

**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. 20-1019

(consolidated with  
No. 19-1198)

**NON-BINDING STATEMENT  
OF ISSUES TO BE RAISED**

Pursuant to the Court's Order of January 27, 2020, Petitioner Commonwealth of Massachusetts hereby states, without waiving the right to raise additional issues, that it intends to raise the following issues in its consolidated petitions for review:

1. Whether the Nuclear Regulatory Commission's (NRC) "Final No Significant Hazards Consideration" determination, which made the order transferring the Pilgrim Nuclear Power Station's license from

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively, Entergy) to Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC (HDI) (License Transfer Order), the related order amending Pilgrim's license (License Amendment), and the order exempting Holtec Pilgrim and HDI from 10 C.F.R. § 50.82(a)(8)(i)(A) (restricting use of decommissioning trust funds to radiological decontamination) (Trust Fund Exemption Order) immediately effective, exceeded 10 C.F.R. § 2.1315's scope, was arbitrary and capricious, and unlawfully deprived the Commonwealth of its right to a hearing before the NRC on the underlying merits.

2. Whether the NRC violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA) by, among other things:

(a) unlawfully segmenting its review of the License Transfer and License Amendment Application, HDI's request that the NRC exempt HDI and Holtec Pilgrim from complying with 10 C.F.R. § 50.82(a)(8)(i)(A), which prohibits HDI and Holtec Pilgrim from using Pilgrim's Decommissioning Trust Fund for non-decommissioning purposes (Trust Fund Exemption), and

HDI's revised Post-Shutdown Activities Report (PSDAR) and Site-Specific Cost Estimate on which the License Transfer Order, License Amendment, and Trust Fund Exemption Order were based;

(b) failing to complete an environmental impact statement on the potential direct and indirect environmental consequences of the License Transfer Order, License Amendment, Trust Fund Exemption Order, and revised PSDAR and Site-Specific Cost Estimate on which the License Transfer Order, License Amendment, Trust Fund Exemption Order were based;

(c) relying on a so-called categorical exclusion to exempt from any NEPA review the License Transfer Order and License Amendment even though the cited NRC categorical exclusion does not apply to those agency actions;

(d) issuing an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Trust Fund Exemption Order without taking the required hard look at the environmental consequences of doing so, which include, among other things, the public health, safety, and environmental risks

created by a funding shortfall caused by the Trust Fund Exemption Order.

3. Whether the NRC's License Transfer Order and License Amendment, which, effective immediately, transferred Pilgrim's license to new entities (i.e., Holtec Pilgrim and HDI) that do not meet the NRC's technical and financial qualification requirements and eliminated from Pilgrim's license a \$50 million contingency fund previously imposed by the NRC to cover any funding shortfall for radiologically decontaminating Pilgrim, violated the APA, the Atomic Energy Act (AEA), and the NRC's own regulations, or are otherwise arbitrary and capricious, unsupported by substantial evidence, an abuse of discretion or not in accordance with law.

4. Whether the NRC's Trust Fund Exemption Order, which, effective immediately, authorized HDI and Holtec Pilgrim to use Pilgrim's Decommissioning Trust Fund to pay for costs that 10 C.F.R. § 50.82(a)(8)(i)(A) expressly prohibits (i.e., non-radiological cleanup and spent fuel management costs) even though the exemption will lead to a funding shortfall and allow HDI and Holtec Pilgrim to convert Massachusetts electric ratepayer funds collected to ensure the complete

decommissioning of Pilgrim to private profit before the plant is radiologically decontaminated and the spent nuclear fuel removed from the site, violated the APA, the Atomic Energy Act (AEA), and the NRC's own regulations, or is otherwise arbitrary and capricious, unsupported by substantial evidence, an abuse of discretion or not in accordance with law.

5. Whether the NRC's Memorandum and Order (CLI-19-11), which denied the Commonwealth's request to stay the NRC's orders approving the License Transfer and License Amendment Application and the Trust Fund Exemption Order and thus permits the continuation of the effectiveness of the foregoing final unlawful agency orders prior to a hearing before the NRC on the underlying merits of those orders, violated the APA, the AEA, NEPA, the Council on Environmental Quality's NEPA regulations, and the NRC's own regulations, or is otherwise arbitrary and capricious, unsupported by substantial evidence, an abuse of discretion or not in accordance with law.

//

//

Respectfully submitted,

COMMONWEALTH OF  
MASSACHUSETTS

By its attorneys,

MAURA HEALEY  
ATTORNEY GENERAL

/s/ Joseph Dorfler

SETH SCHOFIELD

*Senior Appellate Counsel*

JOSEPH DORFLER

*Assistant Attorney General*

LIAM J. PASKVAN

*Special Assistant Attorney  
General*

Energy and Environment Bureau  
OFFICE OF THE ATTORNEY GENERAL  
FOR MASSACHUSETTS

One Ashburton Place, 18th Floor  
Boston, Massachusetts 02108

(617) 963-2436

seth.schofield@mass.gov

Dated: February 26, 2020

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Non-Binding Statement of Issues to be Raised with the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on February 26, 2020, and that all parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system.

Dated: February 26, 2020

/s/ Joseph Dorfler  
Joseph Dorfler  
*Assistant Attorney General*  
Energy and Environment  
Bureau  
Office of the Attorney General  
for Massachusetts  
One Ashburton Place, 18th Floor  
Boston, Massachusetts 02108  
(617) 963-2086  
joseph.dorfler@mass.gov