.06.02.01 Inspection and maintenance of buildings and systems
01.02.06.02.02 Site upkeep activities
01.02.06.03.01 Electricity supply systems
01.02.06.03.02 Ventilation systems
01.02.06.03.07 Other systems
01.02.06.04.02 Radiation protection and monitoring
01.02.06.04.03 Environmental protection and radiation environmental monitoring
01.02.08.02.01 Core management group
01.02.08.02.02 Project implementation planning, detailed ongoing planning

Brewer ignores all of this information and simply computes the annual average of the rolled-up total for all Program Management costs for license termination and site restoration activities (approximately $150 million). Third Brewer Decl. at 6. Brewer assumes, without comment or justification, that (1) every subcategory within this catchall applies to work activities shown in the NDCAP timeline to be performed in 2025-2027, (2) delaying commencement of direct scope (like demolition of reactor and turbine buildings) associated with these indirect costs would *adversely* affect cash flow and NDT value and result in *increased* costs, and (3) a project-wide average is a reliable metric for calculating actual costs of specific activities performed over a discrete period despite the fact that virtually every category rolled into that average is shown in the DCE to be frontloaded during the early years of the project (*see* DCE Table 3-2). Brewer offers no support for these assumptions nor does he contend with directly contradictory information in the DCE.

For example, nearly half of Program Management costs for license termination and site restoration activities are security staffing and radiation protection and monitoring.[18] Brewer does

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01.02.08.02.03 Scheduling and cost control
01.02.08.02.04 Safety and environmental analysis, ongoing studies
01.02.08.02.05 Quality assurance and quality surveillance
01.02.08.02.06 General administration and accounting
01.02.08.02.07 Public relations and stakeholders involvement
01.02.08.03.01 Engineering support
01.02.08.03.02 Information system and computer support
01.02.08.03.03 Waste management support
01.02.08.03.04 Decommissioning support including chemistry, decontamination
01.02.08.03.05 Personnel management and training
01.02.08.03.06 Documentation and records control
01.02.08.03.07 Procurement, warehousing, and materials handling
01.02.08.04.01 Health physics
01.02.08.04.02 Industrial safety

See DCE at 31–32. The WBS codes corresponding to the other categories selected by Brewer from Table 3-3 are:

Energy: 01.02.08.03.08 (Housing, office equipment, support services)
Insurance and Regulatory Fees: 01.02.11.01.03 (Payments (fees) to authorities), 01.02.11.03.01 (Nuclear related insurances), and 01.02.11.03.02 (Other insurances)
Property Taxes: 01.02.11.02.02 (Local, community, federal taxes)

[18] *See* DCE at 49, Table 6-1 (WBS codes lines 01.02.06.01 and 01.02.06.04).

not provide any explanation for why it is appropriate to extrapolate these costs across the industrial demolition, waste removal, earthwork, and final site restoration activities shown in the NDCAP timeline to occur in 2025–2027, after all fuel and Greater Than Class C waste has been removed and corresponding security requirements and major dose sources have been reduced. Brewer ignores Table 3-2 of the DCE, which shows a massive reduction in security staffing well before 2025.[19] Likewise, Brewer ignores the more than 50% reduction in radiation protection and monitoring costs from 2023 to 2024[20] and fails to explain why the same indirect cost structure associated with radiation protection during reactor vessel segmentation has any relevance to the cost structure for demolition of out buildings, final status surveys, earthwork, and site restoration. Similarly, Brewer fails to explain why any of the seven subcategories of indirect support services[21] (rolled into Program Management) relate to the direct scope expected to take place in 2025-2027, or why delaying certain direct scope activities would still result in consistent expenditure of the associated indirect costs from 2019 to 2027.[22]

[19] DCE Table 3-2 (WBS code 01.02.06.01.04) shows that annualized security staffing costs of $11-12 million in 2019, 2020, and 2021 are reduced to less than $800,000 per year in 2022 and beyond. DCE at 31; *see also* DCE at 21 ("[D]aily onsite staffing . . . is expected to decrease as the spent fuel cools, as the fuel is moved from the pool to the ISFSI and as requirements for security and emergency planning are reduced."); PSDAR at 21 ("Onsite HDI staffing changes . . . are expected to occur at the following milestones: • The spent fuel emergency planning zone is reduced following the spent fuel cooling period • All spent fuel has been moved from the [spent fuel pool] to the ISFSI • Major demolition start").

[20] DCE at 31 (Table 3-2, WBS Code 01.02.06.04.02).

[21] DCE at 50, Table 6-1 (WBS Codes 01.02.08.03.01 (Engineering Support), 01.02.08.03.02 (Information system and computer support), 01.02.08.03.03 (Waste management support), 01.02.08.03.04 (Decommissioning support including chemistry, decontamination), 01.02.08.03.05 (Personnel management and training), 01.02.08.03.06 (Documentation and records control), 01.02.08.03.07 (Procurement, warehousing, and materials handling)).

[22] Similarly, Brewer fails to explain why the categories other than Program Management activities that he selected from Table 3-3 would apply uniformly in 2025-2027. For example, he provides no explanation why items such as regulatory fees and nuclear-related insurance costs for the period prior to the zirconium fire risk-reduction milestone (during which there is still a potential for a spent fuel pool fire) should be used in computing the insurance and regulatory costs of the project in 2025-2027. Brewer also fails to take into account any increased NDT earnings that would accrue as a result of certain activities (such as demolition, final status surveys, and site restoration) taking place in 2025-2027 rather than 2023-2024.

Because § 2.309(f)(1)(vi) requires the Commonwealth to demonstrate that a genuine dispute exists, Brewer must provide sufficient information to explain why it is appropriate to extrapolate average costs for each of the thirty subcategories[23] that Brewer chose to lump together. Brewer's unexplained and baseless assumptions do not provide a basis to invoke the hearing process, just as Brewer's bare opinion (offered in his first declaration supporting the Commonwealth's initial petition to intervene) that "costs [associated with a delay] could be significant"[24] is insufficient to merit a hearing. Brewer fails to engage with any of the information in the PSDAR or DCE to offer any meaningful analysis of the NDCAP timeline, the cost profile applicable to work extending past 2025, or the efficiencies from sequencing certain activities (and their corresponding NDT withdrawals) later in time and/or after key intermediate milestones. As a result, Brewer's analysis is nothing more than an arbitrary and irrelevant math exercise that adds nothing of value to the assessment of the LTA's financial analysis.

B. The Amended Contention Fails to Raise a Material Dispute with the Application

In any event, even accepting *arguendo* Brewer's conclusion that a 2027 partial site release results in $88 million in net additional project costs (accounting for Brewer's acknowledgement that a *cost impact* analysis appropriately excludes additional contingency (Third Brewer Decl. at 6)), the Commonwealth still has not shown a material dispute with HDI's and Holtec Pilgrim's financial qualifications. The LTA's financial analysis contains substantial conservatisms, including $165 million in contingency (nearly double Brewer's $88 million number) and no credit

[23] See *supra* note 17.

[24] First Brewer Decl. at 6.

for expected recoveries from DOE for spent fuel management costs.[25] Thus, even under Brewer's worst-case scenario, and even assuming all contingency through partial site release is consumed by unrelated factors, the NDT would contain over **$120 million** at partial site release[26] with Holtec Pilgrim positioned to recover significant reimbursements from DOE for maintaining the fuel year after year through license termination.

The Commonwealth has never disputed the conservatisms in the Applicants' financial analysis or explained why—in light of those conservatisms, the Commission's annual review of actual costs and revised estimates, and the availability of significant resources to remedy a shortfall should one ever arise—the Applicants have failed to provide reasonable assurance that funding will remain adequate. The Commonwealth's present Motion gets no closer to the mark in this respect. The Commonwealth's sole attempt to engage with the only question that matters is to say that "[Brewer's estimated] added costs are well above the $3.6 million margin of error Holtec left itself." Motion at 4. In addition to using the wrong number[27] and making no attempt to calculate the amount of additional funding that would be required *today* to remedy the supposed shortfall, the Commonwealth does not dispute the availability of hundreds of millions of dollars in the form of DOE recoveries (not relied upon in the LTA's financial analysis) or the Commission's authority to require adjustments to funding assurance as part of its ongoing, comprehensive oversight. The

[25] *See also* HDI Response to NRC Request for Additional Information, Enclosure, at E-5 (July 29, 2019) (ADAMS Accession No. ML19210E470) ("RAI Response") (explaining that HDI's cash flow analysis conservatively assumed NDT withdrawals for each year occur on January 1 and NDT earnings for each year are based on the NDT value on December 31).

[26] Reducing the 2027 EOY balance ($210,893,000) in DCE Table 5-1 by $88 million. *See* DCE at 46.

[27] As demonstrated in Applicants' second RAI response, when using the regulatorily-prescribed 2% real rate of return and adding an additional $3.7 million per year (approximately $25.9 million added in 2019 through 2025, and another $14.8 million added in 2060 through 2063) to address staff's question regarding differences between HDI's site-specific estimate and the 50.75(c) formulaic amount (i.e., not associated with any actual project costs), the NDT balance remaining in 2063 is **$11.5 million**. RAI Response at E-5 and Attachment 1. The Commonwealth makes no attempt to address or demonstrate any dispute with this analysis.

Commonwealth provides no basis to assume that HDI and Holtec Pilgrim cannot or will not comply with the NRC's rules requiring funding adjustment when necessary.[28] Accordingly, even if Brewer's fictional number is taken at face value, the Commonwealth has not raised a genuine material dispute with the LTA's showing of reasonable assurance that funding will remain adequate.[29]

C. The Commonwealth's Regulatory Compliance Claims are Beyond the Scope of this Proceeding

The Commonwealth's claims that HDI has violated 10 C.F.R. § 50.82 are beyond the scope of a license transfer proceeding and in any event lack merit. To start, the alleged violations are claims regarding regulatory compliance that are properly and exclusively raised under 10 C.F.R. § 2.206, not in a license transfer proceeding or any other licensing action giving rise to an opportunity for intervention and hearing.[30] This regulatory bar is the only justification needed to reject the Commonwealth's claims that HDI violated §§ 50.82(a)(6)(iii) and (a)(7).

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[28] *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-01-9, 53 N.R.C. 232, 235 (2001) ("[T]he NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises.").

[29] The Commonwealth and Brewer also postulate that Applicants have an obligation to supplement the application: "[a]bsent a viable and supportable revised PSDAR and DCE to reflect the extended schedule, the only reasonable conclusion that can be reached at this time is that Pilgrim's Decommissioning Trust Fund is not adequate to complete the decommissioning of PNPS." Third Brewer Decl. at 7; *see also* Motion at 6 ("Without a credible revised PSDAR and DCE reflecting this extended schedule and somehow accounting for the certain increase in decommissioning costs (along with addressing all of the other flaws with Holtec's DCE that the Commonwealth has raised in its previous filings), there currently exits a lack of reasonable assurance that adequate funds will be available to fully decommission Pilgrim . . . ."). This logic ignores the Commonwealth's obligation to meet § 2.309's contention-admissibility standard. *See AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 260 (2009) (noting that the contention admissibility rules "require *the petitioner* . . . to supply all of the required elements for a valid intervention petition" (emphasis added) (footnote omitted)); *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 N.R.C. 1, *aff'd in part*, CLI-95-12, 42 N.R.C. 111 (1995) (explaining that where a petitioner has failed to satisfy the contention-admissibility standard, the presiding officer "may not make factual inferences on [the] petitioner's behalf.") (citing Palo Verde, CLI-91-12, 34 N.R.C. 149)).

[30] *See Commonwealth Edison Co.* (Zion Nuclear Power Station) CLI-99-04, 49 N.R.C. 185, 196 (1999) (explaining that a petitioner must resort to a 2.206 petition, not license amendment adjudication, in order to pursue claims that licensee has violated regulatory requirements); *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station) CLI-00-6, 51 N.R.C. 193, 213-14 (2000) ("A license transfer proceeding is not a forum for a full review of all aspects of current plant operation.").

In addition, the Commonwealth's 50.82(a)(6)(iii) claim is clearly meritless because, even accepting the alleged net cost increase, the earliest date such a violation could even theoretically occur would be 2025 by Brewer's own logic. And, even if all of the supposed $88 million were spent by 2027, there would still be $120 million to cover the less than $15 million of radiological decommissioning costs that remain to achieve full license termination.[31] The Commonwealth's claim that the NDCAP presentation demonstrates a violation of 10 C.F.R. § 50.82(a)(7) is likewise baseless. NRC guidance makes clear that the § 50.82(a)(7) standard for "significant" schedule changes or cost increases that trigger the intra-year update requirement is not intended to capture even the alleged $88 million impact or two-year extension to partial site release.[32]

In sum, contrary to 10 C.F.R. § 2.309(f)(1)(v) and (vi), the Commonwealth does not provide any reasoned expert or factual basis, and does not engage with any of the relevant information in the application, to support the Commonwealth's unfounded suggestion that the NDCAP timeline is likely to have any effect on the cost of decommissioning Pilgrim. But even

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[31] See *supra* note 26 and DCE at 47, Table 5-1 (showing $13,921 in remaining license termination costs after partial site release).

[32] As explained in Reg. Guide 1.185:

> [I]f the licensee makes significant changes to major schedules or to the cost estimate, it must provide written notification to the NRC per 10 CFR 50.82(a)(7). . . . Examples of changes in activities and schedule include, but are not limited to, *changing from long-term storage to active dismantlement, changing the method used to remove the reactor vessel or steam generators from cutting and segmenting to intact removal, or changing the schedule to affect major milestones. Licensees do not need to report changes on the removal of structures, systems, or components that are not contaminated or in the immediate proximity of contaminated systems that could result in a worker dose*. Examples of significant increases in cost associated with decommissioning the facility include (1) a revised cost estimate that is more than *20 percent* greater than the site-specific cost estimate or the PSDAR cost estimate, or (2) a 25-percent increase in cost needed to complete any major milestone.

Regulatory Guide 1.185, Rev. 1, Standard Format and Content for Post-Shutdown Decommissioning Activities Report (June 2013) at 11 (ADAMS Accession No. ML13140A038) (emphasis added).

In the case of Pilgrim, a 20% increase would be roughly **$225 million**. Moreover, the cover letter to the PSDAR (which itself was a 50.82(a)(7) update triggered by the shift from SAFSTOR to DECON) states in unambiguous terms: "Pursuant to 10 CFR 50.82(a)(7), HDI is submitting the enclosed . . . (DECON PSDAR) to notify the NRC of changes to accelerate the schedule for the prompt decommissioning of PNPS and unrestricted release of all portions of the site (excluding the ISFSI) *within eight (8) years*." PSDAR at 1.

accepting the Commonwealth's unsupported claims, the Commonwealth still has not demonstrated a material dispute with the financial qualification of HDI and Holtec Pilgrim, as required by § 2.309(f)(1)(iv). Finally, arguments related to HDI's regulatory compliance are beyond the scope of this proceeding, in violation of § 2.309(f)(1)(iii). The Motion therefore fails to satisfy 10 C.F.R. § 2.309(f)(1), and Petitioner's contentions remain inadmissible for all of the other reasons discussed previously in Applicants' Answer.

IV. CONCLUSION

For the reasons described above, the Commission should deny the Commonwealth's Motion.

Respectfully submitted,

/signed electronically by Alan D. Lovett/

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January 7, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)		
	)		
Entergy Nuclear Operations, Inc.,	)		
Entergy Nuclear Generation Company,	)	Docket Nos.	50-293-LT
Holtec International, and	)		72-1044-LT
Holtec Decommissioning International, LLC	)		
	)		
(Pilgrim Nuclear Power Station)	)		

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing the Motion of the Commonwealth of Massachusetts to Amend its Petition with New Information has been served through the E-Filing system on the participants in the above-captioned proceeding this 7th day of January 2020.

/signed electronically by Alan D. Lovett/
Alan D. Lovett