

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.,)	
ENTERGY NUCLEAR GENERATION)	
COMPANY, AND HOLTEC)	Docket Nos. 50-293 & 72-1044
DECOMMISSIONING INTERNATIONAL,)	
LLC; CONSIDERATION OF APPROVAL OF)	
TRANSFER OF LICENSE AND)	
CONFORMING AMENDMENT)	
)	
(Pilgrim Nuclear Power Station))	

**COMMONWEALTH OF MASSACHUSETTS' REPLY IN SUPPORT OF
MOTION TO AMEND ITS PETITION WITH NEW INFORMATION**

Petitioner, the Commonwealth of Massachusetts (Commonwealth or Massachusetts), submits this Reply to the Applicants' Answer to the Commonwealth's Motion to Amend its Petition with New Information (Motion). In short, the Applicants' objections are an elaborate misdirection and, in many cases, wrong. Indeed, four facts tear down the Applicants' false facade: (i) Holtec relied on its 2018 Site-Specific Decommissioning Cost Estimate (DCE) to support its claim before this Commission that it is financially qualified to hold Pilgrim's license; (ii) Holtec's DCE is based on a 2025 partial site release deadline; (iii) Holtec's recently announced delayed 2027 partial site release date will increase its total costs; and (iv) the cost impact of the delayed partial release date is not accounted for anywhere. Holtec can quibble with how the Commonwealth's expert *estimated* the potential cost impact of the *new* partial site release date based on Holtec's outdated and inaccurate DCE, but that cannot cure the fact Holtec's original DCE indisputably fails to account for at least two-years of additional license-

termination-related costs. For these reasons, as elaborated on below, the Commonwealth's Motion was timely and satisfies the Commission's contention admissibility standards.

First, the Applicants' argument that the Commonwealth's Motion is untimely reflects a distorted representation of the record. In particular, the Applicants' argue that the Commonwealth's Motion is untimely because the Applicants "have repeatedly and consistently stated that [Holtec Decommissioning International, LLC (HDI)]'s project goal is to reach partial site release *in* eight years (i.e., in 2027)," Answer at 4 (emphasis added), and the Commonwealth thus should have known that 2027 was Holtec's actual partial release date, *see id.* But what Holtec actually said was that its "decommissioning strategy for the project is . . . to support partial site release . . . *within* eight years of license transfer and equity sale closure," *e.g.*, HDI Revised Post Shutdown Decommissioning Activities Report (Revised PSDAR) at 5 (Nov. 16, 2018) (ADAMS Accession No. ML18320A040) (emphasis added),¹ and then, significantly, Holtec relied on a partial site release date—2025—*within* that eight year timeframe in all of its decommissioning schedules and cash flow analysis.²

In fact, based on Holtec's representations in the License Transfer Application (LTA), Revised PSDAR, and DCE both the Commonwealth, *and the NRC*, understood the Applicants' LTA, Holtec's Revised PSDAR, and Holtec's DCE to mean precisely what Holtec said: Holtec

¹ *See also* License Transfer Application (LTA) 4 (Nov. 16, 2018) (ADAMS Accession No. ML1830A031) ("within eight years"); DCE at 10 ("within approximately eight years").

² *See* Revised PSDAR at 17 Fig. 3-1 (PNPS Decommissioning Schedule) (identifying early 2025 as the date of Partial Site Release (except for ISFSI)); DCE at 19-20, 31-32 Tbl. 3-2 (Program Management Cost Detail) (providing program management expenses for only decommissioning activities starting in 2019 and ending in 2025), 45 Fig. 5-1 (Pilgrim Master Summary Schedule) (identifying early 2025 as the date of Partial Site Release (except for ISFSI)), & 46-47 Tbl. 5-1 (Decommissioning Funding Cash Flow Analysis) (showing expenses and cash flow for License Termination Costs and Site Restoration Costs starting in 2019 and ending in 2025); and LTA, Encl. 1, Attach. D, at 1, 3, 5-6 (same).

intended to achieve partial site release by 2025—a date within the eight year period.³ If Holtec actually intended to convey that it sought to achieve partial site release at the eight year mark (i.e., *in* 2027), then Holtec’s schedules and cash-flow analysis (which it claims were conservative) should have relied on that later date. But Holtec did not rely on a 2027 partial release date, and the first time Holtec publicly acknowledged the delayed 2027 partial site release date was in its November 14, 2019 presentation to the Pilgrim Nuclear Decommissioning Citizens Advisory Panel. Mass. Mot. ¶ 3. Thus, Holtec’s claim here that its recently revised (and delayed) 2027 partial site release is not new information because it, too, falls *within* its eight-year “goal” is flatly inconsistent with the prior existing record, its representations in its application materials to the NRC, and, significantly, its cash-flow analysis in its DCE. The Commission should reject Holtec’s effort to fault the Commonwealth for not knowing what Holtec never said.

Second, the Applicants’ argument that the Commonwealth’s Motion to amend its contentions is inadmissible fares no better than its strained attempt to argue that the Motion was untimely. The Applicants begin by suggesting that the expert declaration of Warren Brewer that the Commonwealth submitted to support its Motion “merely states a conclusion . . . *without providing a reasoned basis* or explanation” for Mr. Brewer’s estimate of the cost impact of the newly disclosed schedule delay. Answer 7 (citation omitted). Yet, what the Applicants attempt

³ In NRC Staff’s Safety Evaluation Report, Staff noted that Holtec’s “partial site release” date is “2025,” and then relied on that representation in its cash flow analysis. *See* Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Request for Direct and Indirect Transfers of Control of Renewed Facility Operating License No. DPR-35 and the General License for the Independent Spent Fuel Storage Installation from Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. to Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC (Pilgrim Nuclear Power Station), Docket Nos. 50-293 and 72-1044, at 10 & Attach. 1, note *b* (Aug. 22, 2019) (ADAMS Accession No. 19234A365) (Safety Evaluation Report).

to rebut over the course of the more than four pages that follow, is not a conclusion, but Mr. Brewer's actual "reasoned basis" for his "estimate" of the delay's cost impact on Holtec's cash flow analysis based on information in Holtec's own DCE. *See* Answer 7-11. Further, the Applicants' wrongly claim that Mr. 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," Answer 11, while conveniently ignoring the indisputable fact that the "LTA's financial analysis" was keyed to the now inaccurate 2025 partial site release date in the DCE, *e.g.*, DCE 31-32 Fig. 3-2 (accounting for program management costs *only* for years through 2025). Significantly, Applicants do not deny that the two-year delay will indeed have *some* real cost impact. *See* Answer 7-11. And Mr. Brewer acknowledges that his cost-impact analysis is a "reasonable estimate," not a certain estimate, based on the limited available information in Holtec's DCE, and then states, critically and without contradiction from Holtec, that "[e]ven if the . . . costs are dramatically lower" than his estimate, "the added cost would still far exceed the 3.6 million surplus projected by Holtec in its DCE." Third Brewer Decl. ¶ 10.⁴ Indeed, the additional costs for Taxes (WBS Code 01.02.11.02) and Nuclear Related Insurances (WBS Code 01.02.11.03.01) associated with the recently announced two-year delay will *alone* add nearly

⁴ Relatedly, the Applicants' also claim falsely in their Answer that the correct amount for their margin of error is \$11.5 million (not the \$3.6 million in Holtec's DCE, *see* DCE 47 at Tbl. 5-1) and that the "Commonwealth makes no attempt to address or demonstrate any dispute with this analysis." Answer at 12 n. 27. However, the Commonwealth has disputed this figure because it is based on incorrect assumptions. *See* Safety Evaluation Report at 30 (reprinting comments from the Commonwealth to the NRC); Application of the Commonwealth for a Stay of the Effectiveness of the NRC Staff's Actions Approving the Licensing Transfer Application and Request for Exemption to Use the Decommissioning Trust Fund for Non-Decommissioning Purposes 4 (Sept. 3, 2019) (ADAMS Accession No. ML19247B431); Second Brewer Decl. ¶¶ 6-8 (Sept. 3, 2019) (included at pages 1 through 15 of the Appendix submitted in support of the Commonwealth's Stay Application).

\$5.3 million to Holtec's existing DCE, well over Holtec's \$3.6 million margin of error, without even considering loss of interest over time or other cost escalation related to the two-year delay.⁵

Moreover, the information included in the Commonwealth's Motion and Mr. Brewer's expert declaration is more than sufficient to satisfy the contention admissibility standards. Contrary to the Applicant's suggestion, the Commonwealth does not have the burden at this stage to demonstrate with certainty that a shortfall in the Decommissioning Trust Fund (Trust Fund) will occur. While the Commonwealth believes that it has demonstrated that Holtec will face a Trust Fund shortfall in fact, the Commonwealth does not have to prove that a *specific event* will, more likely than not, cause a shortfall in the Trust Fund.⁶ Instead, to raise an admissible dispute, the Commonwealth need only demonstrate, with supporting documentation, that Holtec's cost-and-revenue estimates fail to provide a realistic outlook.⁷ Here, Holtec's DCE "rel[ies] on assumptions seriously at odds with governing realities,"⁸ i.e., the new reality that it will not achieve partial site release until at least 2027 and that date is at least two years beyond the date it relied on to perform its cash-flow analysis. Indeed, Holtec did not account for *any* partial site release expenses beyond 2025 in *any* of its analyses. *E.g.*, DCE at 46-47 Tbl. 5-1 (Decommissioning Funding Cash Flow Analysis) (identifying partial site release costs only for

⁵ This is so because Holtec's DCE states that costs for Taxes (WBS Code 01.02.11.02) and Nuclear Related Insurances (WBS Code 01.02.11.03.01) are constant at about \$1.9 million and \$835,000, respectively, for years 2022, 2023, and 2024. DCE at 32 Tbl. 3-2. Thus, extending these two costs alone over just two additional full years (i.e., 2025 and 2026) will add nearly \$5.3 million: taxes (\$1,928,000) plus Nuclear Related Insurances (\$835,000) equals \$2,763,000. Over two years, this doubles to \$5,526,000. Less the amount already allocated for year 2025 (\$161,000 for Taxes and \$70,000 for Nuclear Related Insurances) equals \$5,295,000.

⁶ See *N. Atl. Energy Serv. Corp., et al.* (Seabrook Station, Unit 1), 49 N.R.C. 201, 222 (Mar. 5, 1999); *Gulf States Utils. Co., et al.* (River Bend Station, Unit 1), 40 N.R.C. 43, 51 (Aug. 23, 1994).

⁷ See *N. Atl. Energy Serv. Corp.*, 49 N.R.C. at 222.

⁸ *Id.*

years 2019 through 2025); Third Brewer Decl. ¶¶ 7, 13-14 (stating that Holtec’s delay announcement did not include an accompanying cost-impact analysis and that Holtec has not submitted a revised PSDAR and DCE based on the new, delayed date). Thus, Holtec’s cost-and-revenue estimates fail to provide a realistic outlook. Having carried its burden, the Commonwealth is entitled to a hearing “to substantiate its concerns.”⁹

Third, the Applicants argue that even if Brewer’s estimates are accurate, there are “conservatisms”¹⁰ in its cash-flow analysis that will compensate for the additional costs, namely its potential spent-nuclear fuel cost recoveries from DOE, the NRC’s authority to require additional funding, and Holtec’s 17% Contingency Allowance. Those claims, however, are also false. The first—Holtec’s repeated hand-waving at its potential DOE spent-nuclear fuel cost recoveries, Answer 3, 11-12—rings hollow because, as the Commonwealth has itself made repeatedly clear, Holtec has steadfastly refused to make a regulatory commitment to retain any money it recovers from DOE for spent nuclear fuel management costs for future use in the event of a funding shortfall.¹¹ The second—NRC’s authority to demand additional funding, Answer 3, 12-13—also falls flat both because the NRC has rejected this type of circular and nonsensical

⁹ *Id.*

¹⁰ Despite the Applicants’ statements to the contrary, the Commonwealth has disputed these alleged “conservatisms” in prior filings. Regarding the DOE Recoveries, *see* Petition at 26, 34; Reply in Support of Petition, at 3, 14-15 (ADAMS Accession No. ML19091A297). Regarding the NRC’s authority to require future adjustments, *see* Reply in Support of Petition at 2, 11-13. Regarding the Contingency Allowance in the DCE cash flow analysis, *see* Petition at 22-23; Brewer Decl. ¶¶ 8-9; Reply in Support of Petition at 17-18.

¹¹ Petition, at 26, 34; Reply in Support of Petition, at 3, 14-15; *see also* Safety Evaluation Report, at 14-15, Att. 1 (NRC Staff finding that Holtec “did not declare DOE reimbursements for consideration in this license application” and, as a result, Staff only considered the Trust Fund in its cash flow analysis).

argument,¹² and because the NRC simply cannot force licensees to provide funding they do not possess.¹³ The third—Holtec’s reliance on its 17% Contingency Allowance—is similarly spurious because even before the recently acknowledged schedule delay Holtec had already conceded that it “expected” to “fully consume[]” the 17% Contingency Allowance.¹⁴ And even if one were to disregard that concession and assume an available total amount of \$165 million in contingency for the entire project, Answer 11, which is an improper assumption, Third Brewer Decl. ¶ 12, the \$88 million in increased costs associated with the delay would leave only \$77 million to cover other contingencies, which amounts to only about 8 percent for decommissioning, site restoration, and spent fuel management.¹⁵ Leaving only 8 percent will lead to a certain funding shortfall in the Trust Fund.

Finally, the Applicants’ argument that the regulatory compliance issues are beyond the scope of this proceeding is disingenuous. With Holtec’s recently announced partial site release date delay, there is clearly an indication that there will be insufficient funds in the Trust Fund for decommissioning, site restoration, and spent fuel management. When a company has a reason to believe that it will have insufficient funds to complete its work, such as the case here, it is

¹² *N. Atl. Energy Serv. Corp.*, 49 N.R.C. at 222 (rejecting applicant’s attempt to conflate compliance with the regulation’s filing requirement with compliance with the regulation’s financial assurance standard). Indeed, if the Applicants’ claim were correct, then an applicant could simply rely on future reporting as a means to satisfy its present financial assurance obligation. See Reply in Support of Petition at 2, 11-13.

¹³ As the Commonwealth has previously made clear, Reply in Support of Petition at 2-3, 12-13, this is the very scenario presented by Holtec’s application because Holtec’s only source of funding is the Trust Fund and both Holtec Pilgrim and HDI are limited liability companies with no assets other than the Trust Fund. LTA, Encl. 1, at 2-4. Indeed, Holtec emphasized this point, stating that a decision by the NRC to deny its request for an exemption to use the Trust Fund for all of its costs would “prevent the transaction from occurring.” *Id.* at 18.

¹⁴ DCE at 41.

¹⁵ Total expenditures from the DCE (\$1.134 billion) less total contingency (\$165 million) equals \$969 million. \$77 million / \$969 million = 7.9 percent.

incumbent upon that company to amend the materials it provided to the NRC. *See* 10 C.F.R. § 50.9(a) (“Information provided to the Commission by ... a licensee ... shall be complete and accurate in all material respects.”). The Applicants cannot willfully ignore the financial implications of the changed circumstances they now face, or their obligation to ensure the accuracy of the information they have provided to this Commission, and upon which this Commission relies.

* * *

For the foregoing reasons, and for good cause shown, the Commonwealth requests that the Commission grant its Motion and consider this new information in connection with the Commission’s consideration of the Commonwealth’s pending Petition and Reply.

Respectfully submitted this 14th day of January 2020,

COMMONWEALTH OF MASSACHUSETTS

By its attorneys,

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Signed (electronically) by _____

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CERTIFICATION OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that copies of the Commonwealth of Massachusetts's Reply in Support of its Motion to Amend its Petition with New Information have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding this 14th day of January 2020.

Signed (electronically) by
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Dated: January 14, 2020