

ORAL ARGUMENT NOT YET SCHEDULED
**UNITED STATES COURT OF APPEALS
 FOR THE DISTRICT OF COLUMBIA CIRCUIT**

COMMONWEALTH OF
 MASSACHUSETTS,

Petitioner,

v.

UNITED STATES NUCLEAR
 REGULATORY COMMISSION AND
 UNITED STATES OF AMERICA,

Respondents,

HOLTEC DECOMMISSIONING
 INTERNATIONAL, LLC, et al.,

*Intervenor-
 Respondents.*

No. 19-1198

**MASSACHUSETTS' OPPOSITION TO RESPONDENTS' AND
 INTERVENOR-RESPONDENTS' MOTIONS TO DISMISS**

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INTRODUCTION

The Nuclear Regulatory Commission (NRC or Commission) gave Holtec International and Entergy Nuclear Operations (Companies) everything they requested on August 22, 2019. The NRC, by contrast, is telling the Commonwealth that it must watch Holtec—Pilgrim Nuclear Power Station’s newly minted licensee—withdraw millions of dollars from a Massachusetts-ratepayer-funded decommissioning trust fund to physically alter Pilgrim’s infrastructure while the Commonwealth waits for the Commission to act at some future date on the petition it filed on February 20, 2019—nearly a year ago—requesting a hearing to contest those very actions. According to the NRC, the Commonwealth cannot obtain judicial review of the orders authorizing those actions now, including the final order making the orders immediately effective, because its request for a hearing remains pending before the Commission. If that view were correct, the Commission could effectively preclude judicial review of immediately effective actions indefinitely—“a seemingly endless administrative limbo” Judge Millett appropriately characterized as “a Kafkaesque regime” in a similar context. *Allegheny Defense Project v. FERC*, 932 F.3d 940, 948 (D.C. Cir. 2019) (Millett, J., concurring), *reh’g en banc granted*, 943 F.3d 496 (D.C. Cir. 2019). But that is not the law, and, in fact, the Commission has confirmed that the NRC’s “Final No Significant Hazards Determination”—the order making the NRC’s decisions effective immediately—was final when issued. Addendum (Add-##) 91. This Court should deny the motions to dismiss.

REGULATORY BACKGROUND

The Atomic Energy Act (AEA) prohibits the transfer of any license to operate a nuclear power reactor “unless the Commission shall ... find that the transfer is in accordance with the” Act, 42 U.S.C. § 2234, and authorizes the Commission to amend existing operating licenses, *id.* at § 2237. The Act, in turn, requires the Commission to “grant a hearing upon the request of any person whose interest may be affected by” a proceeding concerning transferring or amending a license or both and “admit such person as a party to such a proceeding.” *Id.* at § 2239(a)(1)(A). Recognizing the substantial state interests in those matters, Congress required the NRC to allow “State representatives to offer evidence, interrogate witnesses, and advise the Commission” regarding such proceedings, *id.* at § 2201(h), and the NRC has granted, by regulation, automatic standing to states when they request a hearing about a facility within their boundaries, 10 C.F.R. § 2.309(h)(2). By regulation, the NRC also has imposed on itself a duty to “issue a decision on each request for a hearing ... within 45 days after the filing of answers and replies” or, if it will not comply with that obligation, “a notice advising the ... parties ... the expected date when the decision will issue.” *Id.* at § 2.309(j)(1). Here, the 45-day deadline came and passed on May 16, 2019 without *any* Commission action on the Commonwealth’s petition. Stay Mot. 6.

Consistent with due process, the AEA generally requires the NRC to hold a hearing on contested license transfer or amendment applications before it makes any approval effective. *See Sholly v. NRC*, 651 F.2d 780, 786-89 (D.C. Cir. 1980), *vacated to*

consider mootness, 459 U.S. 1194 (1983) (rejecting NRC claim that agency could make license amendment effective immediately upon “no significant hazards” finding). In response to *Sholly*, however, Congress authorized the NRC to “issue and make immediately effective any amendment to an operating license ..., upon a determination by the Commission that” it “involves no significant hazards consideration, notwithstanding the pendency ... of a request for a hearing.” 42 U.S.C.

§ 2239(a)(2)(A). Congress also required the NRC to first “consult with the State in which the facility involved is located,” *id.*, and directed it to promulgate regulations establishing how that obligation would be fulfilled in “good faith,” H.R. Rep. No. 97-884, at 39 (1982) (Conf. Rep.), standards for making no-significant-hazards-consideration determinations, and requirements for “prior notice and reasonable opportunity for public comment.” 42 U.S.C. § 2239(a)(2)(C).¹ The NRC issued two regulations to govern this process: (i) regulations for license amendments, which require prior public notice and comment, state consultation, and specific findings, 10 C.F.R. §§ 50.91- 50.92, and (ii) regulations for license-transfer-related-amendments, which do not (in conflict with the statute) specifically require prior public notice and

¹ Meaningful consultation with states and notice and public comment prior to a license amendment being made immediately effective were both critical to the Senate and House conferees. H.R. Rep. No. 97-884, at 38. “The purpose of requiring” those steps except in “emergency situations,” the conferees wrote, “is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues.” *Id.*

comment, state consultation, or specific findings, *id.* at § 2.1315. Those determinations are “final” when made. 10 C.F.R. §§ 50.58(b)(6), 50.92(c). Here, the NRC relied on the § 2.315 license-transfer-amendment regulation, informed the public that it was not soliciting comments, and made a “Final” determination on August 22, 2019. Stay Mot. 5.²

The NRC’s regulations also authorize the Commission to “grant exemptions from the requirements of [its] regulations” if the exemption is (i) “authorized by law, will not present an undue risk to public health and safety, and [is] consistent with the common defense and security” and (ii) certain defined “special circumstances are present.” 10 C.F.R. § 50.12. Neither that regulation itself nor any other NRC regulation requires the NRC to provide prior public notice and comment regarding a regulatory exemption request or afford interested parties a right to ask for a hearing before the Commission on such a request (or, for that matter, any explicit means even to challenge an exemption request, or a decision on one, before the agency). *See, e.g., id.* at §§ 2.105, 2.309, 50.12. Here, the NRC relied on this regulation and granted a final exemption to Holtec, which authorizes Holtec to withdraw approximately \$540 *million* from Pilgrim’s Decommissioning Trust Fund that the regulation would

² The NRC does not mention in its motion that the agency relied on 10 C.F.R. § 2.1315; instead, it wrongly claims that the NRC relied on the procedures in 10 C.F.R. §§ 50.91-50.92. NRC Br. 6 n.3.

otherwise prohibit. Stay Mot. 4; Add-54-65, 126-27.³ The NRC’s Exemption Order was final when it issued on August 22, 2019, Add-71, and Holtec is presently withdrawing millions from the Fund because of it.

The NRC must also comply with the National Environmental Policy Act (NEPA) before it takes final agency action. 42 U.S.C. §§ 4321-4370m-12. NEPA “requires federal agencies such as the Commission to examine and report on the environmental consequences of their actions.” *New York v. NRC*, 681 F.3d 471, 476 (D.C. Cir. 2012). It is thus “designed to ensure ‘fully informed and well-considered decision[s]’ by federal agencies.” *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1309-10 (D.C. Cir. 2014) (citation omitted). To that end, the NRC must comply with NEPA *before* making the proposed action (e.g., license transfer, license amendment, regulatory exemption) effective, *see Oglala Sioux Tribe v. NRC*, 896 F.3d 520, 531-32 (D.C. Cir. 2018), and may not segment its review by dividing “connected ... federal actions into separate” ones, *Delaware*, 753 F.3d at 1313. The vehicle for NEPA compliance is an environmental impact statement (EIS) unless an agency first conducts a less intensive environmental assessment (EA) and issues a finding of no

³ This was the most recent exemption of this kind: the NRC Staff has granted *every* request the NRC has ever received for an exemption from the regulation that protects decommissioning trust funds for their intended purpose, “effectively repeal[ing] a Commission-approved rule promulgated in accordance with the Administrative Procedure Act (APA) and replac[ing] it with a new Staff-generated rule without” APA compliance. *In re Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), CLI-16-17, 2016 WL 6441048, at *17 (Oct. 27, 2017) (Barran, Comm’r, concurring in part, dissenting in part).

significant impact (FONSI) or determines that the proposed action is exempt from NEPA review under an agency-specific categorical exclusion. *See New York*, 681 F.3d at 476. Here, the NRC divided its review and found that the license transfer and related amendment were categorically excluded from NEPA and issued a “*final* [EA] and a *final* [FONSI]” for the Trust Fund Exemption. Add-66 col.2 (emphasis added); Stay Mot. 7-8.

Finally, the NRC Staff prepared a Safety Evaluation Report regarding the license transfer and amendment request. Add-19-53. That Report was a necessary predicate to the license transfer order, license amendment order, Exemption Order, the Categorical Exclusion, and the EA and FONSI. *See* Add-5, 51, 59-60, 67. It also includes the “Final No Significant Hazards Consideration,” Add-43, and a determination that the NRC need not conduct any analysis of the potential environmental consequences of the license transfer and amendment under NEPA *before* making those actions effective because, in the NRC’s view, they are categorically excluded from NEPA review under the agency’s regulations. Add-51; Stay Mot. 14-15. And while the Safety Evaluation carefully distinguishes between the Staff and Commission decisions—a point the NRC argues is significant, NRC Br. 1 n.1—the Report makes clear that it was the “Commission[’s]” own conclusion, not Staff’s, that amending the license to effect the transfer would comply with the NRC’s regulations based on the Safety Evaluation. Add-43-44.

ARGUMENT

I. The Court Has Jurisdiction Over the Commonwealth's Petition Because the Challenged Orders Are Final Under the Hobbs Act.

The Hobbs Act gives this Court jurisdiction to review all “final orders” of the NRC. 28 U.S.C. § 2342(4); 42 U.S.C. § 2239(b); *see also Honeywell Int’l, Inc. v. NRC*, 628 F.3d 568, 575 (D.C. Cir. 2010). “[I]n determining finality,” this Court considers “whether the process of administrative decisionmaking has reached a stage where judicial review will not disrupt the orderly process of adjudication and whether rights or obligations have been determined or legal consequences flow from agency action.” *Blue Ridge Envtl. Def. League v. NRC*, 668 F.3d 747, 753 (D.C. Cir. 2012) (quoting *Port of Boston Marine Terminal Ass’n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)); *see Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (APA finality). While finality is “narrowly construed,” “[a]n order is final [under the Hobbs Act] if it ‘imposes an obligation, denies a right, or fixes some legal relationship, usually at the consummation of an administrative process.’” *Blue Ridge*, 668 F.3d at 753 (citation omitted). Under this framework, this Court has previously held that it has jurisdiction to review immediately effective NRC orders, *Massachusetts v. NRC*, 924 F.2d 311, 322 (D.C. Cir. 1991), and certain other NRC orders under the collateral order doctrine, *Oglala*, 896 F.3d at 527-28.

Here, the NRC, joined by the Intervenor, are mistaken in claiming that this Court lacks jurisdiction over *all* of the action for which the Commonwealth seeks

review in its Petition. NRC Br. 1-2; Holtec Br. 18. Indeed, controlling precedent from this Circuit dictates that, at a minimum, this Court has jurisdiction to review the NRC's Final No Significant Hazards Consideration order, which made the NRC's license transfer and amendment orders and Trust Fund Exemption Order immediately effective prior to a hearing on the Commonwealth's challenges to those requests. *See infra* Argument Pt.I.A. And the Exemption Order itself lacks the "provisional" language the NRC relies on to make its finality argument as to the license transfer and amendment orders. *See* Add-54-65. The NRC's half-hearted exhaustion argument fares no better, NRC Br. 14 n.9, both because exhaustion is only required when the agency's order is inoperative, *see infra* Argument Pt.II, and because, in any event, exhaustion does not in itself present a *jurisdictional* bar to judicial review, *id.* Thus, far from being "a waste of judicial time and effort," NRC Br. 11 (citation omitted), this is the only time when the Commonwealth may secure meaningful judicial review of, among other things, the NRC's final order making the license transfer, license amendment, and Trust Fund Exemption effective immediately prior to a hearing on the Commonwealth's challenges to those very actions.

A. The NRC's Order Making the License Transfer, License Amendment, and Trust Fund Exemption Immediately Effective Is Final.

The NRC's decision to make the license transfer, amendment, and Exemption Orders immediately effective based on its 10 C.F.R. § 2.1315 "*Final*/No Significant Hazards Consideration" order (Add-43 (emphasis added)) is reviewable now as a final

order under the Hobbs Act or, alternatively, under the collateral order doctrine.

Indeed, that conclusion is indisputable given the Commission's own confirmation of that order's finality, Add-91,⁴ and a long line of precedent from this Court reaching the same conclusion. In *Massachusetts*, for example, this Court held that the NRC's decision to make its authorization for a reactor to operate at full power immediately effective "represents a final agency order that is reviewable by this court." 924 F.2d at 322. It did so because, as is the case here (and the NRC thus appropriately concedes, NRC Br. 12), "significant legal consequences flow from the ... action." *Id.* That was the case, the Court continued, even though, as also is the case here, the immediate effectiveness determination was "without prejudice to any pending administrative appeal or subsequent adjudication." *Id.* This Court reached the same conclusion in *Shoreham-Wading River Central School Dist. v. NRC*, 931 F.2d 102 (D.C. Cir. 1991). There, just as in *Massachusetts*, the Court held that it had jurisdiction to review the NRC's immediate effectiveness orders. *Id.* at 105; *see also Blue Ridge*, 668 F.3d at 757 ("In the context of NRC actions, an order issued during ongoing administrative proceeding is reviewable ... if, *for example*, it authorizes a plant operator to operate at full power pending further review by the Commission" (emphasis added)).

The NRC's attempt to distinguish *Massachusetts* is specious. NRC Br. 14-16. First, the NRC has successfully taken the precise opposite position in another case

⁴ The Commission stated that "[t]he Staff's conclusion on the no significant hazards consideration is final" and "decline[d] to review the Staff's finding." Add-91.

concerning judicial review of an NRC *Staff* significant-hazards-consideration determination. In *Center for Nuclear Responsibility v. NRC*, the NRC persuaded the U.S. District Court for the District of Columbia to accept the agency's argument that NRC Staff no-significant-hazards-consideration determinations were "reviewable only in courts of appeals." 586 F. Supp. 579, 580-81 (D.D.C. 1984). Second, the NRC's claim that the Staff's Final No Significant Hazards Consideration will be reviewable at a later time is also misplaced. NRC Br. 16. That final order deprived the Commonwealth of a hearing before the license transfer, license amendment, and Exemption were made effective; a later determination by the Commission to hold or deny the hearing requested by the Commonwealth will thus deprive the Commonwealth of any meaningful relief on its claim that the immediate effectiveness order was unlawful. *See* Stay Mot. 9-12. For that reason, both this Court and other circuits have reviewed the NRC's immediate-effectiveness determinations. *E.g., San Luis Obispo Mothers for Peace v. NRC*, 799 F.2d 1268, 1269-71 (9th Cir. 1986) (finding unlawful NRC Staff's no-significant-hazards-consideration-determination).

The Final No Significant Hazards Consideration is also reviewable under the collateral order doctrine. Under that doctrine, this Court will review "collateral rulings that, although they do not end the litigation, are appropriately deemed 'final,'" *Oglala*, 896 F.3d at 528 (citation omitted), where the decision (i) is "conclusive," (ii) "resolve[s] important questions separate from the merits," and (iii) is "effectively unreviewable on appeal from a final judgment in the underlying action," *id.* (citation

omitted). Here, as the Commission has itself confirmed, the No Significant Hazards Consideration order is final and thus conclusive. Add-91. The question whether the NRC properly invoked its generic no-significant-hazards-consideration regulation for license transfer amendments (10 C.F.R. § 2.1315) is an important question separate from the merits. *Oglala*, 896 F.3d at 528. Indeed, it presents the legal question whether the NRC unlawfully deprived the Commonwealth of its right to a hearing before the license was transferred from Entergy to Holtec, and before Holtec was authorized to begin immediately altering structures at Pilgrim and withdrawing millions of dollars from a Massachusetts-ratepayer created Trust Fund to do so. Finally, the Final determination will be effectively unreviewable on appeal because the Commission will (presumably) at some undefined future time either hold a hearing on the Commonwealth's claims or deny its request for a hearing. In either case, a later appeal of the Final No Significant Hazards Consideration Determination would likely be futile, and, even if the Commonwealth were to prevail in a later appeal on the merits, the Commonwealth and its citizens may well have suffered irreparable harms in the interim. *See id.* at 529.

B. The NRC's NEPA-Related Decisions—Decisions that NEPA Requires the NRC to Make *Before* Taking Final Action—Are Also Final Orders Subject to Review Now.

The NRC's decision to segment its NEPA review of the interdependent requests for the now-*effective* agency actions together with its (i) determination that the license transfer and amendment orders are categorically excluded from *any* NEPA

review, Add-51, and (ii) issuance of, in the NRC's own words, a "final" EA and a "final" FONSI for the Trust Fund Exemption Order are also reviewable now, Add-66 col.2. As this Court has recently emphasized, timing is critically important when it comes to an agency's compliance with NEPA. *Oglala*, 896 F.3d at 529-32. And, in that regard, courts have consistently made clear that an agency must discharge its NEPA obligation to "take the required hard look" at a *proposed* agency action's potential environmental impacts "*before* taking that action." *Id.* at 532. In the case of the NRC, "before" means before making a nuclear reactor license, license amendment, or regulatory exemption effective. *See id.* at 531. Here, the NRC has purported to comply with NEPA and made the related agency actions effective immediately. The Commonwealth's Petition for Review of the NEPA decisions are also subject to review now.

Given the unique relationship between NEPA's "action-forcing" mandate, *id.* (citation omitted), and agency action, courts, including this one, have deemed agency NEPA determinations final and ripe for review at least at the time the related agency action is effected. That is because "a person ... who is injured by a failure to comply with the NEPA procedures may complain of that failure at the time the failure takes place, for the claim can never get riper." *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 737 (1998). While this Court has explained that this passage from *Ohio Forestry* was dicta—albeit "forceful" dicta—and that it does not "resolv[e] the point at which such a violation would occur," *Center for Biological Diversity v. U.S. Department of Interior*,

563 F.3d 466, 481 (D.C. Cir. 2009), it has made clear that this Court's own opinions "fill[]" that "gap," *id.* Under this Court's precedent, a petitioner's "NEPA claims" do "not get any riper than at the time NEPA's obligation commenced and was disregarded" by the agency, which occurs no later than when the agency makes its action effective and thus authorizes the applicant to engage in actions that will affect the environment. *Id.* at 481; *see also id.* at 480-81. In *Center for Biological Diversity*, the Court thus refused to review the agency's NEPA decision because no agency action had yet been effected (lease sales) and thus "no rights ha[d] been implicated, or actions taken." *Id.* at 480-81.

This Court, in contrast, has not hesitated to review agency NEPA decisions even where not all of the underlying issues before the agency had been resolved—so long as the NEPA decision itself was final. This Court, for example, reviewed the Department of Energy's (DOE) environmental impact statement for transporting nuclear waste to the then-proposed long-term storage site at Yucca Mountain in Nevada, while it refused to review as un-ripe DOE's underlying interim transportation plan. *Nevada v. DOE*, 457 F.3d 78, 83-94 (D.C. Cir. 2006). Other circuits have followed a similar path to judicial review of agency NEPA decisions. The Eighth Circuit also rejected a federal agency's argument that its EA and FONSI were not final reviewable agency actions even where the agency had not yet entered into agreements to start construction or received funding for the project. *Sierra Club v. U.S. Army Corps of Eng'rs*, 446 F.3d 808, 812 (8th Cir. 2006). Indeed, other Circuits

have held that the issuance of a FONSI triggers the statute of limitations for “commencing a NEPA action.” *Id.* at 815 (collecting cases). And the Tenth Circuit rejected a similar agency claim that was premised, like NRC’s argument here, on a caveat in the decision that it was not final. *Cure Land, LLC v. U.S. Department of Agric.*, 833 F.3d 1223, 1230-32 (10th Cir. 2016). “Where,” the Tenth Circuit held, “‘an agency has issued a ‘definitive statement of its position, determining the rights and obligations of the parties,’ the agency’s action is final notwithstanding ‘the possibility of further proceedings in the agency’ on related issues.” *Id.* at 1232 (citations omitted).

The NRC’s NEPA decisions here, some of which the agency has itself characterized as “final,” Add-66 col.2; *see Environmental Law & Policy v. NRC*, 470 F.3d 676, 681 (7th Cir. 2006) (NRC’s publication of final EIS subject to judicial review), represent definitive statements conveying the NRC’s analysis, insofar that it viewed any analysis necessary, to comply with NEPA, and its implicit decision to forego notice and public comment on any of its NEPA decisions. *See Brodsky v. NRC*, 704 F.3d 113, 121-24 (2d Cir. 2013) (EA and FONSI deficient where NRC Staff failed to explain why the agency did not provide prior public notice and comment). “To deny judicial review of the” NRC’s “NEPA compliance because” the agency may at some undetermined point in the future say more on the issue “would undermine the purpose of judicial review under NPEA—‘to ensure that important effects will not be overlooked or underestimated only to be discovered after resources have been

committed or the die otherwise cast.”” *See Sierra Club*, 446 F.3d at 816 (citation omitted). That is especially true in this case where there literally are no further steps the NRC must take before Holtec may act under the NRC’s approvals and, indeed, Holtec is acting today under the auspices of orders that are themselves, in the Commonwealth’s view, the subject of the NRC’s flawed NEPA decisions. Stay Mot. 12-17. In these circumstances, the Commonwealth should not be forced to wait in the wings to remedy its NEPA-related injuries until some undefined future date when the Commission decides it *may* want to say something more on the issue. That is not the law, and this Court should reject that approach here to avoid turning NEPA on its head.

C. The NRC’s Exemption, License Transfer, and License Amendment Orders and the Safety Evaluation Report That Allegedly Support Them Are Also Reviewable.

“NRC orders that are given ‘immediate effect’” are, again, subject to judicial review, *City of Benton v. NRC*, 136 F.3d 824, 825-26 (D.C. Cir. 1998), and here the license transfer, license amendment, and Exemption Orders were all given immediate effect, *e.g.*, NRC Br. 12 (conceding that the NRC’s actions “have legal consequences”). Moreover, regarding exemption approvals in particular, this Court has held that NRC Staff decisions to grant exemptions from the NRC’s regulations are final and reviewable under the Hobbs Act when issued. In *Honeywell International*, for example, this Court held that it had jurisdiction under the Hobbs Act to review an NRC Staff decision to deny an exemption request, 628 F.3d at 574-76, and then, upon review,

reversed, as arbitrary and capricious, the Staff's determination, *id.* at 578-81. In its brief to the Court in that case, the NRC also made clear that the agency's procedural rules do not provide a route for a hearing before the Commission on exemption decisions, and "Honeywell was not obliged to request a hearing before petitioning for judicial review." Br. of NRC at 25 n.13, *Honeywell*, 628 F.3d 568 (D.C. Cir. 2010) (No. 10-1022); *see also Shoreham-Wading*, 931 F.2d at 105-07 (reviewing NRC Staff exemption). That is the case here, too, where the Commonwealth has not requested a hearing on the Staff's Exemption Order.

Even if these Orders were not independently reviewable now, they are all reviewable under *Massachusetts* because they are "necessary predicates to [the] immediate effectiveness" order. 924 F.2d at 322; *see also id.* ("we will consider the NRC's full power rulings only to the extent necessary to review the Commission's exercise of discretion in allowing immediate effectiveness"). So, for example, in *Massachusetts*, the Court also reviewed a decision to "exclude ... testimony" relevant to the issue because there existed a "close link" between the immediate effectiveness decision and the evidentiary issue. *Id.* at 823. So, too, in *San Luis Obispo*, where the Court, apparently at NRC's urging, reviewed a technical analysis prepared by Staff, which the NRC then relied on to justify Staff's no-significant-hazards-consideration determination before that court. 799 F.2d at 1270-71. In this case, the Staff relied on 10 C.F.R. § 2.1315's generic no-significant-hazards-consideration finding, which applies to license transfers and contemplates only those amendments that "do[] no

more than conform the license to reflect the transfer action,” i.e., name substitutions, *see id.* at § 2.1315, even though Staff stripped from the license—without any explanation—a \$50 million financial assurance condition. Stay Mot. 12.

It is true that nearly a year ago, on February 20, 2019, the Commonwealth asked the NRC for a hearing to contest the requested actions that the NRC has since made effective prior to ruling on that request. The Commission now seizes on the Commonwealth’s effort to present its views to the Commission and preserve its rights and claims to bolster NRC’s claim here that this Court lacks jurisdiction to review *any* of the NRC’s orders. NRC Br. 14. But the Commonwealth did not *choose* to be stuck with claims “contesting the same decisions” pending before this Court and the agency by simultaneously seeking reconsideration of already issued NRC orders and review in this Court. *Id.* Instead, the posture was created by the Commission’s decision to make its orders immediately effective prior to a hearing on the Commonwealth’s petition. The Commission’s delay in adjudicating the Commonwealth’s claims should not be allowed to insulate *all* of its orders from judicial review. *See Allegheny*, 932 F.3d. at 948 (Millett, J., concurring). To be sure, the Commonwealth also challenged Holtec’s exemption request in its still-pending petition, again, to preserve the claim, but it has not sought a new hearing on the Staff’s decision to grant the exemption in the interim—something, again, the NRC has conceded it was “not obliged” to do. *Supra.* Nor is this a case where, as the NRC tries to claim by analogy, the

Commonwealth sought reconsideration before the agency and that request remains pending. NRC Br. 14 n.9.

In summary, the NRC's license transfer, license amendment, and Exemption Orders are also reviewable now. This Court should reject the NRC's attempt to create "a Kafkaesque regime," *Allegheny*, 932 F.3d. at 948 (Millett, J., concurring), that gives licensees the financial benefit of expeditious agency action notwithstanding the complete absence of any public necessity or benefit while sidelining a sovereign state's challenges to those very actions until the Commission has time to address them.

II. The Commonwealth is Not Required to Exhaust Any Administrative Remedies Because the NRC Has Made its Decisions Immediately Effective.

The NRC also suggests that this Court should decline jurisdiction to review the Commonwealth's petition because it has failed to exhaust its administrative remedies before the NRC. *E.g.*, NRC Br. 14 n.9, 16. Indeed, its argument, fundamentally, is that the Commonwealth should have to exhaust the contentions the Commonwealth filed long-before the NRC acted by waiting until the Commission addresses them. But exhaustion of administrative remedies is not a jurisdictional bar to review by this Court here. *Vermont Department of Public Serv. v. United States*, 684 F.3d 149, 156-57 (D.C. Cir. 2012) (exhaustion "non-jurisdictional" under Hobbs Act). Indeed, exhaustion "is a prerequisite to judicial review *only* when expressly required by statute or when an agency rule requires appeal before review *and* the administrative action is made *inoperative* pending that review." *Marine Mammal Conservancy, Inc. v. Department of*

Agric., 134 F.3d 409, 411 (D.C. Cir. 1998) (quoting *Darby v. Cisneros*, 509 U.S. 137, 154 (1993) (emphases added)). Neither is true here.

It is undisputed that the NRC's license transfer, license amendment, and Exemption Orders are not *inoperative*; the very purpose of the Final No Significant Hazards Consideration determination was to do the precise opposite—make them operative, immediately. The NRC's claim that a Commission decision at some undefined future date to rescind the Staff license transfer and amendment order would require "Entergy and Holtec" to "return the plant ownership to the status quo ante and revert to the conditions existing before the transfer," NRC Br. 13, does not alter this settled rule. *See Marine Mammal*, 134 F.3d at 411. Even if that were not the case, the NRC cites no example of the Commission actually rescinding a prior-issued license, and provides no explanation as to how it would effect such a result. *See* NRC Br. 1-23.⁵ For example, if Holtec dropped a spent nuclear fuel cask and released radiation into the environment, how would the Companies undo the potential harm to the environment and the public?⁶ Or, for example, how would the NRC secure repayment of withdrawn Trust Fund money from two companies with no assets other

⁵ Accordingly, Holtec has apparently spent "months" "transitioning insurance, employment matters, IT systems, and everything else required" to assume immediate control of Pilgrim, Holtec Br. 2-3, and it has awarded major contracts to other companies to complete the decommissioning and site restoration work as Pilgrim's new licensee, *see, e.g., GEH Contract for Pilgrim Internals Dismantling*, World Nuclear News, Dec. 4, 2019, <https://tinyurl.com/qot736f>.

⁶ *See* NRC Br. Ex.2, at 20 (describing Holtec cask-drop in 2018).

than the Trust Fund? The simple fact is that the NRC cannot guarantee that it can unwind (NRC Br. 5-6) the consequences of its unlawful decision to make the license transfer, license amendment, and Exemption Order immediately effective if it (as it should) comes to a different conclusion at a later date.

Finally, the NRC's claim that the Commonwealth's inclusion of a no-significant-hazards contention in its petition to the Commission renders that Commission's otherwise reviewable final order "non-final" was undermined fatally by the Commission's adoption of the Commonwealth's position that the Staff's Final No Significant Hazards Consideration determination was indeed final when issued. The NRC's claim was then buried by the Commission's decision declining discretionary review of it. *Compare* NRC Br. 14 n.9, *with* Add-91. In addition to rejecting the NRC and the Companies' existing arguments, this Court should thus also reject any *post hoc* attempt by the NRC in reply to resurrect its claim based on the Commission's inherent authority to reconsider past final orders—a power that nearly all agencies enjoy within certain boundaries regarding their final—and reviewable—agency actions. *See Albertson v. FCC*, 182 F.2d 397, 399 (D.C. Cir. 1951); *County of Rockland v. NRC*, 709 F.2d 766, 775 & n.12 (2d Cir. 1983).

CONCLUSION

The Court should deny the motions to dismiss.

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Respectfully submitted,

COMMONWEALTH OF
MASSACHUSETTS

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Dated: January 10, 2020

** application for admission pending*

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32

I hereby certify that:

1. This opposition complies with the type-volume limitations of Fed. R. App. P. 27(d)(2), because it contains 5,169 words, excluding the accompanying documents authorized by Fed. R. App. P. 27(a)(2)(B) and the parts of the opposition exempted by Fed. R. App. P. 32(f); and.

2. This opposition complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1) (referring to Fed. R. App. 32(a)(5), (a)(6)) because this opposition has been prepared in a proportionally spaced typeface using Microsoft Word 2010 with 14-point, Garamond-style font.

Dated: January 10, 2020

/s/ Seth Schofield

Seth Schofield

*Counsel for the Commonwealth of
Massachusetts*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Opposition to the Motions to Dismiss with the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on January 10, 2020, and that parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system. I further certify that pursuant to Circuit Rule 27(b), the original and four paper copies of this filing will be sent to the Court on January 13, 2020 via overnight United Parcel Service (UPS) delivery.

Dated: January 10, 2020

/s/ Seth Schofield

Seth Schofield

*Counsel for the Commonwealth of
Massachusetts*

Addendum

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Entergy Nuclear Generation Company)	
Entergy Nuclear Operations, Inc.)	Docket Nos.: 50-293 and 72-1044
)	License No.: DPR-35
Pilgrim Nuclear Power Station)	
EA-19-084)	

**ORDER APPROVING DIRECT AND INDIRECT TRANSFER OF LICENSE AND
CONFORMING AMENDMENT**

I.

Entergy Nuclear Operations, Inc. (ENOI) and Entergy Nuclear Generation Company (ENGCO) are the holders of Renewed Facility Operating License No. DPR-35, for the Pilgrim Nuclear Power Station (Pilgrim), and the general license for the Pilgrim Independent Spent Fuel Storage Installation (ISFSI). Pilgrim permanently ceased operations on May 31, 2019. Pursuant to Sections 50.82(a)(1)(i) and (a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR), by letter dated June 10, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19161A033), ENOI certified to the U.S. Nuclear Regulatory Commission (NRC) that it had permanently ceased operations at Pilgrim and that all fuel had been permanently removed from the reactor. Therefore, pursuant to 10 CFR 50.82(a)(2), operations at Pilgrim are no longer authorized under the license issued under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," and ENOI and ENGCO are licensed to possess, but not use or operate, Pilgrim under Renewed Facility Operating License No. DPR-35, subject to the conditions specified therein. The Pilgrim site is located in the town of Plymouth, Massachusetts, in Plymouth County on Cape Cod Bay.

II.

By letter dated November 16, 2018 (ADAMS Accession No. ML18320A031), and as supplemented by letters dated November 16, 2018, April 17, 2019, and July 29, 2019 (ADAMS Accession Nos. ML18320A040, ML19109A177, and ML19210E470, respectively), ENOI, on behalf of itself and ENGC (to be known as Holtec Pilgrim, LLC), Holtec International (Holtec), and Holtec Decommissioning International, LLC (HDI) (together, the Applicants), requested that the NRC consent to the proposed direct and indirect transfer of the Pilgrim Renewed Facility Operating License No. DPR-35 and the general license for the Pilgrim ISFSI (collectively referred to as the facility). Specifically, the Applicants requested that the NRC consent to the direct transfer of ENOI's currently licensed authority (licensed operator for decommissioning) to HDI. In addition, the Applicants requested the indirect transfer of control of ENGC's ownership interests in the facility licenses to Holtec. The Applicants also requested that the NRC approve a conforming administrative amendment to the facility licenses to reflect the proposed direct transfer of the license from ENOI to HDI, as well as a planned name change from ENGC to Holtec Pilgrim. The Applicants submitted these direct and indirect transfer requests to the NRC for approval under Section 184, "Inalienability of Licenses," of the Atomic Energy Act of 1954, as amended (AEA); 10 CFR 50.80, "Transfer of Licenses"; 10 CFR 72.50, "Transfer of Licenses"; and 10 CFR 50.90, "Application for Amendment of License, Construction Permit, or Early Site Permit."

ENOI and ENGC intend to transfer the licensed possession, maintenance, and decommissioning authorities to HDI to implement expedited decommissioning at Pilgrim. Following approval and implementation of the proposed direct transfer of control of the license, HDI would assume licensed responsibility for Pilgrim through the direct transfer of ENOI's responsibility for licensed activities at Pilgrim to HDI. If the proposed indirect transfer of control is approved, ENGC would change its name to Holtec Pilgrim, LLC (Holtec Pilgrim), but

the same legal entity would continue to exist before and after the proposed transfer. Holtec Pilgrim would also enter into an operating agreement with HDI, which provides for HDI to act as Holtec Pilgrim's agent and for HDI to pay Holtec Pilgrim's costs of operation, including all decommissioning costs. Holtec Pilgrim would own the Pilgrim facility as well as its associated assets and real estate, including its nuclear decommissioning trust fund, title to spent nuclear fuel, and rights pursuant to the terms of its Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the U.S. Department of Energy. Upon the proposed license transfer, HDI would assume responsibility for compliance with the current licensing basis, including regulatory commitments that exist at the closing of the transaction between the Applicants, and would implement any changes under applicable regulatory requirements and practices. HDI's licensed activities will involve possessing and disposing of radioactive material, maintaining the facility in a safe condition (including handling, storing, controlling, and protecting the spent fuel), decommissioning and decontaminating the facility, and maintaining the ISFSI until it can be decommissioned, each in accordance with the license and NRC regulations.

The NRC published the notice of NRC consideration of the license transfer application in the *Federal Register* (FR) on January 31, 2019 (84 FR 816), and included an opportunity to comment, request a hearing, and petition for leave to intervene. On February 20, 2019 (ADAMS Accession No. ML19051A114), the Commonwealth of Massachusetts filed a request for a hearing and petition for leave to intervene, submitting two contentions challenging the proposed license transfer. On February 20, 2019 (ADAMS Accession No. ML19051A019), Pilgrim Watch also filed a request for a hearing and petition for leave to intervene with two contentions challenging the proposed license transfer. On April 24, 2019 (ADAMS Accession No. ML19114A519), the Commonwealth of Massachusetts filed a motion to supplement its motion to intervene and request for hearing with new information. On April 26, 2019 (ADAMS Accession No. ML19116A162) and May 9, 2019 (ADAMS Accession No. ML19129A473),

Pilgrim Watch filed motions to supplement its motion to intervene and request for hearing with new information. On July 16, 2019 (ADAMS Accession No. ML19197A330), Pilgrim Watch submitted a motion to file a new contention. On August 1, 2019 (ADAMS Accession No. ML19213A313), the Commonwealth of Massachusetts filed a motion to stay the license transfer proceeding for 90 days to permit the completion of settlement negotiations. These requests are currently pending before the Commission. The NRC also received public comments on this application for license transfer, which are summarized in the safety evaluation for this license transfer request.

The NRC staff notes, in Enclosure 2 of the application dated November 16, 2018, in support of the license transfer request, that the Applicants submitted a request for an exemption to 10 CFR 50.82(a)(8)(i)(A) to allow Holtec Pilgrim and HDI to make withdrawals from the Pilgrim decommissioning trust fund for spent fuel management and site restoration activities. The staff approved the exemption request on August 22, 2019 (ADAMS Accession No. ML19192A083). The NRC is issuing the exemption to Holtec Pilgrim and HDI simultaneously with this Order.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Holtec Pilgrim and HDI are qualified to be the holders of the licenses, and that the direct and indirect transfer of the licenses, as described in the application, is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

Upon review of the application for a conforming amendment to the Pilgrim license to reflect the direct and indirect transfer of the Pilgrim licenses, the NRC staff determined the following:

- (1) The application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I, "Nuclear Regulatory Commission."
- (2) There is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering public health and safety and that such activities will be conducted in compliance with the Commission's regulations.
- (3) The issuance of the proposed license amendment will not be inimical to the common defense and security or to public health and safety.
- (4) The issuance of the proposed license amendment is in accordance with 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," of the Commission's regulations, and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated August 22, 2019, which is available at ADAMS Accession No. ML19170A250.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 50.90, IT IS HEREBY ORDERED that the application for the direct and indirect transfer of the licenses, as described herein, is approved for Pilgrim and the ISFSI, subject to the following conditions:

- (1) Prior to the closing of the license transfer, Holtec Pilgrim and HDI shall provide the Directors of NRC's Office of Nuclear Material Safety and Safeguards (NMSS) and Office of Nuclear Reactor Regulation (NRR) satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of a licensee under 10 CFR 140.11(a)(4) and 10 CFR 50.54(w) of the Commission's regulations.
- (2) The NRC staff's approval of this license transfer is subject to the Commission's authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing on the license transfer application. For example, if the Commission overturns the NRC staff's approval of this license transfer, this Order and any conforming amendments reflecting this transfer, will be rescinded, and the Applicants must return the plant ownership to the status quo ante and revert to the conditions existing before the transfer.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct and indirect license transfer, is approved. The amendment shall be issued and made effective within 30 days of the date when the proposed direct and indirect license transfer action is completed.

IT IS FURTHER ORDERED that Holtec Pilgrim and HDI shall, at least 2 business days prior to closing, inform the Directors of NMSS and NRR in writing of the date of closing of the license transfer for Pilgrim and the ISFSI. Should the transfer of the license not be completed within 1 year of this Order's date of issuance, this Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated November 16, 2018, as supplemented by letters dated November 16, 2018, April 17, and July 29, 2019, and the associated NRC safety evaluation dated August 22, 2019, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who encounter problems with ADAMS should contact the NRC's Public Document Room reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this 22nd day of August, 2019.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Ho K. Nieh, Director,
Office of Nuclear Reactor Regulation.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC

HOLTEC PILGRIM, LLC

PILGRIM NUCLEAR POWER STATION

DOCKET NO. 50-293

AMENDMENT TO RENEWED FACILITY OPERATING LICENSE

Amendment No. XXX
Renewed License No. DPR-35

1. The U.S. Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment filed by Entergy Nuclear Operations, Inc. (ENOI), on behalf of itself and Entergy Nuclear Generation Company (ENGCO) (to be known as Holtec Pilgrim, LLC), Holtec International (Holtec), and Holtec Decommissioning International, LLC (HDI), dated November 16, 2018, as supplemented by letters dated November 16, 2018, April 17, and July 29, 2019, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Renewed Facility Operating License No. DPR-35 is amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of its date of issuance and shall be implemented within 30 days from that date.

FOR THE NUCLEAR REGULATORY COMMISSION

Ho K. Nieh, Director
Office of Nuclear Reactor Regulation

Attachment:
Changes to Renewed Facility
Operating License No. DPR-35,
Technical Specifications, and
Appendix B, Additional Conditions

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. XXXPILGRIM NUCLEAR POWER STATIONRENEWED FACILITY OPERATING LICENSE NO. DPR-35DOCKET NO. 50-293

Replace the following pages of the Renewed Facility Operating License; Appendix A, Technical Specifications, and Appendix B, Additional Conditions, with the attached revised pages. The revised pages are identified by amendment number and contain vertical lines indicating the areas of change.

Renewed Facility Operating License No. DPR-35REMOVE

1
2
3
4
5

INSERT

1
2
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Appendix A, Technical SpecificationsREMOVE

Title page
4.0-1

INSERT

Title page
4.0-1

Appendix B, Additional ConditionsREMOVE

1

INSERT

1

HOLTEC PILGRIM, LLC
And HOLTEC DECOMMISSIONING INTERNATIONAL
(PILGRIM NUCLEAR POWER STATION)

DOCKET NO. 50-293
RENEWED FACILITY OPERATING LICENSE

Renewed License No. DPR-35

The Nuclear Regulatory Commission (the Commission) has found that:

- a. Except as stated in condition 5, construction of the Pilgrim Nuclear Power Station (the facility) has been substantially completed in conformity with the application, as amended, the Provisional Construction Permit No. CPPR-49, the provisions of the Atomic Energy Act of 1954, as amended (the Act), and the rules and regulations of the Commission as set forth in Title 10, Chapter 1, CFR; and
- b. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission; and
- c. There is reasonable assurance (i) that the activities authorized by the renewed operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the rules and regulations of the Commission; and
- d. Holtec Pilgrim, LLC (Holtec Pilgrim) is financially qualified and Holtec Decommissioning International, LLC (HDI) is technically and financially qualified to engage in the activities authorized by this renewed operating license, in accordance with the rules and regulations of the Commission; and
- e. Holtec Pilgrim and HDI have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements" of the Commission's regulations; and
- f. The issuance of this renewed operating license will not be inimical to the common defense and security or to the health and safety of the public; and
- g. After weighing the environmental, economic, technical, and other benefits of the facility against environmental costs and considering available alternatives, the issuance of this renewed operating license (subject to the condition for protection of the environment set forth herein) is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements of said regulations have been satisfied; and
- h. Actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under

10 CFR 54.21(a)(1); and (2) time-limited aging analyses that have been identified to require review under 10 CFR 54.21(c), such that there is reasonable assurance that the activities authorized by the renewed operating license will continue to be conducted in accordance with the current licensing basis, as defined in 10 CFR 54.3, for the facility, and that any changes made to the facility's current licensing basis in order to comply with 10 CFR 54.29(a) are in accordance with the Act and the Commission's regulations.

Facility Operating License No. DPR-35, dated June 8, 1972, issued to the Boston Edison Company (Boston Edison) is hereby amended in its entirety, pursuant to an Initial Decision dated September 13, 1972, by the Atomic Safety and Licensing Board, to read as follows:

1. This renewed operating license applies to the Pilgrim Nuclear Power Station, a single cycle, forced circulation, boiling water nuclear reactor and associated electric generating equipment (the facility), owned by Holtec Pilgrim and maintained and operated for decommissioning by HDI. The facility is located on the western shore of Cape Cod Bay in the town of Plymouth on the Holtec Pilgrim site in Plymouth County, Massachusetts, and is described in the "Final Safety Analysis Report," as supplemented and amended.
2. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
 - A. Pursuant to the Section 104b of the Atomic Energy Act of 1954, as amended (the Act) and 10 CFR Part 50, "Licensing of Production and Utilization Facilities," a) Holtec Pilgrim to possess, and b) HDI to possess, maintain, and decommission the facility at the designated location on the Pilgrim site;
 - B. HDI, pursuant to the Act and 10 CFR 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;
 - C. HDI, pursuant to the Act and 10 CFR Parts 30, 40 and 70 to receive, possess and use at any time any byproduct, source or special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
 - D. HDI, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
 - E. HDI, pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.
3. This renewed operating license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations; 10 CFR Part 20, Section 30.34 of 10 CFR Part 30, Section 40.41 of 10 CFR Part 40, Sections 50.54 and 50.59 of 10 CFR Part 50 and Section 70.32 of 10 CFR Part 70; and is subject to all applicable

provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified below:

A. Maximum Power Level

HDI is authorized to operate the facility at steady state power levels not to exceed 2028 megawatts thermal.

B. Technical Specifications

The Technical Specifications contained in Appendix A, as revised through Amendment No. XXX, are hereby incorporated in the renewed operating license. The licensee shall operate the facility in accordance with the Technical Specifications.

C. Records

HDI shall keep facility operating records in accordance with the requirements of the Technical Specifications.

D. Equalizer Valve Restriction - DELETED

E. Recirculation Loop Inoperable - DELETED

F. Fire Protection

HDI shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report for the facility and as approved in the SER dated December 21, 1978 as supplemented subject to the following provision:

HDI may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

G. Physical Protection

The licensee shall fully implement and maintain in effect all provisions of the Commission-approved physical security, training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The combined set of plans, which contain Safeguards Information protected under 10 CFR 73.21, is entitled: "Pilgrim Nuclear Power Station Physical Security, Training and Qualification, and Safeguards Contingency Plan, Revision 0" submitted by letter dated October 13, 2004, as supplemented by letter dated May 15, 2006.

The licensee shall fully implement and maintain in effect all provisions of the Commission-approved cyber security plan (CSP), including changes made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The licensee's CSP was approved by License Amendment No. 236, as supplemented by changes approved by Amendment Nos. 238, 241, 244, and 247.

H. Post-Accident Sampling System, NUREG-0737, Item II.B.3. and
Containment Atmospheric Monitoring System, NUREG-0737, Item II.F.1(6)

The licensee shall complete the installation of a post-accident sampling system and a containment atmospheric monitoring system as soon as practicable, but no later than June 30, 1985.

I. Additional Conditions

The Additional Conditions contained in Appendix B, as revised through Amendment No. XXX, are hereby incorporated into this renewed operating license. HDI shall operate the facility in accordance with the Additional Conditions.

J. Conditions Related to the Sale and Transfer

(1) Deleted

(2) Deleted

(3) Deleted

(4) Deleted

- (5) The Decommissioning Trust agreement(s) shall be in a form which is acceptable to the NRC and shall provide, in addition to any other clauses, that:
- a) Investments in the securities or other obligations of Holtec Pilgrim, Holtec International, their affiliates, subsidiaries or associates, or their successors or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants is prohibited.
 - b) The Director, Office of Nuclear Reactor Regulation, shall be given 30 days prior written notice of any material amendment to the trust agreement(s).

K. Mitigation Strategy License Condition

Develop and maintain strategies for addressing large fires and explosions and that include the following key areas:

- (a) Fire fighting response strategy with the following elements:
 - 1. Pre-defined coordinated fire response strategy and guidance
 - 2. Assessment of mutual aid fire fighting assets
 - 3. Designated staging areas for equipment and materials
 - 4. Command and control
 - 5. Training of response personnel
- (b) Operations to mitigate fuel damage considering the following:
 - 1. Protection and use of personnel assets
 - 2. Communications
 - 3. Minimizing fire spread
 - 4. Procedures for implementing integrated fire response strategy
 - 5. Identification of readily-available pre-staged equipment
 - 6. Training on integrated fire response strategy
 - 7. Spent fuel pool mitigation measures
- (c) Actions to minimize release to include consideration of:
 - 1. Water spray scrubbing
 - 2. Dose to onsite responders

- L. The licensee shall implement and maintain all Actions required by Attachment 2 to NRC Order EA-06-137, issued June 20, 2006, except the last action that requires incorporation of the strategies into the site security plan, contingency plan, emergency plan and/or guard training and qualification plan, as appropriate.
- M. Upon Implementation of Amendment No. 231 adopting TSTF-448, Revision 3, the determination of control room envelope (CRE) unfiltered air inleakage required by SR 4.7.6.2.e in accordance with TS 5.5.8.c.(i), the assessment of CRE habitability as required by Specification 5.5.8.c.(ii), and the measurement

APPENDIX A
TO
FACILITY OPERATING LICENSE DPR-35
TECHNICAL SPECIFICATION AND BASES
FOR
PILGRIM NUCLEAR POWER STATION
PLYMOUTH, MASSACHUSETTS
Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC

4.0 DESIGN FEATURES

4.1 Site Location

Pilgrim Nuclear Power Station is located on the western shore of Cape Cod Bay in the Town of Plymouth, Plymouth County, Massachusetts and contains approximately 517 acres owned by Holtec Pilgrim as shown on FSAR Figures 2.2-1 and 2.2-2. The site boundary is posted and a perimeter security fence provides a distinct security boundary for the protected area of the station.

The reactor (center line) is located approximately 1800 feet from the nearest property boundary.

4.2 Deleted

4.3 Fuel Storage

4.3.1 Criticality

4.3.1.1 The spent fuel storage racks are designed and shall be maintained with:

- a. Fuel assemblies having a maximum k-infinity of 1.32 for standard core geometry, calculated at the burn up of maximum bundle reactivity, and an average U-235 enrichment of 4.6 % averaged over the axial planar zone of highest average enrichment; and
- b. $K_{eff} \leq 0.99$ if fully flooded with unborated water, which includes an allowance for uncertainties as described in Section 10.3.5 of the FSAR.

(continued)

APPENDIX B

ADDITIONAL CONDITIONS

OPERATING LICENSE NO. DPR-35

Holtec Decommissioning International, LLC shall comply with the following conditions on the schedules noted below:

<u>Amendment Number</u>	<u>Additional Conditions</u>	<u>Implementation Date</u>
177	The licensee is authorized to relocate certain Technical Specifications requirements to licensee-controlled documents. Implementation of this amendment shall include relocation of various sections of the technical specifications to the appropriate documents as described in the licensee's application dated September 19, 1997, and in the staff's safety evaluation attached to this amendment.	The amendment shall be implemented within 30 days from July 31, 1998, except that the licensee shall have until the next scheduled Updated Final Safety Analysis Report (UFSAR) update to incorporate the UFSAR relocations.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

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

1.0 INTRODUCTION

By application dated November 16, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18320A031), as supplemented by letters dated November 16, 2018, April 17, and July 29, 2019 (ADAMS Accession Nos. ML18320A040, ML19109A177, and ML19210E470, respectively), Entergy Nuclear Operations, Inc. (ENOI), on behalf of itself and Entergy Nuclear Generation Company (ENGCO) (to be known as Holtec Pilgrim, LLC), Holtec International (Holtec), and Holtec Decommissioning International, LLC (HDI), (hereinafter referred to as "Applicants"), requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the following actions:

- (1) the direct transfer of ENOI's operating authority to HDI, and
- (2) the indirect transfer of control of the Renewed Facility Operating License No. DPR-35 for the Pilgrim Nuclear Power Station (Pilgrim), as well as the general license for the Pilgrim Independent Spent Fuel Storage Installation (ISFSI), to Holtec.

The Applicants also requested that the NRC approve a conforming administrative amendment to the facility licenses, to reflect the proposed direct transfer of the licenses from ENOI to HDI and the planned name change for ENGCO, from ENGCO to Holtec Pilgrim, LLC (Holtec Pilgrim). The supplements dated April 17, and July 29, 2019, provided additional information that clarified the application and did not expand the scope of the application as originally noticed in the *Federal Register* (FR) on January 31, 2019 (84 FR 816).

2.0 REGULATORY EVALUATION

2.1 Background

By letter dated November 10, 2015 (ADAMS Accession No. ML15328A053), ENOI notified the NRC of its intent to permanently cease operations at Pilgrim no later than June 1, 2019. By letter dated June 10, 2019 (ADAMS Accession No. ML19161A033), ENOI certified to the NRC that power operations ceased at Pilgrim on May 31, 2019, and fuel was permanently removed from the reactor vessel and placed in the spent fuel pool (SFP) on June 9, 2019. Pursuant to 10 CFR 50.82(a)(2), upon docketing of the certifications of permanent cessation of power operations and permanent removal of fuel from the reactor vessel in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 50.82(a)(1)(i) and (ii), and the license under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel.

By letter dated November 16, 2018, ENOI submitted the Pilgrim Post-Shutdown Decommissioning Activities Report (PSDAR) (ADAMS Accession No. ML18320A034), which describes ENOI's plan to utilize the SAFSTOR method for decommissioning. In accordance with ENOI's SAFSTOR decommissioning approach, license termination would occur in 2079 and site restoration would be completed by 2080. The Applicants stated that the license transfer is being sought to effectuate a transaction under which Holtec Pilgrim will own the Pilgrim facility, including the ISFSI, pursuant to the terms of the Equity Purchase and Sale Agreement (EPSA), and HDI will assume the licensed responsibility for maintaining and decommissioning the facility, as the decommissioning operator of Pilgrim. The Applicants further stated that the transfer is desirable, because it will result in the prompt decommissioning of Pilgrim, consistent with the DECON method for decommissioning, as described in HDI's revised PSDAR, dated November 16, 2018 (ADAMS Accession No. ML18320A040). In accordance with HDI's DECON decommissioning approach, the release of all portions of the site other than the ISFSI will occur on an accelerated schedule, within approximately 8 years of the license transfer.

2.2 Pilgrim License Transfer and Equity Sale

According to the Applicants, approval of both the direct and indirect transfers is being sought pursuant to a transaction under which 100 percent of the equity interests in ENGCO will be transferred to Holtec based upon the terms of an EPSA, dated July 30, 2018 (the nonproprietary, publicly available version can be found as Attachment B at ADAMS Accession No. ML18320A031). Holtec Pilgrim will own the Pilgrim nuclear facility pursuant to the terms of the EPSA, and will have responsibility for Pilgrim as its licensed owner. Holtec Pilgrim will enter into an agreement for decommissioning services with HDI, with HDI acting as Holtec Pilgrim's agent and with Holtec Pilgrim paying for all HDI expenses related to decommissioning, spent fuel management, and site restoration. Accordingly, HDI will become the licensed operator for decommissioning.

HDI will contract with Comprehensive Decommissioning International, LLC (CDI), a company jointly formed and owned by Holtec and SNC-Lavalin Group, as the decommissioning general contractor. CDI will perform day-to-day activities at the site, including decommissioning activities, subject to HDI's direct oversight and control as the licensed decommissioning operator. Pursuant to the terms of the EPSA, closing of the transaction cannot occur until the satisfaction of several conditions, including ENOI's certification pursuant to 10 CFR 50.82(a)(1)(ii) that fuel has been permanently removed from the reactor vessel, which,

as noted above, was submitted to the NRC on June 10, 2019, shortly after permanent cessation of operations. Attachments 1A and 1B, "Corporate Structure - Pilgrim License Transfer and Equity Sale," of the application include simplified organization charts reflecting the current and post-transfer organizations.

2.3 Revised Post-Shutdown Decommissioning Activities Report

In support of its license transfer application, Holtec submitted to the NRC a revised PSDAR for Pilgrim on November 16, 2018 (ADAMS Accession No. ML18320A040), to notify the NRC of changes in the actions and schedules previously described in the ENOI PSDAR. The revised PSDAR updates the information previously provided by ENOI on November 16, 2018 (ADAMS Accession No. ML18320A034), as required by 10 CFR 50.82(a)(7). The revised PSDAR is based and contingent upon NRC approval of this license transfer, and ENGCO being acquired by Holtec, pursuant to the terms of the EPSA. On December 17, 2018 (ADAMS Accession No. ML18333A240), the NRC notified ENOI that the staff is treating the revised PSDAR submittal, dated November 16, 2018, as a supplement to the Pilgrim license transfer application, also dated November 16, 2018, until such time as the NRC makes a regulatory decision on the Pilgrim license transfer application. The NRC staff reviewed the revised PSDAR only to determine whether Holtec Pilgrim and HDI are financially and technically qualified to hold the license for Pilgrim and the general license for the Pilgrim ISFSI, as described in the application, and to engage in the proposed maintenance and decommissioning activities associated with the Pilgrim site.

2.4 Regulations and Guidance

As described in the application, the proposed transaction constitutes a direct transfer of authority to conduct licensed activities at Pilgrim to HDI and the indirect transfer of control of the Renewed Facility Operating License No. DPR-35 for Pilgrim as well as the general license for the Pilgrim ISFSI, to Holtec, which requires prior NRC approval. For transfers of control of a license, the NRC must find that the transfer of the license is otherwise consistent with the applicable provisions of the law, NRC regulations, and orders issued by the Commission.

The request for approval of the transfers of the Pilgrim licenses was made pursuant to 10 CFR 50.80(a), which states, in part:

No license for a production or utilization facility..., or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the regulations in 10 CFR 50.80(b) and (c) apply. The regulation at 10 CFR 50.80(b) states, in part:

- (1) An application for transfer of a license shall include:
 - (i) For a construction permit or operating license under this part, as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

In addition, 10 CFR 50.80(c) states, in part:

...the Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

In 10 CFR 50.40, "Common Standards," the NRC states, in part:

In determining that a construction permit or operating license in this part...will be issued to an applicant, the Commission will be guided by the following considerations:

...
(b) The applicant for a construction permit, operating license...is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter.

In 10 CFR 50.34(b)(6), the NRC requires that applicants provide certain information on facility operation. It requires, in part, that the information provided by the applicants include the following:

- (i) The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualification requirements.
- (ii) Managerial and administrative controls to be used to assure safe operation.

In 10 CFR 50.34(b)(7), the NRC requires applicants for an operating license to provide the following information in the final safety analysis report:

The technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter.

With respect to the requested conforming amendment, 10 CFR 50.90, "Application for Amendment of License, Construction Permit, or Early Site Permit," states, in part:

Whenever a holder of a license, including a construction permit and operating license under this part..., desires to amend the license or permit, application for an amendment must be filed with the Commission..., fully describing the changes desired, and following as far as applicable, the form prescribed for original applications.

Furthermore, 10 CFR 2.1315 states the following, in part:

- (a) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action, involves respectively, "no significant hazards consideration"

- (b) Where administrative license amendments are necessary to reflect an approved transfer, such amendments will be included in the order that approves the transfer.

In 10 CFR 50.33(a) through (d), the NRC requires applicants to provide information including the name of the applicant, address of the applicant, description of the business or occupation, corporate structure of the applicant, citizenship of the applicant, and foreign ownership and control of the applicant, as applicable.

In addition, 10 CFR 50.33(f) states, in part:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, [each application shall state] information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The NRC staff applies guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," issued February 1999 (ADAMS Accession No. ML013330264), to evaluate the financial qualifications of applicants to carry out the activities for which the permit or license is sought.

In 10 CFR 50.54(bb), the NRC requires, in part, that a licensee submit, for NRC review and preliminary approval, the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel, also known as spent fuel, at the reactor following permanent cessation of operation of the reactor until title to the spent fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository.

In accordance with 10 CFR 50.2, "Definitions," the term "decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license.

In 10 CFR 50.33(k)(1), the NRC requires that applicants provide information, in the form of a report, as described in 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning," indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

10 CFR 50.75 specifies how a licensee will provide reasonable assurance that funds will be available for the decommissioning process. Specifically, 10 CFR 50.75(b) requires that each power reactor applicant for an operating license submit a decommissioning report, as required by 10 CFR 50.33(k). 10 CFR 50.75(b) also requires decommissioning financial assurance be provided in an amount not less than the minimum formula amount in 50.75(c). In 10 CFR 50.75(e), the NRC includes the methods acceptable to the agency for providing decommissioning financial assurance. Finally, 10 CFR 50.75(h) provides additional requirements on the management of decommissioning trust funds (DTFs).

In 10 CFR 50.82(a)(8)(i), the NRC states that licensees may use DTFs under the following conditions:

- (A) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2;
- (B) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and;
- (C) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

In 10 CFR 50.82(a)(8)(v), the NRC requires power reactor licensees that have permanently ceased operations to provide to the NRC annually, by March 31, a decommissioning financial assurance status report.

In addition, 10 CFR 50.82(a)(8)(vii) provides, in part, for the licensee's annual submittal to the NRC, a report on the status of its funding for managing spent fuel.

In addressing foreign ownership, control, or domination (FOCD) issues, Section 103d of the Atomic Energy Act of 1954, as amended (AEA), provides for the following, in relevant part:

No license may be issued to...any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The NRC's regulation in 10 CFR 50.38, "Ineligibility of Certain Applicants," is the regulatory provision that implements the FOCD provision of the AEA. Specifically, 10 CFR 50.38 states, in part:

[A]ny corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license.

The NRC staff evaluates license transfer applications in a manner consistent with the guidance provided in the "Final Standard Review Plan on Foreign Ownership, Control, or Domination," as published in the *Federal Register* on September 28, 1999 (64 FR 52357), to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The NRC staff also reviews information that relates to nuclear onsite property damage insurance requirements under 10 CFR 50.54(w) and the Price-Anderson insurance and indemnity requirements under Section 170 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

With respect to the transfer of control of a license for an ISFSI, 10 CFR 72.50(a) states as follows:

No license or any part included in a license issued under this part for an ISFSI or MRS [monitored retrievable storage facility] shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

The NRC staff considered the following regulatory guidance in its review of the proposed transfer:

- NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Support Organization," Revision 6, issued August 2016 (ADAMS Accession No. ML15005A449), provides guidance for the review of changes to the technical organization or personnel qualifications proposed as a result of an operating license transfer. Specifically, Section I.4, "Review of Operating License Transfers," states that the applicant for transfer of an operating license should provide a description of the organization to support plant operations, which should include (1) organizational charts of the corporate-level management and technical support organizations, emphasizing the changes to be made as a result of the transfer, (2) the relationship of the nuclear-oriented parts of the organization to the rest of the corporate organization, and (3) description of the specific provisions which have been made for uninterrupted technical support for operations.
- NUREG-0800, Chapter 13, Section 13.1.2–13.1.3, "Operating Organization," Revision 7, issued August 2017 (ADAMS Accession No. ML15007A296), provides guidance for the review of a changes to the operating organization proposed as a result of an operating license transfer.
- NUREG-1713, "Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors" (ADAMS Accession No. ML043510113), provides a list of items for which decommissioning trust funds can be used. The bases for NUREG-1713 can be found in two NUREGs that reference decommissioning at a pressurized water reactor and a boiling water reactor: NUREG/CR-5884, "Revised Analyses of Decommissioning for the Reference Pressurized Water Reactor Power Station (ADAMS Accession No. ML14008A187) and NUREG/CR-6174, "Revised Analyses of Decommissioning for the Reference Boiling Water Reactor Power Station" (ADAMS Accession No. ML14008A186). The Pilgrim facility employed a General Electric boiling-water reactor nuclear steam supply system. As such, NUREG/CR-6174 applies.

3.0 TECHNICAL EVALUATION

3.1 Financial Qualifications

In complying with the general corporate information requirements of 10 CFR 50.33, "Contents of Applications; General Information" (sections a through d), the Applicants state that Holtec Pilgrim (the proposed licensed owner after the license transfer and equity sale) will be a direct, wholly owned subsidiary of Nuclear Asset Management Company, LLC, (NAMCo), which will be a direct, wholly owned subsidiary of Holtec Power, Inc. (Holtec Power). HDI will be a direct,

wholly owned subsidiary of Holtec Power, and Holtec Power will be a direct, wholly owned subsidiary of Holtec. CDI, although jointly formed and owned by Holtec and SNC-Lavalin Group as previously discussed, will be the decommissioning general manager after the license transfer and equity sale and will have no direct or indirect ownership or licensing authority at Pilgrim.

Figures 1 and 2 of the application dated November 16, 2018, reflect the corporate ownership structure, including identification of the licensed owner and licensed operator, before and after the license transfer and equity sale. In summary, upon completion of the license transfer and equity sale transaction, Holtec Pilgrim will be the licensed owner of Pilgrim and HDI will be the licensed operator of Pilgrim.

The general corporate information required by 10 CFR 50.33(d)(3) includes identification of principal officers and directors of the Applicants, including those of Holtec, Holtec Power, NAMCo, Holtec Pilgrim, and HDI. Holtec will be the ultimate parent company of the proposed licensed entities. Holtec is a privately held corporation and is controlled by its Board of Directors, all of whom are U.S. citizens. It is owned by its shareholders as follows: (1) The Great Banyan Trust, 36.33-percent ownership interest, and (2) Multi-Decades Trust, 63.67-percent ownership interest. Dr. Krishna Singh of Holtec controls these trusts. As previously noted, by letter dated November 10, 2015, in accordance with 10 CFR 50.82(a)(1)(i) and (ii), the current licensee, ENOI, stated that Pilgrim will permanently cease operations no later than June 1, 2019. On May 31, 2019, ENOI permanently ceased operations at Pilgrim. The current licensee, ENOI, submitted a letter dated June 10, 2019 (ADAMS Accession No. ML19161A033), certifying the permanent cessation of operations and permanent removal of fuel from the reactor vessel.

HDI (proposed licensed operator for decommissioning) will not be authorized under the facility license to operate or load fuel in the reactor pursuant to the terms of 10 CFR 50.82(a)(2) and will not conduct reactor operations contemplated by the financial qualifications provisions of 10 CFR 50.33(f)(2). Rather, all of HDI's licensed activities will involve possession of radioactive material in connection with maintaining the safe condition of the plant, radiological decommissioning of the Pilgrim site (including the ISFSI), license termination, and operational responsibilities associated with spent fuel management. Thus, following the proposed direct and indirect transfers, Holtec Pilgrim (the proposed licensed owner) will maintain the existing DTF and will be responsible for funding all the expenses associated with radiological decommissioning and operational costs for spent fuel management. Accordingly, as described in this safety evaluation, the NRC staff's review of HDI and Holtec Pilgrim's financial qualifications and decommissioning financial assurance pursuant to 10 CFR 50.33(f), 10 CFR 50.33(k)(1), 10 CFR 50.75, and 10 CFR 50.82(a), includes an analysis of the projected costs for decommissioning the facility and terminating the license, and managing spent fuel until the U.S. Department of Energy (DOE) takes title and possession of the fuel.

For a facility in decommissioning, a licensee is required to execute financial plans for spent fuel management under 10 CFR 50.54(bb) and report annually on the status of funding dedicated towards radiological decommissioning and spent fuel management under 10 CFR 50.82(a)(8)(v) to (vii).

As stated in the application, Holtec Pilgrim will provide the financial assurance required by 10 CFR 50.75, 10 CFR 50.82(a)(8)(vi), and 10 CFR 72.30(b) and (c) for decommissioning Pilgrim, including the ISFSI, using the prepayment method in accordance with 10 CFR 50.75(e)(1)(i) and 10 CFR 72.30, "Financial Assurance and Recordkeeping for Decommissioning." Holtec Pilgrim will retain the Pilgrim DTF, which, as of October 31, 2018,

contained \$1,051,722,466 (as documented in the Pilgrim Updated Spent Fuel Management Plan submitted by ENOI on November 16, 2018). Under the terms of the EPSA, the after-tax market value of the DTF must be no less than \$1.030 billion at closing, subject to an adjustment that will not impact Holtec Pilgrim's or HDI's financial qualifications, as discussed in the EPSA. Accordingly, staff's evaluation of the adequacy of the Applicants' financial qualifications considered the more conservative value of \$1.030 billion. Further analysis of the Applicants' decommissioning funding resources is provided in the next section.

3.2 Radiological Decommissioning

As noted above, pursuant to 10 CFR 50.2, "decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license. The existing DTF for Pilgrim was created in compliance with 10 CFR 50.75, and the funds within the trust were collected while the facility was operating. As described below, the NRC staff's review of decommissioning financial assurance assesses whether the Applicants have provided reasonable assurance that funds will be available to cover estimated costs for radiological decommissioning of Pilgrim and its ISFSI.

Separate from and in parallel with this application, the Applicants submitted the HDI revised PSDAR¹ reflecting plans for decommissioning and spent fuel management following the proposed transfer of the licenses. Specifically, the HDI revised PSDAR contains the following:

- a description of the planned decommissioning activities along with a schedule for their accomplishment;
- a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by previously issued environmental impact statements; and
- a site-specific decommissioning cost estimate (DCE), including the costs for projected spent fuel management, license termination, and site restoration.

The HDI revised PSDAR reflects HDI's plan to complete the immediate and accelerated decommissioning of the non-ISFSI portions of the Pilgrim site within approximately 8 years after the proposed transfer is approved. The ENOI PSDAR reflected the current licensee's decommissioning plan for Pilgrim to be completed by ENOI and ENGEC within a 60-year period using the SAFSTOR method. The HDI revised PSDAR also contains the most recent decommissioning cost estimate and spent fuel management plans pursuant to 10 CFR 50.82, "Termination of License."

Under the HDI revised PSDAR, as compared to the ENOI PSDAR, the proposed change in decommissioning method from SAFSTOR to DECON results in an approximate 50-year acceleration of the site closure, and a site-specific DCE that reflects reductions in license termination costs of approximately \$595 million, and an increase in spent fuel management costs of approximately \$81 million.

¹ The staff notes that the NRC does not review the PSDAR for approval; however, for the purpose of this license transfer request, the staff relied on the revised PSDAR as a reference for the HDI's decommissioning plans and site-specific decommissioning cost estimate.

Following partial site release scheduled for 2025, and removal of spent fuel and GTCC waste from the site, HDI plans to decommission the ISFSI, terminate its NRC license, and release the site for unrestricted use in 2063. In accordance with the specific requirements of 10 CFR 72.30 for ISFSI decommissioning, the cost estimate for decommissioning the ISFSI reflects: 1) the cost of HDI's decommissioning contractor performing the decommissioning activities; 2) a contingency allowance of 25%; and 3) the cost of meeting the criteria for unrestricted use. The cost summary for decommissioning the ISFSI is presented in Appendix A of the HDI revised PSDAR.

As part of its review of the application, the staff reviewed the revised site-specific DCE for Pilgrim included with the HDI revised PSDAR to ensure that it contains the appropriate information. Pursuant to NUREG-1713, "Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors," for decommissioning planning purposes, this information includes:

- A description of the decommissioning cost estimating methodology
- A description of the overall decommissioning project annual expenses
- A summary decommissioning cost estimate by major activity and phase
- A schedule of the major decommissioning activities
- A summary of the radiological D&D management with support staff levels
- An estimate of the radioactive waste volume

NUREG-1713 also states that if the amount of the site-specific cost estimate is less than the certification formula amount, a licensee must provide adequate justification for the difference.

In its evaluation of HDI's site-specific DCE, the staff noted that the DCE relies on estimated Pilgrim site-specific radiological decommissioning costs of \$592,553,000, which is lower than the 10 CFR 50.75(c) minimum formula amount of \$633,267,558, as reported by ENOI in its March 28, 2019, decommissioning funding status report (ADAMS Accession No. ML19087A318). The application dated November 16, 2018, states that the required DTF value at closing (\$1.030 billion) exceeds the minimum financial assurance required by 10 CFR 50.75(b)—which, in turn, requires decommissioning financial assurance be provided in an amount not less than the minimum formula amount in 50.75(c).² However, the application did not provide any explanation for the difference in funding levels for radiological decommissioning costs between the site-specific DCE and the 10 CFR 50.75(c) minimum formula amount. Therefore, the staff sought supplemental information from the Applicants in a request for additional information (RAI) dated July 26, 2019, (ADAMS Accession No. ML19207B366). The RAI requested, among other things, that the Applicants provide justification for using a site-specific radiological decommissioning cost estimate value of \$592,553,000 that is less than the 10 CFR 50.75(c) minimum formula amount of \$633,267,558.

By letter dated July 29, 2019 (ADAMS Accession No. ML19210E470), the Applicants provided their justification for using a total site-specific radiological decommissioning cost estimate value that is less than the minimum formula amount. Specifically, HDI stated that the HDI site-specific DCE is a more reliable and precise estimate of decommissioning costs because it is based on

² Throughout this SE, the staff refers to the amount specified in the table of minimum amounts in 10 CFR 50.75(c) as the 10 CFR 50.75(c) minimum formula amount.

Pilgrim site-specific plant data and historical information, actual site conditions, regulatory requirements applicable to Pilgrim, and actual pricing information, as compared to the 10 CFR 50.75(c) formula amount, which is based on generic inputs. Additionally, in both the November 16, 2018, application and the July 29, 2019, supplement, the Applicants stated that the HDI Pilgrim site-specific DCE was reviewed against the estimates of costs associated with license termination (radiological decommissioning) in NUREG/CR-6174, benchmarked against nine comparable decommissioning projects, and compared with costs for similar radioactive decommissioning activities at seven boiling water reactors.

As part of its review of the Applicants' justification for relying on estimated site-specific radiological decommissioning costs of \$592,553,000, the staff compared the Pilgrim site-specific radiological decommissioning costs with the estimated activities of the four periods associated with the DECON decommissioning method as outlined in NUREG/CR-6174, "Revised Analyses of Decommissioning for the Reference Boiling Water Reactor Power Station":

- 1) Pre-shutdown planning/engineering and regulatory reviews,
- 2) Plant deactivation and preparation for storage,
- 3) A period of plant safe storage with concurrent operations in the spent fuel pool until the pool inventory is zero, and
- 4) Decontamination and dismantlement of the radioactive portions of the plant, leading to license termination.

The NRC staff also compared the Pilgrim site-specific estimated radiological decommissioning costs of \$592,553,000 with the site-specific costs of comparable decommissioning projects.

Based on the review of the Pilgrim site-specific radiological decommissioning costs of \$592,553,000, as compared to NUREG/CR-6174, the staff concludes that the Applicants' method for developing the Pilgrim site-specific radiological decommissioning cost estimate is reasonable. Further, when compared to radiological decommissioning costs associated with similar decommissioning projects, the staff finds that the Applicants' Pilgrim site-specific radiological decommissioning costs of \$592,553,000 is reasonable.

Therefore, based on (1) its review of the Applicants' justification for relying on a site-specific DCE that is less than the minimum formula amount, (2) its review of the HDI site-specific DCE, in accordance with NUREG-1713 and NUREG/CR-6174, and (3) a comparison to the original ENOI PSDAR and site-specific DCE, the staff finds that HDI's site-specific DCE, which uses \$592,553,000 for the estimated site-specific radiological decommissioning costs for Pilgrim, is reasonable. As such, the staff used the value of \$592,553,000 for radiological decommissioning costs when it conducted its independent cash flow analysis, as described below.

3.2.1 Decommissioning Funding Assurance

ENOI's March 28, 2019, annual report on the status of decommissioning funding for Pilgrim reports a DTF balance of approximately \$1.028 billion as of December 31, 2018, and approximately \$1.043 billion as of February 28, 2019. The cash flow analysis in Table 1 of the November 16, 2018, application is based on a beginning DTF balance of \$1.030 billion

(following closure of the equity sale in 2019),³ as well as estimated costs for radiological decommissioning, spent fuel management, and site restoration of Pilgrim, all to be funded using the DTF. HDI stated that this beginning DTF balance reflects the fund value post-closure of the asset sale. Furthermore, the application states that the 2019 HDI costs include estimated pre-closure and post-closure costs.

In their application dated November 16, 2018, the Applicants provided financial projections for the duration of the Pilgrim decommissioning project, including the amount of the decommissioning trust funds in the DTF. The application also included a cash flow analysis that assumes a DTF balance of approximately \$1.030 billion, as well as estimated costs for radiological decommissioning, including the Pilgrim ISFSI (~\$592 million), spent fuel management (~\$501 million), and site restoration of Pilgrim (~\$40 million), all to be funded using the DTF. With respect to the adequacy of funding for the radiological decommissioning of Pilgrim and the Pilgrim ISFSI, the staff reviewed the application, including the HDI site-specific DCE for the facility, planned decommissioning activities, the opening DTF balance of \$1.030 billion, and projected trust growth. The staff used the opening DTF balance of \$1.030 billion based on the terms of the EPSA, which states that the after-tax market value of the DTF must be no less than \$1.030 billion at time of transaction closing. As discussed above, the staff used \$592,553,000 for radiological decommissioning costs. As allowed by 10 CFR 50.75(e)(1)(ii), the staff began its cost analysis using a 2% real-rate of return on annual balances. In its application dated November 16, 2018, the Applicants stated they also used a 2% real-rate of return. However, in Table 1 of the November 16, 2018, application, the Applicants noted that the Year Ending DTF Balance is after-taxes. Therefore, in its cost analysis, the staff found that Table 1 reflects an actual real-rate of return of 1.42%. The staff notes that this is conservative to the 2% annual real rate of return allowed by 10 CFR 50.75(e)(1)(ii). To be consistent in validating the HDI's site-specific DCE, the staff used the more conservative 1.42% real-rate of return. These considerations were included in the staff's independent cash flow analysis, which is contained in Attachment 1 to this safety evaluation.

As noted above, HDI's site-specific DCE relies on estimated radiological decommissioning costs of \$592,553,000, which is lower than the 10 CFR 50.75(c) minimum formula amount of \$633,267,558. In its RAI dated July 26, 2019, the staff requested a justification for this lower amount and, in case the Applicants' failed to provide sufficient justification, the staff also requested that the Applicants provide a revised decommissioning cash flow analysis using the minimum formula amount of \$633,267,558. In Attachment 1 of the July 29, 2019, supplement, the Applicants provided the requested revised cash flow analysis. Although the staff completed a separate, independent cash flow analysis to validate this revised cash flow analysis, ultimately, as noted above, the staff determined that HDI's site-specific DCE, which uses \$592,553,000 for the estimated site-specific radiological decommissioning costs for Pilgrim, is reasonable and sufficiently justified. Therefore, for purposes of this safety evaluation, the staff relies on the cash flow analysis in Attachment 1 to support its finding that the funds in the DTF are expected to be available and sufficient to cover the estimated costs of \$592,553,000 for the radiological decommissioning of the facility (including the ISFSI).

In Enclosure 2 of the November 16, 2018 application, pursuant to 10 CFR 50.12, "Specific exemptions," the Applicants requested an exemption from 10 CFR 50.82(a)(8)(i)(A) to allow Holtec Pilgrim and HDI to use of a portion of the funds from the Pilgrim DTF for the management of spent fuel and site restoration activities. The staff's analysis of this regulatory

³ The terms of the Equity Purchase and Sales Agreement describes the after-tax market value of the DTF must be no less than \$1.030 billion at time of transaction closing.

exemption (ADAMS Accession No. ML19192A083) was performed separate from this safety evaluation and, on August 22, 2019, the staff approved the exemption request. This exemption is being issued simultaneously with this license transfer; it will only apply to Holtec Pilgrim and HDI after the Applicants have completed the license transfer transaction and the NRC has issued the conforming amendment reflecting the license transfers.

In its review of the exemption, the NRC staff concluded that reasonable assurance exists that adequate funds will be available in the DTF to complete radiological decommissioning. The NRC staff considered its findings from its evaluation of the exemption in its analysis of this proposed license transfer, which supports the NRC staff's conclusion that the Applicants' use of the DTF for activities associated with spent fuel management and site restoration, will not negatively impact availability of funding for radiological decommissioning. The NRC staff's independent cash flow analysis, as contained in Attachment 1 to this safety evaluation, supports these findings.

3.2.2 Radiological Decommissioning Conclusion

Based on this review, in consideration of the above analysis and the NRC staff's independent cash flow analysis in the Attachment 1 to this safety evaluation, the NRC staff finds that the Applicants have provided reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning Pilgrim and its ISFSI in accordance with the requirements of 10 CFR 50.33(f), 10 CFR 50.33(k)(1), 10 CFR 50.75, and 10 CFR 50.82(a).

3.3 Spent Fuel Management

After the closing of the proposed transaction, Holtec Pilgrim will continue to hold title to the spent nuclear fuel at Pilgrim and will continue to maintain the DOE Standard Contract, including all rights and obligations under that contract (see Section 3.5, "Standard Contract for Disposal of Spent Nuclear Fuel," of this safety evaluation, for further discussion on this topic).

With regard to spent fuel removal from the Pilgrim site, HDI indicated in its PSDAR that its plan for spent fuel removal is consistent with ENOI's previously submitted spent fuel management plan (ADAMS Accession No. ML18320A036), as approved by the NRC staff (ADAMS Accession No ML19122A199), in that fuel is expected to be removed beginning in 2030. This plan remains dependent upon the DOE's ability to remove spent fuel from the site in a timely manner. According to the Pilgrim spent fuel management plan, assuming the DOE's generator allocation/receipt schedules are based upon the oldest fuel receiving the highest priority and that the DOE begins removing spent fuel from commercial facilities in 2025 with an annual capacity of 3,000 metric tons of uranium, spent fuel is projected to remain at the Pilgrim site for approximately 43 years after the termination of operations in 2019. Any delay in transfer of fuel to DOE or decrease in the rate of acceptance will correspondingly prolong the transfer process and result in spent fuel remaining at the site longer than anticipated. Accordingly, in Section 3.2 of Enclosure 1, "PNPS Site-Specific Decommissioning Cost Estimate," of HDI's Pilgrim PSDAR, HDI based its cost assumptions on fuel removal from Pilgrim in 2030 through 2062. The NRC staff accepts these assumptions with regard to the final disposition of Pilgrim spent fuel as DOE, according to the Nuclear Waste Policy Act of 1982, is authorized to ultimately enter into contracts with owners and generators of commercial spent nuclear fuel to begin taking title to (legal ownership of) spent nuclear fuel. Spent fuel storage operations will continue at the site, independent of decommissioning operations, until the transfer of the fuel to DOE is complete.

In its license transfer application, the Applicants provided their funding plan for spent fuel management costs, which included using excess DTFs for spent fuel management. The NRC staff discusses its review of the Applicants' funding plan for spent fuel management costs below.

3.3.1 Exemption To Use Decommissioning Trust Fund for Spent Fuel Management

Because Holtec Pilgrim and HDI will rely on the DTF to provide funding for spent fuel management and site restoration costs, the Applicants requested an exemption from 10 CFR 50.82(a)(8)(i)(A) to allow Holtec Pilgrim and HDI to use funds from the DTF for these activities. As mentioned above, the staff's analysis of this regulatory exemption was performed separate from this safety evaluation and, on August 22, 2019 (ADAMS Accession No. ML19192A083), the NRC approved this exemption for Holtec Pilgrim and HDI. This exemption is being issued simultaneously with this license transfer; it will only apply to Holtec Pilgrim and HDI after the Applicants have completed the license transfer transaction and the NRC has issued the conforming amendment reflecting the license transfers.

In its review of the exemption, the NRC staff concluded that reasonable assurance exists that adequate funds will be available in the DTF to complete radiological decommissioning. The NRC staff considered its findings from its evaluation of the exemption in its analysis of this proposed license transfer, which supports the NRC staff's conclusion that the use of the DTF for activities associated with spent fuel management will not negatively impact availability of funding for radiological decommissioning. The NRC staff's independent cash flow analysis, as shown in Attachment 1 to this safety evaluation, supports these findings.

Therefore, based on its evaluation, the staff finds that the use of excess funds from the DTF for spent fuel management provides a reasonable source of funding to cover the costs associated with spent fuel management.

3.3.2 Spent Fuel Management Conclusion

The staff reviewed estimates for major spent fuel management activities and funding requirements. Based on its review, the staff concludes that the activities and associated costs of the Pilgrim spent fuel management plan appear reasonable, and as noted above, the staff accepts the assumptions in the Pilgrim spent fuel management plan with regard to the final disposition of Pilgrim's spent fuel by DOE. In addition, the staff does not have new information that challenges the preliminary approval of the Pilgrim spent fuel management plan previously granted by the NRC.

Pertaining to the HDI's plan to fund spent fuel management activities from the DTF, the NRC staff reviewed HDI's site-specific DCE for the facility, planned decommissioning activities and funding associated with those activities, and use of the DTF for spent fuel management (about \$501 million) through 2063. With an opening DTF balance of \$1.030 billion (2019\$), and a projected DTF growth rate of 1.42-percent real rate of return on annual balances as assumed by HDI, the NRC staff finds that funds are expected to be available to pay for the radiological decommissioning of the facility (including the ISFSI), spent fuel management, and site restoration, as allowed by the approval of the regulatory exemption. Attachment 1 to this safety evaluation report contains the NRC staff's independent cash flow analysis.

The NRC staff notes that Holtec Pilgrim expects to recover spent fuel management costs it will incur from the DOE through litigation or settlement of its claims. Holtec Pilgrim did not declare

DOE reimbursements for consideration in this license application. As such, the staff did not factor in potential DOE reimbursements as part of its independent cash flow analysis.

Based on its review, and in consideration of the above analysis describing the Applicants' financial plans for managing spent fuel, the NRC staff finds that the Applicants have reasonable assurance of obtaining the funds necessary to cover estimated costs for spent fuel management in accordance with 10 CFR 50.33(f) and 10 CFR 50.54(bb).

3.4 Financial Qualifications Conclusion

As described above, the NRC staff reviewed the application in its evaluation of the Applicants' financial qualifications, funding for the decommissioning of Pilgrim, and funding for spent fuel management at Pilgrim. Based on its evaluation as described above and shown in its independent cash flow analysis in Attachment 1, the NRC staff concludes that the funds in the DTF are expected to be available and sufficient to cover the estimated costs for the radiological decommissioning of the facility (including the ISFSI). Therefore, the NRC staff concludes that the Applicants have provided reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning Pilgrim in accordance with the requirements of 10 CFR 50.33(f), 10 CFR 50.33(k)(1), 10 CFR 50.75, and 10 CFR 50.82(a).

In addition, based on its evaluation above of the Applicants' funding plans for managing spent fuel, including the exemption to use DTF for spent fuel management, as supported by the NRC staff's independent cash flow analysis in Attachment 1, the NRC staff finds that the Applicants have provided reasonable assurance of obtaining the funds necessary to cover estimated costs for spent fuel management in accordance with the requirements of 10 CFR 50.33(f) and 10 CFR 50.54(bb).

Accordingly, considering the foregoing evaluation, the NRC staff finds that Holtec Pilgrim and HDI are financially qualified to hold the Pilgrim License No. DPR-35, and the general license for the Pilgrim ISFSI, as proposed.

3.5 Standard Contract for Disposal of Spent Nuclear Fuel

As stated by the Applicants, Holtec Pilgrim will continue to hold title to the spent nuclear fuel at Pilgrim and will continue to maintain the DOE Standard Contract, including all rights and obligations under that contract. The previous owner, Boston Edison Company, and the United States of America, represented by the DOE, entered into this Standard Contract, No. DE-CR01-83NE44368, dated June 17, 1983, to govern the disposal of the spent nuclear fuel generated at Pilgrim.

3.6 Antitrust Review

The AEA does not require or authorize antitrust reviews of post-operating license transfer applications (Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999)). This application postdates the issuance of the operating license for the unit under consideration in this safety evaluation and, therefore, no antitrust review is required or authorized.

3.7 Foreign Ownership, Control, or Domination

Sections 103d and 104d of the AEA prohibit the NRC from issuing a license for a nuclear power plant to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” The NRC’s regulation, 10 CFR 50.38, contains language to implement this prohibition.

According to the Applicants, Holtec is a privately held corporation and is controlled by its Board of Directors, all of whom are U.S. citizens. The directors are ultimately appointed by Holtec’s owners, who are trust companies organized in the State of Florida and are controlled by U.S. citizens. Holtec has been U.S.-owned since its inception in 1986 without any non-U.S. control or domination. Holtec Power, NAMCo, Holtec Pilgrim, and HDI are all directly or indirectly under Holtec’s control, and all of the directors and executive committee members as identified in Attachment C to the application are U.S. citizens. Although Holtec performs work in foreign countries, the contractual arrangements to provide products and services do not result in any FOCD of the Holtec organization or its subsidiaries or contracts. The activities conducted in foreign countries are ultimately controlled by U.S. citizens.

Further, the Applicants state that, as the licensed entity with possession of and responsibility for direct oversight, control, and decommissioning of Pilgrim, HDI will act for itself and on behalf of Holtec Pilgrim, as its agent. Neither HDI nor Holtec Pilgrim is acting as the agent or representative of any other entity in the proposed transfer of the licenses. The Applicants also state that CDI is jointly owned by HDI and SNC-Lavalin. HDI, as the majority owner of CDI, controls CDI. SNC-Lavalin, a company based in Montreal, Quebec, Canada, is a publicly traded company on the Toronto Stock Exchange. CDI’s role is defined as the decommissioning general contractor under a contract between HDI and CDI. CDI will not be the licensed owner or operator of the plant and will not have direct access to the Pilgrim DTFs. CDI will perform decommissioning activities pursuant to its contract with HDI, subject to HDI’s direct oversight and control. There is no prohibition against a company with foreign minority ownership performing licensed activities at U.S. nuclear reactors. Therefore, notwithstanding CDI’s foreign minority ownership and engagement as the decommissioning operations contractor, Holtec and the licensee entities proposed for Pilgrim will not be owned, controlled, or dominated by any foreign person.

Based on this information, the NRC staff finds that the direct and indirect transfer of the facility licenses to Holtec, Holtec Pilgrim, and HDI, as proposed in the application, does not raise any issues related to FOCD within the meaning of the AEA and NRC regulations. In light of the above and pursuant to Sections 103d and 104d of the AEA and 10 CFR 50.38, the NRC staff concludes that it does not know, or have reason to believe, that any of the Applicants or their respective owners will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, as a result of the direct or indirect license transfers.

3.8 Nuclear Insurance and Indemnity

Pursuant to the requirements of the Price-Anderson Act (Section 170 of the AEA) and the NRC’s implementing regulations in 10 CFR Part 140, the current indemnity agreement must be modified to reflect that, after the proposed license transfers take effect, Holtec Pilgrim (licensed owner) and HDI (licensed operator for decommissioning) will be the sole licensees for Pilgrim for purposes of decommissioning the site. Consistent with NRC practice, the NRC staff will require Holtec Pilgrim and HDI to provide and maintain onsite property insurance as specified in 10 CFR 50.54(w). Holtec Pilgrim and HDI are also required to provide evidence that they have

obtained the appropriate amount of insurance in accordance with 10 CFR 140.11(a)(4), which will be effective concurrent with the date of the license transfers and amended indemnity agreement. Therefore, the order approving the transfer will be conditioned as follows:

Prior to the closing of the license transfer, Holtec Pilgrim and HDI shall provide the Directors of NRC's Office of Nuclear Material Safety and Safeguards (NMSS) and Office of Nuclear Reactor Regulation (NRR) satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of a licensee under 10 CFR 140.11(a)(4) and 10 CFR 50.54(w) of the Commission's regulations.

Based on the above, the NRC staff concludes that the proposed license transfer, as conditioned, satisfies the nuclear insurance and indemnity requirements of 10 CFR Part 140 and 10 CFR Part 50.

3.9 Financial Conclusions

Based on the foregoing, and subject to the conditions described herein, the NRC staff concludes that Holtec Pilgrim and HDI are financially qualified to be the holders of the Pilgrim license as owner and decommissioning operator, respectively, and of the general license for the Pilgrim ISFSI, as described in the application, and to engage in the proposed maintenance and decommissioning activities associated with the Pilgrim site. The NRC staff has concluded, based on the considerations discussed above, that (1) the proposed transferees are financially qualified to be the holders of license DPR-35 and (2) the proposed direct and indirect license transfers are otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Additionally, the NRC staff finds that the Applicants have satisfied the NRC's decommissioning funding assurance requirements and the applicable onsite and offsite insurance requirements as conditioned. Further, the NRC staff finds that the Applicants are not owned, controlled, or dominated by a foreign entity.

3.10 Management and Technical Support Organization

By application dated November 16, 2018, the Applicants requested that the NRC consent to the license transfer for the purpose of implementing expedited decommissioning at Pilgrim. Figure 2 of the application shows the planned ownership structure following the proposed transfer. Holtec International is the ultimate parent company of Holtec Pilgrim and HDI. Holtec Power is a direct, wholly owned subsidiary of Holtec International. Holtec Pilgrim will be a direct, wholly owned subsidiary of NAMCo, which, in turn, is a direct, wholly owned subsidiary of Holtec Power. HDI is also a direct, wholly owned subsidiary of Holtec Power.

As stated in the application, following NRC approval of the transfers, 100 percent of the equity interests in ENGCO will be transferred to Holtec pursuant to the terms of an EPSA. ENGCO will change its name to Holtec Pilgrim, but the same legal entity will continue to exist before and after the proposed transfer. After the closing of the transaction and license transfer, ENGCO, renamed Holtec Pilgrim, will continue to own Pilgrim, as well as its associated assets and title to spent nuclear fuel. Upon closing the proposed transaction, HDI will assume licensed responsibility as the decommissioning operator of Pilgrim, and Holtec Pilgrim will assume licensed responsibility as the owner of Pilgrim. Holtec Pilgrim will enter into a decommissioning operator services agreement with HDI, which will provide for HDI to act as Holtec Pilgrim's

agent and for Holtec Pilgrim to pay HDI's costs for post-shutdown operations, including decommissioning, spent fuel management, and site restoration costs. HDI's licensed activities will involve possessing and disposing of radioactive material, maintaining the facility in a safe condition (including handling, storing, controlling, and maintaining the spent fuel), decommissioning and decontaminating the facility, and maintaining the ISFSI until it can be decommissioned.

The Applicants further stated, in Sections 2 and 5.C of Enclosure 1 to the application dated November 16, 2018, that HDI will contract with CDI, a company jointly formed and owned by Holtec and SNC-Lavalin, as the decommissioning general contractor, subject to HDI's direct oversight and control as the decommissioning licensed operator. HDI will become Pilgrim's licensed operator for decommissioning, and CDI will perform day-to-day licensed activities at the site, including decommissioning activities, pursuant to the Decommissioning General Contractor Agreement between HDI and CDI, subject to HDI's direct oversight and control as the decommissioning licensed operator. The application further specified that CDI will subcontract with industry vendors who have "demonstrated expertise in dismantlement and decommissioning in the nuclear field." HDI and CDI will select subcontractors using an industry vendor evaluation and selection vetting process, with key criteria for selection that include recent experience, technical capability to perform tasks, safety record, prior record of adherence to quality, and history of any adverse NRC notices, such as notices of violation or confirmatory action letters.

Section 5.B of the application described HDI's responsibilities as the licensed operator, to include the following:

- meeting all duties and obligations of the decommissioning operator licensee, including continuing compliance with the ISFSI Certificate of Compliance, licensing basis, and regulatory commitments and requirements
- possessing and disposing of radioactive material
- maintaining the facility in a safe condition, including the storage, control, and protection of the spent fuel in the pool and on the ISFSI, until the ISFSI is decommissioned
- establishing and implementing processes to ensure compliance with the licenses and NRC regulations, and retaining decisionmaking authority for any issues related to compliance with the licenses and NRC regulations
- overseeing the development and submittal of licensing actions required to support ongoing decommissioning activities
- making necessary modifications to the emergency preparedness and security plans and responses to NRC orders on security
- performing the functions necessary to fulfill the quality assurance requirements of the Pilgrim technical specifications (TS) and as specified in the Pilgrim Quality Assurance Program Manual (QAPM) in place at the time of license transfer
- providing oversight of CDI, including quality assurance, safety, and security

The application described HDI as being structured in a manner that is similar to the corporate organization that exists in many current nuclear industry utilities with a fleet of operating units, including the current Pilgrim structure. HDI plans to fill the onsite HDI position of Pilgrim Site Vice President with an incumbent Pilgrim senior manager.

The Applicants provided a combined organizational chart of the Pilgrim organization in Figure A-1 of the application, depicting the relationships between HDI as the decommissioning licensed operator and CDI and the decommissioning general contractor. Further, Sections 5.B and 5.C of Enclosure 1 to the application, dated November 16, 2018, contain information about the roles and responsibilities of HDI and CDI senior management, respectively. The planned HDI senior management organization will comprise Holtec personnel and will include the following:

- The HDI President and Chief Nuclear Officer (CNO) will report directly to the Holtec Executive Committee. The HDI President and CNO will be responsible for overseeing the safety, operation, and decommissioning of nuclear sites maintained by HDI, including Pilgrim.
- The HDI Vice President for Quality Assurance and Nuclear Oversight will report to the HDI President and CNO and will be responsible for providing quality assurance oversight for nuclear sites maintained by HDI, including Pilgrim. The responsibilities of the HDI Vice President for Quality Assurance and Nuclear Oversight include quality assurance oversight for the movement of fuel and the transportation of radioactive waste.
- The HDI Senior Vice President and Chief Operating Officer (COO) will report to the HDI President and CNO and will be responsible for providing oversight of the decommissioning activities performed by CDI at nuclear sites maintained by HDI, including fuel management, security, and emergency preparedness.
- The HDI Pilgrim Site Vice President will report to the HDI Senior Vice President and COO and will be responsible for providing day-to-day onsite leadership and direction of safe decommissioning activities at the site. In addition, the HDI Pilgrim Site Vice President will be responsible for assuring compliance with the licenses, including the TS, ISFSI Certificate of Compliance, and any other regulatory requirements and commitments.
- The HDI Vice President for Licensing will report to the HDI Senior Vice President and COO and will be responsible for providing licensing oversight for the decommissioning of nuclear sites maintained by HDI, including Pilgrim.
- The HDI Vice President for Technical Support will report to the HDI Senior Vice President and COO and will be responsible for providing technical support in the areas of health and safety, the environment, radiation protection, and decommissioning improvements at nuclear sites maintained by HDI, including Pilgrim.
- The CDI Pilgrim Decommissioning General Manager will report to the HDI Pilgrim Site Vice President; will lead the CDI team; and will maintain responsibility for overall management, performance, nuclear safety, quality assurance, and employee safety. The CDI Pilgrim Decommissioning General Manager will also report to the CDI Vice President for Corporate Operations, who, in turn, reports directly to the CDI Chief Executive Officer. The following organizations and their respective managers will be

reporting to the CDI Pilgrim Decommissioning General Manager: Decommissioning Deputy General Manager, Regulatory Affairs Manager, Spent Fuel Manager, Radiation Protection Manager, Waste Manager, Decommissioning Projects Manager, and Project Controls Manager. In addition, the incumbent ENOI Pilgrim Decommissioning Organization personnel at the time of license transfer who accept offers of employment will be integrated into the CDI site organization. They will continue to be located at Pilgrim and will include staff from the plant operations, emergency planning, and security organizations, with their roles and responsibilities based largely on their pretransfer roles and responsibilities. Incumbent staffing levels will be based on the permanent shutdown and defueled status of Pilgrim immediately before the license transfer.

By letter dated August 31, 2018 (ADAMS Accession No. ML18243A489), Exelon Generation Company, LLC (Exelon Generation), Oyster Creek Environmental Protection, LLC, and HDI submitted an application for order approving direct transfer of the operating license for Oyster Creek Nuclear Generating Station (Oyster Creek) from Exelon Generation to Oyster Creek Environmental Protection as the licensed owner and to HDI as the licensed decommissioning operator, for NRC's approval. The application stated that HDI, as licensed operator, will provide the overall management of decommissioning activities at Oyster Creek. The NRC approved the license transfer request for Oyster Creek on June 20, 2019 (ADAMS Accession No. ML19095A454). HDI became the licensed decommissioning operator for Oyster Creek on July 1, 2019 (ADAMS Accession No. ML19164A157).

During its review of the instant license transfer application, the NRC staff noted that, should the license transfer for Pilgrim be approved, HDI would be responsible for conducting licensed activities at two sites simultaneously (Pilgrim and Oyster Creek), including possession and disposition of radioactive material, maintenance of the facilities in a safe condition (including storage, control, and maintenance of the spent fuel), decommissioning and decontamination of the facilities, and maintenance of the ISFSIs until they can be decommissioned. Therefore, by letter dated March 21, 2019 (ADAMS Accession No. ML19086A349), the NRC staff submitted a request for additional information, asking that the Applicants provide information that justifies that HDI's management and technical support organization will have sufficient resources (i.e., corporate structure, management and technical support organization staff capacities, internal procedures) to conduct licensed activities at multiple sites. By letter dated April 17, 2019 (ADAMS Accession No. ML19109A177), HDI responded that it would use a fleet model to manage and conduct the decommissioning of its shutdown nuclear power plants. The fleet model will provide for efficiency by establishing standard processes, procedures, and approaches at the corporate level and at the decommissioning sites, similar to the model used by many operating fleets. In addition, each of HDI's decommissioning sites will have a dedicated leadership reporting to the same HDI corporate executive team and sufficient technical support from the CDI site organizations, mostly made up of experienced incumbents and supplemented as needed by additional Holtec and SNC-Lavalin resources. HDI further stated that it will implement governance procedures at both the HDI corporate level and at the site level. As decommissioning progresses at the sites, HDI will make changes to the site governance documents, with the overall goal of standardizing such documents across the HDI fleet as much as practicable, to allow efficiency in oversight and the application of site-specific lessons learned and operating experience to other sites in the HDI fleet. The executive leadership team at the HDI corporate level will oversee the safety, operation, and decommissioning at the Oyster Creek and Pilgrim sites. The executive leadership team consists of the HDI Vice President for Licensing, Treasurer and Nuclear Decommissioning Trust Fund Management, Vice President for Technical Support, Senior Vice President and COO, Vice President for Quality Assurance and Nuclear Oversight, President and CNO, and the Holtec

Executive Committee. HDI stated that the corporate HDI and CDI executive team is structured and staffed in anticipation of supporting planning and decommissioning activities at multiple sites, with the capacity to expand as needed.

The Applicants further stated in the application dated November 16, 2018, that CDI will support HDI's responsibility to maintain the facility in compliance with the licenses and NRC regulations by performing licensed activities and decommissioning safely and securely. HDI will retain ultimate decision-making authority and will provide direct governance and oversight of CDI's performance, thereby fulfilling its licensed responsibilities as the decommissioning licensed operator. Holtec senior staff will manage HDI to provide the requisite managerial capabilities and decision-making authority within the licensed organization, while a combination of Holtec and Atkins personnel (see below) who have commercial nuclear experience, including experience in spent fuel handling and decommissioning, will staff CDI. As of the transaction closing, CDI will become the employer of ENOI's employees in the Pilgrim decommissioning organization, with the exception of an incumbent senior manager at Pilgrim, who will be employed by HDI.

As stated in Sections 5.C, 5.D, and 8.D of Enclosure 1 to the letter, CDI will perform the day-to-day activities at the site to maintain compliance with the licenses and NRC regulations, subject to HDI's direct oversight and control as the licensed operator. After the closing of the transaction and license transfer, ENGEC, renamed Holtec Pilgrim, will continue to own Pilgrim and its associated assets that will be needed to maintain Pilgrim and the site in accordance with NRC requirements and the facility licenses. In addition to the structures and equipment, these assets will include the necessary books, records, safety and maintenance manuals, and engineering construction documents. HDI plans to adopt the current NRC-approved ENOI programs, procedures, and work instructions applicable to Pilgrim, and HDI and CDI will continue to work in accordance with those documents following the license transfer. The existing Pilgrim programs and procedures at the time of transfer, including the emergency plan, physical security and cybersecurity plans, fire protection program, radiological protection, certified fuel handler training, and quality assurance program will also be implemented by HDI and CDI, after license transfer. Upon closing of the transaction, HDI will assume authority and responsibility for the functions necessary to fulfill the quality assurance requirements of the Pilgrim TS and as specified in the Pilgrim QAPM in place at the time of license transfer. The Pilgrim QAPM will be added as an appendix to the Holtec quality assurance program and specified as applicable to the Pilgrim site.

3.10.1 Strategic Partner Experience and Expertise

As stated in the application, HDI will draw on the experience and expertise of its parent company, Holtec, and its contractor, CDI. Under HDI's direct oversight and control, CDI will perform the day-to-day licensed activities at the site, including decommissioning the plant, pursuant to a Decommissioning General Contractor Agreement between HDI and CDI. A combination of Holtec and SNC-Lavalin personnel who have commercial nuclear experience, including experience in spent fuel handling and decommissioning, will staff CDI. In addition to employees transferred from Holtec and SNC-Lavalin, CDI staffing will include ENOI's Pilgrim decommissioning organization incumbent staff who, at the time of the license transfer, will be integrated into the CDI decommissioning organization, in a manner consistent with their experience and previous positions at Pilgrim.

The information below briefly describes the experience and expertise of HDI and each of its strategic partners.

HDI is an indirect, wholly owned subsidiary of Holtec. The senior management of HDI comprises Holtec personnel. HDI is structured to serve as a fully resourced organization to directly oversee and manage licensed decommissioning operations and the dismantlement of a nuclear power plant that has ceased operation. HDI has the expertise to oversee all licensed activities following reactor defueling, including the transfer of spent fuel from the SFP to the ISFSI, security, and emergency preparedness.

Holtec has extensive experience in designing, manufacturing, and installing capital equipment, as well as providing services to operating commercial power plants. Holtec also possesses in-house capabilities to design, engineer, analyze, construct, and deploy spent fuel. Holtec possesses both technical resources and experience with nuclear decommissioning, spent fuel handling equipment, transport of nuclear fuel, and wet and dry spent fuel storage systems and components.

CDI is a company jointly owned by HDI and Kentz USA Inc., an SNC-Lavalin subsidiary. HDI owns the majority of CDI. As stated in the application, the CDI staff will comprise a combination of Holtec and SNC-Lavalin personnel who have commercial nuclear experience, including experience in spent fuel handling and decommissioning, and enhanced by the addition of incumbents from the ENOI Pilgrim decommissioning organization who will transition to HDI following the license transfer. The CDI staff will also include Atkins personnel who have decommissioning expertise and experience.

SNC-Lavalin, one of CDI's joint owners, is an engineering and construction company. SNC-Lavalin is also the current owner and the original equipment manufacturer of CANDU reactor technology. SNC-Lavalin acquired Atkins in July 2017, which then became a wholly owned subsidiary of SNC-Lavalin. Atkins is a design, engineering, and project management consultancy company, based in the United Kingdom. Atkins has been involved in the nuclear cleanup, decommissioning, and environmental remediation of nuclear waste storage sites since the late 1980s, working with Sellafield Ltd (formerly British Nuclear Fuels Limited) and managing the fleet of 22 Magnox reactors, through operation and into decommissioning in the United Kingdom. In addition, in 2016, Atkins acquired the EnergySolutions' Projects, Products, and Technology (PP&T) division, which was responsible for decommissioning the Zion Nuclear Generating Station. In addition, British Nuclear Fuels Limited, which is now owned by Atkins through its acquisition of EnergySolutions PP&T, had a significant role in the decommissioning of Big Rock Point, including the removal of the large components and reactor vessel.

3.10.2 Management and Technical Support Organization Conclusion

The Applicants provided organizational charts of the corporate-level management and technical support organizations and described changes they will make as a result of the proposed transfer. The Applicants described the relationship of the nuclear-oriented parts of the organization to the rest of the corporate organization. The Applicants explained that HDI will be using a fleet model approach to ensure that the management and technical support organizations will have sufficient resources to conduct licensed activities at multiple sites. The Applicants described several provisions that they will make for uninterrupted support of technical operations, which include (1) plans to adopt the current NRC-approved ENOI policies, programs, procedures, and work instructions applicable to Pilgrim, and to continue to work in accordance with those documents following the license transfer, and (2) plans for the decommissioning general contractor, CDI, to employ the ENOI Pilgrim decommissioning organization's incumbent staff.

Based on its review of the application for license transfer, the NRC staff finds that the Applicants provided reasonable assurance that the requirements of 10 CFR 50.34(b)(7) and 10 CFR 50.80 regarding the technical qualifications of HDI to engage in the proposed activities have been met. In addition, the staff finds that HDI is technically qualified to be the holder of the license and that the transfer of the license is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission. Accordingly, the staff concludes that the proposed HDI management and technical support organization will adequately support the proposed maintenance and decommissioning activities at Pilgrim.

3.11 Operating Organization

As stated in the application, CDI will establish a site decommissioning organization. CDI plans to employ ENOI's Pilgrim decommissioning organization personnel at the site at the time of the transaction closing, with the exception of one incumbent senior manager, who will become an HDI employee as the Site Vice President in charge of the site-based organization.

The application stated that staffing levels at the time of transfer will be fully compliant with the requirements of facility licenses and NRC regulations. HDI will ensure that vacated positions previously filled by incumbent employees are backfilled with qualified personnel, subject to a determination of the need to fill the position. In all cases, the individuals will be qualified for Pilgrim's programs and procedures.

The staffing and qualification requirements for the current operating organization at Pilgrim were previously found to be acceptable, as approved in Amendment No. 246 to Renewed Facility Operating License No. DPR-35 (ADAMS Accession No ML17066A130), consistent with the permanent cessation of operations and permanent removal of fuel from the reactor vessel. These staffing and qualification requirements detailed, among others, the responsibilities of a plant manager and a control room supervisor and stipulated that the minimum shift crew composition include at least one control room supervisor, who must be a Certified Fuel Handler, and one Non-Certified Operator. In addition, the facility staff qualifications are required to be maintained as stated in Section 5.3 of the TS. The proposed changes to the license as described in Enclosure 1, Attachment A, to the application letter do not affect the staffing or qualifications requirements as approved in Amendment No. 246.

In Enclosure 1, Attachment C, to the letter, the Applicants provided résumés of several key personnel with responsibilities of regulatory significance, including, among others, those of the HDI President and CNO, HDI Senior Vice President and COO, HDI Vice President for Quality Assurance and Nuclear Oversight, HDI Vice President for Licensing, and HDI Vice President for Technical Support. The résumés provided information on the experience of individuals who will occupy the aforementioned key positions in the areas of spent fuel management, decommissioning, nuclear safety, licensing and regulatory affairs, engineering and operations, and quality assurance.

3.11.1 Operating Organization Conclusion

Based on its evaluation, the NRC staff concludes that the onsite organization will adequately support the proposed maintenance and decommissioning activities at Pilgrim in accordance with 10 CFR 50.34(b)(7) that requires Applicants to provide the technical qualifications to engage in the proposed activities, and 10 CFR 50.80(c) that requires the proposed license transferee to be

qualified to be the holder of the license, and is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission.

3.12 Technical Qualification Conclusion

The Applicants have described the management and technical support organization, as well as the onsite operating organization, that would be responsible for the maintenance and decommissioning of Pilgrim after the proposed transfer of licensed authority to HDI. Based on its evaluation as described above, the NRC staff concludes that (1) HDI will have an acceptable management organization, (2) HDI will retain an onsite organization capable of safely conducting decommissioning activities, and (3) HDI will have the technically qualified resources and experience to support the safe maintenance and decommissioning of the Pilgrim site after the transfer of licensed authority from ENOI to HDI. The staff also determined that the Applicants provided reasonable assurance that they have met the relevant requirements of 10 CFR 50.34(b)(7) and 10 CFR 50.80 to engage in the proposed activities. Accordingly, in light of the foregoing evaluation, the staff finds that HDI is technically qualified to hold Pilgrim License No. DPR-35, and the general license for the Pilgrim ISFSI, as proposed.

3.13 Conforming License Amendment

3.13.1 Technical Specifications

The Applicants requested a conforming amendment to Renewed Facility Operating License No. DPR-35 for Pilgrim. The NRC staff notes that TS page 4.0-1 is in effect with an administrative change to Section 4.1, "Site Location," and recognizes that Section 4.3, "Fuel Storage," is also on the same TS page. On April 7, 2016, the NRC issued Generic Letter (GL) 2016-01, "Monitoring of Neutron-Absorbing Materials in Spent Fuel Pools" (ADAMS Accession No. ML16097A169), to address the degradation of neutron-absorbing materials in wet storage systems for reactor fuel at power and nonpower reactors. The generic letter requested that licensees provide information to allow the NRC staff to verify continued compliance through effective monitoring to identify and mitigate any degradation or deformation of neutron-absorbing materials credited for criticality control in SFPs.

By letter dated November 3, 2016 (ADAMS Accession No. ML16319A131), as supplemented by letter dated February 8, 2018 (ADAMS Accession No. ML18039A843), Entergy responded to GL 2016-01 for Pilgrim. In Entergy's response to GL 2016-01, as supplemented, the licensee also noted that 2016 testing on the Boraflex installed in the SFP at Pilgrim showed that some of the Boraflex was no longer bounded by the nuclear criticality safety analysis of record. This resulted in the licensee implementing corrective actions to manage Boraflex degradation and maintain subcriticality in the SFP. On September 26, 2018, the NRC issued a letter to Entergy on the closeout of GL 2016-01. The letter states that the NRC staff found interim corrective actions taken to be adequate and that the licensee-identified nonconservative TS would be resolved in accordance with Administrative Letter 98-10, "Dispositioning of Technical Specifications That Are Insufficient to Assure Plant Safety," dated December 29, 1998 (ADAMS Accession No. ML031110108). The GL 2016-01 issue affects TS Section 4.3.

By letter dated September 13, 2018 (ADAMS No. ML18260A085), as supplemented by letters dated January 10, February 8, and March 14, 2019 (ADAMS Nos. ML19016A135, ML19044A574, and ML19079A158), ENOI submitted a license amendment request to revise the Pilgrim Renewed Facility Operating License and associated TS to permanently defueled TS consistent with the permanent cessation of reactor operation and permanent defueling of the

reactor. The NRC staff is addressing changes to TS Section 4.3 as part of its review of the license amendment request, dated September 13, 2018.

As described in the November 16, 2018, application, HDI will assume licensed responsibility for Pilgrim through a direct transfer of ENOI's responsibility for licensed activities at Pilgrim to HDI. Upon closing of the proposed license transfer and issuance of the conforming amendment, HDI would assume responsibility for compliance with the current licensing basis, including regulatory commitments that exist at the closing of the transaction between the Applicants, and would implement any changes under applicable regulatory requirements and practices. Additionally, HDI would assume responsibility for open licensing actions previously submitted by ENOI. As stated previously, the NRC staff determined that HDI will be technically qualified to support the safe maintenance and decommissioning of the Pilgrim site; this includes issues pertaining to the SFP.

3.13.2 Final No Significant Hazards Consideration

Under the Atomic Energy Act of 1954, as amended, and the NRC's regulations, the NRC staff may issue and make an amendment immediately effective, notwithstanding the pendency before the Commission of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has made a final determination that no significant hazards consideration is involved.

On February 20, 2019 (ADAMS Accession No. ML19051A114), the Commonwealth of Massachusetts filed a request for a hearing and petition for leave to intervene challenging the proposed license transfer. On February 20, 2019 (ADAMS Accession No. ML19051A019), Pilgrim Watch also filed a request for a hearing and petition for leave to challenging the proposed license transfer. On April 24, 2019 (ADAMS Accession No. ML19114A519), the Commonwealth of Massachusetts filed a motion to supplement its motion to intervene and request for hearing with new information. On April 26, 2019 (ADAMS Accession No. ML19116A162) and May 9, 2019 (ADAMS Accession No. ML19129A473), Pilgrim Watch filed motions to supplement its motion to intervene and request for hearing with new information. On July 16, 2019 (ADAMS Accession No. ML19197A330), Pilgrim Watch submitted a motion to file a new contention. On August 1, 2019 (ADAMS Accession No. ML19213A313), the Commonwealth of Massachusetts filed a motion to stay the license transfer proceeding for 90 days to permit the completion of settlement negotiations. These requests are currently pending before the Commission.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an ISFSI, which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific application.

3.13.3 Conforming License Amendment Conclusion

The conforming amendment requested by the Applicants does not affect TS Section 4.3. Further, the Applicants requested no physical or operational changes to the facility. The proposed conforming amendment only reflects the proposed license transfer action. The conforming amendment involves no safety question and is administrative in nature. Accordingly, the proposed amendment is acceptable.

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the proposed action will not endanger public health and safety, (2) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to public health and safety.

3.14 Public Comments

The NRC published a notice of consideration of the approval of transfer of license and conforming amendment in the *Federal Register* on January 31, 2019 (84 FR 816). The notice included an opportunity to provide written comment and stated that the NRC would participate in a public meeting at Hotel 1620 in Plymouth, Massachusetts, on January 15, 2019. The announcement also noted that NRC personnel at the public meeting would take oral or written comments on the application for the proposed license transfer and the associated proposed HDI revised PSDAR. The public meeting record (ADAMS Accession No. ML19017A173) summarizes the oral comments; the presentation slides are available in ADAMS under Accession Nos. ML19008A494, ML19009A171, and ML19009A343; and a transcript of the public meeting is available at ADAMS Accession No. ML19029A025.

The NRC received written comments from the public in response to the FR notice. These comments are publicly available in ADAMS under Accession Nos. ML19032A073, ML19046A017, ML19057A188, ML19057A190, ML19057A569, ML19059A023, ML19060A227, ML19060A228, ML19064B330, ML19064B331, ML19064B332, ML19064B345, ML19065A180, ML19065A187, ML19065A188, ML19065A192, ML19065A193, ML19065A196, ML19065A198, ML19065A257, ML19065A258, ML19070A161, ML19070A162, ML19070A164, ML19070A165, ML19070A166, ML19070A167, ML19070A168, ML19070A169, ML19070A170, ML19070A171, ML19070A172, ML19070A174, ML19070A175, ML19070A176, ML19070A177, ML19072A312, ML19072A314.

Of the comments received, 4 were out of scope, 8 favored granting the license transfer, 18 supported the hearing requests from the Commonwealth of Massachusetts and Pilgrim Watch, and 9 expressed concerns.

Several questions and comments came from the general public at the public meeting. The themes of the written questions and comments overlapped with the oral questions and comments. The questions and comments had the following themes:

- concerns about the responsibility for any decommissioning fund shortfalls and the financial integrity or other qualifications of Holtec and its partners
- use of the site after decommissioning
- concerns about continued storage of spent fuel after decommissioning, transportation of spent fuel and radioactive waste, and the destination of spent fuel once it is removed from the site
- support for the timely review and approval of the license transfer and the immediate decommissioning of the facility
- concerns that support for the license transfer is partially based on proprietary information or incomplete cost information and that the work will have proper oversight

- concerns about the potential to turn parts of the facility to rubble and bury it on site
- concerns about unknown radiation ground contamination
- concerns about climate change affecting the site
- concerns about the reduction of emergency planning
- concerns about Entergy's current use of the DTF
- NRC communications and coordination on the review process
- concerns about the dry cask incident at San Onofre

The NRC staff reviewed the questions and comments made in the public meeting, along with the written comments received during the open comment period, and considered them in the review process. This safety evaluation of the license transfer request addresses the themes of the questions and comments that were within the scope of the NRC's review, such as concerns about decommissioning fund shortfalls and the financial integrity and the financial and technical qualifications of Holtec and its partners.

The NRC considers concerns about the environment to be out of scope for a license transfer review. Additionally, as indicated below, the NRC staff has determined that the license transfer and conforming amendment meet the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(21). Therefore, under 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the transfer application and conforming license amendment.

4.0 STATE CONSULTATION

In accordance with the Commission's regulations, the NRC notified the Commonwealth of Massachusetts official of the proposed license transfer and draft conforming amendment on August 13 and 14, 2019 (ADAMS Accession No. ML19226A396). The Commonwealth official responded on August 21, 2019 with written comments (ADAMS Accession No. ML19233A278).

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an ISFSI that does no more than conform the license to reflect the transfer action involves no significant hazards consideration. As noted above in Section 3.13.2, no contrary determination has been made with respect to this specific application. The NRC staff notes that the consultation requirements in 10 CFR 50.91(c) do not give the Commonwealth the right to veto or insist upon a postponement of the Commission's no significant hazards consideration determination. The staff has considered the comments and determined no changes to the safety evaluation were necessary.

At the request of the Commonwealth, the Commonwealth's comments are reprinted here in their entirety.

At the outset, the Commonwealth objects to the proposed action based on the procedural irregularities and disparate treatment of the Commonwealth during the consultation process as compared to other similarly situated states.

On August 13, 2019, the NRC State liaison contacted the Massachusetts Executive Office of Energy and Environmental Affairs with an offer for NRC Staff to consult with the Commonwealth about the Staff's proposed actions during a narrow two-hour window later that day. By mutual agreement, that "consultation" meeting was scheduled for 1:30 pm on August 13, 2019. Approximately twenty-minutes prior to that meeting, however, NRC Staff filed into the above referenced proceeding a "Notification," which informed the proceeding participants that Staff had notified the Commission that Staff intended to issue an order approving the license transfer application and Exemption Request on or about August 21, 2019.¹ Even though the NRC Staff had not yet consulted with the Commonwealth on that intended action, the Notification also indicated wrongly that NRC Staff had *already* notified the Commonwealth of the proposed actions. During the "consultation" call that *followed* the Notification's filing in the docket, the NRC Staff initially declined even to describe the contents of the just filed public Notification and refused to provide any details regarding what the anticipated approval Order would say or the findings underlying it in the anticipated SER. This conduct is not consistent with the NRC's state consultation requirements under, *inter alia*, 10 C.F.R. § 50.91 or the respect due to a sovereign state that has raised serious concerns about the requested actions. Nor is this a situation where an "emergency" would excuse the Staff's obligation to "make a good faith attempt to consult with" the Commonwealth of Massachusetts before NRC Staff or the Commission acts. See 10 C.F.R. § 50.91(b)(4).²

In another example of a lack of meaningful consultation, NRC Staff, on August 14, 2019, rejected the Commonwealth's request for fourteen days to provide to Staff the Commonwealth's written views on the proposed action prior to the Staff's taking any final action. Instead, in conflict with the state consultation process with the State of New Jersey for the recent transfer of Oyster Creek Nuclear Generating Station's operating license, NRC Staff informed the Commonwealth that it would have five business days (close of business on August 21, 2019) to offer any written comments to Staff on the intended actions. In support of its request for fourteen days, the Commonwealth had noted during its August 13 and August 14, 2019, conversations with NRC Staff that the Staff had just recently given the State of New Jersey fifteen days from the initial notification of the Staff's intention to approve the Oyster Creek license transfer application to submit an official written response to the Staff's proposed action.³

¹ Notification of Significant Licensing Action (NSLA) (ADAMS Accession No. ML19225D006).

² The NRC Staff also argued that its obligation to consult with the Commonwealth was limited to the *conforming amendment* sought by the Applicants. The NRC requirements, however, do not so narrowly limit the state consultation process, and, in any event, NRC Staff's approach would undermine the very purpose of state consultation to solicit state input about the *substance* of proposed NRC actions that have the potential to pose environmental and public health risks to the state and its residents.

³ *Safety Evaluation by the Office of Nuclear Reactor Regulation and Office of Nuclear Material Safety and Safeguards, Related Request for Direct Transfer of Control of Renewed Facility Operating License No. DPR-16 and the General License for the Independent Spent Fuel Storage Installation from Exelon Generation Company, LLC to*

Upon receipt of New Jersey's written response, NRC Staff then incorporated New Jersey's written response into the state consultation section of the SER.⁴ During its conversations with NRC Staff, the Commonwealth requested that it receive the same treatment as NRC Staff afforded to New Jersey just over two months earlier. After NRC Staff rejected, on August 14, 2019, the Commonwealth's request for fourteen days to submit a written response, the Commonwealth asked NRC Staff whether there were extenuating circumstances that caused the Staff to give New Jersey fifteen days to respond but to reject the Commonwealth's request to be treated similarly. NRC Staff was unable to provide any justification and could not explain why it gave New Jersey fifteen days to respond. Instead, Staff said its internal guidance—Procedures for Handling License Transfers—dictates that Staff is to provide states five business days to respond after initial consultation. Those procedures, however, are silent on the amount of time NRC Staff should give a host state to submit comments on the Staff's intention to approve a license transfer application.⁵ NRC Staff's failure to follow what appears to be the NRC's normal state consultation process and its unexplained disparate treatment of the Commonwealth as compared to the State of New Jersey renders its planned action arbitrary and capricious.

Given the NRC Staff's refusal to give the Commonwealth a reasonable amount of time to respond during the consultation process (again, at least the same amount of time it gave New Jersey), the Commonwealth incorporates by reference, as if fully set forth here, the contentions, arguments, and issues it has raised in its yet-to-be acted on Petition for Leave to Intervene and Hearing Request, Docket Nos. 50-293 & 72-1044, filed on February 20, 2019 (Petition); Reply in Support of Petition for Leave to Intervene and Hearing Request, Docket Nos. 50-293 & 72-1044, filed on April 1, 2019 (Reply); and Motion of the Commonwealth of Massachusetts to Supplement Its Petition with New Information, Docket Nos. 50-293 & 72-1044, filed on April 24, 2019. Consistent with the concerns raised in those filings, there are at least two substantive issues that require the NRC Staff to, at a minimum, re-evaluate its plan to approve the

Oyster Creek Environmental Protection, LLC and Holtec Decommissioning International, LLC (Oyster Creek Nuclear Generating Station) (Jun. 20, 2019), Docket Nos. 50-219 & 72-15, at 20 (ADAMS Accession No. ML19095A457).

⁴ *Id.* at 20.

⁵ See generally *U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, NRR Office Instruction, Change Notice: Procedures for Handling License Transfers*, LIC-107, Revision 2 (Jun. 5, 2017) (hereinafter, *Procedures for Handling License Transfers*). Another Staff action in this matter was, however, inconsistent with the actual terms of that license transfer processing Instruction. While the Instruction provides that NRC Staff must give the *Commission* at least "5 work days" to object to issuance of the Staff approval order before it is issued, *id.* at 13, the Staff sent a notice to Entergy on August 15, 2019, which stated that Pilgrim's license had *already* been "issued to [Holtec]." Encl. at 2 *in* Ltr. from Scott P. Wall, Sr. Project Manager, NRC Plan Licensing Branch III, to Brian R. Sullivan, Site Vice President, Entergy (Aug. 15, 2019) (ADAMS Accession No. ML19191A006). That notice and its statement that the license had already been "issued" to Holtec was then published in the Federal Register on August 20, 2019. 84 Fed. Reg. 43,186, 43,186 col.3 (Aug. 20, 2019).

license transfer application and Exemption Request if not deny them outright. These two issues go to the heart of this matter—Holtec’s ability to satisfy the NRC’s financial and technical requirements for license transfer approval—and should make any regulator take the time to seriously question and evaluate the veracity of Holtec’s assertions, including awaiting the completion of an adjudicatory hearing on them to ensure that all issues have been fully aired and considered.

First, Holtec’s response to the NRC Staff’s July 26, 2019 Request for Additional Information (RAI) belies any claim that Holtec has satisfied the NRC’s financial qualification and assurance requirements for either the license transfer or the Exemption Request. In fact, after Holtec’s misleading response to that request is corrected, Holtec’s cash-flow analysis shows that Holtec will suffer a funding shortfall of more than \$50 million. In its original cash-flow analysis, Holtec claimed a year ending decommissioning trust fund balance of \$3.615 million for the year 2063 (projected end of project life).⁶ In developing this analysis, Holtec used a license termination cost of \$592,553,322.⁷ In response to NRC Staff’s RAI, Holtec completed a revised cash flow analysis based on the Minimum Formula Amount (MFA), as required by 10 C.F.R. § 50.75(c).⁸ The revised MFA-based cash flow analysis increased the license termination cost by \$40,714,236 to a total of \$633,267,558.⁹ Yet, despite the \$40 million plus cost increase, and a claim that it used the same assumptions in its revised analysis that it used in its original analysis, Holtec’s recent analysis provides a positive year-end trust balance of \$11,595,232.¹⁰ In other words, despite increasing its costs, Holtec’s analysis results, inexplicably in a higher positive year-end balance. To derive this result in its revised analysis, Holtec appears to have excluded the tax impact on each year-end-earnings-balance that it accounted for in its original cash-flow analysis despite stating to NRC Staff that it included the tax impact.¹¹ When taxes are accounted for in the revised MFA-based cash-flow analysis, the analysis actually shows a funding shortfall of more than \$50 million.

Second, the misleading nature of Holtec’s RAI response appears to be part of a troubling pattern of behavior that raises serious questions about Holtec’s veracity, judgment, and technical qualifications to decommission a nuclear power

⁶ *Revised Post-Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost Estimate for Pilgrim Nuclear Power Station*, Enclosure 1, at 47 (Nov. 16, 2018) (ADAMS Accession No. ML18320A040).

⁷ *Id.*

⁸ *Response to NRC Request for Additional Information*, at E-4-5 and Enclosure (Jul. 29, 2019) (ADAMS Accession No. ML19210E470).

⁹ *Id.* Holtec stated that its lower license termination cost estimate is more accurate because it includes site-specific data to Pilgrim, but, as NRC Staff explained in its RAI, Holtec’s cash-flow analysis does not comply with the NRC’s regulations and, for that reason, cannot be “more accurate.” And Holtec’s attack on that regulation, of course, constitutes an improper challenge to an NRC regulation. Moreover, a large Boiling Water Reactor, such as Pilgrim, has never been decommissioned in the United States. Additionally, as stated in the Commonwealth’s Petition and Reply, Holtec has not provided adequate details as to how its costs are realistic or related to Pilgrim.

¹⁰ *Id.*

¹¹ *Id.*

reactor. In October 2010, for example, the Tennessee Valley Authority (TVA) temporarily debarred Holtec and required the company to pay a \$2 million “administrative fee” based on the results of a criminal investigation into an alleged Holtec contract-bribery scheme.¹² The TVA employee, who, according to the TVA Inspector General’s Report, received \$54,000 in undisclosed payments funneled to the employee from Holtec to help Holtec secure a contract with TVA, pleaded guilty in 2007.¹³ In a recorded telephone conversation between that employee and an individual who appears in the report to be a Holtec official, during which the employee asked the Holtec official for advice on how to handle the TVA Inspector General’s inquiry, the Holtec official informed the employee to tell the investigators that the employee did not “know anything about [the payments], other than the fact that your wife was in the business of doing consulting services and it was a payment retainer for that work.”¹⁴ More recently, New Jersey’s Economic Development Authority (EDA) froze a \$260 million tax break secured by Holtec when it discovered that Holtec had falsely sworn on its tax break application that the company had never “been barred from doing business with a state or federal agency,”¹⁵ even though, as noted above, TVA temporarily debarred Holtec in October 2010. On April 24, 2019, the NRC itself cited Holtec for two violations of NRC regulatory requirements.¹⁶ And, Holtec’s business “partner” for its nuclear decommissioning venture, SNC-Lavalin, which Holtec has leaned on heavily to support its claimed technical capacity to undertake multiple complex decommissioning projects at the same time,¹⁷ faces its own legal troubles having been caught-up in numerous alleged international

¹² Office of the Inspector General, TVA, Semiannual Report 18 (Apr. 1, 2015 - Sept. 30, 2015), <https://oig.tva.gov/reports/semi59.pdf>; see also Office of the Inspector General, TVA, Semiannual Report 8 (Oct. 1, 2010 - Mar. 31, 2011), <https://oig.tva.gov/reports/semi50.pdf>.

¹³ Office of Inspector General, TVA, Report of Administrative Inquiry 1 (Mar. 23, 2010), <https://www.politico.com/states/f/?id=0000016b-d7ca-d6eb-a96f-fffebfa70001>; Andrew Seidman & Catherine Dunn, Holtec Funneled \$50,000 to Federal Employee in Bid to Win Contract, Inspector General Report says, *The Philadelphia Inquirer*, Jul. 9, 2019, <https://www.inquirer.com/business/holtec-tennessee-valley-authority-nj-tax-credit-investigation-20190709.html>.

¹⁴ Office of Inspector General, TVA, Report of Administrative Inquiry 4 (Mar. 23, 2010), <https://www.politico.com/states/f/?id=0000016b-d7ca-d6eb-a96f-fffebfa70001>.

¹⁵ Nancy Solomon & Jeff Pillets, *Holtec’s \$260 Million Tax Break Frozen by NJ EDA*, WNYC News, June 4, 2019, <https://www.wnyc.org/story/holtecs-260-million-tax-break-frozen-eda/>; see also Ryan Hutchins, *Task Force Uncovers Bombshell Report on Holtec*, Politico, Jul. 10, 2019, <https://www.politico.com/newsletters/new-jersey-playbook/2019/07/10/task-forceuncovers-bombshell-report-on-holtec-454824>.

¹⁶ Notice of Violation to Holtec International, NRC OE EA 18-51, 2019 WL 2004418 (Apr. 24, 2019) (ADAMS Accession No. ML19072A128).

¹⁷ Applicants’ Answer Opposing the Commonwealth’s Mot. to Supplement its Petition with New Information at 8 (May 2, 2019); see also Holtec Response to NRC Request for Additional Information at Encl., p.2 (Apr. 17, 2019) (ADAMS Accession No. ML19109A177). In its RAI Response, for example, Holtec relies on the size of SNC-Lavalin’s workforce to support its assertion that it will have adequate support for its planned multi-reactor decommissioning endeavor, but SNC-Lavalin is currently restructuring its business and reducing its work force. Compare *id.* at E-2, with, e.g. *infra* note 19.

bribery scandals.¹⁸ Of course, any serious criminal or regulatory actions taken against Holtec, or its partners or executives, will have the potential of further draining resources and hampering Holtec's ability to perform decommissioning in a timely, safe and fiscally responsible manner.¹⁹

Those issues would be problematic if Holtec's obligations were limited to Pilgrim. But, as NRC Staff is aware, they are not limited to Pilgrim. In fact, Holtec is planning to embark on an uncharted path of attempting to decommission six nuclear power reactors at four different nuclear generating stations in four different states. The unprecedented nature of this endeavor and the cumulative impacts on Holtec's capacity to follow through on those commitments makes this license transfer application and Exemption Request sui generis and outside, for that reason alone, the license transfer actions contemplated by the Commission when it adopted its Subpart M Procedures (10 C.F.R. sub. pt. M). Holtec's unprecedented plan exacerbates all of the issues and concerns raised above and in the Commonwealth's Petition, Reply, and Motion to Supplement, and, in connection with the history described above, demands a heightened degree of scrutiny by NRC Staff and the Commission before any final action is taken on the license transfer or Exemption requests. While Holtec may be comfortable attempting to do what has never been done before, that is cold comfort for the Commonwealth and its citizens who have to accept Holtec as its new resident and the risks that accompany it all before the Commonwealth has an opportunity to present its views in an adjudicatory hearing. That concern is made all the worse by the fact that Holtec has asked the NRC to delete a pre-existing license condition upon which the public and the Commonwealth have relied that requires the Pilgrim licensee to have access to a \$50 million contingency fund for, among other things, "safe and prompt decommissioning." Renewed License No. DPR-35 at 4, ¶ J(4). Certainly, these facts preclude any "no significant hazards consideration" finding or reliance on a National Environmental Policy Act categorical exclusion since the proposed action does much more "than [simply] conform the license to reflect the transfer action." 10 C.F.R. § 2.1315. Indeed, granting the requested actions at Pilgrim and the other power stations will materially and significantly increase the risk to public health, safety, and the environment.

¹⁸ See, e.g., Richard L. Cassin, *Former SNC-Lavalin Chief Pleads Guilty in Bribery Case*, The FPCA Blog, Feb. 4, 2019, <https://www.fcpablog.com/blog/2019/2/4/former-snc-lavalinchief-pleads-guilty-in-bribery-case.html>; *SNC-Lavalin Opts for Judge-Only Trial in Corruption Case*, CBC News, June 28, 2019, <https://www.cbc.ca/news/canada/montreal/snc-lavalin-trialcorruption-bribery-judge-1.5193975>.

¹⁹ Indeed, as the Commonwealth noted in its Reply in Support of its Motion to Supplement its Petition with New Information at 3 n.4 (May 9, 2019), SNC-Lavalin's legal troubles have had serious consequences for the company. Just recently, in fact, SNC-Lavalin made a dramatic cut to its dividend payments, lost half of its shareholder value this year, and announced a major restructuring and downsizing of its business. E.g., Shanti S. Nair, *SNC-Lavalin Cuts Dividend, Posts Wider-Than-Expected Loss as Costs Run High*, Reuters, Aug. 1, 2019, <https://www.reuters.com/article/us-snc-lavalin-results/snc-lavalin-cuts-dividend-posts-widerthan-expected-loss-as-costs-run-high-idUSKCN1UR4FQ>.

5.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of a license issued by the NRC and an associated conforming amendment required to reflect the approval of the transfer. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the transfer application and conforming license amendment.

6.0 CONCLUSION

Based on the foregoing, and subject to the conditions described herein, the NRC staff concludes that Holtec Pilgrim and HDI are financially qualified and HDI is technically qualified to hold the license for Pilgrim and the general license for the Pilgrim ISFSI, as described in the application, and engage in the proposed maintenance and decommissioning activities associated with the Pilgrim site. The NRC staff has concluded, based on the considerations discussed above, that (1) the proposed transferees are qualified to be the direct and indirect holders of Renewed Facility Operating License No. DPR-35 and (2) the direct and indirect transfer of the license is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Additionally, the NRC staff finds that the Applicants have satisfied the NRC's decommissioning funding assurance requirements and the applicable onsite and offsite insurance requirements, as conditioned. Further, the NRC staff finds that the Applicants are not owned, controlled, or dominated by a foreign entity.

The NRC staff finds that proposed license transfer will be consistent with the requirements of the AEA and NRC regulations. The transfer of the licenses will not be inimical to the common defense and security and does not involve foreign ownership, control, or domination.

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Date:

Attachment:
Closing Balance Calculations in Support
of Applicants'/Transferee's PSDAR

ATTACHMENT 1: Pilgrim Nuclear Power Station Closing Balance Calculations in Support of Applicants'/Transferee's Post-Shutdown Decommissioning Activities Report (thousands of constant 2018 Dollars) <i>(reflects information from November 16, 2018, Entergy Nuclear Operations, Inc., and Holtec Decommissioning International submissions)</i>						
Year	Opening DTF Balance	License Termination Costs ^d	Spent Fuel Management Costs	Site Restoration Costs	Interest Earned ^e	Closing Balance
2019 ^a	\$1,030,000	\$84,927	\$53,920	\$18	\$5,273	\$896,408
2020	\$896,408	\$79,292	\$84,905	\$28	\$10,397	\$742,579
2021	\$742,579	\$46,759	\$82,500	\$637	\$8,700	\$621,384
2022	\$621,384	\$103,197	\$3,332	\$23,630	\$6,975	\$498,200
2023	\$498,200	\$167,453	\$3,135	\$1,700	\$4,628	\$330,540
2024	\$330,540	\$95,694	\$3,225	\$9,236	\$3,158	\$225,543
2025 ^b	\$225,543	\$1,310	\$6,306	\$4,127	\$3,036	\$216,837
2026	\$216,837		\$5,952		\$2,995	\$213,879
2027	\$213,879		\$5,939		\$2,953	\$210,893
2028	\$210,893		\$5,952		\$2,910	\$207,851
2029	\$207,851		\$5,952		\$2,867	\$204,766
2030	\$204,766		\$7,212		\$2,805	\$200,359
2031	\$200,359		\$7,212		\$2,743	\$195,891
2032	\$195,891		\$7,212		\$2,679	\$191,358
2033	\$191,358		\$7,212		\$2,615	\$186,762
2034	\$186,762		\$7,193		\$2,550	\$182,119
2035	\$182,119		\$7,212		\$2,484	\$177,391
2036	\$177,391		\$7,230		\$2,416	\$172,577
2037	\$172,577		\$7,212		\$2,348	\$167,713
2038	\$167,713		\$7,193		\$2,279	\$162,800
2039	\$162,800		\$7,212		\$2,209	\$157,798
2040	\$157,798		\$7,212		\$2,138	\$152,724
2041	\$152,724		\$7,212		\$2,066	\$147,579
2042	\$147,579		\$7,212		\$1,993	\$142,361
2043	\$142,361		\$7,212		\$1,919	\$137,068
2044	\$137,068		\$7,212		\$1,844	\$131,701
2045	\$131,701		\$7,193		\$1,768	\$126,276
2046	\$126,276		\$7,212		\$1,691	\$120,755
2047	\$120,755		\$7,212		\$1,612	\$115,156
2048	\$115,156		\$7,230		\$1,533	\$109,458
2049	\$109,458		\$7,193		\$1,452	\$103,717
2050	\$103,717		\$7,212		\$1,370	\$97,876
2051	\$97,876		\$7,193		\$1,288	\$91,971

ATTACHMENT 1: Pilgrim Nuclear Power Station Closing Balance Calculations in Support of Applicants'/Transferee's Post-Shutdown Decommissioning Activities Report (thousands of constant 2018 dollars) <i>(reflects information from November 16, 2018, Entergy Nuclear Operations, Inc. (ENOI) and Holtec Decommissioning International submissions)</i>						
Year	Opening DTF Balance	License Termination Costs ^d	Spent Fuel Management Costs	Site Restoration Costs	Interest Earned ^e	Closing Balance
2052	\$91,971		\$7,230		\$1,203	\$85,944
2053	\$85,944		\$7,212		\$1,118	\$79,851
2054	\$79,851		\$7,212		\$1,031	\$73,671
2055	\$73,671		\$7,193		\$944	\$67,422
2056	\$67,422		\$7,212		\$855	\$61,065
2057	\$61,065		\$7,212		\$765	\$54,618
2058	\$54,618		\$7,212		\$673	\$48,080
2059	\$48,080		\$7,212		\$580	\$41,449
2060	\$41,449	\$4,296	\$7,212		\$425	\$30,367
2061	\$30,367	\$4,375	\$7,212		\$267	\$19,047
2062 ^c	\$19,047	\$4,358	\$7,193		\$106	\$7,602
2063	\$7,602	\$892	\$2,441	\$706	\$51	\$3,615
Total		\$592,553	\$501,467	\$40,079		

a—Reflects the value of the decommissioning trust fund (DTF) following closure of the equity sale, in 2019, from the current licensee to the Applicants, which does not include deductions for costs incurred by the current licensee, ENOI, before closure of the sale

b—Year in which the Pilgrim site meets partial site release criteria

c—Anticipated year in which the U.S. Department of Energy takes possession of spent fuel from the Pilgrim independent spent fuel storage installation (ISFSI)

d—Includes funding for ISFSI decommissioning

e—Based on Applicants' data, real rate of return applied by the Applicants is equal to approximately 1.42 percent, which considers growth of DTF net of taxes.

NUCLEAR REGULATORY COMMISSION**Docket No. 50-293****Holtec Decommissioning International, LLC****Pilgrim Nuclear Power Station****Exemption****I. Background.**

By letter dated November 10, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15328A053), Entergy Nuclear Operations, Inc. (ENOI), submitted a notification to the U.S. Nuclear Regulatory Commission (NRC) indicating that it would permanently shut down Pilgrim Nuclear Power Station (Pilgrim) no later than June 1, 2019. By letter dated June 10, 2019 (ADAMS Accession No. ML19161A033), ENOI submitted to the NRC a certification in accordance with § 50.82(a)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR), stating that Pilgrim permanently ceased power operations on May 31, 2019, and that as of June 9, 2019, all fuel had been permanently removed from the Pilgrim reactor vessel and placed in the spent fuel pool. Accordingly, pursuant to 10 CFR 50.82(a)(2), the Pilgrim renewed facility operating license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. By letter dated November 16, 2018 (ADAMS Accession No. ML18320A036), ENOI submitted the updated Pilgrim spent fuel management plan (SFMP) pursuant to 10 CFR 50.54(bb) and preliminary decommissioning cost estimate (DCE). By letter dated November 16, 2018 (ADAMS Accession No. ML18320A034), as supplemented by letter dated January 9, 2019 (ADAMS Accession No. ML19015A020) and letter dated July 29, 2019 (ADAMS Accession No. ML19210E470), ENOI submitted a post-shutdown decommissioning activities report (PSDAR) and the site-specific DCE for Pilgrim.

By letter dated November 16, 2018 (ADAMS Accession No. ML18320A031), ENOI, on behalf of itself and Entergy Nuclear Generation Company (ENGCO) (to be known as Holtec Pilgrim, LLC (Holtec Pilgrim)), Holtec International (Holtec), and Holtec Decommissioning International (HDI) submitted a license transfer application (LTA) requesting that the NRC consent to the direct transfer of ENOI's operating authority to HDI and the indirect transfer of control of the Pilgrim Renewed Facility Operating License and the General License for the Pilgrim Independent Spent Fuel Storage Installation (ISFSI) to Holtec. By letter dated November 16, 2018 (ADAMS Accession No. ML18320A040), HDI submitted a "Notification of Revised Post-Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost Estimate for Pilgrim Nuclear Power Station" (revised PSDAR), to notify the NRC of changes to accelerate the schedule for the prompt decommissioning (i.e., the DECON method for decommissioning) of Pilgrim and unrestricted release of all portions of the site (excluding the ISFSI) within 8 years after the license transfer.

Under the proposed transfers, Holtec Pilgrim will own the Pilgrim nuclear facility and will have responsibility for Pilgrim as its licensed owner. Holtec Pilgrim will enter into an agreement for decommissioning services with HDI, with HDI acting as Holtec Pilgrim's agent and with Holtec Pilgrim paying for all HDI expenses related to decommissioning, spent fuel management, and site restoration. Accordingly, HDI will become the licensed operator for decommissioning.

II. Request/Action.

The requested exemption from 10 CFR 50.82(a)(8)(i)(A) would permit Holtec Pilgrim and HDI to use funds from the Pilgrim Decommissioning Trust Fund (DTF) for spent fuel management and site restoration activities in accordance with HDI's site-specific DCE for Pilgrim. HDI submitted a revised site-specific DCE for Pilgrim by letter dated November 16, 2018, as part of the revised PSDAR. A similar exemption request from Entergy

was approved by the NRC for Pilgrim by letter dated July 22, 2019 (ADAMS Accession No. ML19162A334).

The 10 CFR 50.82(a)(8)(i)(A) requirement restricts the use of DTF withdrawals to expenses for legitimate decommissioning activities consistent with the definition of decommissioning that appears in 10 CFR 50.2. The definition of “decommission” in 10 CFR 50.2 reads as follows:

to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license;

or

(2) Release of the property under restricted conditions and termination of the license.

This definition does not include activities associated with spent fuel management or site restoration activities. Therefore, an exemption from 10 CFR 50.82(a)(8)(i)(A) is needed to allow Holtec Pilgrim and HDI to use funds from the DTF for spent fuel management and site restoration activities.

Similar to 10 CFR 50.82(a)(8)(i)(A), provisions of 10 CFR 50.75(h)(1)(iv) and (h)(2) dictate that with certain exceptions, disbursements from nuclear decommissioning trusts “are restricted to decommissioning expenses.” However, in accordance with 10 CFR 50.75(h)(5), these provisions do not apply to “any licensee that as of December 24, 2003, has existing license conditions relating to decommissioning trust agreements, so long as the licensee does not elect to amend those license conditions.” The operating license for Pilgrim included “existing license conditions relating to decommissioning trust agreements” on December 24, 2003, and as such, Pilgrim is exempt from the provisions of sections (h)(1) through (h)(3) of 10 CFR 50.75, pursuant to the terms of 10 CFR 50.75(h)(5).

III. Discussion.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 (1) when the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things:

(a) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; and

(b) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

A. Authorized by Law

The requested exemption from 10 CFR 50.82(a)(8)(i)(A) would allow Holtec Pilgrim and HDI to use a portion of the funds from the DTF for spent fuel management and site restoration activities at Pilgrim in the same manner that withdrawals are made under 10 CFR 50.82(a)(8) for radiological decommissioning activities. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 when the exemptions are authorized by law. The NRC staff has determined, as explained further below, that there is reasonable assurance of adequate funding for radiological decommissioning because the Applicants' use of the DTF for activities associated with spent fuel management and site restoration will not negatively impact the availability of funding for radiological decommissioning. Accordingly, the exemption is authorized by law because granting the licensee's proposed exemption will not

result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations.

B. No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) is to provide reasonable assurance that adequate funds will be available for the radiological decommissioning of power reactors and license termination. As explained in further detail in Section D below, based on NRC staff's review of HDI's revised site-specific DCE and the staff's independent cash flow analysis contained in Attachment 1 to the NRC staff's safety evaluation for the associated LTA (ADAMS Accession No. ML19170A250), the NRC staff finds that the use of the Pilgrim DTF for spent fuel management and site restoration activities at Pilgrim will not adversely impact Holtec Pilgrim and HDI's ability to terminate the Pilgrim license (*i.e.*, complete radiological decommissioning) as planned, consistent with the schedule and costs contained in the revised PSDAR.

Furthermore, withdrawals from the DTF for spent fuel management and site restoration are still constrained by the provisions of 10 CFR 50.82(a)(8)(i)(B) – (C) and are reviewable under the annual reporting requirements of 10 CFR 50.82(a)(8)(v) – (vii).

There are no new accident precursors created by using the DTF in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, the requested exemption will not present an undue risk to the public health and safety.

C. Consistent with the Common Defense and Security

The requested exemption would allow Holtec Pilgrim and HDI to use funds from the Pilgrim DTF for spent fuel management and site restoration activities at Pilgrim. Spent fuel management under 10 CFR 50.54(bb) is an integral part of the planned decommissioning and

license termination process and will not adversely affect Holtec Pilgrim and HDI's ability to physically secure the site or protect special nuclear material. This change to enable the use of a portion of the funds from the DTF for spent fuel management and site restoration activities has no relation to security issues. Therefore, the common defense and security is not impacted by the requested exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the regulation.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A), which restricts withdrawals from DTFs to expenses for radiological decommissioning activities, is to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors and license termination. Strict application of this requirement would prohibit the withdrawal of funds from the Pilgrim DTF for spent fuel management and site restoration activities, until final radiological decommissioning at Pilgrim has been completed.

ENOI's March 28, 2019, annual report (ADAMS Accession No. ML19087A318) on the status of decommissioning funding for Pilgrim reports a DTF balance of approximately \$1.028 billion as of December 31, 2018, and approximately \$1.043 billion as of February 28, 2019. The cash flow analysis in Table 1 of the November 16, 2018, application is based on a beginning DTF balance of \$1.030 billion (following closure of the equity sale in 2019).¹ HDI states that this beginning DTF balance reflects the fund value post-closure of the asset sale. Furthermore, the application states that the 2019 costs include estimated pre-closure and post-closure costs. In the NRC staff's analysis provided in its safety evaluation for

¹ The terms of the Equity Purchase and Sales Agreement describes the after-tax market value of the DTF must be no less than \$1.030 billion at time of transaction closing.

the LTA, the staff used the opening DTF balance of \$1.030 billion as the money available to cover radiological decommissioning, spent fuel management, and site restoration costs.

The analysis in the November 16, 2018 revised PSDAR, projects the total radiological decommissioning cost of Pilgrim to be approximately \$593 million in 2018 dollars which is lower than the 10 CFR 50.75(c) minimum formula amount of approximately \$633 million. The revised PSDAR estimated decommissioning costs are consistent with the estimated costs for radiological decommissioning, including ISFSI decommissioning costs, provided in the November 16, 2018 request for exemptions. However, the LTA and the exemption request did not provide any explanation for the difference in funding levels for radiological decommissioning costs between the site-specific DCE and the 10 CFR 50.75(c) minimum formula amount. Therefore, the staff sought supplemental information from the Applicants in a request for additional information (RAI) dated July 26, 2019, (ADAMS Accession No. ML19207B366). The RAI requested, among other things, that the Applicants provide justification for using a radiological decommissioning cost estimate value that is less than the 10 CFR 50.75(c) minimum formula amount.

On July 29, 2019 (ADAMS Accession No. ML19210E470), HDI provided its justification, stating that the HDI site-specific DCE is a more reliable and precise estimate of decommissioning cost because it is based on Pilgrim-specific plant data and historical information, actual site conditions, regulatory requirements applicable to Pilgrim, and actual pricing information, as compared to the 10 CFR 50.75(c) minimum formula amount, which is based on generic inputs. Additionally, in both the November 16, 2018 application and the July 29, 2019 supplement, HDI states that its site-specific DCE was reviewed against the estimates of costs associated with license termination (radiological decommissioning) in NUREG/CR-6174, "Revised Analyses of Decommissioning for the Reference Boiling Water Reactor Power Station" (ADAMS Accession No. ML14008A186), benchmarked against nine comparable decommissioning projects, and compared with costs from similar activities at seven

boiling water reactors. Accordingly, as part of its review, the NRC staff compared the Pilgrim site-specific radiological decommissioning costs with the estimated activities of the four periods associated with the DECON decommissioning method as outlined in NUREG/CR-6174:

- 1) Pre-shutdown planning/engineering and regulatory reviews,
- 2) Plant deactivation and preparation for storage,
- 3) A period of plant safe storage with concurrent operations in the spent fuel pool until the pool inventory is zero, and
- 4) Decontamination and dismantlement of the radioactive portions of the plant, leading to license termination.

The NRC staff also compared the Pilgrim site-specific estimated radiological decommissioning costs of approximately \$593 million with the site-specific costs of similar decommissioning projects.

Based on the review of the Pilgrim site-specific radiological decommissioning costs of approximately \$593 million, as compared to NUREG/CR-6174, the staff concludes that HDI's method for developing the Pilgrim site-specific radiological decommissioning cost estimate is reasonable. Further, when compared to radiological decommissioning costs associated with similar decommissioning projects, the staff finds that the HDI's Pilgrim site-specific radiological decommissioning costs of approximately \$593 million is reasonable.

As such, the staff used the value of approximately \$593 million for radiological decommissioning costs when it conducted its independent cash flow analysis. As allowed by 10 CFR 50.75(e)(1)(ii), the staff began its cost analysis using a 2% real rate of return on annual balances. In its application dated November 16, 2018, HDI states they also used a 2% real rate of return. However, in Table 1 of the November 16, 2018, application, HDI noted that the Year Ending DTF Balance is after-taxes. Therefore, in its cost analysis, the staff found that Table 1 reflects an actual annual real rate of return of 1.42%. The staff notes that this is conservative to the 2% annual real rate of return allowed by 10 CFR 50.75(e)(1)(ii). To be consistent in

validating HDI's site-specific DCE, the staff used the more conservative 1.42% annual real rate of return. The staff's independent cash flow analysis is contained in Attachment 1 to the NRC staff's safety evaluation for the associated LTA.

As noted above, HDI's site-specific DCE relies on estimated radiological decommissioning costs of approximately \$593 million, which is lower than the 10 CFR 50.75(c) minimum formula amount of approximately \$633 million. In its RAI dated July 26, 2019, the staff requested a justification for this lower amount and, in case the Applicants' failed to provide sufficient justification, the staff also requested that the Applicants provide a revised decommissioning cash flow analysis using the higher minimum formula amount of \$633,267,558. In Attachment 1 of the July 29, 2019, supplement, HDI provided the requested revised cash flow analysis. Although the staff completed a separate, independent cash flow analysis to validate this revised cash flow analysis, ultimately, as noted above, the staff determined that HDI's site-specific DCE, which uses \$592,553,000 for the estimated site-specific radiological decommissioning costs for Pilgrim, is reasonable and sufficiently justified.

Based on its evaluation above and the cash flow analysis contained in Attachment 1 to the NRC staff's safety evaluation for the associated LTA, the staff finds that the funds in the DTF are expected to be available and sufficient to cover the estimated costs of approximately \$593 million for the radiological decommissioning of the facility (including the ISFSI). Therefore, the NRC staff finds that HDI has provided reasonable assurance that adequate funds will be available for the radiological decommissioning of Pilgrim, even with the disbursement of funds from the DTF for spent fuel management and site restoration activities. Consequently, the NRC staff concludes that application of the 10 CFR 50.82(a)(8)(i)(A) requirement that funds from the DTF only be used for radiological decommissioning activities and not for spent fuel management and site restoration activities is not necessary to achieve the underlying purpose of the rule; thus, special circumstances are present supporting approval of the exemption request.

By granting the exemption to 10 CFR 50.82(a)(8)(i)(A), withdrawals from the DTF for spent fuel management and site restoration activities, consistent with the licensee's submittal dated November 16, 2018, are authorized. As stated previously, the NRC staff has determined that there are sufficient funds in the DTF to complete radiological decommissioning activities as well as to conduct spent fuel management and site restoration activities consistent with the revised PSDAR, DCE, SFMP, and the November 16, 2018, exemption request. Pursuant to the requirements in 10 CFR 50.82(a)(8)(v) and (vii), licensees are required to monitor and annually report to the NRC the status of the DTF and the licensee's funding for managing spent fuel. These reports provide the NRC staff with awareness of, and the ability to take action on, any actual or potential funding deficiencies. Additionally, 10 CFR 50.82(a)(8)(vi) requires that the annual financial assurance status report must include additional financial assurance to cover the estimated cost of completion if the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2% real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning. The requested exemption would not allow the withdrawal of funds from the DTF for any other purpose that is not currently authorized in the regulations without prior approval from the NRC.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii), are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. HDI states that the DTF contains funds in excess of the estimated costs of radiological decommissioning and that these excess funds are needed for spent fuel management and site restoration activities. The NRC does not preclude the use of funds from the decommissioning trust in excess of those needed for radiological decommissioning for other purposes, such as spent fuel management or site restoration activities (see NRC Regulatory Issue Summary 2001-07, Rev. 1, "10 CFR 50.75 Reporting and

Recordkeeping for Decommissioning Planning,” dated January 8, 2009 (ADAMS Accession No. ML083440158), and Regulatory Guide 1.184, Revision 1, “Decommissioning of Nuclear Power Reactors,” dated October 2013 (ADAMS Accession No. ML13144A840)). Preventing access to those excess funds in the DTF because spent fuel management and site restoration activities are not associated with radiological decommissioning would create an unnecessary financial burden without any corresponding safety benefit. The adequacy of the DTF to cover the cost of activities associated with spent fuel management and site restoration, in addition to radiological decommissioning, is supported by the site-specific DCE. If the licensee cannot use its DTF for spent fuel management and site restoration activities, it would need to obtain additional funding that would not be recoverable from the DTF, or the licensee would have to modify its decommissioning approach and methods. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when 10 CFR 50.82(a)(8)(i)(A) was adopted.

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) would be achieved by allowing Holtec Pilgrim and HDI to use a portion of the Pilgrim DTF for spent fuel management and site restoration activities, and compliance with the regulation would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulations were adopted. Thus, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist and support the approval of the requested exemption.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of the exemption will not have a significant effect on the quality of the human environment (see Environmental Assessment and Finding of No Significant Impact published in the Federal Register on August 20, 2019 (84 FR 43186)).

IV. Conclusions.

In consideration of the above, the NRC staff finds that the proposed exemption confirms the adequacy of funding in the Pilgrim DTF to complete radiological decommissioning of the site and to terminate the license and also to cover estimated spent fuel management and site restoration activities. The NRC staff also finds that there is reasonable assurance that adequate funds are available in the DTF to complete all activities associated with radiological decommissioning.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Holtec Pilgrim and HDI an exemption from 10 CFR 50.82(a)(8)(i)(A) to allow them to use of a portion of the funds from the Pilgrim DTF for spent fuel management and site restoration activities consistent with the revised PSDAR and site-specific DCE dated November 16, 2018.

These exemptions are effective upon the NRC's issuance of a conforming license amendment reflecting HDI and Holtec Pilgrim as the licensees for Pilgrim, following NRC approval of the license transfer application and the Applicants' completion of the transaction.

Dated at Rockville, Maryland, this 22nd day of August, 2019.

For the Nuclear Regulatory Commission.

/RA/

Gregory F. Suber, Deputy Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees that are U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days prior to the meeting. Information should be sent to Mr. Andrew Rowe, at andrew.rowe@nasa.gov.

Patricia Rausch,
Advisory Committee Management Officer,
National Aeronautics and Space
Administration.

[FR Doc. 2019-17944 Filed 8-19-19; 8:45 am]

BILLING CODE 7510-13-P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Regular Board of Directors Meeting

TIME & DATE: 3:00 p.m., Wednesday, September 4, 2019.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington, DC 20002.

STATUS: Open (with the exception of Executive Session).

MATTERS TO BE CONSIDERED: The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Report From CEO
- Board and Officer Elections

Agenda

- I. Call to Order
- II. Approval of Minutes
- III. Executive Session: Report from CEO
- IV. Action Item Recognition of Service for Senior Deputy Controller Grovetta Gardineer
- V. Action Item FY2020 Preliminary Budget
- VI. Action Item Investment Policy Update
- VII. Action Item Lapse Plan Policy
- VIII. Discussion Item Corporate Goals for FY2020
- IX. Discussion Item FY2021 Budget Submission Process

- X. Discussion Item Non-Core Private Funds
- XI. Discussion Item Western Region—Denver Office Lease Renewal
- XII. Discussion Item 40th Anniversary Event
- XIII. Management Program Background and Updates
- XIV. Adjournment

CONTACT PERSON FOR MORE INFORMATION:
Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760-4105; Rsimmons@nw.org.

Rutledge Simmons,
EVP & General Counsel/Corporate Secretary.

[FR Doc. 2019-18039 Filed 8-16-19; 4:15 pm]

BILLING CODE 7570-02-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293; NRC-2019-0152]

Entergy Nuclear Operations Inc; Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption in response to a November 16, 2018, request from Entergy Nuclear Operations, Inc. (ENOI or the licensee) on behalf of Entergy Nuclear Generation Company (ENGCO) (to be renamed Holtec Pilgrim, LLC) and Holtec Decommissioning International, LLC (HDI), related to Pilgrim Nuclear Power Station (Pilgrim), located in Plymouth County, Massachusetts. The proposed action would permit Holtec Pilgrim, LLC and HDI to use funds from the Pilgrim decommissioning trust fund (the Trust) for management of spent fuel and site restoration activities. The staff is issuing a final environmental assessment (EA) and a final finding of no significant impact (FONSI) associated with the proposed exemption.

DATES: The EA and FONSI referenced in this document are available on August 20, 2019.

ADDRESSES: Please refer to Docket ID NRC-2019-0152 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0152. Address

questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the Availability of Documents section.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:
Scott P. Wall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2855; email: Scott.Wall@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to section 50.12 of title 10 of the *Code of Federal Regulations* (10 CFR), "Specific exemptions," the NRC is considering issuance of an exemption from 10 CFR 50.82(a)(8)(i)(A) for Renewed Facility Operating License No. DPR-35, issued to HDI for Pilgrim, located in Plymouth County, Massachusetts. By letter dated November 16, 2018 (ADAMS Accession No. ML18320A031), ENOI, on behalf of itself, Entergy Nuclear Generation Company (ENGCO) (to be known as Holtec Pilgrim, LLC), Holtec International (Holtec), and HDI submitted a License Transfer Application (LTA) requesting that the NRC consent to the proposed direct and indirect transfer of the Pilgrim Renewed Facility Operating License No. DPR-35 and the general license for the Pilgrim ISFSI (collectively referred to as the facility). Specifically, the Applicants requested that the NRC consent to the direct transfer of ENOI's currently licensed authority (licensed operator for decommissioning) to HDI. In addition, the Applicants requested the indirect transfer of control of ENGCO's ownership interests in the facility licenses to

Holtec. In Enclosure 2 of the November 16, 2018, LTA, HDI requested an exemption from 10 CFR 50.82(a)(8)(i)(A). The exemption would allow Holtec Pilgrim, LLC and HDI to use funds from the Trust for spent fuel management and site restoration activities, in the same manner that funds from the Trust are used under 10 CFR 50.82(a)(8) for radiological decommissioning activities. This exemption would only apply following NRC approval of the LTA and closing of the underlying transaction.

In accordance with 10 CFR 51.21, the NRC has prepared an environmental assessment (EA) that analyzes the environmental effects of the proposed action. Based on the results of this EA, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action and is issuing a finding of no significant impact (FONSI).

II. Environmental Assessment

Description of the Proposed Action

The proposed action would partially exempt Holtec Pilgrim, LLC and HDI from the requirements set forth in 10 CFR 50.82(a)(8)(i)(A). Specifically, the proposed action would allow Holtec Pilgrim, LLC and HDI to use funds from the Trust for spent fuel management and site restoration activities not associated with radiological decommissioning activities.

The proposed action is also described in the licensee's application dated November 16, 2018 (ADAMS Accession No. ML18320A031).

Need for the Proposed Action

By letter dated November 10, 2015 (ADAMS Accession No. ML15328A053), ENOI informed the NRC that it planned to permanently cease power operations at Pilgrim no later than June 1, 2019. ENOI permanently ceased power operations at Pilgrim on May 31, 2019. ENOI permanently defueled Pilgrim on June 9, 2019.

As required by 10 CFR 50.82(a)(8)(i)(A), decommissioning trust funds may be used by Holtec Pilgrim, LLC and HDI if the withdrawals are for legitimate decommissioning activity expenses, consistent with the definition of decommissioning in 10 CFR 50.2. This definition addresses radiological decontamination and does not include activities associated with spent fuel management or site restoration. Therefore, exemption from 10 CFR 50.82(a)(8)(i)(A) is needed to allow Holtec Pilgrim, LLC and HDI to use funds from the Trust for spent fuel

management and site restoration activities.

HDI stated that Table 1 of the application dated November 16, 2018, demonstrates that the Trust contains the amount needed to cover the estimated costs of radiological decommissioning, as well as spent fuel management and site restoration activities. The adequacy of funds in the Trust to cover the costs of activities associated with spent fuel management, site restoration, and radiological decontamination through license termination is supported by the revised Pilgrim Post-Shutdown Decommissioning Activities Report submitted by HDI in a letter dated November 16, 2018 (ADAMS Accession No. ML18320A034), as supplemented by letters dated January 9, 2019 and July 29, 2019 (ADAMS Accession Nos. ML19015A020 and ML19210E470, respectively). HDI stated that it needs access to the funds in the Trust to support spent fuel management and site restoration activities not associated with radiological decontamination.

In summary, by letter dated November 16, 2018, HDI requested an exemption from NRC regulations to allow Trust withdrawals for spent fuel management and site restoration activities.

Environmental Impacts of the Proposed Action

The proposed action involves regulatory requirements that are of a financial or administrative nature and that do not have an impact on the environment. The NRC has completed its evaluation of the proposed action and concludes that there is reasonable assurance that adequate funds are available in the Trust to complete all activities associated with radiological decommissioning. There would be no decrease in safety associated with the use of the Trust to fund activities associated with spent fuel management and site restoration. The NRC regulations in 10 CFR 50.82(a)(8)(v) require licensees to submit a financial assurance status report annually between the time of submitting their decommissioning cost estimate until they submit their final radiation survey and demonstrate that residual radioactivity has been reduced to a level that permits termination of the operating license. Section 50.82(a)(8)(vi) of 10 CFR requires that if the sum of the balance of any remaining decommissioning funds, plus expected rate of return, plus any other financial surety mechanism relied upon by the licensee, does not cover the estimated costs to complete the decommissioning, the financial assurance status report must include additional financial

assurance to cover the cost of completion. These annual reports provide a means for the NRC to monitor the adequacy of available funding. The proposed exemption would allow Holtec Pilgrim, LLC and HDI to use Trust funds to support spent fuel management and site restoration activities not associated with radiological decontamination. The NRC staff has determined that there is reasonable assurance of adequate funding for radiological decommissioning based on the remaining Trust funds dedicated for radiological decontamination. Specifically, HDI has provided detailed, site-specific, cost-estimates for radiological decommissioning that the NRC staff finds sufficiently demonstrate that the Trust funds dedicated to radiological decommissioning are adequate. Thus, there is reasonable assurance that there will be no environmental effect due to lack of adequate funding for decommissioning.

The proposed action will not significantly increase the probability or consequences of radiological accidents or change the types of effluents released offsite. In addition, there would be no significant increase in the amount of any radiological effluent released offsite, and no significant increase in occupational or public radiation exposure. There would be no materials or chemicals introduced into the plant affecting the characteristics or types of effluents released offsite. In addition, waste processing systems would not be affected by the proposed exemption. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

Regarding potential nonradiological impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents, and no changes to the plant's National Pollutant Discharge Elimination System permits would be needed. In addition, there would be no noticeable effect on socioeconomic and environmental justice conditions in the region, no air quality impacts, and no potential to affect historic properties. Therefore, there would be no significant nonradiological environment impacts associated with the proposed action.

Accordingly, the NRC concludes that there would be no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.*, the “no-action” alternative). Denial of the exemption request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action would be similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies or Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On August 14, 2019, the NRC notified the Commonwealth of Massachusetts representative of the EA and FONSI.

III. Finding of No Significant Impact

The requested exemption from 10 CFR 50.82(a)(8)(i)(A) would allow Holtec Pilgrim, LLC and HDI to use funds from the Trust for spent fuel

management and site restoration activities.

The NRC is considering issuing the requested exemption. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or nonradiological impacts. The reason the human environment would not be significantly affected is that the proposed action involves an exemption from requirements that are of a financial or administrative nature that do not have an impact on the human environment. Consistent with 10 CFR 51.21, the NRC conducted the EA for the proposed action, and this FONSI incorporates by reference the EA included in Section II of this document. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined there is no need to prepare an environmental impact statement for the proposed action.

As required by 10 CFR 51.32(a)(5), the related environmental document is the “Generic Environmental Impact Statement for License Renewal of

Nuclear Plants: Regarding Pilgrim Nuclear Power Station, Final Report,” January 2007 (NUREG–1437, Supplement 29, Volumes 1 and 2), which provides the latest environmental review of current operations and description of environmental conditions at Pilgrim.

The finding and other related environmental documents may be examined, and/or copied for a fee, at the NRC’s Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records are accessible electronically from ADAMS Public Electronic Reading Room on the internet at the NRC’s website: <https://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC’s PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to pdr.resource@nrc.gov.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Date	Title	ADAMS Accession No.
6/10/2019	Letter from Entergy to NRC titled “Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel”.	ML19161A033
11/16/2018	Letter from Entergy to NRC titled “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)”.	ML18320A031
11/16/2018	Letter from HDI to NRC titled “Notification of Revised Post-Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost Estimate for Pilgrim Nuclear Power Station”.	ML18320A040
11/10/2015	Letter from Entergy to NRC titled “Notification of Permanent Cessation of Power Operations”	ML15328A053
7/2007	NUREG–1437, Supplement 29, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Pilgrim Nuclear Power Station,” Volumes 1 and 2.	ML071990020; ML071990027

Dated at Rockville, Maryland, this 15th day of August, 2019.

For the Nuclear Regulatory Commission.

Scott P. Wall,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–17888 Filed 8–19–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289; NRC–2019–0079]

Exelon Generation Company LLC; Three Mile Island Nuclear Station Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Exelon Generation Company, LLC to withdraw its application dated December 14, 2018, for a proposed amendment to Renewed Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit

1. The proposed amendment would have revised Technical Specification 6.8.5 “Reactor Building Leakage Rate Testing Program,” to allow for a one-cycle extension to the 10-year frequency of the containment leakage rate test (*i.e.*, Integrated Leakage Rate Test (ILRT) or Type A test).

DATES: The withdrawal of the proposed amendment takes effect on August 20, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0079 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search

three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.*, 37 CFR 380.6(c).

On July 29, 2019, SoundExchange filed with the Judges a notice of intent to audit Sirius XM Radio Inc.'s Commercial Webcaster service, Preexisting Satellite Digital Audio Radio Service, New Subscription Service, and Business Establishment Service for transmissions terminating in the United States for the year 2018.¹ The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See id.* Today's notice fulfills this requirement with respect to SoundExchange's notice of intent to audit filed July 29, 2019.

Dated: August 23, 2019.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2019-18549 Filed 8-27-19; 8:45 am]

BILLING CODE 1410-72-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-293 and 72-1044; NRC-2018-0279]

In the Matter of Entergy Nuclear Generation Company, Entergy Nuclear Operations, Inc., Holtec Pilgrim, LLC, Holtec Decommissioning International, LLC, and Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct and indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order approving the direct transfer of Renewed Facility Operating License No. DPR-35 for the Pilgrim Nuclear Power Station (Pilgrim), and its general license for the Pilgrim Independent Spent Fuel Storage Installation, from the currently licensed operator, Entergy Nuclear Operations, Inc. (ENOI), to Holtec Decommissioning International, LLC (HDI). This Order also approves the indirect transfer of control of Entergy Nuclear Generation Company's (ENG) ownership interests in the facility to Holtec International (Holtec). The NRC is also issuing a conforming amendment for the facility operating license for

administrative purposes to reflect the direct transfer of the license from ENOI to HDI and the planned name change for ENG, from ENG to Holtec Pilgrim, LLC (Holtec Pilgrim).

DATES: The Order was issued on August 22, 2019, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC-2018-0279 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2018-0279. Address questions about NRC docket IDs in [Regulations.gov](https://www.regulations.gov) to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The license transfer Order, the NRC safety evaluation supporting the staff's findings, and the conforming license amendment are available in ADAMS Package Accession No. ML19170A147.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

Scott P. Wall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2855, email: Scott.Wall@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 22nd day of August, 2019.

For the Nuclear Regulatory Commission.

Scott P. Wall,

Senior Project Manager, Plant Licensing Branch III, Division of Operator Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—

Order Approving the Direct and Indirect Transfer of Licenses.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-293 and 72-1044; NRC-2018-0279]

In the Matter of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. Pilgrim Nuclear Power Station

ORDER APPROVING DIRECT AND INDIRECT TRANSFER OF LICENSE AND CONFORMING AMENDMENT

I.

Entergy Nuclear Operations, Inc. (ENOI) and Entergy Nuclear Generation Company (ENG) are the holders of Renewed Facility Operating License No. DPR-35, for the Pilgrim Nuclear Power Station (Pilgrim), and the general license for the Pilgrim Independent Spent Fuel Storage Installation (ISFSI). Pilgrim permanently ceased operations on May 31, 2019. Pursuant to Sections 50.82(a)(1)(i) and (a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR), by letter dated June 10, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19161A033), ENOI certified to the U.S. Nuclear Regulatory Commission (NRC) that it had permanently ceased operations at Pilgrim and that all fuel had been permanently removed from the reactor. Therefore, pursuant to 10 CFR 50.82(a)(2), operations at Pilgrim are no longer authorized under the license issued under 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," and ENOI and ENG are licensed to possess, but not use or operate, Pilgrim under Renewed Facility Operating License No. DPR-35, subject to the conditions specified therein. The Pilgrim site is located in the town of Plymouth, Massachusetts, in Plymouth County on Cape Cod Bay.

II.

By letter dated November 16, 2018 (ADAMS Accession No. ML18320A031), and as supplemented by letters dated November 16, 2018, April 17, 2019, and July 29, 2019 (ADAMS Accession Nos. ML18320A040, ML19109A177, and ML19210E470, respectively), ENOI, on behalf of itself and ENG (to be known as Holtec Pilgrim, LLC), Holtec International (Holtec), and Holtec Decommissioning International, LLC (HDI) (together, the Applicants), requested that the NRC consent to the proposed direct and indirect transfer of the Pilgrim Renewed Facility Operating License No. DPR-35 and the general license for the Pilgrim ISFSI (collectively referred to as the facility). Specifically, the Applicants requested

¹ The notice does not include an intent to audit statutory license payments made by Pandora Media, LLC or its predecessor company, Pandora Media, Inc.

that the NRC consent to the direct transfer of ENOI's currently licensed authority (licensed operator for decommissioning) to HDI. In addition, the Applicants requested the indirect transfer of control of ENGCG's ownership interests in the facility licenses to Holtec. The Applicants also requested that the NRC approve a conforming administrative amendment to the facility licenses to reflect the proposed direct transfer of the license from ENOI to HDI, as well as a planned name change from ENGCG to Holtec Pilgrim. The Applicants submitted these direct and indirect transfer requests to the NRC for approval under Section 184, "Inalienability of Licenses," of the Atomic Energy Act of 1954, as amended (AEA); 10 CFR 50.80, "Transfer of Licenses"; 10 CFR 72.50, "Transfer of Licenses"; and 10 CFR 50.90, "Application for Amendment of License, Construction Permit, or Early Site Permit."

ENOI and ENGCG intend to transfer the licensed possession, maintenance, and decommissioning authorities to HDI to implement expedited decommissioning at Pilgrim. Following approval and implementation of the proposed direct transfer of control of the license, HDI would assume licensed responsibility for Pilgrim through the direct transfer of ENOI's responsibility for licensed activities at Pilgrim to HDI. If the proposed indirect transfer of control is approved, ENGCG would change its name to Holtec Pilgrim, LLC (Holtec Pilgrim), but the same legal entity would continue to exist before and after the proposed transfer. Holtec Pilgrim would also enter into an operating agreement with HDI, which provides for HDI to act as Holtec Pilgrim's agent and for HDI to pay Holtec Pilgrim's costs of operation, including all decommissioning costs. Holtec Pilgrim would own the Pilgrim facility as well as its associated assets and real estate, including its nuclear decommissioning trust fund, title to spent nuclear fuel, and rights pursuant to the terms of its Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the U.S. Department of Energy. Upon the proposed license transfer, HDI would assume responsibility for compliance with the current licensing basis, including regulatory commitments that exist at the closing of the transaction between the Applicants, and would implement any changes under applicable regulatory requirements and practices. HDI's licensed activities will involve possessing and disposing of radioactive material, maintaining the facility in a safe condition (including

handling, storing, controlling, and protecting the spent fuel), decommissioning and decontaminating the facility, and maintaining the ISFSI until it can be decommissioned, each in accordance with the license and NRC regulations.

The NRC published the notice of NRC consideration of the license transfer application in the **Federal Register** (FR) on January 31, 2019 (84 FR 816), and included an opportunity to comment, request a hearing, and petition for leave to intervene. On February 20, 2019 (ADAMS Accession No. ML19051A114), the Commonwealth of Massachusetts filed a request for a hearing and petition for leave to intervene, submitting two contentions challenging the proposed license transfer. On February 20, 2019 (ADAMS Accession No. ML19051A019), Pilgrim Watch also filed a request for a hearing and petition for leave to intervene with two contentions challenging the proposed license transfer. On April 24, 2019 (ADAMS Accession No. ML19114A519), the Commonwealth of Massachusetts filed a motion to supplement its motion to intervene and request for hearing with new information. On April 26, 2019 (ADAMS Accession No. ML19116A162) and May 9, 2019 (ADAMS Accession No. ML19129A473), Pilgrim Watch filed motions to supplement its motion to intervene and request for hearing with new information. On July 16, 2019 (ADAMS Accession No. ML19197A330), Pilgrim Watch submitted a motion to file a new contention. On August 1, 2019 (ADAMS Accession No. ML19213A313), the Commonwealth of Massachusetts filed a motion to stay the license transfer proceeding for 90 days to permit the completion of settlement negotiations. These requests are currently pending before the Commission. The NRC also received public comments on this application for license transfer, which are summarized in the safety evaluation for this license transfer request.

The NRC staff notes, in Enclosure 2 of the application dated November 16, 2018, in support of the license transfer request, that the Applicants submitted a request for an exemption to 10 CFR 50.82(a)(8)(i)(A) to allow Holtec Pilgrim and HDI to make withdrawals from the Pilgrim decommissioning trust fund for spent fuel management and site restoration activities. The staff approved the exemption request on August 22, 2019 (ADAMS Accession No. ML19192A083). The NRC is issuing the exemption to Holtec Pilgrim and HDI simultaneously with this Order.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility,

or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Holtec Pilgrim and HDI are qualified to be the holders of the licenses, and that the direct and indirect transfer of the licenses, as described in the application, is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

Upon review of the application for a conforming amendment to the Pilgrim license to reflect the direct and indirect transfer of the Pilgrim licenses, the NRC staff determined the following:

(1) The application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I, "Nuclear Regulatory Commission."

(2) There is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering public health and safety and that such activities will be conducted in compliance with the Commission's regulations.

(3) The issuance of the proposed license amendment will not be inimical to the common defense and security or to public health and safety.

(4) The issuance of the proposed license amendment is in accordance with 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," of the Commission's regulations, and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated August 22, 2019, which is available at ADAMS Accession No. ML19170A250.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 50.90, IT IS HEREBY ORDERED that the application for the direct and indirect transfer of the licenses, as described herein, is

approved for Pilgrim and the ISFSI, subject to the following conditions:

(1) Prior to the closing of the license transfer, Holtec Pilgrim and HDI shall provide the Directors of NRC's Office of Nuclear Material Safety and Safeguards (NMSS) and Office of Nuclear Reactor Regulation (NRR) satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of a licensee under 10 CFR 140.11(a)(4) and 10 CFR 50.54(w) of the Commission's regulations.

(2) The NRC staff's approval of this license transfer is subject to the Commission's authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing on the license transfer application. For example, if the Commission overturns the NRC staff's approval of this license transfer, this Order and any conforming amendments reflecting this transfer, will be rescinded, and the Applicants must return the plant ownership to the status quo ante and revert to the conditions existing before the transfer.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct and indirect license transfer, is approved. The amendment shall be issued and made effective within 30 days of the date when the proposed direct and indirect license transfer action is completed.

IT IS FURTHER ORDERED that Holtec Pilgrim and HDI shall, at least 2 business days prior to closing, inform the Directors of NMSS and NRR in writing of the date of closing of the license transfer for Pilgrim and the ISFSI. Should the transfer of the license not be completed within 1 year of this Order's date of issuance, this Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated November 16, 2018, as supplemented by letters dated November 16, 2018, April 17, and July 29, 2019, and the associated NRC safety evaluation dated August 22, 2019, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/>

reading-rm/adams.html. Persons who encounter problems with ADAMS should contact the NRC's Public Document Room reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this 22nd day of August, 2019.

FOR THE NUCLEAR REGULATORY COMMISSION

Ho K. Nieh,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2019-18506 Filed 8-27-19; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2019-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 26, September 2, 9, 16, 23, 30, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 26, 2019

There are no meetings scheduled for the week of August 26, 2019.

Week of September 2, 2019—Tentative

There are no meetings scheduled for the week of September 2, 2019.

Week of September 9, 2019—Tentative

Monday, September 9, 2019

10:00 a.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852

Tuesday, September 10, 2019

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of September 16, 2019—Tentative

There are no meetings scheduled for the week of September 16, 2019.

Week of September 23, 2019—Tentative

There are no meetings scheduled for the week of September 23, 2019.

Week of September 30, 2019—Tentative

There are no meetings scheduled for the week of September 30, 2019.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Denise McGovern at 301-415-0681 or via email at Denise.McGovern@nrc.gov. The

schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301-287-0739, by videophone at 240-428-3217, or by email at Kimberly.Meyer-Chambers@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301-415-1969), or by email at Wendy.Moore@nrc.gov or Tyesha.Bush@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 26th day of August, 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019-18702 Filed 8-26-19; 4:15 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293; NRC-2019-0152]

Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a November 16, 2018, request from Entergy Nuclear Operations, Inc. (ENOI), on behalf of Entergy Nuclear Generation Company (to be renamed Holtec Pilgrim, LLC) and Holtec Decommissioning International, LLC (HDI). The exemption permits Holtec Pilgrim, LLC and HDI to use funds from the Pilgrim decommissioning trust fund for management of spent fuel and site restoration activities. By Order dated

August 22, 2019, the NRC approved the request for the direct transfer of ENOI's operating authority to HDI and the indirect transfer of control of the Renewed Facility Operating License No. DPR-35 for Pilgrim, as well as the general license for the Pilgrim Independent Spent Fuel Storage Installation, to Holtec International. This exemption is being issued simultaneously with the license transfer Order and will be effective upon the NRC's issuance of a conforming license amendment reflecting Holtec Pilgrim, LLC and HDI as the licensees for Pilgrim, following consummation of the license transfer transaction.

DATES: The exemption was issued on August 22, 2019.

ADDRESSES: Please refer to Docket ID NRC-2019-0152 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0152. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Scott P. Wall, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2855; email: Scott.Wall@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated at Rockville, Maryland, this 22nd day of August, 2019.

For the Nuclear Regulatory Commission.

Scott P. Wall,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 50-293

Holtec Decommissioning International, LLC

Pilgrim Nuclear Power Station

Exemption

I. Background

By letter dated November 10, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15328A053), Entergy Nuclear Operations, Inc. (ENOI), submitted a notification to the U.S. Nuclear Regulatory Commission (NRC) indicating that it would permanently shut down Pilgrim Nuclear Power Station (Pilgrim) no later than June 1, 2019. By letter dated June 10, 2019 (ADAMS Accession No. ML19161A033), ENOI submitted to the NRC a certification in accordance with § 50.82(a)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR), stating that Pilgrim permanently ceased power operations on May 31, 2019, and that as of June 9, 2019, all fuel had been permanently removed from the Pilgrim reactor vessel and placed in the spent fuel pool. Accordingly, pursuant to 10 CFR 50.82(a)(2), the Pilgrim renewed facility operating license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. By letter dated November 16, 2018 (ADAMS Accession No. ML18320A036), ENOI submitted the updated Pilgrim spent fuel management plan (SFMP) pursuant to 10 CFR 50.54(bb) and preliminary decommissioning cost estimate (DCE). By letter dated November 16, 2018 (ADAMS Accession No. ML18320A034), as supplemented by letter dated January 9, 2019 (ADAMS Accession No. ML19015A020) and letter dated July 29, 2019 (ADAMS Accession No. ML19210E470), ENOI submitted a post-shutdown decommissioning activities report (PSDAR) and the site-specific DCE for Pilgrim.

By letter dated November 16, 2018 (ADAMS Accession No. ML18320A031), ENOI, on behalf of itself and Entergy Nuclear Generation Company (ENGCO) (to be known as Holtec Pilgrim, LLC (Holtec Pilgrim)), Holtec International (Holtec), and Holtec Decommissioning International (HDI) submitted a license transfer application (LTA) requesting that the NRC consent to the direct transfer of ENOI's operating authority to HDI and the indirect transfer of control of the Pilgrim Renewed Facility Operating License and the General License for the Pilgrim Independent Spent Fuel Storage Installation (ISFSI) to Holtec. By letter dated November 16, 2018 (ADAMS Accession No. ML18320A040), HDI submitted a "Notification of Revised Post-Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost

Estimate for Pilgrim Nuclear Power Station" (revised PSDAR), to notify the NRC of changes to accelerate the schedule for the prompt decommissioning (*i.e.*, the DECON method for decommissioning) of Pilgrim and unrestricted release of all portions of the site (excluding the ISFSI) within 8 years after the license transfer.

Under the proposed transfers, Holtec Pilgrim will own the Pilgrim nuclear facility and will have responsibility for Pilgrim as its licensed owner. Holtec Pilgrim will enter into an agreement for decommissioning services with HDI, with HDI acting as Holtec Pilgrim's agent and with Holtec Pilgrim paying for all HDI expenses related to decommissioning, spent fuel management, and site restoration. Accordingly, HDI will become the licensed operator for decommissioning.

II. Request/Action

The requested exemption from 10 CFR 50.82(a)(8)(i)(A) would permit Holtec Pilgrim and HDI to use funds from the Pilgrim Decommissioning Trust Fund (DTF) for spent fuel management and site restoration activities in accordance with HDI's site-specific DCE for Pilgrim. HDI submitted a revised site-specific DCE for Pilgrim by letter dated November 16, 2018, as part of the revised PSDAR. A similar exemption request from Entergy was approved by the NRC for Pilgrim by letter dated July 22, 2019 (ADAMS Accession No. ML19162A334).

The 10 CFR 50.82(a)(8)(i)(A) requirement restricts the use of DTF withdrawals to expenses for legitimate decommissioning activities consistent with the definition of decommissioning that appears in 10 CFR 50.2. The definition of "decommission" in 10 CFR 50.2 reads as follows:

To remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

- (1) Release of the property for unrestricted use and termination of the license; or
- (2) Release of the property under restricted conditions and termination of the license.

This definition does not include activities associated with spent fuel management or site restoration activities. Therefore, an exemption from 10 CFR 50.82(a)(8)(i)(A) is needed to allow Holtec Pilgrim and HDI to use funds from the DTF for spent fuel management and site restoration activities.

Similar to 10 CFR 50.82(a)(8)(i)(A), provisions of 10 CFR 50.75(h)(1)(iv) and (h)(2) dictate that with certain exceptions, disbursements from nuclear decommissioning trusts "are restricted to decommissioning expenses." However, in accordance with 10 CFR 50.75(h)(5), these provisions do not apply to "any licensee that as of December 24, 2003, has existing license conditions relating to decommissioning trust agreements, so long as the licensee does not elect to amend those license conditions." The operating license for Pilgrim included "existing license conditions relating to decommissioning trust agreements" on December 24, 2003, and as such, Pilgrim is exempt from the provisions of sections (h)(1) through (h)(3) of 10 CFR 50.75, pursuant to the terms of 10 CFR 50.75(h)(5).

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50(1) when the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things:

(a) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; and

(b) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

A. Authorized by Law

The requested exemption from 10 CFR 50.82(a)(8)(i)(A) would allow Holtec Pilgrim and HDI to use a portion of the funds from the DTF for spent fuel management and site restoration activities at Pilgrim in the same manner that withdrawals are made under 10 CFR 50.82(a)(8) for radiological decommissioning activities. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law. The NRC staff has determined, as explained further below, that there is reasonable assurance of adequate funding for radiological decommissioning because the Applicants' use of the DTF for activities associated with spent fuel management and site restoration will not negatively impact the availability of funding for radiological decommissioning. Accordingly, the exemption is authorized by law because granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations.

B. No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) is to provide reasonable assurance that adequate funds will be available for the radiological decommissioning of power reactors and license termination. As explained in further detail in Section D below, based on NRC staff's review of HDI's revised site-specific DCE and the staff's independent cash flow analysis contained in Attachment 1 to the NRC staff's safety evaluation for the associated LTA (ADAMS Accession No. ML19170A250), the NRC staff finds that the use of the Pilgrim DTF for spent fuel management and site restoration activities at Pilgrim will not adversely impact Holtec Pilgrim and HDI's ability to terminate the Pilgrim license (*i.e.*, complete radiological decommissioning) as planned, consistent with the schedule and costs contained in the revised PSDAR.

Furthermore, withdrawals from the DTF for spent fuel management and site

restoration are still constrained by the provisions of 10 CFR 50.82(a)(8)(i)(B)–(C) and are reviewable under the annual reporting requirements of 10 CFR 50.82(a)(8)(v)–(vii).

There are no new accident precursors created by using the DTF in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, the requested exemption will not present an undue risk to the public health and safety.

C. Consistent With the Common Defense and Security

The requested exemption would allow Holtec Pilgrim and HDI to use funds from the Pilgrim DTF for spent fuel management and site restoration activities at Pilgrim. Spent fuel management under 10 CFR 50.54(bb) is an integral part of the planned decommissioning and license termination process and will not adversely affect Holtec Pilgrim and HDI's ability to physically secure the site or protect special nuclear material. This change to enable the use of a portion of the funds from the DTF for spent fuel management and site restoration activities has no relation to security issues. Therefore, the common defense and security is not impacted by the requested exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the regulation.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A), which restricts withdrawals from DTFs to expenses for radiological decommissioning activities, is to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors and license termination. Strict application of this requirement would prohibit the withdrawal of funds from the Pilgrim DTF for spent fuel management and site restoration activities, until final radiological decommissioning at Pilgrim has been completed.

ENOI's March 28, 2019, annual report (ADAMS Accession No. ML19087A318) on the status of decommissioning funding for Pilgrim reports a DTF balance of approximately \$1.028 billion as of December 31, 2018, and approximately \$1.043 billion as of February 28, 2019. The cash flow analysis in Table 1 of the November 16, 2018, application is based on a beginning DTF balance of \$1.030 billion (following closure of the equity sale in 2019).¹ HDI states that this beginning DTF balance reflects the fund value post-closure of the asset sale. Furthermore, the application states that the 2019 costs include estimated pre-closure and post-closure costs. In the NRC staff's analysis provided in its safety evaluation for the LTA,

¹ The terms of the Equity Purchase and Sales Agreement describes the after-tax market value of the DTF must be no less than \$1.030 billion at time of transaction closing.

the staff used the opening DTF balance of \$1.030 billion as the money available to cover radiological decommissioning, spent fuel management, and site restoration costs.

The analysis in the November 16, 2018 revised PSDAR, projects the total radiological decommissioning cost of Pilgrim to be approximately \$593 million in 2018 dollars which is lower than the 10 CFR 50.75(c) minimum formula amount of approximately \$633 million. The revised PSDAR estimated decommissioning costs are consistent with the estimated costs for radiological decommissioning, including ISFSI decommissioning costs, provided in the November 16, 2018 request for exemptions. However, the LTA and the exemption request did not provide any explanation for the difference in funding levels for radiological decommissioning costs between the site-specific DCE and the 10 CFR 50.75(c) minimum formula amount. Therefore, the staff sought supplemental information from the Applicants in a request for additional information (RAI) dated July 26, 2019, (ADAMS Accession No. ML19207B366). The RAI requested, among other things, that the Applicants provide justification for using a radiological decommissioning cost estimate value that is less than the 10 CFR 50.75(c) minimum formula amount.

On July 29, 2019 (ADAMS Accession No. ML19210E470), HDI provided its justification, stating that the HDI site-specific DCE is a more reliable and precise estimate of decommissioning cost because it is based on Pilgrim-specific plant data and historical information, actual site conditions, regulatory requirements applicable to Pilgrim, and actual pricing information, as compared to the 10 CFR 50.75(c) minimum formula amount, which is based on generic inputs. Additionally, in both the November 16, 2018 application and the July 29, 2019 supplement, HDI states that its site-specific DCE was reviewed against the estimates of costs associated with license termination (radiological decommissioning) in NUREG/CR-6174, "Revised Analyses of Decommissioning for the Reference Boiling Water Reactor Power Station" (ADAMS Accession No. ML14008A186), benchmarked against nine comparable decommissioning projects, and compared with costs from similar activities at seven boiling water reactors. Accordingly, as part of its review, the NRC staff compared the Pilgrim site-specific radiological decommissioning costs with the estimated activities of the four periods associated with the DECON decommissioning method as outlined in NUREG/CR-6174:

(1) Pre-shutdown planning/engineering and regulatory reviews,

(2) Plant deactivation and preparation for storage,

(3) A period of plant safe storage with concurrent operations in the spent fuel pool until the pool inventory is zero, and

(4) Decontamination and dismantlement of the radioactive portions of the plant, leading to license termination.

The NRC staff also compared the Pilgrim site-specific estimated radiological decommissioning costs of approximately \$593 million with the site-specific costs of similar decommissioning projects.

Based on the review of the Pilgrim site-specific radiological decommissioning costs of approximately \$593 million, as compared to NUREG/CR-6174, the staff concludes that HDI's method for developing the Pilgrim site-specific radiological decommissioning cost estimate is reasonable. Further, when compared to radiological decommissioning costs associated with similar decommissioning projects, the staff finds that the HDI's Pilgrim site-specific radiological decommissioning costs of approximately \$593 million is reasonable.

As such, the staff used the value of approximately \$593 million for radiological decommissioning costs when it conducted its independent cash flow analysis. As allowed by 10 CFR 50.75(e)(1)(ii), the staff began its cost analysis using a 2% real rate of return on annual balances. In its application dated November 16, 2018, HDI states they also used a 2% real rate of return. However, in Table 1 of the November 16, 2018, application, HDI noted that the Year Ending DTF Balance is after-taxes. Therefore, in its cost analysis, the staff found that Table 1 reflects an actual annual real rate of return of 1.42%. The staff notes that this is conservative to the 2% annual real rate of return allowed by 10 CFR 50.75(e)(1)(ii). To be consistent in validating HDI's site-specific DCE, the staff used the more conservative 1.42% annual real rate of return. The staff's independent cash flow analysis is contained in Attachment 1 to the NRC staff's safety evaluation for the associated LTA.

As noted above, HDI's site-specific DCE relies on estimated radiological decommissioning costs of approximately \$593 million, which is lower than the 10 CFR 50.75(c) minimum formula amount of approximately \$633 million. In its RAI dated July 26, 2019, the staff requested a justification for this lower amount and, in case the Applicants' failed to provide sufficient justification, the staff also requested that the Applicants provide a revised decommissioning cash flow analysis using the higher minimum formula amount of \$633,267,558. In Attachment 1 of the July 29, 2019, supplement, HDI provided the requested revised cash flow analysis. Although the staff completed a separate, independent cash flow analysis to validate this revised cash flow analysis, ultimately, as noted above, the staff determined that HDI's site-specific DCE, which uses \$592,553,000 for the estimated site-specific radiological decommissioning costs for Pilgrim, is reasonable and sufficiently justified.

Based on its evaluation above and the cash flow analysis contained in Attachment 1 to the NRC staff's safety evaluation for the associated LTA, the staff finds that the funds in the DTF are expected to be available and sufficient to cover the estimated costs of approximately \$593 million for the radiological decommissioning of the facility (including the ISFSI). Therefore, the NRC staff finds that HDI has provided reasonable assurance that adequate funds will be available for the radiological decommissioning of Pilgrim, even with the disbursement of funds from the DTF for spent fuel management and site restoration activities. Consequently, the NRC staff

concludes that application of the 10 CFR 50.82(a)(8)(i)(A) requirement that funds from the DTF only be used for radiological decommissioning activities and not for spent fuel management and site restoration activities is not necessary to achieve the underlying purpose of the rule; thus, special circumstances are present supporting approval of the exemption request.

By granting the exemption to 10 CFR 50.82(a)(8)(i)(A), withdrawals from the DTF for spent fuel management and site restoration activities, consistent with the licensee's submittal dated November 16, 2018, are authorized. As stated previously, the NRC staff has determined that there are sufficient funds in the DTF to complete radiological decommissioning activities as well as to conduct spent fuel management and site restoration activities consistent with the revised PSDAR, DCE, SFMP, and the November 16, 2018, exemption request. Pursuant to the requirements in 10 CFR 50.82(a)(8)(v) and (vii), licensees are required to monitor and annually report to the NRC the status of the DTF and the licensee's funding for managing spent fuel. These reports provide the NRC staff with awareness of, and the ability to take action on, any actual or potential funding deficiencies. Additionally, 10 CFR 50.82(a)(8)(vi) requires that the annual financial assurance status report must include additional financial assurance to cover the estimated cost of completion if the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2% real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning. The requested exemption would not allow the withdrawal of funds from the DTF for any other purpose that is not currently authorized in the regulations without prior approval from the NRC.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii), are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. HDI states that the DTF contains funds in excess of the estimated costs of radiological decommissioning and that these excess funds are needed for spent fuel management and site restoration activities. The NRC does not preclude the use of funds from the decommissioning trust in excess of those needed for radiological decommissioning for other purposes, such as spent fuel management or site restoration activities (see NRC Regulatory Issue Summary 2001-07, Rev. 1, "10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning," dated January 8, 2009 (ADAMS Accession No. ML083440158), and Regulatory Guide 1.184, Revision 1, "Decommissioning of Nuclear Power Reactors," dated October 2013 (ADAMS Accession No. ML13144A840)). Preventing access to those excess funds in the DTF because spent fuel management and site restoration activities are not associated with radiological decommissioning would

create an unnecessary financial burden without any corresponding safety benefit. The adequacy of the DTF to cover the cost of activities associated with spent fuel management and site restoration, in addition to radiological decommissioning, is supported by the site-specific DCE. If the licensee cannot use its DTF for spent fuel management and site restoration activities, it would need to obtain additional funding that would not be recoverable from the DTF, or the licensee would have to modify its decommissioning approach and methods. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when 10 CFR 50.82(a)(8)(i)(A) was adopted.

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) would be achieved by allowing Holtec Pilgrim and HDI to use a portion of the Pilgrim DTF for spent fuel management and site restoration activities, and compliance with the regulation would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulations were adopted. Thus, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist and support the approval of the requested exemption.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of the exemption will not have a significant effect on the quality of the human environment (see Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** on August 20, 2019 (84 FR 43186)).

IV. Conclusions

In consideration of the above, the NRC staff finds that the proposed exemption confirms the adequacy of funding in the Pilgrim DTF to complete radiological decommissioning of the site and to terminate the license and also to cover estimated spent fuel management and site restoration activities. The NRC staff also finds that there is reasonable assurance that adequate funds are available in the DTF to complete all activities associated with radiological decommissioning.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Holtec Pilgrim and HDI an exemption from 10 CFR 50.82(a)(8)(i)(A) to allow them to use of a portion of the funds from the Pilgrim DTF for spent fuel management and site restoration activities consistent with the revised PSDAR and site-specific DCE dated November 16, 2018.

These exemptions are effective upon the NRC's issuance of a conforming license amendment reflecting HDI and Holtec Pilgrim as the licensees for Pilgrim, following NRC approval of the license transfer application and the Applicants' completion of the transaction.

Dated at Rockville, Maryland, this 22nd day of August, 2019.

For the Nuclear Regulatory Commission.
/RA/

Gregory F. Suber,
Deputy Director, Division of Operating
Reactor Licensing, Office of Nuclear Reactor
Regulation.

[FR Doc. 2019-18490 Filed 8-27-19; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86728; File No. SR-ICC-
2019-009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to ICC's Treasury Operations Policies and Procedures

August 22, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 8, 2019, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. ICC filed the proposed rule change pursuant Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to revise the ICC Treasury Operations Policies and Procedures ("Treasury Policy"). These revisions do not require any changes to the ICC Clearing Rules ("Rules").

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes to revise its Treasury Policy. Specifically, ICC proposes minor changes to the Treasury Policy to more generally refer to a data provider for the purposes of collateral valuation and to promote uniform investment guidelines that are applicable to Euro-denominated cash posted by Clearing Participants ("CPs") for their margin requirements related to client positions ("customer origin cash") and Euro-denominated Guaranty Fund and margin cash posted by CPs ("house origin cash"). ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed changes are described in detail as follows.

ICC proposes to more generally refer to a data provider for the purposes of collateral valuation in the 'Collateral Valuation' sub-section. Currently, the Treasury Policy references, by name, a data provider that ICC uses as a source for collateral valuation information. ICC proposes to remove references to the specific data provider and to more generally require ICC to use a reliable data provider as a source for collateral valuation information. ICC does not intend that the Treasury Policy list ICC service providers or control the onboarding or review of such data provider. Service providers are subject to contractual arrangements entered into by authorized ICC officers and, if deemed a critical vendor under the Operational Risk Management Framework, governed by the Operational Risk Management

Framework that describes their review and approval.⁵

ICC proposes updates to the Euro investment guidelines appendix, which is applicable to Euro-denominated customer origin and house origin cash. The current Euro investment guidelines allow direct investments in French and German sovereign debt securities having a final maturity of no greater than 198 days but require that all such investments with customer origin cash comply with any applicable conditions and restrictions in Commodity Futures Trading Commission ("CFTC") Regulation 1.25,⁶ including any applicable exemptive orders. As such, direct investments with customer origin cash are limited to French and German sovereign debt securities having a final maturity of no greater than 180 days in accordance with the exemptive order that was issued by the CFTC (the "Order").⁷ ICC proposes to update the Euro investment guidelines to restrict direct investments with both customer origin and house origin cash to French and German sovereign debt securities having a final maturity of no greater than 180 days in order to promote uniform Euro investment guidelines that are applicable to customer origin and house origin cash.

ICC has filed the proposed rule change for immediate effectiveness and proposes that it will be operative on or about, but no sooner than, September 10, 2019.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁸ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F),⁹ because ICC believes that the proposed rule change will promote the prompt

⁵ See SR-ICC-2018-003 for more information regarding the review and approval of critical vendors under the ICC Operational Risk Management Framework.

⁶ 17 CFR 1.25.

⁷ 83 FR 35241 (July 25, 2018).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

Training and Experience Subcommittee. This report will include the subcommittee's comments and recommendations on its review of the NRC staff's evaluation of the training and experience requirements for radiopharmaceuticals under title 10 Code of Federal Regulations (10 CFR) 35.300, "Use of unsealed byproduct material for which a written directive is required." Meeting information, including a copy of the agenda and handouts, will be available at <https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2019.html> on or about October 2, 2019. The agenda and handouts may also be obtained by contacting Ms. Kellee Jamerson using the information below.

DATES: The teleconference meeting will be held on Thursday, October 17, 2019, 2:00 p.m. to 4:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to participate in the teleconference

meeting should contact Ms. Jamerson using the contact information below: Kellee Jamerson, email: Kellee.Jamerson@nrc.gov, telephone: (301) 415-7408.

SUPPLEMENTARY INFORMATION:

Conduct of the Meeting

Dr. Darlene Metter, ACMUI Chairman, will preside over the meeting. Dr. Metter will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Jamerson at the contact information listed above. All submittals must be received by October 11, 2019, three business days prior to the October 17, 2019, meeting and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted

during the meeting at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's website <https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2019.html> on or about December 2, 2019.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in 10 CFR part 7.

Dated: September 19, 2019.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

Subject: **Federal Register** Notice: Advisory Committee on the Medical Uses of Isotopes Meeting Notice. Dated September 19, 2019.

ADAMS ML19261C009

OFC	MSST/MSEB	MSST/MSEB	MSST/MSEB	SECY
NAME	KJamerson	LDimmick *	CEinberg *	RChazell.
DATE	9/18/2019	9/18/2019	9/18/2019	9/ /2019.

*via email.

Official Record Copy

[FR Doc. 2019-20612 Filed 9-23-19; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2019-0187]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant

hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from August 27, 2019 to September 9, 2019. The last biweekly notice was published on September 10, 2019.

DATES: Comments must be filed by October 24, 2019. A request for a hearing must be filed by November 25, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0187. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments,

see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5411, email: Shirley.Rohrer@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2019-0187, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0187.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/>

Add-076

adams.html. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR*: You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2019-0187, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the

action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity

to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within

its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be

submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper

filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include

copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

*Exelon Generation Company, LLC,
Docket Nos. 50-352 and 50-353,
Limerick Generating Station (Limerick),
Units 1 and 2, Montgomery County,
Pennsylvania*

Date of amendment request: August 1, 2019. A publicly-available version is in ADAMS under Accession No. ML19213A246.

Description of amendment request: The amendments would relocate the following operability and surveillance requirements from the Limerick Technical Specifications (TSs) to the Limerick Technical Requirements Manual: TS Section 3.3.7.8.1, "Chlorine Detection System," and TS Section 3.3.7.8.2, "Toxic Gas Detection System."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not alter the physical design of any plant structure, system, or component; therefore, the proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. Operation or failure of the Chlorine Detection System and the Toxic Gas Detection System are not assumed to be initiators of any analyzed event in the Updated Final Safety Analysis Report (UFSAR) and cannot cause an accident. Whether the requirements for the Chlorine Detection System and the Toxic Gas Detection System are in TS or another licensee-controlled document has no effect on the probability or consequences of any accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter the plant configuration (no new or different type of equipment is being installed) or require any new or unusual operator actions. The proposed changes do not alter the safety limits or safety analysis assumptions associated with the operation of the plant. The proposed changes do not introduce any new failure modes that could result in a new accident. The proposed changes do not reduce or adversely affect the capabilities of any plant structure, system, or component in the performance of their safety function. Also, the response of the plant and the operators following the design basis accidents is unaffected by the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC,
Docket Nos. STN 50–456 and STN 50–
457, Braidwood Station, Units 1 and 2,
Will County, Illinois

Exelon Generation Company, LLC,
Docket Nos. STN 50–454 and STN 50–
455, Byron Station, Unit Nos. 1 and 2,
Ogle County, Illinois

Exelon Generation Company, LLC,
Docket No. 50–461, Clinton Power
Station, Unit No. 1, DeWitt County,
Illinois

Exelon Generation Company, LLC,
Docket Nos. 50–010, 50–237, and 50–
249, Dresden Nuclear Power Station,
Units 1, 2, and 3, Grundy County,
Illinois

Exelon Generation Company, LLC,
Docket Nos. 50–373 and 50–374, LaSalle
County Station, Units 1 and 2, LaSalle
County, Illinois

Exelon Generation Company, LLC,
Docket Nos. 50–254 and 50–265, Quad
Cities Nuclear Power Station, Units 1
and 2, Rock Island County, Illinois

Date of amendment request: August
23, 2019. A publicly-available version is
in ADAMS under Accession No.
ML19239A006.

Description of amendment request:
The amendments would revise the
emergency plans for each of these
facilities by removing specific
references to radiation monitoring
instrumentation in emergency action
level (EAL) RA3.

Basis for proposed no significant
hazards consideration determination:
As required by 10 CFR 50.91(a), the
licensee has provided its analysis of the
issue of no significant hazards
consideration for each site, which is
presented below:

1. Does the proposed amendment involve
a significant increase in the probability or
consequences of an accident previously
evaluated?

Response: No.

The proposed change to EAL RA3.1 for the
Exelon facilities noted meets the guidance
established in NEI 99–01, Revision 6, as
endorsed by the NRC and does not reduce the
capability to meet the emergency planning
requirements established in 10 CFR 50.47
and 10 CFR 50, Appendix E. The proposed
change does not reduce the functionality,
performance, or capability of Exelon's ERO
[emergency response organization] to
respond in mitigating the consequences of
any design basis accident.

The probability of a reactor accident
requiring implementation of Emergency Plan
EALs has no relevance in determining
whether the proposed change to EAL RA3.1
will reduce the effectiveness of the
Emergency Plans. As discussed in Section D,
“Planning Basis,” of NUREG–0654, Revision
1, “Criteria for Preparation and Evaluation of

Radiological Emergency Response Plans and
Preparedness in Support of Nuclear Power
Plants”:

“ . . . The overall objective of emergency
response plans is to provide dose savings
(and in some cases immediate life saving) for
a spectrum of accidents that could produce
offsite doses in excess of Protective Action
Guides (PAGs). No single specific accident
sequence should be isolated as the one for
which to plan because each accident could
have different consequences, both in nature
and degree. Further, the range of possible
selection for a planning basis is very large,
starting with a zero point of requiring no
planning at all because significant offsite
radiological accident consequences are
unlikely to occur, to planning for the worst
possible accident, regardless of its extremely
low likelihood. . . . ”

Therefore, Exelon did not consider the risk
insights regarding any specific accident
initiation or progression in evaluating the
proposed change involving EAL RA3.

The proposed change to EAL RA3.1 does
not involve any physical changes to plant
equipment or systems, nor does the proposed
change alter the assumptions of any accident
analyses. The proposed change does not
adversely affect accident initiators or
precursors nor does the proposed change
alter the design assumptions, conditions, and
configuration or the manner in which the
plants are operated and maintained. The
proposed change does not adversely affect
the ability of Structures, Systems, or
Components (SSCs) to perform their intended
safety functions in mitigating the
consequences of an initiating event within
the assumed acceptance limits.

Therefore, the proposed change to EAL
RA3.1 for the affected sites does not involve
a significant increase in the probability or
consequences of an accident previously
evaluated.

2. Does the proposed amendment create
the possibility of a new or different kind of
accident from any accident previously
evaluated?

Response: No.

The proposed change to EAL RA3.1 for the
Exelon facilities noted meets the guidance
established in NEI 99–01, Revision 6, as
endorsed by the NRC and does not involve
any physical changes to plant systems or
equipment. The proposed change does not
involve the addition of any new plant
equipment. The proposed change will not
alter the design configuration, or method of
operation of plant equipment beyond its
normal functional capabilities. Exelon ERO
functions will continue to be performed as
required. The proposed change does not
create any new credible failure mechanisms,
malfunctions, or accident initiators.

Therefore, the proposed change to EAL
RA3.1 for the affected sites does not create
the possibility of a new or different kind of
accident from those that have been
previously evaluated.

3. Does the proposed amendment involve
a significant reduction in a margin of safety?

Response: No.

The proposed change to EAL RA3.1 for the
Exelon facilities noted meets the guidance
established in the guidance in NEI 99–01,

Revision 6, as endorsed by the NRC and does
not alter or exceed a design basis or safety
limit. There is no change being made to
safety analysis assumptions, safety limits, or
limiting safety system settings that would
adversely affect plant safety as a result of the
proposed change. There are no changes to
setpoints or environmental conditions of any
SSC or the manner in which any SSC is
operated. Margins of safety are unaffected by
the proposed change to EAL RA3. The
applicable requirements of 10 CFR 50.47 and
10 CFR 50, Appendix E will continue to be
met.

Therefore, the proposed change to EAL
RA3.1 for the affected sites does not involve
any reduction in a margin of safety.

The NRC staff has reviewed the
licensee's analysis for each site and,
based on this review, it appears that the
three standards of 10 CFR 50.92(c) are
satisfied. Therefore, the NRC staff
proposes to determine that the
requested amendments involve no
significant hazards consideration.

Attorney for licensee: Tamra Domeyer,
Associate General Counsel, Exelon
Generation Company, LLC, 4300
Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Lisa M.
Regner.

Southern Nuclear Operating Company,
Docket No. 52–026, Vogtle Electric
Generating Plant (VEGP), Unit 4, Burke
County, Georgia

Date of amendment request: August
22, 2019. A publicly-available version is
in ADAMS under Accession No.
ML19234A327.

Description of amendment request:
The amendment proposes to depart
from AP1000 Design Control Document
Tier 2* material that has been
incorporated into the Updated Final
Safety Analysis Report (UFSAR). The
proposed departure consists of changes
to Tier 2* information in the UFSAR to
change the provided area of horizontal
reinforcement for VEGP Unit 4 Wall L
and Wall 7.3 from elevation 117'-6" to
135'-3".

Basis for proposed no significant
hazards consideration determination:
As required by 10 CFR 50.91(a), the
licensee has provided its analysis of the
issue of no significant hazards
consideration, which is presented
below:

1. Does the proposed amendment involve
a significant increase in the probability or
consequences of an accident previously
evaluated?

Response: No.

As described in UFSAR Subsections
3H.5.1.2 and 3H.5.1.3, interior Wall 7.3 and
Wall L are located in the auxiliary building.

UFSAR, Section 3H.5 classifies Interior
Wall on Column Line 7.3, from elevation (EL)
66'-6" to 160'-6" as a “Critical Section.”
UFSAR, Section 3H.5 classifies Interior Wall

on Column Line L, from EL 117'-6" to 153'-0" as a Critical Section." Deviations were identified in the constructed walls from the design requirements. The proposed changes modify the provided area of steel horizontal reinforcement for VEGP Unit 4 Wall L and Wall 7.3 from elevation 117'-6" to 135'-3". These changes maintain conformance to American Concrete Institute (ACI) 349-01 and have no adverse impact on the seismic response of Wall L and Wall 7.3. Wall L and Wall 7.3 continue to withstand the design basis loads without loss of structural integrity or the safety-related functions. The proposed changes do not affect the operation of any system or equipment that initiates an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events.

This change does not adversely affect the design function of VEGP Unit 4 Wall L and Wall 7.3, or the SSCs contained within the auxiliary building. This change does not involve any accident initiating components or events, thus leaving the probabilities of an accident unaltered.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change modifies the provided area of steel horizontal reinforcement for VEGP Unit 4 Wall L and Wall 7.3 from elevation 117'-6" to 135'-3". As demonstrated by the continued conformance to the applicable codes and standards governing the design of the structures, the walls withstand the same effects as previously evaluated. The proposed change does not affect the operation of any systems or equipment that may initiate a new or different kind of accident or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed change does not adversely affect the design function of auxiliary building Wall L and Wall 7.3, or any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. This change does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change modifies the provided area of steel horizontal reinforcement for VEGP Unit 4 Wall L and Wall 7.3 from elevation 117'-6" to 135'-3". This change maintains conformance to ACI 349-01. The changes to Wall L and Wall 7.3 horizontal reinforcement from elevation 117'-6" to 135'-3" do not change the performance

of the affected portion of the auxiliary building for postulated loads. The criteria and requirements of ACI 349-01 provide a margin of safety to structural failure. The design of the auxiliary building structure conforms to criteria and requirements in ACI 349-01 and therefore, maintains the margin of safety. The change does not alter any design function, design analysis, or safety analysis input or result, and sufficient margin exists to justify departure from the Tier 2* requirements for the walls. As such, because the system continues to respond to design basis accidents in the same manner as before without any changes to the expected response of the structure, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes. Accordingly, no significant safety margin is reduced by the change.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203-2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52-025 and 52-026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: July 26, 2019. A publicly-available version is in ADAMS under Accession No. ML19207A727.

Description of amendment request: The amendment request proposes changes to the Combined License (COL) Numbers NPF-91 and NPF-92 for VEGP, Units 3 and 4, and Updated Final Safety Analysis Report (UFSAR). Specifically, the requested amendment would eliminate COL condition 2.D.(2)(a)1 which describes a first plant Pressurizer Surge Line Stratification Evaluation and make related revisions to the UFSAR Tier 2 information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not affect the operation of any systems or equipment that

initiates an analyzed accident or alter any structures, systems, or components [SSC] accident initiator or initiating sequence of events. The proposed changes remove the requirement to perform the Pressurizer Surge Line Stratification Evaluation first plant tests based on a number of factors that render the testing unnecessary. The changes do not adversely affect any methodology which would increase the probability or consequences of a previously evaluated accident.

The change does not impact the support, design, or operation of mechanical or fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the proposed change create any new accident precursors.

The proposed changes do not involve a change to any mitigation sequence or the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove the requirement to perform the Pressurizer Surge Line Stratification Evaluation first plant tests based on a number of factors that render the testing unnecessary. The proposed changes do not adversely affect any design function of any SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. This proposed change does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

These proposed changes do not adversely affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. Therefore, this proposed change does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change maintains existing safety margin and provides adequate protection through continued application of the existing design requirements in the

UFSAR. The proposed change satisfies the same design functions in accordance with the same codes and standards as stated in the UFSAR. This change does not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by this change, and no significant margin of safety is reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203-2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has

made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment requests: May 2, 2017, as supplemented by letters dated July 20 and November 21, 2017; December 3, 2018; and March 7, April 8, July 10, and August 1, 2019.

Brief description of amendments: The amendments modified Catawba's Technical Specifications (TSs) to extend the Completion Time (CT) of TS 3.8.1, "AC Sources—Operating," Required Action B.6 (existing Required Action B.4, numbered as B.6) for an inoperable emergency diesel generator (EDG) from 72 hours to 14 days. To support this request, the licensee will add a supplemental power source (*i.e.*, two supplemental diesel generators (SDGs) per station) with the capability to power any emergency bus.

The SDGs will have the capacity to bring the affected unit to cold shutdown. Additionally, the amendments would modify TS 3.8.1 to add new two limiting conditions for operation (LCOs), TS LCO 3.8.1.c and TS LCO 3.8.1.d, to ensure that at least one train of shared components has an operable emergency power supply. Corresponding Conditions, Required Actions and CTs of TS 3.8.1 are revised to account for the new supplemental AC power source.

Date of issuance: August 27, 2019.

Effective date: These license amendments are effective as of its date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 304 (Unit 1) and 300 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19212A655; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Renewed Licenses and TSs.

Date of initial notice in Federal Register: February 27, 2018 (83 FR 8512). The supplemental letters dated July 20 and November 21, 2017;

December 3, 2018; and March 7, April 8, July 10, and August 1, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2019.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 11, 2017, as supplemented by letter dated June 6, 2019.

Brief description of amendment: The amendment revised Technical Specification (TS) Limiting Condition for Operation 3.7.13, "Spent Fuel Pit Storage," and TS 4.0, "Design Features," Section 4.3, "Fuel Storage." The amendment resolves a non-conservative TS associated with TS Limiting Condition for Operation 3.7.13 and negates the need for the associated compensatory measures, while taking no credit for installed Boraflex panels.

Date of issuance: September 4, 2019.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 290. A publicly-available version is in ADAMS under Accession No. ML19209C966; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR-26: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in Federal Register: March 13, 2018 (83 FR 10916). The supplemental letter dated June 6, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (Peach Bottom), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: September 28, 2018, as supplemented by letters dated February 15, 2019; March 26, 2019; and May 23, 2019.

Brief description of amendments: The amendments revised the design and licensing basis described in the Peach Bottom Updated Final Safety Analysis Report to reduce the design pressure rating of the high-pressure service water (HPSW) system. This change provides additional corrosion margin in the HPSW system pipe wall thickness, thereby increasing the margin of safety for the existing piping. In addition, this change also temporarily revises certain Technical Specifications (TSs) to allow sufficient time to perform modifications of the HPSW system to support the proposed reduction of the HPSW design pressure and to allow for timely repairs of a heat exchanger on Peach Bottom, Unit 3.

Date of issuance: August 28, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendments Nos.: 327 (Unit 2) and 330 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19182A006; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The

amendments revised TSs 3.6.2.3, 3.6.2.4, 3.6.2.5, and 3.7.1.

Date of initial notice in: November 6, 2018 (83 FR 55566).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC and Exelon FitzPatrick, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (JAF), Oswego County, New York

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LCS), Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station (NMP), Unit 2, Oswego County, New York

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: February 1, 2019, as supplemented by letter dated March 7, 2019.

Brief description of amendments: The amendments revise the Technical Specification (TS) requirements for these facilities related to the safety limit minimum critical power ratio (MCPR) and the core operating limits report. The amendments are based on Technical Specification Task Force (TSTF) Traveler TSTF–564, Revision 2, “Safety Limit MCPR” (ADAMS Accession No. ML18297A361). The amendments for LGS and JAF also make changes to these requirements that are outside the scope of TSTF–564, Revision 2.

Date of issuance: August 28, 2019.

Effective date: As of the date of issuance and shall be implemented as shown in the following table.

Facility	Implementation requirement
CPS Unit 1	prior to entering Mode 4 following refueling outage C1R19.
JAF	prior to entering Mode 4 following refueling outage FPR24.
LCS Unit 1	prior to entering Mode 4 following refueling outage L1R18.
LCS Unit 2	prior to LCS Unit 1 entering Mode 4 following refueling outage L1R18.
LGS Unit 1	prior to entering Operational Condition 4 following refueling outage Li1R18.
LGS Unit 2	prior to entering Operational Condition 4 following refueling outage Li2R16.
NMP Unit 2	prior to entering Mode 4 following refueling outage N2R17.
PBAPS Unit 2	prior to entering Mode 4 following refueling outage P2R23.
PBAPS Unit 3	prior to entering Mode 4 following refueling outage P3R22.

Amendment Nos.: CPS–225, JAF–327, LCS–238/224, LGS–236/199, NMP2–176, and PBAPS–326/329. A publicly-available version is in ADAMS under Accession No. ML19176A033.

Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–62, DPR–59, NPF–11, NPF–18, NPF–39, NPF–85, NPF–69, DPR–44, and

DPR–56: Amendments revised the Facility Operating Licenses and TSs.

Date of initial notice in: April 9, 2019 (84 FR 14146).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois and Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: January 31, 2019, as supplemented by letter dated August 9, 2019.

Brief description of amendments: The amendments revised Technical Specifications (TSs) for inoperable snubbers by adding limiting condition for operation (LCO) 3.0.9. The change is consistent with the NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specifications Change Traveler, TSTF-372, "Addition of LCO 3.0.8, Inoperability of Snubbers."

Date of issuance: August 28, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 202/208 (Braidwood, Units 1 and 2), and 208/208 (Byron, Unit Nos. 1 and 2). A publicly-available version is in ADAMS under Accession No. ML19190A081; documents related to these amendments are listed in the related Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF-72, NPF-77, NPF-37, and NPF-66: The amendments revised the TSs and the Renewed Facility Operating Licenses.

Date of initial notice in: May 7, 2019 (84 FR 19970).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1 (TMI-1), Dauphin County, Pennsylvania

Date of amendment request: July 25, 2018, as supplemented by letter dated March 6, 2019.

Brief description of amendment: The amendment revised the TMI-1 Renewed Facility Operating License and the associated Technical Specifications (TSs) to permanently defueled TSs, consistent with the permanent cessation of reactor operation and permanent defueling of the reactor. The amendment also changed the current licensing basis mitigation strategies for flood mitigation and aircraft impact protection in the air intake tunnel.

Date of issuance: August 29, 2019.

Effective date: The amendment is effective following the docketing of the certifications required by 10 CFR 50.82(a)(1)(i) and (ii) that TMI-1 has been permanently shut down and defueled. The amendment shall be implemented within 30 days of the effective date of the amendment, but will not exceed December 31, 2019.

Amendment No.: 297. A publicly-available version is in ADAMS under Accession No. ML19211D317; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR-50: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in: November 20, 2018 (83 FR 58611). The supplemental letter dated March 6, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2019.

No significant hazards consideration comments received: No.

Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC, Docket No. 50-293, Pilgrim Nuclear Power Station (Pilgrim), Plymouth County, Massachusetts

Date of amendment request: November 16, 2018, as supplemented by letters dated November 16, 2018; April 17, 2019; and July 29, 2019.

Brief description of amendment: The amendment revised Renewed Facility Operating License No. DPR-35 to reflect the indirect transfer of Pilgrim Renewed Facility Operating License No. DPR-35 and the general license for the Pilgrim Independent Spent Fuel Storage Installation from Entergy Nuclear Operations, Inc. (ENOI) to Holtec International; the name change for Entergy Nuclear Generation Company to Holtec Pilgrim, LLC; and the direct transfer of ENOI's operating authority to Holtec Decommissioning International, LLC.

Date of issuance: August 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 249. A publicly-available version is in ADAMS under Accession No. ML19235A050; documents related to this amendment are listed in the Safety Evaluation referenced in the letter dated August 22, 2019 (ADAMS Accession No. ML19170A101).

Renewed Facility Operating License No. DPR-35: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in: January 31, 2019 (84 FR 816).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2019.

Northern States Power Company—Minnesota, Docket No. 50-263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: March 28, 2018, as supplemented by letters dated March 13, 2019, and May 15, 2019.

Brief description of amendment: The amendment added a condition to the MNGP renewed facility operating license to allow the implementation of 10 CFR 50.69, "Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors."

Date of issuance: August 29, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 203. A publicly-available version is in ADAMS under Accession No. ML19176A421; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR-22: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in: May 22, 2018 (83 FR 23735). The supplemental letters dated March 13, 2019, and May 15, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2019.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 18, 2019.

Brief description of amendment: The amendment revised Hope Creek Generating Station Technical Specification (TS) 3.6.5.1, "Secondary Containment Integrity," Surveillance Requirements (SRs) 4.6.5.1.a and 4.6.5.1.b.2.a. SR 4.6.5.1.a is revised to address conditions during which the secondary containment pressure may not meet the SR pressure requirements. SR 4.6.5.1.b.2.a is modified to

acknowledge that both secondary containment access openings may be simultaneously open for entry and exit. Additionally, TS Definitions 1.39.d and 1.39.g are revised to conform to the changes to these two SRs.

Date of issuance: September 6, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 218. A publicly-available version is in ADAMS under Accession No. ML19205A306; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF-57: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in Federal Register: June 4, 2019 (84 FR 25839).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant (Hatch), Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: October 17, 2018.

Brief description of amendments: The amendments modified the required actions associated with the Hatch, Unit Nos. 1 and 2, Technical Specification (TS) 3.6.4.1, "Secondary Containment," to allow up to 7 days to determine and correct the cause of secondary containment degradation when at least one combination of standby gas treatment subsystems can maintain adequate secondary containment vacuum.

Date of issuance: September 4, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 298 (Unit 1) and 243 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19198A104; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR-57 and NPF-5: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in Federal Register: March 26, 2019 (84 FR 11342).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority (TVA) Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant (Browns Ferry), Units 1, 2, and 3, Limestone County, Alabama

TVA Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant (Sequoyah), Units 1 and 2, Hamilton County, Tennessee

TVA Docket Nos. 50-390 and 50-391, Watts Bar Nuclear Plant (Watts Bar), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: November 17, 2017, as supplemented by letter dated June 18, 2018, and as subsequently revised by letter dated November 19, 2018, and supplemented by letter dated January 25, 2019.

Brief description of amendments: The amendments added a new level of protection regarding "unbalanced voltage" to the Technical Specifications (TSs) for the loss of power instrumentation. Implementation of these amendments provides for equipment protection from the effects of an unbalanced voltage in a similar fashion to the existing degraded and loss of voltage protection schemes. Specifically, the amendments added a new condition to TS 3.3.8.1 and revised TS Table 3.3.8.1-1 for Browns Ferry, and added a new condition to TS 3.3.5 and revised TS Table 3.3.5-1 for Sequoyah and Watts Bar to reflect the implementation of the Class 1E "unbalanced voltage" relays for Browns Ferry, Sequoyah, and Watts Bar TSs loss of power instrumentation.

Date of issuance: August 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 309, 332, and 292 (Browns Ferry, Units 1, 2, and 3 respectively); 345 and 339 (Sequoyah, Units 1 and 2, respectively); and 128 and 31 (Watts Bar, Units 1 and 2, respectively). A publicly-available version is in ADAMS under Accession No. ML18277A110; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR-33, DPR-52, DPR-68, DPR-77, and DPR-79, and Facility Operating License Nos. NPF-90 and NPF-96: The amendments revised the Facility Operating Licenses and TSs.

Date of initial notice in Federal Register: January 16, 2018 (83 FR 2231). The supplemental letter dated June 18, 2018, and as subsequently revised by letter dated November 19, 2018, and supplemented by letter dated January 25, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 18th day of September 2019.

For the Nuclear Regulatory Commission.

Jessica A. Bielecki,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019-20507 Filed 9-23-19; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-29462; NRC-2019-0167]

Consideration of License Amendment Request for Exemption to NRC's Regulations to Remove Radioisotope Thermoelectric Generators From the Department of the Navy Master Material License No. 45-23645-01NA; Permit No. 45-4650-N1NP; Naval Nuclear Power Unit

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption under its regulations to the U.S. Navy from the decommissioning requirements as it relates to six Radioisotope Thermoelectric Generators (RTGs). The approval would allow the in-situ abandonment of six RTGs on the ocean bottom and subsequent termination of Naval Radioactive Materials Permit No. 45-4650-N1NP, Naval Nuclear Power Unit, Port Hueneme, California.

DATES: The environmental assessment and finding of no significant impact referenced in this document are available on September 24, 2019.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

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

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.,
ENTERGY NUCLEAR GENERATION
COMPANY, HOLTEC INTERNATIONAL,
AND HOLTEC DECOMMISSIONING
INTERNATIONAL, LLC

(Pilgrim Nuclear Power Station)

Docket Nos. 50-293-LT
72-1044-LT

CLI-19-11

MEMORANDUM AND ORDER

I. INTRODUCTION

On August 22, 2019, the NRC Staff issued an order approving the direct and indirect transfers of the renewed facility operating license for the Pilgrim Nuclear Power Station and the general license for the Pilgrim Independent Spent Fuel Storage Installation (ISFSI) (collectively, the facility).¹ The Staff also issued on the same day a related regulatory exemption allowing Holtec Pilgrim, LLC, as the licensed owner of the facility, and Holtec Decommissioning International, LLC (HDI), as the licensed operator for decommissioning the facility, to use a portion of the funds in the Pilgrim decommissioning trust fund to pay for spent fuel management

¹ Order Approving Direct and Indirect Transfer of License and Conforming Amendment (Aug. 22, 2019) (ADAMS accession no. ML19170A265) (Order Approving Transfers).

and site restoration activities.² The Staff subsequently informed us and the litigants that the proposed license transfer transaction closed on August 26, 2019, and that on August 27, 2019, the Staff issued a conforming license amendment to Holtec Pilgrim and HDI to reflect the license transfer and an associated name change (from Entergy Nuclear Generation Company to Holtec Pilgrim).³

The Commonwealth of Massachusetts (Commonwealth) and Pilgrim Watch seek a stay of the effectiveness of both the Staff's order approving the license transfer and of the issued exemption.⁴ The applicants oppose the requests.⁵ For the reasons outlined below, we deny the requests for a stay. As we emphasize below, however, the Staff's order is not the agency's final action on the license transfer application and exemption request. This adjudicatory proceeding continues separate from the Staff's review. The Staff's order therefore remains subject to our authority to modify, condition, or rescind, depending on this proceeding's outcome. Our decision today speaks only to timing—whether the Staff's order should be stayed pending the resolution of this adjudicatory proceeding. We conclude that the immediate

² See Exemption (Aug. 22, 2019) (ML19192A086) (Exemption); Exemption; Issuance, 84 Fed. Reg. 45,178 (Aug. 28, 2019); see also Environmental Assessment and Finding of No Significant Impact; Issuance, 84 Fed. Reg. 43,186 (Aug. 20, 2019) (Exemption EA).

³ See Amendment No. 249 to DPR-35, attached as Encl. 1 to Letter from Scott Wall, NRC, to Pierre Paul Oneid, Holtec International, and Pamela Cowan, HDI (Aug. 27, 2019) (ML19235A050) (License Amendment); see also *Notification of Issuance of Conforming Amendment* (Aug. 27, 2019) (ML19239A410).

⁴ See *Application of the Commonwealth of Massachusetts for a Stay of the Effectiveness of the Nuclear Regulatory Commission Staff's Actions Approving the License Transfer Application and Request for an Exemption to Use the Decommissioning Trust Fund for Non-Decommissioning Purposes* (Sept. 3, 2019) (Commonwealth's Stay Application); *Pilgrim Watch Motion under 10 C.F.R. § 2.1327 to Stay Staff Order of August 22, 2019* (Sept. 3, 2019) (PW's Motion to Stay Order); *Pilgrim Watch Motion under 10 C.F.R. § 2.323 to Stay Staff Order of August 22, 2019 Granting Exemption* (Sept. 3, 2019) (PW's Motion to Stay Exemption).

⁵ See *Applicants' Answer Opposing the Application of the Commonwealth of Massachusetts for a Stay* (Sept. 13, 2019) (Applicants' Answer to Commonwealth); *Applicants' Answer Opposing Pilgrim Watch's Stay Motions* (Sept. 13, 2019) (Applicants' Answer to PW).

effectiveness of the Staff's order will not limit our ability through this proceeding to address and, if warranted, to remedy the asserted deficiencies that the Commonwealth and Pilgrim Watch have raised regarding the license transfer.

II. BACKGROUND

This proceeding concerns a license transfer application filed by Entergy Nuclear Operations, Inc. (ENOI), on behalf of itself and Entergy Nuclear Generation Company (ENG), Holtec International (Holtec), and HDI (together, the Applicants). As outlined in the application, the license transfer would be effectuated pursuant to the terms of an Equity Purchase and Sale Agreement, under which the equity interests in ENG would transfer from ENG's parent companies to Holtec; ENG's name would be changed to Holtec Pilgrim (as the licensed owner); and the operating authority to conduct licensed activities at Pilgrim would transfer from ENOI to HDI.⁶

The NRC published a notice of the license transfer application and provided an opportunity for comment and to request a hearing.⁷ The Commonwealth and Pilgrim Watch each filed a request for hearing and petition to intervene challenging the application.⁸ We are reviewing the intervention petitions.

When there is no hearing request on a license transfer application, the Staff alone will conduct a review of the application (unless we were to review the application on our own

⁶ In addition, Entergy states that "Holtec (through its subsidiary HDI) has formed Comprehensive Decommissioning International, LLC (CDI), a jointly-owned company with SNC-Lavalin Group's subsidiary, Kentz USA Inc. CDI is majority-owned by HDI." Letter from A. Christopher Bakken III, ENOI, to NRC Document Control Desk (Nov. 16, 2018) (ML18320A031) (Bakken Letter).

⁷ Pilgrim Nuclear Power Station; Consideration of Approval of Transfer of License and Conforming Amendment, 84 Fed. Reg. 816 (Jan. 31, 2019) (Hearing Opportunity Notice).

⁸ See *Commonwealth of Massachusetts' Petition for Leave to Intervene and Hearing Request* (Feb. 20, 2019); *Pilgrim Watch Petition for Leave to Intervene and Hearing Request* (Feb. 20, 2019) (PW Petition to Intervene).

initiative, an unusual step). But if the NRC receives a hearing request on a license transfer application, we will review the intervention petition to determine if it satisfies the threshold standards for granting a hearing. The Staff's technical review and the Commission's adjudicatory review may overlap, but they are separate reviews, each of which must be completed and satisfied before a license transfer approval can be considered final.

NRC regulations anticipate that the Staff may complete its review of a license transfer application before the adjudication has concluded. The regulations specify that despite a pending adjudicatory proceeding, the Staff is "expected to promptly issue approval or denial" of the application, consistent with the findings in its Safety Evaluation Report (SER).⁹ The Staff, therefore, generally issues an immediately effective order approving a license transfer although a hearing on the application, or a Commission decision on petitions for hearing, remains pending.¹⁰ But a license transfer application "will lack the agency's final approval until and unless the Commission concludes the adjudication in the Applicant's favor."¹¹ While license transfer applicants may act in reliance on a Staff order approving an application, we have emphasized that both the transferor and transferee do so at their own risk "in the event that the

⁹ See 10 C.F.R. § 2.1316(a).

¹⁰ See, e.g., *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 286 & n.1 (2000) (granting hearing requests although the Staff had issued orders approving both license transfers and the companies had closed on the sale of the two nuclear reactor plants); *Power Authority of the State of New York* (James A. Fitzpatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488 (2001) (declining, following a hearing on the merits, to disturb the Staff's approval of the license transfers); *Vermont Yankee Nuclear Power Corp. and AmerGen Vermont, LLC* (Vermont Yankee Nuclear Power Station), CLI-00-17, 52 NRC 79, 83 (2000) (intervention petitions were pending before the Commission although the Staff had issued order approving the transfer); *Entergy Nuclear Operations, Inc. and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 257 n.8 (2008) (decision on intervention petitions issued after Staff had issued order approving transfer).

¹¹ See *Vermont Yankee*, CLI-00-17, 52 NRC at 83.

Commission later determines that intervenors have raised valid objections to the license transfer application.”¹² Because this adjudicatory proceeding remains pending, the Staff’s order approving the license transfer includes the following condition:

The NRC Staff’s approval of this license transfer is subject to the Commission’s authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing on the license transfer application. For example, if the Commission overturns the NRC staff’s approval of this license transfer, this Order and any conforming amendments reflecting this transfer, will be rescinded, and the Applicants must return the plant ownership to the status quo ante and revert to the conditions existing before the transfer.¹³

The NRC’s procedural regulations for license transfers are based on the presumption—rooted in agency historical experience—that license transfers in general do not result in a significant impact on public health, safety, or the environment.¹⁴ While ensuring that an applicant demonstrates financial qualifications is a key part of the Staff’s review, the applicant’s financial capabilities ultimately are “important over the long term, but have no direct or immediate impact” on the day-to-day activities at a facility.¹⁵

Accordingly, the license transfer regulations also generically establish that a license amendment that does no more than conform the license to reflect the transfer action involves “no significant hazards consideration” and therefore may be issued any time after the Staff has

¹² See *id.*; see also *FitzPatrick/Indian Point*, CLI-00-22, 52 NRC at 286 n.1 (noting that notwithstanding the Staff’s orders approving the license transfers, the Commission could modify the license or “require the Applicants to return the plant ownership to the *status quo ante*”).

¹³ See Order Approving Transfers at 6, Condition (2).

¹⁴ See Streamlined Hearing Process for NRC Approval of License Transfers, Final Rule, 63 Fed. Reg. 66,721, 66,728 (Dec. 3, 1998) (“Safety Evaluation Reports (SERs) prepared in connection with previous license transfers confirm that such transfers do not, as a general matter, have significant impacts on the public health and safety”) (Streamlined Process); see also, e.g., 10 C.F.R. § 51.22(c)(21) (rule generically finding that absent special circumstances, approvals of direct and indirect license transfers and any associated amendments required to reflect the approvals, do not individually or cumulatively have a significant effect on the environment).

¹⁵ See Streamlined Process, 63 Fed. Reg. at 66,722.

reviewed and approved a proposed license transfer.¹⁶ The NRC's no significant hazards consideration determination affects only the timing of a potential hearing. Pursuant to section 2.1316, the Staff issued its order approving the Pilgrim license transfer despite this pending proceeding. To reflect the transfer, it also issued the related license amendment after concluding that the amendment involves no significant hazards consideration.¹⁷ The Staff's conclusion on the no significant hazards consideration is final, "subject only to the Commission's discretion, on its own initiative, to review the determination."¹⁸ We have inherent supervisory authority to stay the Staff's action or to rescind a license amendment. We decline to review the Staff's finding here.¹⁹

III. DISCUSSION

Although we can take corrective action if intervenors prevail in challenging a license transfer application, NRC regulations also provide the opportunity to seek a stay of a Staff order. Section 2.1327 governs applications to stay the effectiveness of the Staff's order on a license transfer application. In determining whether to grant or deny a stay, we consider the following four factors: (1) whether the requestor will be irreparably injured unless a stay is granted;

¹⁶ See 10 C.F.R. § 2.1315; Streamlined Process, 63 Fed. Reg. at 66,728.

¹⁷ See Safety Evaluation by the Office of Nuclear Reactor Regulation Related to the Request for Direct and Indirect Transfers (Aug. 22, 2019) (ML19170A250) (SER), at 25; *see also* Hearing Opportunity Notice, 84 Fed. Reg. at 817; License Amendment.

¹⁸ See 10 C.F.R. § 50.58(b)(6); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 118 (2001).

¹⁹ As we discuss later in this decision, the license amendment involved the deletion of specific license conditions of a financial nature. The deletion of the financial conditions does not involve any safety concerns that would render the license amendment unsuitable for a no significant hazards consideration determination. See 10 C.F.R. § 50.92 (outlining the factors considered in making a no significant hazards consideration finding); *see also infra* at 21-22, 30 (addressing why the deletion of License Condition J (4) poses neither an immediate nor irreparable harm).

(2) whether the requestor has made a strong showing that it is likely to prevail on the merits; (3) whether the granting of a stay would harm other participants; and (4) where the public interest lies.²⁰

We long have considered the “most crucial” factor to be whether denying a stay will cause irreparable harm to the party requesting the stay.²¹ The entity seeking a stay must show that it “faces imminent, irreparable harm that is both ‘certain and great.’”²² Irreparable injury “must be actual and not theoretical.”²³ It is not merely injury that is “feared as liable to occur at some indefinite time.”²⁴ Similarly, the possibility of some irreparable injury occurring in the “remote future” does not constitute the imminent likely harm that justifies granting a stay.²⁵ The injury must be of such “*imminence*” that there is a “clear and present need” for equitable relief to prevent irreparable harm from occurring pending a decision on the merits.²⁶ Here, neither the Commonwealth nor Pilgrim Watch has established that they are likely to suffer imminent, irreparable harm pending the outcome of this proceeding.

²⁰ See 10 C.F.R. § 2.1327(d). The same four-part test is considered in ruling on a request for a stay of the effectiveness of a presiding officer decision. See 10 C.F.R. § 2.342(e). The standard restates the principles of equity commonly considered by courts when ruling on stay requests or similar forms of temporary injunctive relief.

²¹ See, e.g., *Vermont Yankee*, CLI-00-17, 52 NRC at 83; *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-3, 31 NRC 219, 258 (1990).

²² *Vermont Yankee LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237 (2006) (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)); see also *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-11, 75 NRC 523, 529 (2012); *Cuomo v. NRC*, 772 F.2d 972, 976 (D.C. Cir. 1985).

²³ See *Wisconsin Gas*, 758 F.2d at 674.

²⁴ *Id.* (internal quotation and citation omitted).

²⁵ See *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008).

²⁶ See *Wisconsin Gas*, 758 F.2d at 674 (internal quotation omitted).

A. Irreparable Harm**1. The Commonwealth****a. Drawdown of Decommissioning Trust Funds**

In addressing irreparable harm, the Commonwealth makes three claims. It first argues that without a stay, the license transfer order will likely make it “impossible” to complete decommissioning or will lead to irreversible consequences if regulatory or financial concerns require a change from HDI’s intended prompt decommissioning under the DECON decommissioning option to a different, longer-term approach such as the SAFSTOR decommissioning option.²⁷

The Commonwealth rests its claim on a cashflow analysis prepared by HDI, which depicts HDI’s projected year-by-year withdrawals from the decommissioning trust fund to pay for decommissioning, spent fuel management, and site restoration activities at Pilgrim. The

²⁷ See Commonwealth’s Stay Application at 7; Second Declaration of Warren K. Brewer (Sept. 3, 2019), at ¶ 15 (Brewer Decl.). Holtec Pilgrim and HDI intend to implement the DECON method of decommissioning. Under the DECON approach, the structures, equipment, and portions of the facility that contain radioactive contaminants are removed or decontaminated to a level that permits termination of the license shortly after cessation of operations. HDI’s goal is to complete decommissioning and site restoration and to release the non-ISFSI portions of the site for unrestricted use within eight years after license transfer. See 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) (License Transfer Application), at 4. The license transfer application is attached as Encl. 1 to the Bakken Letter; the cover letter and application are available together under ADAMS accession number ML18320A031.

If this license transfer is not approved, ENOI plans (as had been its intention prior to the proposed transfer) to implement the SAFSTOR decommissioning approach, under which it intends to dismantle and decontaminate the facility during the years 2074 to 2078, terminate the license in 2079, and complete site restoration by 2080. See Pilgrim Post-Shutdown Decommissioning Activities Report (Entergy PSDAR), at 7, attached to Letter from Mandy Halter, ENOI, to NRC Document Control Desk (Nov. 16, 2018) (ML18320A034). Under SAFSTOR, after reactor fuel and radioactive fluids are removed, the facility is left intact for a long-term dormant period that allows for radioactivity levels to be significantly reduced; after this dormant period, the facility is dismantled and decontaminated to levels that permit license termination.

Commonwealth focuses on HDI's projected trust fund withdrawals over the next seventeen months. Specifically, the Commonwealth states that Holtec projects that it will spend over \$138 million in 2019 and about \$164 million in 2020. Therefore Holtec will "draw over \$303 million from the Trust Fund during the first [seventeen] months of the decommissioning, site restoration, and spent fuel management work"—an amount reflecting twenty-nine percent of the value of the trust fund at license transfer.²⁸ The Commonwealth goes on to claim that this drawdown of funds in the first seventeen months of HDI's work at Pilgrim will likely mean that "if Holtec falters" or "if regulatory or financial concerns . . . require a modified decommissioning approach," there will not be sufficient funds remaining in the decommissioning trust fund for another entity to complete the decommissioning work, nor sufficient funds left in the trust fund to change from HDI's intended accelerated decommissioning under DECON to a decommissioning approach involving a longer timetable, such as SAFSTOR or a delayed DECON approach.²⁹

More specifically, the Commonwealth argues that HDI's decommissioning efforts implementing DECON "may leave the facility in such a state as to preclude a transition to SAFSTOR, rendering meaningless the NRC's ability" to alter the decommissioning approach in the event of a shortfall in decommissioning funds or of an NRC "determination that . . . Holtec is technically unsuited to perform the work as planned."³⁰ Relatedly, the Commonwealth contends that if the "DECON process is halted and a switch made to SAFSTOR after gaps or holes have

²⁸ See Commonwealth's Stay Application at 7-8; Brewer Decl. ¶¶ 5, 15. Specifically, for 2019 HDI projects to spend approximately \$85 million for license termination (radiological decommissioning) activities, \$54 million for spent fuel management activities, and \$18,000 for site restoration activities. For 2020, HDI projects to spend approximately \$79 million for license termination activities, \$85 million for spent fuel management activities, and \$28,000 for site restoration activities. See SER, Att. 1, Closing Balance Calculations.

²⁹ See Commonwealth's Stay Application at 7-8; Brewer Decl. ¶ 15.

³⁰ Commonwealth's Stay Application at 7-8.

been made in the containment but not all of the material has been removed from within the containment, the containment would not serve as a long-term weather-tight barrier to the spread of contamination and remedial work would be required to return the containment to a condition consistent with SAFSTOR.”³¹ The Commonwealth goes on to explain that if decommissioning begins under DECON but “in the future” a decision is made to change to SAFSTOR, “there may not be sufficient time for the depleted decommissioning fund to earn enough interest to cover the decommissioning costs associated with the switch.”³² The Commonwealth claims that as a result “local Massachusetts residents will be exposed to increased safety and health hazards.”³³

We find these claims insufficient to establish irreparable harm. First, pursuant to the condition imposed in the Staff’s order, we can require the Applicants to “return the plant ownership to the status quo ante and revert to the conditions existing before the transfer.”³⁴ If warranted, therefore, the NRC can require the Applicants to return the ownership of the plant to ENGEC and ENOI and can further require the Applicants (which include ENGEC and ENOI) to restore the trust fund to the amount existing at the time of the transfer.

As we earlier stated, while the Applicants are free to rely on the Staff’s order approving a license transfer, they do so at their own risk if an adjudicatory proceeding remains pending. Based on the results of this proceeding, we can condition the license and/or the exemption, require additional financial assurance, or take other appropriate action including requiring a return to the original conditions existing before the transfer.

³¹ Brewer Decl. ¶ 15. The Commonwealth similarly claims that “once holes or openings have been created in other structures” (other than the containment) additional work would be required to restore the structures to “an acceptable state for long-term storage.” *See id.*

³² *See id.*

³³ Commonwealth’s Stay Application at 8.

³⁴ *See* Order Approving Transfers at 6, Condition (2).

Second, the Commonwealth has not shown that HDI's projected trust fund withdrawals in the short term would render the fund either insufficient to allow another entity to take over and complete the decommissioning or insufficient to permit a change to a longer-term decommissioning method. In effect, the Commonwealth suggests that HDI will spend the next seventeen months focused only on performing decommissioning tasks specific to DECON, such as dismantling large facility components. Essentially, the Commonwealth's argument implies that if either another entity must take over the decommissioning, or a change to a longer-term decommissioning method must be implemented, the tasks performed during the initial seventeen-month period will not have advanced the decommissioning effort.

But much of the work that HDI intends to do in the next year and a half centers on spent fuel management, and it is the same kind of work that ENOI planned to do during this time. Of the \$164 million in Holtec's projected expenses for 2020 that the Commonwealth references, for example, over half of the expenses—\$85 million—are projected for spent fuel management activities, not decommissioning activities; and in 2019 over a third of Holtec's projected expenses—\$54 million—are for spent fuel management activities. Entergy, similarly, expected during this same initial period to spend significant amounts from the trust fund on spent fuel management activities.³⁵ In short, both under HDI's DECON-based decommissioning approach and under ENOI's SAFSTOR-based approach, a significant part of the work to be performed at Pilgrim beginning in 2019 and extending into 2021 is for spent fuel management.

Consequently, a large portion of the projected withdrawals from the decommissioning trust fund over the next seventeen months will go towards work that would have been done regardless of the decommissioning method chosen or the licensee performing the work. Specifically, out of the referenced \$303 million that HDI intends to withdraw during the initial

³⁵ See Entergy PSDAR, Attach. 1, Site-Specific Decommissioning Cost Estimate for the Pilgrim Nuclear Power Station, § 3, at 26 (projecting to spend for spent fuel management work approximately \$60 million in 2019 and approximately \$55 million in 2020).

seventeen months, close to half (\$149 million) will be for spent fuel management. This work, which includes transferring the spent fuel from the wet storage pool to dry storage and expanding the facility's dry storage capacity, would be done whether HDI or ENOI is the licensed operator of Pilgrim.

Third, HDI affirms that between now and mid-2021 at the earliest, during which time it will be engaged in a campaign to transfer the spent fuel to the ISFSI, there will be "no activity which would prevent the plant from returning to SAFSTOR, or require significant additional expenditure to do so."³⁶ If HDI undertakes any decommissioning action inconsistent with that representation pending this proceeding, it and the other Applicants would bear the risk of the consequences if we were to disapprove the license transfer.

Fourth, the Commonwealth has not shown that the projected withdrawals in the short term from the trust fund would leave the fund with less than the amount necessary to change to a longer-term decommissioning approach. Based on HDI's projected \$303 million drawdown from the trust fund over the first seventeen months after the license transfer, the amount left in the fund at the end of 2020 (\$742 million) is comparable to the amount that ENOI estimated would remain in the fund at the end of 2020 (\$776 million). And yet ENOI still projected the trust fund to have over \$150 million remaining, unspent, in 2080 at license termination—following SAFSTOR-based decommissioning, the ISFSI decommissioning, and site restoration.³⁷ The Commonwealth has not shown that HDI's trust fund withdrawals—pending the outcome of this adjudication—will cause irreparable harm.

³⁶ See Declaration of Pamela B. Cowan ¶ 3 (Cowan Decl.), attached to Applicants' Answer to Commonwealth.

³⁷ See Pilgrim Nuclear Power Station Updated Spent Fuel Management Plan, Table 5, Annual Cashflow Analysis, at 13, attached as Attach. 1 to Letter from Mandy Halter, ENOI, to NRC Document Desk (Nov. 16, 2018) (ML18320A036).

Fifth, the Commonwealth's claims regarding a potential need to alter the decommissioning approach or to change the licensee are in turn premised on uncertain events occurring in the next year and a half—e.g., “if Holtec falters”; “if regulatory or financial concerns . . . require a modified decommissioning approach.”³⁸ These claims underscore the uncertain nature of the Commonwealth's asserted injury. For example, the Commonwealth claims that HDI's intended decommissioning approach may need to be changed because of an NRC “determination that . . . Holtec is technically unsuited to perform the work as planned.”³⁹ As the Commonwealth notes, the Staff requested that the Applicants provide additional information to demonstrate that HDI's management and technical support organization would have sufficient resources to conduct licensed activities concurrently at the Oyster Creek and Pilgrim facilities.⁴⁰ The Commonwealth does not specifically contest HDI's response to the NRC regarding its ability to conduct decommissioning activities concurrently at both the Pilgrim and Oyster Creek facilities, but it questions HDI's ability to conduct activities concurrently at six different reactors.

More specifically, following the NRC's request for additional information, Entergy announced its intention to sell the Indian Point Units 1, 2, and 3 to Holtec.⁴¹ Additionally, Holtec

³⁸ See Commonwealth's Stay Application at 7; see *also* Brewer Decl. at ¶15 (if HDI is not able to manage and execute six decommissioning projects, then “it is possible that sufficient funding will not remain in the decommissioning trust funds to permit another vendor to complete the decommissioning work or to change the decommissioning approach”).

³⁹ See Commonwealth Stay Application at 8. The Commonwealth's argument that Holtec is “technically unsuited” to perform the decommissioning work is based on its claim that Holtec's acquisition of additional plants to decommission may over-extend technical capabilities and resources. The Commonwealth otherwise has not challenged HDI's technical qualifications; the Commonwealth did not, for example, challenge any aspect of the technical qualifications discussion in the license transfer application.

⁴⁰ See E-mail from Scott Wall, NRC, to Philip Couture III, ENOI, Re: Request for Additional Information (Mar. 21, 2019) (ML19086A349); see *also* SER at 20-21. The Staff in its SER found HDI's response acceptable. See *id.* at 20-23.

⁴¹ See Brewer Decl. ¶ 11 & n.8.

has stated that it intends also to acquire the Palisades Nuclear Generating Station. The Commonwealth therefore questions whether Holtec's resources or capabilities ultimately will be over-extended if it becomes "responsible for decommissioning as many as six reactors at four nuclear power stations."⁴² The Commonwealth argues that Holtec has not provided "specific information for the NRC to evaluate its ability to act as owner, licensee, and decommissioning agent for six commercial nuclear reactors on schedule and within budget."⁴³

But these concerns do not pose an imminent irreparable injury to the Commonwealth. First, the Applicants state that there is no "imminent overlap in the decommissioning of the six reactors" because Holtec's planned acquisitions of the Indian Point and Palisades plants will not occur before those plants cease operation, in April 2021 and spring 2022, respectively.⁴⁴ Further, Holtec's potential future purchase of Indian Point and Palisades would require separate, additional NRC license transfer reviews. These reviews would encompass Holtec's technical qualifications to carry out licensed activities at the additional respective plants. Just as the Staff specifically examined HDI's technical capability to conduct decommissioning activities concurrently at the Pilgrim and Oyster Creek facilities, the NRC would need to ensure that HDI has the technical capabilities and related resources to conduct licensed activities at each facility before approving future license transfer applications. In any event, the Commonwealth has not shown how it will be irreparably harmed during this proceeding by Holtec's potential future acquisition of these additional plants.

In short, the Commonwealth has not shown that the projected trust fund withdrawals during the 2019-20 period would make a potential change to another licensee or another decommissioning approach either financially or technically infeasible, or would otherwise make

⁴² See *id.* ¶ 11.

⁴³ See *id.* ¶ 12.

⁴⁴ See Applicants' Answer to Commonwealth at 3, 5; see also Cowan Decl. ¶ 5.

it impossible to decommission the Pilgrim facility. It has not shown that HDI's trust fund withdrawals during this adjudication will cause the Commonwealth certain, great, and irreparable harm. And most critically, the Pilgrim license is expressly conditioned. Based on the results of this proceeding, the Commission may modify the license or the issued exemption or may disapprove the license and order a return to the conditions existing prior to the license transfer.

b. Truck Shipments of Waste

The Commonwealth next claims that it will suffer irreparable health, safety, and infrastructure harm from frequent waste shipments over local roads, which the Commonwealth claims will increase the risks of accidents, affect traffic flow, damage infrastructure, and cause noise, dust, and air pollution.⁴⁵ The Commonwealth bases its claim on HDI's estimated radioactive waste volume of 1.4 million cubic feet. While noting that this amount is bound by the 1.5 million cubic feet of radioactive waste considered in the NRC's generic environmental impact statement for decommissioning (Decommissioning GEIS), the Commonwealth's affiant states generally that "waste volume is often underestimated."⁴⁶ He also claims that the estimated 1.4 million cubic feet of waste "[i]f shipped by truck, . . . could easily require more than 1,400 separate truck shipments just for radioactive waste alone."⁴⁷ He goes on to state that his estimate of 1,400 truck shipments for the radioactive waste reflects more than double the 671 truck shipments that the NRC's Decommissioning GEIS examined. He argues that there has

⁴⁵ Commonwealth's Stay Application at 8.

⁴⁶ See Brewer Decl. ¶ 16 n.13.

⁴⁷ See *id.* ¶ 16; see also Commonwealth's Stay Application at 8. The Commonwealth's affiant derived his estimate of the number of truck shipments of radioactive waste by assuming that 1.4 million cubic feet of waste at 60 pounds per cubic foot results in 84 million pounds of waste; based on legal weight trucks carrying 60,000 pounds of waste per truck, he calculated that there would be 1,400 truck shipments of waste.

been no environmental analysis performed to “evaluate this significantly greater number of truck shipments of radioactive waste.”⁴⁸

The Commonwealth’s affiant also claims that neither Entergy nor Holtec provided information on the amount of non-radioactive waste that would need to be removed and shipped for disposal offsite. Based on information on the decommissioning experience at the Maine Yankee facility, which he states involved 150 million pounds of non-radioactive waste, the Commonwealth’s expert claims that the number of truck shipments of non-radioactive waste over the roads near Pilgrim “could be two to three times” his estimate of 1,400 truck shipments of radioactive waste; the Commonwealth states this would mean “2,400 to 3,400 total trips” by truck.⁴⁹

The Commonwealth’s affiant adds that legacy waste—waste that was generated during operations and has been stored on site—typically is removed and shipped within sixty days of the beginning of decommissioning under DECON to clear space on the site. He states that these shipments of legacy waste therefore will begin immediately. Based on these various claims, the Commonwealth argues that absent a stay, waste shipments by truck will begin immediately and will cause irreparable harm to local and state infrastructure, local health, safety, and the environment.⁵⁰

At the outset, we note that the Commonwealth raises in its stay application its concern about the environmental impacts of truck shipments of waste for the first time. The Commonwealth did not include these truck transportation arguments in its request for hearing. Under NRC caselaw, “[t]o qualify as ‘irreparable harm’ justifying a stay, the asserted harm must

⁴⁸ See Brewer Decl. ¶ 16.

⁴⁹ See *id.* ¶ 16; Commonwealth’s Stay Application at 8.

⁵⁰ See Commonwealth’s Stay Application at 8.

be related to the underlying” contention(s) before the NRC.⁵¹ The purpose of a stay would be to prevent an irreparable harm from occurring before we have had the opportunity to resolve the claim. But here these truck-related environmental impacts claims are not pending before us as part of the Commonwealth’s hearing request.

Moreover, we are not persuaded that the Commonwealth faces imminent irreparable harm from truck shipments of waste. First, as to the *imminence* of the truck shipments of waste (radioactive and non-radioactive) associated with the decommissioning process, the Applicants state that they will not start shipping any significant volumes of decommissioning-related waste until they begin the removal of the large components, which they only intend to undertake after they have concluded transferring the spent fuel to the ISFSI—at the earliest in mid-2021.⁵²

The Applicants also state that shipments of legacy wastes—wastes removed during early stages of plant shutdown and prior to the removal of large components—would occur regardless of the license transfer (that is, regardless of whether the decommissioning approach chosen is DECON or SAFSTOR) and therefore would not be affected by a stay of the Staff’s order. In addition, they state that such legacy waste shipments would not be “materially different from regular shipments of waste from Pilgrim which have occurred over the life of the plant,” and which must comply with applicable packaging, labeling, and transportation requirements to protect public health and safety.⁵³

⁵¹ See *Vogtle*, CLI-12-11, 75 NRC at 530-31 (2012) (internal quotation omitted).

⁵² See Cowan Decl. ¶ 4; see also *id.* ¶ 3 (spent fuel campaign to end mid-2021 at the earliest).

⁵³ See *id.* ¶ 4.

The Commonwealth has not shown that shipments of legacy waste would be excessive, unusual, or otherwise would cause the Commonwealth an irreparable harm.⁵⁴ Nor did the Commonwealth link shipments of legacy waste to the transfer of the Pilgrim license.

We note, moreover, that the Commonwealth's arguments do not acknowledge relevant representations that HDI made about its plans for waste transportation. HDI stated, for example, that it may also construct a barge slip and remove a portion of the waste by barge to reduce the number of shipments over local roadways and that in addition to trucks, it may also use railcars to transport the waste to a disposal facility. Similarly, the Applicants' affiant states that Holtec "plans to use a combination of approaches" to transport the waste, including road, rail, and barge.⁵⁵

HDI also stated that truck shipments of waste would occur over an extended period of time and therefore would not result in a significant change to traffic density or patterns or to worker or public dose.⁵⁶ The Decommissioning GEIS notes, for example, that the decommissioning experience has been that the number of low-level waste shipments from a decommissioning site averages "much less than [one] per day," which the GEIS concludes is "not nearly enough to have a detectable . . . effect on traffic flow or road wear."⁵⁷ And

⁵⁴ To the extent that the Commonwealth may claim that truck shipments of legacy waste while this proceeding is pending will damage infrastructure or interfere with "local quality of life and enjoyment," it provided no support for these claims. See *id.*

⁵⁵ See DECON Post-Shutdown Decommissioning Activities Report, at 34-35, attached to Letter from Pamela Cowan, HDI, to NRC Document Control Desk (Nov. 16, 2018) (ML18320A040) (HDI PSDAR); Cowan Decl. ¶ 4.

⁵⁶ See HDI PSDAR at 34.

⁵⁷ See "Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities" (Final Report), NUREG-0586, Supplement 1, vol. 1 (Nov. 2002), at 4-79 (ML023470304, ML023470323) (Decommissioning GEIS). The Commonwealth does not suggest, for example, how the asserted increase in potential truck shipments (e.g., 1,400 instead of 671) would, if occurring over an extended period, be likely to cause significantly greater impacts (whether radiological or not) than those evaluated in the GEIS. The Decommissioning GEIS found both

decommissioning waste shipments generally take place over a period of years during the course of decontamination and dismantlement.⁵⁸ Therefore, the Commonwealth has not demonstrated that it faces certain, great, and irreparable harm from truck shipments of waste during this adjudication.

Moreover, this license transfer proceeding is focused squarely on the license transfer itself—whether Holtec Pilgrim and HDI have shown that they are qualified to be the Pilgrim licensees. This proceeding does not encompass an examination of the environmental impacts of HDI's planned decommissioning activities. A licensee in decommissioning must describe in its PSDAR the reasons why it has concluded that the environmental impacts associated with site-specific decommissioning "will be bounded" by appropriate previously issued environmental impact statements.⁵⁹ If the licensee cannot so conclude, it must prepare and provide the necessary additional environmental analysis, "describing and evaluating the additional environmental impacts."⁶⁰

the radiological and non-radiological effects of transporting waste to be neither detectable nor destabilizing. See *id.* at 4-78 to 4-81; see also *id.*, app. K. We do not find that the asserted increased numbers of truck shipments will certainly and imminently occur.

⁵⁸ See Decommissioning GEIS, app. K at K-2.

⁵⁹ See 10 C.F.R. § 50.82(a)(4)(i).

⁶⁰ See *Vermont Yankee*, CLI-16-17, 84 NRC at 124; Decommissioning Rule, 61 Fed. Reg. at 39,286. The PSDAR's purpose is to provide a general overview for the public and the NRC of the planned decommissioning activities and the licensee's schedule for those activities. See Decommissioning Rule, 61 Fed. Reg. at 39,281. It does not require NRC approval given that it does not permit a licensee to conduct any activity that is not already authorized under the existing license. Accordingly, a licensee that has submitted certifications of permanent cessation of operations and permanent removal of fuel may begin major decommissioning activities ninety days after the NRC has received its PSDAR. See 10 C.F.R. § 50.82(a)(5).

c. *Failure to Prepare an Environmental Impact Statement*

The Commonwealth argues that it has suffered an immediate, irreparable harm because the NRC did not prepare an environmental impact statement for the Staff's "now-approved actions."⁶¹ Specifically, the Commonwealth argues that when a decision requiring a NEPA impacts analysis is made "without the informed environmental consideration that NEPA requires, the harm that NEPA intends to prevent" already has been suffered.⁶²

In ruling on stay motions the Commission does not presume that a statutory violation without more "equates to a showing of irreparable injury."⁶³ The Commonwealth has not made such a showing here.

Moreover, the Staff concluded that the license transfer action and the associated license amendment meet the criteria of the NRC's categorical exclusion rule in 10 C.F.R. § 51.21.⁶⁴ The rule identifies specific categories of NRC licensing actions that have been found not to have a significant effect on the environment. A categorical exclusion indicates that the NRC has

⁶¹ See Commonwealth's Stay Application at 8.

⁶² See *id.* at 8 (quoting *Massachusetts v. Watt*, 716 F.2d 946, 952 (1st Cir. 1983)).

⁶³ See *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-8, 47 NRC 314, 322-23 (1998) (referencing *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987) (presumption of irreparable damage is contrary to traditional equitable principles)); see also *Nevada v. United States*, 364 F. Supp. 3d 1146, 1151 (D. Nev. 2019) (court will not "presume irreparable harm; there must be a satisfactory showing"). And the First Circuit by its decision in *Massachusetts v. Watt* "did not mean" that a NEPA violation necessarily calls for an injunction. See *Conservation Law Foundation, Inc. v. Busey*, 79 F.3d 1250, 1272 (1996).

⁶⁴ See SER at 33. In addition, the Staff prepared an EA for the exemption. See Exemption EA, 84 Fed. Reg. 43,186.

“established a sufficient administrative record to show that the subject actions do not, either individually or collectively, have a significant effect on the environment.”⁶⁵

(1) Deletion of License Condition Does Not Pose Imminent Irreparable Harm

The Commonwealth acknowledges the NRC’s categorical exclusion of license transfer actions but argues that the categorical exclusion should not have been applied to the license amendment issued as part of this license transfer action. More specifically, the license amendment deleted several license conditions, including License Condition J (4), which required ENGCO to have access to contingency funding in an amount up to \$50 million dollars.⁶⁶ The Commonwealth claims that the license amendment is not encompassed by the NRC’s categorical exclusion for license transfer actions because deleting License Condition J (4) was not “required to reflect approval” of the license transfer.⁶⁷ The Commonwealth therefore claims that the Staff needed to perform an environmental analysis for the license amendment that deleted this license condition.

However, the deletion of the contingency funding license condition does not present any risk of an imminent irreparable harm. By its own terms, the license condition involved *contingency* funding, to be made available only if necessary, and here the decommissioning trust fund at license transfer contained approximately \$1 billion.⁶⁸ Contingency funding to pay for decommissioning activities would not be necessary unless all of the \$1 billion is drained from the decommissioning trust fund during this proceeding, which is highly unlikely given the proposed expenditures over the next seventeen months.

⁶⁵ See Categorical Exclusions from Environmental Review, Final Rule, 75 Fed. Reg. 20,248, 20,251 (Apr. 19, 2010) (Categorical Exclusions).

⁶⁶ See License Transfer Application, Attach. A, Renewed Facility Operating License (Changes), at 4, Condition J (4) (License Condition J (4)).

⁶⁷ See Commonwealth Stay Application at 5-6.

⁶⁸ See License Condition J (4).

Consequently, whether the categorical exclusion rule applies to the license amendment that deleted the license condition is not a question involving an imminent or irreparable harm. There is no imminent need of the contingency funding license condition. If, based on the results of this proceeding, we conclude that additional financial assurance is necessary, we can modify or condition the license. Similarly, if we were to ultimately conclude that the categorical exclusion does not apply to the license amendment and that there is a need for further environmental analysis, we can direct that a supplemental analysis be performed. Either way, NEPA's goal of ensuring that an agency's final decision accounts for the consequences of agency action will be preserved.

(2) Substantive Environmental Concerns Do Not Pose Imminent Irreparable Injury

In addition, the Commonwealth's asserted underlying environmental concerns also do not present a potential to cause imminent, irreparable environmental harm that would occur during this adjudication. The specific substantive harms that the Commonwealth claims flow immediately from the Staff's approvals and will be irreparable either do not present an imminent harm or can be fully remedied through this proceeding.⁶⁹ These substantive harms include claims we already addressed and found unpersuasive: (1) the Commonwealth's argument that HDI's trust fund withdrawals will make it impossible for decommissioning to be completed, and (2) its argument on estimated truck shipments for waste transportation.

The Commonwealth also claims that it will suffer immediate, irreparable, environmental harm from withdrawals from the trust fund for site restoration—non-radiological and other restoration activities that go beyond NRC requirements for decommissioning the site and terminating the license.⁷⁰ Specifically, the Commonwealth argues that if, to “satisfy non-NRC

⁶⁹ See Commonwealth's Stay Application at 8 (citing Brewer Decl. ¶¶ 5, 15-16, 19).

⁷⁰ See 10 C.F.R. § 50.2 (definition of decommissioning).

requirements,” HDI spends five percent more than it projected on site restoration activities, then there could be insufficient funds left in the trust fund to complete the NRC required license termination work.⁷¹

This claim poses no potential of imminent harm during the adjudication. Essentially, the Commonwealth objects to the approval of an exemption that places no express conditions on the amount that Holtec Pilgrim and HDI can withdraw from the trust fund for site restoration activities. But if the Commonwealth prevails in its arguments on this claim, the Commission can impose conditions on the exemption or take other appropriate action to limit trust fund withdrawals. The Commonwealth has not shown that during this proceeding it will suffer an imminent, irreparable harm from trust fund withdrawals for site restoration. We note, moreover, that through 2020 HDI’s projected withdrawals from the trust fund for site restoration are minimal.⁷²

In short, the Commonwealth has not demonstrated that it faces an imminent irreparable harm relating to NEPA that stems from the timing of the transfer. Here the Staff found the NRC’s categorical exclusion rule applicable to its approval of the Pilgrim license transfer and the associated license amendment. The Commonwealth argues that the license amendment is not encompassed by the categorical exclusion rule, but this question does not raise an imminent or irreparable environmental injury.

2. *Pilgrim Watch*

Pilgrim Watch also has not satisfied its burden to demonstrate that, pending completion of this proceeding, it has or will suffer imminent harm that would be irreparable. Initially, we note that Pilgrim Watch does not appear to acknowledge that there are two separate aspects of

⁷¹ See Brewer Decl. ¶ 19 (referenced in Commonwealth’s Stay Application at 8).

⁷² See SER, Attach. 1, Closing Balance Calculations, at 1 (during the years 2019 and 2020, HDI projects that it will spend \$18,000 and \$28,000, respectively, on site restoration activities).

the NRC's consideration of the requested license transfer—the Staff's review and this adjudication. Pilgrim Watch states that there is no indication that the Staff considered its various claims raised in contentions. But Pilgrim Watch's claims are pending in this adjudicatory proceeding, separate from the Staff's review.

Pilgrim Watch first argues that absent a stay both it and the public will be irreparably harmed because of “significant remaining radiological and hazardous contamination in portions of the Pilgrim site that Holtec thinks it has already decommissioned and remediated.”⁷³ HDI, however, has not stated that it has already decommissioned and remediated any portion of the Pilgrim site. Nor has it represented that it will not perform radiological surveys of the site as it conducts decommissioning activities.

HDI's release of the site is not imminent. Under HDI's projected schedule, release of the non-ISFSI portions of the Pilgrim site is projected to occur around 2026.⁷⁴ HDI must submit to the NRC a License Termination Plan at least two years before the termination of the non-ISFSI portion of the license. That plan must include a site characterization, plans for site remediation, an updated decommissioning cost estimate, and detailed plans for the final radiation survey.⁷⁵

NRC approval of the License Termination Plan requires a license amendment and will involve an opportunity to request a hearing. And HDI will need to perform final status surveys to show that the site can be released for unrestricted use.⁷⁶ Further, the NRC will conduct its own radiological surveys of the site before permitting release of any portion of the site for unrestricted use and before allowing the termination of the non-ISFSI portion of the license.

⁷³ PW's Motion to Stay Order at 7.

⁷⁴ See HDI PSDAR at 35.

⁷⁵ See 10 C.F.R. § 50.82(a)(9).

⁷⁶ The NRC's criteria for site release are defined by the Multi-Agency Radiation Survey and Site Investigation Manual, known as MARSIMM. See “Multi-Agency Radiation Survey and Site Investigation Manual (MARSIMM),” NUREG-1575, Rev. 1 (Aug. 2000) (ML003761445).

Pilgrim Watch's claim that portions of the Pilgrim site will be left with contamination does not present an imminent, irreparable injury that is traceable to the decision to maintain the transfer in place during the pendency of this adjudication.

Pilgrim Watch also argues that there will be "leakage, resulting from lack of knowledge and poor and incomplete work, of contaminants into Cape Cod Bay," and therefore a "potential exists for unplanned and unmonitored releases of radioactive liquids to migrate offsite into the public domain undetected."⁷⁷ Pilgrim Watch further states that this asserted future leakage cannot be remediated. These claims do not raise an imminent, irreparable injury posed by the license transfer order.

Pilgrim Watch appears to rely on the NRC Staff's Liquid Radioactive Release Lessons Learned Task Force Report, issued in 2006.⁷⁸ But that report led to significant enhanced environmental monitoring and reporting at nuclear power plant facilities, including at Pilgrim. The current Groundwater Protection Initiative Program and Radiological Environmental Monitoring Program at Pilgrim will continue during the decommissioning process, regardless of whether the license transfer is made effective during the pendency of this proceeding. The results of the periodic groundwater and environmental monitoring are publicly available. Pilgrim Watch does not identify any current deficiency with respect to groundwater or environmental monitoring programs. Significantly, Pilgrim Watch also did not address the discussion in the license transfer application of HDI's technical qualifications to perform decommissioning activities. In sum, Pilgrim Watch has not shown that Holtec will cause imminent "unmonitored releases" or leaks of contaminants to occur, and it has not shown that any leaks that might occur would remain undetected and uncorrected despite ongoing monitoring activities at the site.

⁷⁷ See PW's Motion to Stay Order at 8.

⁷⁸ See *id.* (citing PW Petition to Intervene at 103-04).

Pilgrim Watch likewise does not support its claim that there is or will be imminent or irreparable harm from airborne contamination affecting both workers onsite and the public offsite “because no site analysis was conducted” and therefore “Holtec did not know” that there is contamination.⁷⁹ HDI has stated that it will, during the decommissioning planning and preparation period, conduct surveys and site characterization activities to establish contamination and radiation levels throughout the plant.⁸⁰ HDI stated that the information acquired from the surveys and site characterization activities will be used to develop procedures to ensure that contaminated areas are remediated and worker exposure is controlled.⁸¹ HDI also must comply with NRC regulations on worker and public dose limits and applicable federal and state regulations pertaining to air quality.⁸² Environmental monitoring will continue during the decommissioning process, which remains subject to NRC oversight and inspection. Therefore, Pilgrim Watch has not demonstrated that the public or workers at Pilgrim will suffer imminent irreparable harm from airborne contamination during this proceeding.

Pilgrim Watch additionally claims that HDI will drain the decommissioning trust fund, leaving insufficient funds in the trust to properly complete the decommissioning. As a result, the public will have to pay for the decommissioning. More specifically, Pilgrim Watch argues that the actual cost to decommission Pilgrim, “even over the next six years, will be \$100 million more than Holtec estimates.”⁸³ Pilgrim Watch claims that once the money in the trust fund is spent,

⁷⁹ See *id.* at 8.

⁸⁰ See, e.g., HDI PSDAR at 10; see *also* Applicants’ Answer to PW at 5.

⁸¹ See HDI PSDAR at 10.

⁸² See *generally* 10 C.F.R. Part 20 (establishing standards for worker and public dose limits).

⁸³ See PW’s Motion to Stay Order at 8.

no additional money can be obtained because “Holtec will not provide more money, and the NRC cannot force it to do so.”⁸⁴

Pilgrim Watch’s claim of higher-than-expected decommissioning costs spread out over the next several years does not identify an “imminent” injury. Pilgrim Watch raised the argument of potential escalating decommissioning costs in its request for hearing, and we will address the claim in ruling on the hearing requests.⁸⁵ Pilgrim Watch has not shown that it or the public will suffer irreparable harm from trust fund withdrawals that may be made pending a final decision in this proceeding.

In this proceeding we will address the Commonwealth’s and Pilgrim Watch’s contentions, which include claims that HDI has underestimated particular decommissioning and other costs and that HDI therefore has neither demonstrated adequate financial qualifications for the license transfer nor justified the related exemption. As we have emphasized, depending on the result of this proceeding, we can require Holtec Pilgrim and HDI to provide additional financial assurance, and we can modify or condition the license and/or the exemption. Pursuant to the condition imposed in the Staff’s order, were we to overturn the transfer, we can require the Applicants to restore the decommissioning trust fund, to the extent warranted.

Further, through required annual status reports, the NRC will monitor the status of the decommissioning funding and the spent fuel management funding.⁸⁶ If, for example, through the end of 2020 HDI’s withdrawals from the trust fund prove to be significantly higher than HDI projected and HDI does not remedy a projected shortfall, the NRC can revoke the exemption, preventing HDI from making any further withdrawal for any purpose other than for radiological

⁸⁴ See *id.*

⁸⁵ See PW Petition to Intervene at 25.

⁸⁶ See 10 C.F.R. § 50.82(a)(8)(v), (vii).

decommissioning expenses. In addition, if the financial assurance status report projects a shortfall in funding to pay the estimated remaining decommissioning costs, HDI must promptly provide additional financial assurance to make up the projected shortfall.⁸⁷

The trust fund at the time of license transfer contained approximately \$1 billion, over \$400 million more than HDI's estimated decommissioning cost. The Commonwealth and Pilgrim Watch have not shown that withdrawals that may be made from the trust in the short-term—during this adjudication—are likely to irreparably threaten the ability to safely decommission the Pilgrim facility.

In a separate filing, Pilgrim Watch also seeks a stay of the exemption granted to Holtec Pilgrim and HDI.⁸⁸ But Pilgrim Watch does not address the four factors that we consider in ruling on stay motions. It repeats many claims that it made in its contentions or that the Commonwealth made in its hearing request. Essentially, Pilgrim Watch reiterates that HDI has underestimated the costs of decommissioning, site restoration, and spent fuel management, and therefore Pilgrim Watch concludes there is no reasonable assurance that the trust fund will be sufficient to cover the costs of all three activities. To the extent that Pilgrim Watch raised these claims in its earlier-filed contentions, we will address the claims in this proceeding. Pilgrim Watch has not demonstrated irreparable harm from the current effectiveness of the exemption, nor otherwise demonstrated that a stay of the exemption is warranted. Given the

⁸⁷ More specifically, if the decommissioning funds remaining in the trust (plus calculated earnings at no greater than a 2% annual real rate of return) do “not cover the cost to complete the decommissioning, the financial assurance status report *must include additional financial assurance* to cover the estimated cost of completion.” See 10 C.F.R. § 50.82(a)(8)(vi) (emphasis added). The NRC can enforce this regulation, contrary to Pilgrim Watch's claim that “no one is legally required . . . to supply more money.” See Pilgrim Watch's Stay Order at 2. Under the AEA, the NRC may “prescribe such regulations or order as it may deem necessary. . . to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility.” See AEA § 161i.(4), 42 U.S.C. § 2201.

⁸⁸ See *generally* PW's Motion to Stay Exemption.

intertwined nature of the license transfer and the exemption, if the petitioners prevail in this proceeding regarding their challenges to Holtec Pilgrim's and HDI's financial qualifications, we can through this proceeding correct any deficiency found that relates to the granting of the exemption.

B. Likelihood of Success on the Merits

In the absence of a showing of irreparable injury, as is the case here, movants must make "an overwhelming showing" of likely success on the merits.⁸⁹ They must demonstrate that success on the merits is a "virtual certainty."⁹⁰ This is a high standard that the petitioners have not met at this threshold stage of the proceeding.

1. NEPA Claims

With respect to NEPA, the petitioners' arguments do not overwhelmingly demonstrate that this license transfer action required an environmental assessment or environmental impact statement.⁹¹ First, except for cases involving special circumstances, the NRC has categorically excluded license transfer actions from the need to perform an environmental analysis.⁹² To the extent, therefore, that the petitioners claim that the Staff's order approving the license transfer required an EIS, they would appear to impermissibly challenge the categorical exclusion provision in section 51.21(c)(21).

⁸⁹ See, e.g., *Vogtle*, CLI-12-11, 75 NRC at 529; *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 399 (2008).

⁹⁰ See *Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-10-8, 71 NRC 142, 154 (2010); *Oyster Creek*, CLI-08-13, 67 NRC at 400; *David Geisen*, CLI-09-23, 70 NRC 935, 937 (2009); *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 7 (1999).

⁹¹ See Commonwealth's Stay Application at 5-6; PW's Motion to Stay Order at 4-5.

⁹² See Streamlined Process, 63 Fed. Reg. at 66,728.

Second, to the extent that the petitioners argue that the categorical exclusion rule does not apply to the license amendment issued to Holtec Pilgrim and HDI, the petitioners also have not overwhelmingly demonstrated a likelihood of success on the merits. The petitioners highlight that the license amendment deleted a license condition that required ENGEC to have access to up to \$50 million in contingency funding—a license condition that the NRC added to the Pilgrim license in 1999, as part of the previous license transfer transaction in which ENGEC and ENOI became the Pilgrim licensees. In particular, the petitioners argue that the deletion of License Condition J (4) was not “required to reflect the approval” of the license transfer and therefore that the license amendment is not covered by the categorical exclusion.⁹³

License Condition J (4), which the Commonwealth seeks to have retained in the Pilgrim license, involved a different license transfer application and different circumstances. The NRC imposed the contingency funding license condition when it approved the transfer of the Pilgrim operating license from the Boston Edison Company to ENGEC. The license condition involved an inter-company credit agreement by which the company Entergy International Ltd., LLC, agreed to provide its affiliate Entergy Nuclear Generation Company up to \$50 million, if needed, and as outlined in the inter-company agreement.⁹⁴ No such inter-company contingency funding agreement was part of the Applicants’ license transfer application here. At this stage of the

⁹³ See 10 C.F.R. §51.22(c)(21); Commonwealth’s Stay Application at 5-6; PW’s Motion to Stay Application at 5.

⁹⁴ See Safety Evaluation by the Office of Nuclear Reactor Regulation for the Proposed Transfer of Operating License and Materials License for Pilgrim Nuclear Power Station to Entergy Nuclear Generation Co., at 2, 4-5, 9 (Apr. 29, 1999) (SER for 1999 License Transfer); Order Approving the Transfer of Facility Operating License and Materials License for Pilgrim Nuclear Power Station, from Boston Edison Co. to Entergy Nuclear Generation Co., and Approving Conforming Amendments (Apr. 29, 1999), at 5. Both the SER and the Order relating to the license transfer to ENGEC are attached (as encl. 3 and encl. 1, respectively), to Letter from Alan Wang, NRC, to Theodore Sullivan, Boston Edison Co., and Jerry Yelverton, ENGEC (Apr. 29, 2019) (ML011910099).

proceeding, the petitioners have not overwhelmingly demonstrated that the deletion of the funding provision from the license was not necessary to reflect the actual terms of the license transfer as it was approved by the Staff.

The history of the license transfer rules makes clear that those amendments “that would *directly affect* the actual operation of a facility” do not fall within the scope of the categorical exclusion.⁹⁵ But, the deletion of the contingency funding provision here has no direct effect, much less any imminent effect, on the current day-to-day activities at Pilgrim. At this stage, the Commonwealth has not shown why a license amendment that now removes the condition, based on a different demonstration of financial qualifications, would not likewise be a conforming amendment necessary to reflect the transfer and therefore fall within the scope of the categorical exclusion.

Both petitioners also seek to litigate in this proceeding the environmental impacts of decommissioning activities. However, this license transfer proceeding focuses on the qualifications of Holtec Pilgrim and HDI, not on the environmental impacts of decommissioning activities. Accordingly, in its SER the Staff states that it reviewed HDI’s PSDAR “only to determine whether Holtec Pilgrim and HDI are financially and technically qualified to hold the license for Pilgrim and the general license for the Pilgrim ISFSI.”⁹⁶ The Staff did not conduct a review of the environmental impacts of the planned decommissioning activities. Just as ENOI was free to begin major decommissioning activities ninety days after submitting its PSDAR to the NRC—without need of NRC approval of its PSDAR—HDI also did not need NRC approval of its PSDAR to begin major decommissioning activities. HDI stated in its PSDAR that the environmental impacts associated with its planned decommissioning activities are less than and

⁹⁵ See Streamlined Process, 63 Fed. Reg. at 66,728.

⁹⁶ See SER at 3.

bounded by previously issued environmental impact statements.⁹⁷ If HDI plans to conduct any decommissioning activity that may result in significant environmental impacts not previously reviewed, it would need to provide a supplemental environmental analysis and would need to request a license amendment.⁹⁸ NRC regulations prohibit HDI from performing any decommissioning activities that result in significant environmental impacts not previously reviewed.⁹⁹ Given that petitioners' arguments concerning the environmental impacts of decommissioning appear to be beyond the scope of this proceeding, we find they have not demonstrated the requisite likelihood of success on the merits sufficient to warrant a stay.

2. Financial Qualifications Claims

Both petitioners separately raise numerous arguments challenging the Applicants' financial qualifications for the license transfer and similarly challenging the Applicants' justification for the exemption. Several of these claims raise novel issues that we have not yet addressed in a license transfer proceeding and that may warrant further inquiry. Even assuming, however, that a hearing is granted on specific challenges to the Applicants' financial qualifications, a final Commission decision on the merits of the financial claims would depend on further information developed in the hearing record. For example, some of the claims pending before us in the intervention petitions challenge particular cost estimates by questioning whether they have been adequately explained or supported. Whether any such claim, if admitted for hearing, would prevail on the merits would ultimately depend on additional information, explanations, or argument provided in the record. In other words, to the extent that we may conclude that one or more challenges to the financial qualifications discussion in the application

⁹⁷ See HDI PSDAR at 20.

⁹⁸ See 10 C.F.R. § 50.82(a)(6)(ii); *supra* at 19.

⁹⁹ See 10 C.F.R. § 50.82(a)(6)(ii).

raise an admissible dispute for hearing, to resolve the dispute we likely would require additional focused information or answers from the litigants.

But in the absence of irreparable harm, all we need decide now is whether the petitioners have carried their burden of showing an overwhelming likelihood of prevailing. Overall, given the limited information and arguments before us, at this stage the petitioners have not shown a virtual certainty of success on the merits.¹⁰⁰

C. Harm to Other Participants

Absent a showing of irreparable harm or likelihood of success on the merits, we need not make a determination on the remaining two stay factors.¹⁰¹ Nonetheless, the remaining factors do not tilt in the movants' favor.

The Applicants argue that a stay would “raise numerous commercial, administrative and logistical concerns.”¹⁰² They note that they have taken employment-related actions involving incumbent Entergy employees, amended contracts with vendors, replaced insurance, and performed other administrative modifications based on the license transfer order.¹⁰³ While we find that a stay would result in some harm to the Applicants, we do not find the potential administrative or commercial harms identified to present significant or insurmountable harm.

The Applicants also claim that staying the license transfer would create uncertainty for Pilgrim site employees regarding the likelihood that HDI and CDI will be allowed to proceed with the DECON method of decommissioning Pilgrim and with their long-term employment. The

¹⁰⁰ We also have before us a Pilgrim Watch motion to file a new and third contention for hearing, which raises claims regarding licensee character and integrity. See *Pilgrim Watch Motion to File New Contention* (July 16, 2019) (ML19197A330). We have not yet resolved the timeliness and admissibility of the claims, but if any such claims were admitted for hearing, success on the merits similarly would depend on additional information developed in a hearing.

¹⁰¹ See *Shieldalloy*, CLI-10-8, 67 NRC at 163; *Oyster Creek*, CLI-08-13, 67 NRC at 400.

¹⁰² See Applicants' Answer to Commonwealth at 9.

¹⁰³ See Cowan Decl. at 4.

extent of this asserted harm is not obvious to us, particularly given that until we terminate this proceeding the license transfer action is not final agency action. We find that a stay would cause some limited harm to the Applicants. This factor therefore tilts modestly against the granting of a stay.

D. Where the Public Interest Lies

The license transfer regulations expressly instruct the Staff, consistent with its conclusions in the SER, to promptly issue approval or denial of a license transfer request despite a pending adjudicatory proceeding. The intent behind the regulations was to expedite the Staff's decisions on license transfer requests given potentially time-sensitive license transfer transactions and an increase in the numbers of transfer requests. The regulations balance the interest in prompt Staff action with the interest in affording petitioners the opportunity to participate meaningfully in the adjudicatory proceeding.

These longstanding regulations have provided a predictable, reliable framework, allowing for both expeditious agency action and meaningful public participation. The Staff's approval of a license transfer therefore generally is expected to be made immediately effective, while we retain the authority to condition the license transfer or overturn it, based on the result of an adjudicatory proceeding. As a policy matter, the default rule sets the balance at an optimal point. To deviate from the established regulatory approach for license transfers, where no irreparable harm has been shown, would introduce uncertainty and render less reliable the established framework for license transfers. The petitioners have not provided a sufficient basis to depart from the usual practice.

The NRC recognized at the time that it issued the license transfer regulations that some adjudicatory proceedings could involve unusual or complex questions. It stated, for example, that while the license transfer regulations outline a streamlined adjudicatory process, the

adjudicatory process is not intended be a “hurried” one.¹⁰⁴ Here, the petitioners have each submitted multiple claims in lengthy intervention petitions and in supplemental filings. We are carefully considering the numerous claims raised and will issue a decision on the hearing requests. The public’s strong interest in the NRC providing a meaningful opportunity to challenge the proposed licensing action will be satisfied in this proceeding without a stay of the effectiveness of the Staff’s license transfer order and of the issued exemption.

IV. CONCLUSION

The Commonwealth and Pilgrim Watch have not shown that absent a stay they are likely to suffer irreparable harm, and the balance of equities tilts against them. We therefore *deny* their requests for a stay of the immediate effectiveness of the Staff’s actions.

IT IS SO ORDERED.

For the Commission

NRC Seal

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 17th day of December 2019.

¹⁰⁴ See Streamlined Process, 63 Fed. Reg. at 66,723.

Additional Views of Commissioner Baran

I concur in the Commission's decision to deny the requests for a stay. However, my agreement with this legal outcome should not be read as an endorsement of the NRC regulation that permits the Staff to approve a license transfer before an adjudicatory challenge to the transfer has been resolved. In fact, I have serious doubts about the wisdom of this practice and disagree with the assertion that "the default rule sets the balance at an optimal point."

As a practical matter, once the Staff takes the step of issuing an approval while an adjudicatory challenge is pending, a motion for a stay is subject to the demanding irreparable harm standard. It is difficult for the Commonwealth and Pilgrim Watch to meet this standard because the Commission has the authority to void or further condition the license transfer if the Petitioners are successful on the merits. In that situation, the options available to the Commission would also include an order to restore the decommissioning trust fund to the balance existing at the time of the transfer.

Pilgrim Nuclear Power Station Docket Nos. 50-293 and 72-1044 LT
Commission Memorandum and Order (CLI-19-11)

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[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 17th day of December 2019.

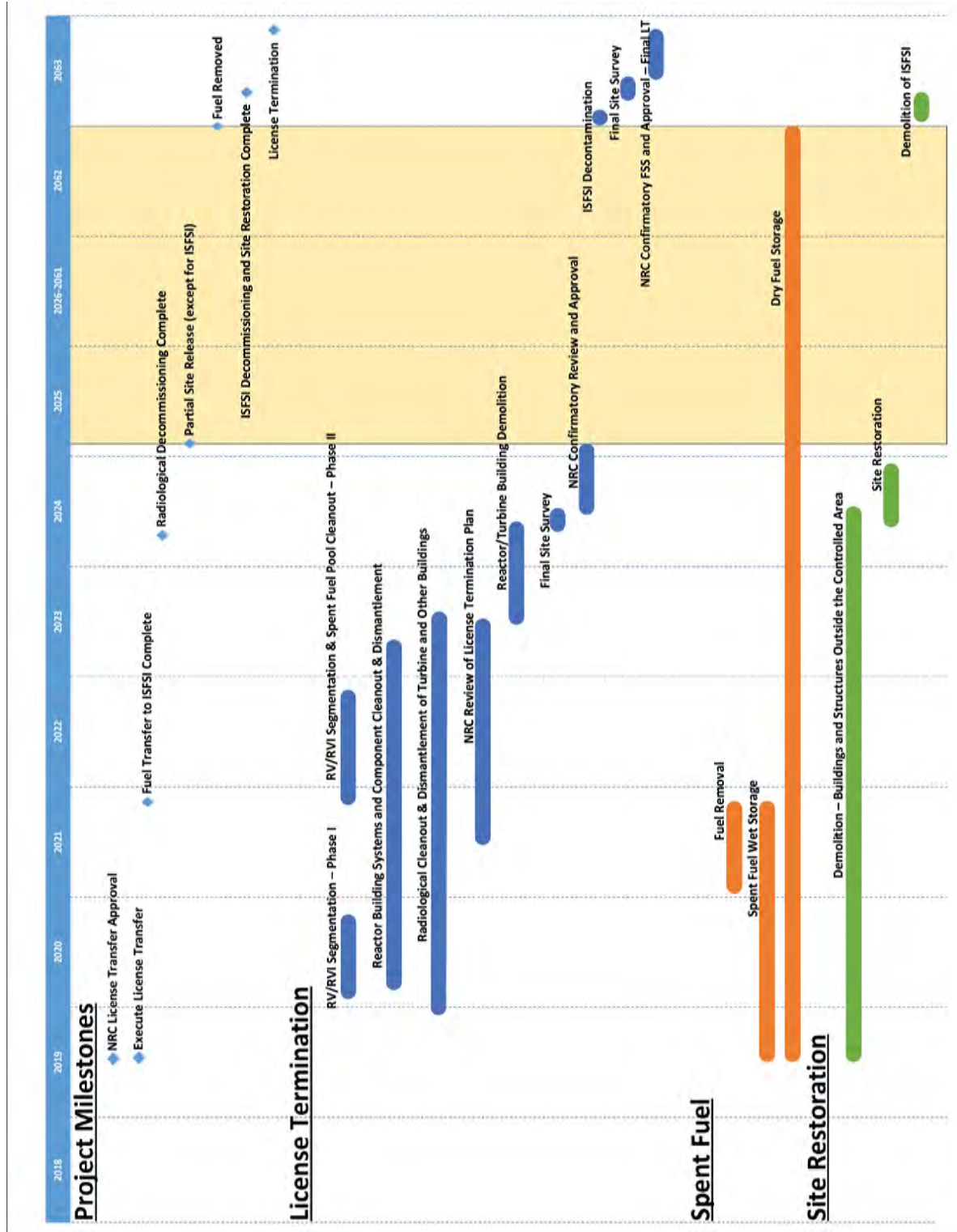
**Pilgrim Nuclear Power Station
DECON Site-Specific Decommissioning Cost Estimate**

Prepared for
Holtec Decommissioning International, LLC

Prepared by
Comprehensive Decommissioning International, LLC

**Pilgrim Nuclear Power Station
Site-Specific Decommissioning Cost Estimate**

Figure 5-1 Pilgrim Master Summary Schedule



Pilgrim Nuclear Power Station
Site-Specific Decommissioning Cost Estimate

Table 5-1 Decommissioning Funding Cash Flow Analysis

Pilgrim Nuclear Power Station - DECON Method								
Annual Cash Flow in Thousands of 2018 Dollars								
No DOE Reimbursement of Spent Fuel Management Costs								
Year	License Termination Cost	Spent Fuel Management Cost	Site Restoration Cost	Total Costs	Beginning of Year NDT Balance ¹	Withdrawals	NDT Earnings ²	Year Ending NDT Balance ³
2019	84,927	53,920	18	138,865	1,030,000	(138,865)	5,273	896,408
2020	79,292	84,905	28	164,225	896,408	(164,225)	10,397	742,579
2021	46,759	82,500	637	129,896	742,579	(129,896)	8,700	621,384
2022	103,197	3,332	23,630	130,159	621,384	(130,159)	6,975	498,200
2023	167,453	3,135	1,700	172,288	498,200	(172,288)	4,628	330,540
2024	95,694	3,225	9,236	108,155	330,540	(108,155)	3,158	225,543
2025	1,310	6,306	4,127	11,742	225,543	(11,742)	3,036	216,837
2026		5,952		5,952	216,837	(5,952)	2,995	213,879
2027		5,939		5,939	213,879	(5,939)	2,953	210,893
2028		5,952		5,952	210,893	(5,952)	2,910	207,851
2029		5,952		5,952	207,851	(5,952)	2,867	204,766
2030		7,212		7,212	204,766	(7,212)	2,805	200,359
2031		7,212		7,212	200,359	(7,212)	2,743	195,891
2032		7,212		7,212	195,891	(7,212)	2,679	191,358
2033		7,212		7,212	191,358	(7,212)	2,615	186,762
2034		7,193		7,193	186,762	(7,193)	2,550	182,119
2035		7,212		7,212	182,119	(7,212)	2,484	177,391
2036		7,230		7,230	177,391	(7,230)	2,416	172,577
2037		7,212		7,212	172,577	(7,212)	2,348	167,713
2038		7,193		7,193	167,713	(7,193)	2,279	162,800
2039		7,212		7,212	162,800	(7,212)	2,209	157,798
2040		7,212		7,212	157,798	(7,212)	2,138	152,724
2041		7,212		7,212	152,724	(7,212)	2,066	147,579
2042		7,212		7,212	147,579	(7,212)	1,993	142,361
2043		7,212		7,212	142,361	(7,212)	1,919	137,068
2044		7,212		7,212	137,068	(7,212)	1,844	131,701
2045		7,193		7,193	131,701	(7,193)	1,768	126,276
2046		7,212		7,212	126,276	(7,212)	1,691	120,755
2047		7,212		7,212	120,755	(7,212)	1,612	115,156
2048		7,230		7,230	115,156	(7,230)	1,533	109,458
2049		7,193		7,193	109,458	(7,193)	1,452	103,717
2050		7,212		7,212	103,717	(7,212)	1,370	97,876
2051		7,193		7,193	97,876	(7,193)	1,288	91,971
2052		7,230		7,230	91,971	(7,230)	1,203	85,944
2053		7,212		7,212	85,944	(7,212)	1,118	79,851

¹ The 2019 Beginning of Year NDT balance reflects the fund value post-closure of the equity sale. The value used does not include deductions for ENOI pre-closure costs. The 2019 costs include HDI estimated pre-closure and post closure costs.

² NDT earnings reflect an assumed 2% Real Rate of Return (RRR)

³ The Year Ending NDT Balance is net of taxes

Pilgrim Nuclear Power Station
Site-Specific Decommissioning Cost Estimate

Pilgrim Nuclear Power Station - DECON Method								
Annual Cash Flow in Thousands of 2018 Dollars								
No DOE Reimbursement of Spent Fuel Management Costs								
Year	License Termination Cost	Spent Fuel Management Cost	Site Restoration Cost	Total Costs	Beginning of Year NDT Balance ¹	Withdrawals	NDT Earnings ²	Year Ending NDT Balance ³
2054		7,212		7,212	79,851	(7,212)	1,031	73,671
2055		7,193		7,193	73,671	(7,193)	944	67,422
2056		7,212		7,212	67,422	(7,212)	855	61,065
2057		7,212		7,212	61,065	(7,212)	765	54,618
2058		7,212		7,212	54,618	(7,212)	673	48,080
2059		7,212		7,212	48,080	(7,212)	580	41,449
2060	4,296	7,212		11,507	41,449	(11,507)	425	30,367
2061	4,375	7,212		11,587	30,367	(11,587)	267	19,047
2062	4,358	7,193		11,551	19,047	(11,551)	106	7,602
2063	892	2,441	706	4,038	7,602	(4,038)	51	3,615
Total⁴	592,553	501,467	40,079	1,134,099		(1,134,099)	107,714	

⁴ Columns may not add due to rounding