

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:

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| ENTERGY NUCLEAR OPERATIONS, INC., |) | Docket Nos. 50-003-LT, |
| ENTERGY NUCLEAR INDIAN POINT 2, LLC, |) | 50-247-LT, |
| ENTERGY NUCLEAR INDIAN POINT 3, LLC, |) | 50-286-LT, and |
| HOLTEC INTERNATIONAL, and HOLTEC |) | 72-051-LT-2 |
| DECOMMISSIONING INTERNATIONAL, LLC |) | |
| |) | March 9, 2020 |
| (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3) |) | |

**APPLICANTS' ANSWER OPPOSING RIVERKEEPER, INC.'S
PETITION TO INTERVENE AND FOR A HEARING**

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NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:

ENTERGY NUCLEAR OPERATIONS, INC.,
ENTERGY NUCLEAR INDIAN POINT 2, LLC,
ENTERGY NUCLEAR INDIAN POINT 3, LLC,
HOLTEC INTERNATIONAL, and HOLTEC
DECOMMISSIONING INTERNATIONAL, LLC

(Indian Point Nuclear Generating Unit Nos. 1, 2, and 3)

)
)
) Docket Nos. 50-003-LT,
) 50-247-LT,
) 50-286-LT, and
) 72-051-LT-2
)

) March 9, 2020
)
)

**APPLICANTS' ANSWER OPPOSING RIVERKEEPER, INC.'S
PETITION TO INTERVENE AND FOR A HEARING**

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. (“ENOI”), Entergy Nuclear Indian Point 2, LLC (“ENIP2”), Entergy Nuclear Indian Point 3, LLC (“ENIP3”), Holtec International (“Holtec”), and Holtec Decommissioning International, LLC (“HDI”) (collectively, “Applicants”) submit this opposition to the Petition of Riverkeeper, Inc. to Intervene and for a Hearing (“Petition”).¹ Because Riverkeeper cannot meet the standards for an admissible contention under 10 C.F.R. § 2.309(f)(1), the Petition should be denied. But even if it could, Riverkeeper lacks standing to intervene.

I. BACKGROUND

On November 21, 2019, Applicants submitted the license transfer application (the “Application”) that is the subject of these proceedings.² On January 23, 2020, the Nuclear

¹ Petition of Riverkeeper, Inc. to Intervene and for a Hearing (Feb. 12, 2020) (ADAMS Accession No. ML20043F530) (“Petition”).

² See Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming Amendments, Indian Point Nuclear Generating Units 1, 2, and 3, Docket Nos. 50-3, 50-247, 50-286 and 72-051

Regulatory Commission (“NRC” or the “Commission”) published a notice in the Federal Register regarding the Application, which provided an opportunity to any person whose interest may be affected, within 20 days of the notice, to request a hearing and file a petition for leave to intervene in the proceeding.³ On February 12, 2020, Riverkeeper filed its Petition.

A thorough discussion of the legal and regulatory framework related to decommissioning, spent nuclear fuel management, reactor license transfers, and contention admissibility is presented in Applicants’ answer to the hearing request filed by the State of New York.⁴ For the sake of brevity, rather than republishing the lengthy discussion in full, Applicants incorporate it herein by reference.

II. RIVERKEEPER’S CONTENTION IS INADMISSIBLE

Riverkeeper contends that the licensees, HDI, Holtec Indian Point 2, LLC (“Holtec IP2”), and Holtec Indian Point 3, LLC (“Holtec IP3”) lack integrity and willingness to comply with NRC regulations. But Riverkeeper’s only basis to support that contention is to attack the general business conduct of Holtec International—HDI’s ultimate parent company—and its CEO. Riverkeeper makes no attempt to connect those claims to either the contents of the Application, the technical and financial qualifications of the proposed licensees, or any of the HDI officers listed in the Application who will be responsible for decommissioning Indian Point Energy Center (“IPEC”) if the Application is approved.

(Nov. 21, 2019) (ADAMS Accession No. ML19326B953). On January 17, 2020, HDI submitted a supplement describing an organizational change within HDI. Supplement to Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments, Indian Point Nuclear Generating Units 1, 2, and 3, Docket Nos. 50-3, 50-247, 50-286 and 72-051 (Jan. 17, 2020) (ADAMS Accession No. ML20017A290) (“First Supplement”).

³ Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Consideration of Approval of Transfer of Control of Licenses and Conforming Amendments, 85 Fed. Reg. 3,947 (Jan. 23, 2020) (the “Notice”).

⁴ Applicants’ Answer Opposing Petition for Leave to Intervene and Hearing Request Filed by the State of New York at § III.

Putting aside the failure to raise claims relevant to the matter before the Commission, Riverkeeper's allegations do not even support its sweeping assertion that Holtec or its CEO has a propensity to willfully violate NRC regulations. Riverkeeper extrapolates from press coverage an unsupported theory of corporate malfeasance that is flatly contradicted by the NRC's public record and far beyond the scope of matters within the NRC's jurisdiction—much less the matters at issue in this license transfer proceeding.

Riverkeeper falls far short of its burden to show that all of the requirements of § 2.309(f)(1) are met. To be specific, though, Riverkeeper fails to demonstrate that its concern is within the scope of the proceeding in accordance with 10 C.F.R. § 2.309(f)(1)(iii); it cannot show that its contention is “material to the findings the NRC must make to support the action that is involved” pursuant to 10 C.F.R. § 2.309(f)(1)(iv); it cannot provide adequate factual or expert support as required by 10 C.F.R. § 2.309(f)(1)(v); and it does not offer sufficient information to demonstrate a genuine dispute exists as required by 10 C.F.R. § 2.309(f)(1)(vi). Failure on any one of those requirements is fatal, and the “contention must be rejected.”⁵

A. Legal Standard

The Commission's contention admissibility standards are enforced rigorously. A presiding officer cannot overlook a deficiency in a contention or assume the existence of missing information.⁶ Admissible contentions “must explain, with specificity, particular safety or legal

⁵ *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted); *see also USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) (“These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements.” (footnotes omitted)).

⁶ *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 N.R.C. 1, *aff'd in part*, CLI-95-12, 42 N.R.C. 111 (1995) (citing *Palo Verde*, CLI-91-12, 34 N.R.C. 149); *see also Private Fuel Storage, L.L.C.* (ISFSI), LBP-98-7, 47 N.R.C. 142, 180 (1998) (explaining that a “bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;” rather, “a petitioner must provide documents or other factual information or expert opinion” “to show why the proffered bases support [a] contention” (citations omitted)).

reasons requiring rejection of the contested [application].”⁷ Any explanation must demonstrate that the contention is “material” to the NRC’s findings and that a genuine dispute on a material issue of law or fact exists.⁸ A “material” issue means that “resolution of the dispute *would make a difference in the outcome* of the licensing proceeding.”⁹

A statement “that simply alleges that some matter ought to be considered” does not provide a sufficient basis for a contention.¹⁰ And “[m]ere reference to documents does not provide an adequate basis for a contention.”¹¹ NRC’s pleading standards require more. A petitioner must read the pertinent portions of the license application, state the applicant’s position and the petitioner’s opposing view, and explain why it has a disagreement with the applicant.¹² If the petitioner does not believe that those materials address a relevant issue, the petitioner must “explain why the application is deficient.”¹³ Conclusory “allegation[s] that some aspect of a license application is ‘inadequate’ or ‘unacceptable’ does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in

⁷ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001).

⁸ 10 C.F.R. § 2.309(f)(1)(iv), (vi).

⁹ Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (emphasis added).

¹⁰ *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), *review declined*, CLI-94-2, 39 N.R.C. 91 (1994).

¹¹ *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

¹² Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170-171 (Aug. 11, 1989); *Millstone*, CLI-01-24, 54 N.R.C. at 358.

¹³ 54 Fed. Reg. at 33,170; *see also Palo Verde*, CLI-91-12, 34 N.R.C. at 156.

some material respect.”¹⁴ Mere speculation is not enough to raise a genuine dispute with the application.¹⁵

B. Riverkeeper’s Wide-Ranging Claims are Not Relevant to the Commission’s Decision on the Application

The NRC places “strict limits on ‘management’ and ‘character’ contentions”¹⁶ and any such claims must have “some direct and obvious relationship between the character issues and the licensing action in dispute.”¹⁷ Claims based on prior actions or past violations must “be directly germane to the challenged licensing action.”¹⁸ “Allegations of management improprieties or poor ‘integrity’ . . . must be of more than historical interest.”¹⁹ Any claims attacking a license transferee’s character must be connected to the technical and financial qualifications of the applicants in the proceeding.²⁰ In this context, the Commission has admitted contentions alleging deliberate NRC violations by a proposed licensee’s plant managers or personnel during operation of the plant or in response to NRC investigations.²¹ But the

¹⁴ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 358 (2006) (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990)).

¹⁵ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 N.R.C. 215, 225 (2017).

¹⁶ *Millstone*, CLI-01-24, 54 N.R.C. at 365.

¹⁷ *Id.* at 365-66. The cases cited by Riverkeeper explain these limitations on character claims. *See Georgia Power Company*, (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 N.R.C. 25, 32 (1993) (“We do not mean to suggest that every licensing action throws open an opportunity to engage in a free-ranging inquiry into the ‘character’ of the licensee. There must be some direct and obvious relationship between the character issues and the licensing action in dispute.”).

¹⁸ *Millstone*, CLI-01-24, 54 N.R.C. at 366-67; *see also Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-04, 49 N.R.C. 185, 189 (1999) (“[L]icensing actions as a rule do not ‘throw[] open an opportunity to engage in a free-ranging inquiry into the ‘character’ of the licensee.’”) (quoting *Vogtle*, CLI-93-16, 38 N.R.C. at 32).

¹⁹ *Id.* at 366 (quoting *Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 N.R.C. 111, 120 (1995)).

²⁰ *See Exelon Generation Co.* (Oyster Creek Nuclear Generating Station), CLI-19-06 (June 18, 2019) (slip op. at 15).

²¹ *See Millstone*, CLI-01-24, 54 N.R.C. at 366 (“[W]e found character allegations directly pertinent when . . . the allegations specifically concerned the current director of the facility, and the current organizational structure of the facility, and were supported by expert witnesses alleged to have knowledge of the current management.” (citing

Commission has consistently rejected generic claims related to large companies' conduct of business activities when the cited conduct is not directly connected to the licensed activities in question.²²

That standard is intentionally restrictive. And for good reason. Admitting general claims about unrelated corporate activities, adequacy of company procedures or culture, or general misconduct of company personnel or executives in every licensing proceeding would open Pandora's box to freewheeling litigation about issues that have no direct bearing on the licensee's ownership and operation of the plant or conduct of the licensed activities at issue.²³ Because of that, the scope of character claims relevant to a license transfer are those that directly relate to the character of the proposed licensee's personnel and their integrity and willingness to operate and manage the plant in compliance with NRC requirements.

Riverkeeper's contention does not meet that standard.

1. Riverkeeper's Allegations Are Not Connected to the Proposed Licensees or Personnel Who Will Be Responsible for Licensed Activities at IPEC

Riverkeeper has not raised any claims that relate to the proposed licensees' personnel or management who would be responsible for decommissioning activities at IPEC. Riverkeeper's

Georgia Tech, CLI-95-12, 42 N.R.C. 111 (1995)); *see also Consumers Energy Co.* (Big Rock Point ISFSI), CLI-07-21, 65 N.R.C. 519, 523 (2007) (explaining that the Commission has admitted contentions where the petitioner "alleged that management had submitted material false statements to the Commission in order to obstruct an NRC investigation" (citing *Vogtle*, CLI-93-16, 38 N.R.C. at 32)).

²² *See Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-85-9, 21 N.R.C. 1118, 1137 (1985) (rejecting character contention that did not provide any indication the individuals involved in wrongdoing were likely to be managing decommissioning activities and explaining that any evidence must have "a rational connection to the safe operation of a nuclear power plant"); *see also Millstone*, CLI-01-24, 54 N.R.C. at 366 (rejecting character contention due to petitioner's failure to establish a link between individuals and direct management involved in wrongdoing and activities occurring at the plant); *Power Authority of the State of New York* (James A. Fitzpatrick Nuclear Power Plant and Indian Point Nuclear Generating Unit No. 3), CLI-00-22, 52 N.R.C. 266, 312 (2000) ("[W]e are unwilling to use our hearing process as a forum for a wide-ranging inquiry into the corporate parent's general activities across the country.").

²³ *See Fitzpatrick & Indian Point*, CLI-00-22, 52 N.R.C. at 311-12; *Zion*, CLI-99-04, 49 N.R.C. at 189.

attack focuses on Holtec and its CEO, Dr. Krishna Singh. As stated in the Application, Holtec is the ultimate parent of HDI and would become the upstream owner of the subsidiaries that would own the IPEC units (to be known as Holtec IP2 and Holtec IP3). Riverkeeper cites what it says are false statements or misconduct by Holtec and its CEO in designing spent fuel casks, handling spent fuel canisters at San Onofre Nuclear Generating Station (“SONGS”), business dealings with TVA, obtaining tax credits for its corporate offices, and pursuing a license to construct a New Mexico spent fuel interim storage facility. From this, Riverkeeper posits that “a hearing is warranted to fully examine *Holtec’s* character and integrity.” (Petition at 13, emphasis added). As is obvious, each allegation relates to Holtec projects and proceedings entirely disconnected from HDI, IPEC, this proceeding, or even nuclear plant decommissioning for that matter.

Riverkeeper attempts to tie these claims to the Application and licensees through a theory of corporate responsibility. But that is inconsistent with both corporate law and Commission precedent. Riverkeeper states, for example, that “the corporate structure of Holtec and its subsidiaries . . . gives Dr. Singh legal responsibility for the operations of Holtec and all of its subsidiaries.” (Petition at 11). Apparently recognizing that this is not how U.S. laws treat executives and shareholders, Riverkeeper offers an alternative theory that “the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation.” (Petition at 12).²⁴ Not only are both statements wrong as general matters of law, but more importantly, they miss the point of the Commission’s requirements for character contentions.

The Commission has already rejected this theory of communal corporate responsibility. In fact, it has even done so in prior IPEC-related licensing proceedings in response to similar

²⁴ Quoting *Safety Light Corp., et al.* (Bloomsburg Site Decommissioning & License Renewal Denials), LBP-95-9, 41 N.R.C. 412, 458 (1995).

character claims. When the current Entergy licensees proposed to buy Unit 3 from the Power Authority of the State of New York, the Commission rejected a contention aimed at Entergy’s corporate and managerial integrity. Like here, the petitioner in that proceeding sought a hearing based on historical events related to the parent company and unrelated subsidiaries.²⁵ The Commission rejected that contention, explaining that “[a]bsent strong support for a claim that difficulties at other plants run by a corporate parent *will affect the plant(s) at issue before the Commission*, we are unwilling to use our hearing process as a forum for a wide-ranging inquiry into the corporate parent’s general activities across the country.”²⁶

The Commission has also rejected similar attacks on HDI based on historical events involving related parties. In the Oyster Creek license transfer proceeding, for example, a petitioner sought a hearing on the basis of alleged misdeeds of SNC-Lavalin—the upstream co-owner of Comprehensive Decommissioning International, LLC (“CDI”) (HDI’s decommissioning general contractor at Oyster Creek who would perform the same role at IPEC).²⁷ The Commission denied the contention because the petitioners did not “link[] its concerns . . . to the technical or financial qualifications of the Applicants, or to any other matter within the scope of this proceeding” and failed to “provide any indication that individuals who may have been involved in the asserted wrongdoing . . . *are likely to be involved in managing Oyster Creek’s decommissioning activities*.”²⁸

Riverkeeper’s contention suffers the same flaw. The Petition does not connect claims about the corporate parent and its CEO, or the alleged activities of Holtec subsidiaries or

²⁵ See Citizens Awareness Network’s Request for Hearing and Petition to Intervene, Docket Nos. 50-333, 50-286 at 36-41 (July 31, 2000) (ADAMS Accession No. ML003737588).

²⁶ *Fitzpatrick & Indian Point*, CLI-00-22, 52 N.R.C. at 312 (emphasis added).

²⁷ See Township of Lacey’s Petition for Leave to Intervene and Hearing Request, Docket Nos. 50-219, 72-015 at 2–3 (Nov. 8, 2018) (ADAMS Accession No. ML18312A251).

²⁸ *Oyster Creek*, CLI-19-06 (slip op. at 14–15) (emphasis added).

personnel in other states and on other projects, to HDI's operation of IPEC following the license transfer. Neither does it connect its claims to any of the HDI managers or personnel listed in the Application who will be responsible for oversight of decommissioning activities, withdrawal of decommissioning trust funds, or regulatory compliance programs. Dr. Singh is not an officer of HDI and will not conduct or directly manage the licensed activities at IPEC—a point that Riverkeeper does not and cannot contest.²⁹ Although the Application notes Dr. Singh's and Holtec's well-known role as a nuclear industry leader in spent fuel management systems, it does not imply that Dr. Singh will have any role in managing the decommissioning of IPEC or any responsibilities for HDI's compliance with NRC regulations in connection with the same.³⁰ That HDI will draw from Holtec's (and SNC-Lavalin's) project management experience and familiarity with NRC regulatory framework does not transform this license transfer proceeding into a free-ranging inquisition into Holtec's or SNC-Lavalin's historical and global business activities. Moreover, the fact that HDI may eventually integrate existing Holtec policies and programs into the current site programs where appropriate (*see* Application at 6, 14–15) also does not open the door to an open-ended examination of Holtec's entire compliance record as a cask certificate holder or vendor on NRC-licensed sites. Not to mention the fact that, as discussed below, Riverkeeper does not actually assert an admissible contention challenging even *Holtec's* integrity as a cask certificate holder or its compliance procedures and programs (assuming such a contention would even be relevant). Nor does Riverkeeper connect any of the

²⁹ See Application at 8 (“HDI is structured to serve as a fully resourced organization to directly oversee and manage licensed decommissioning operations and the dismantlement of nuclear plants that have ceased operation.”); First Supplement at 7–11 (listing HDI officers and their responsibilities for licensed activities at IPEC).

³⁰ Riverkeeper's assertion that Dr. Singh “effectively controls” all Holtec subsidiaries through a lengthy corporate command chain (Petition at 11) ignores how businesses are run by officers, boards, and directors, and is really just another form of Riverkeeper's theory for communal corporate responsibility. The individual responsible for licensed activities at IPEC are HDI's officers listed in the Application.

alleged malfeasance to the policies or programs that may ultimately be integrated into existing IPEC programs.³¹

What's more, Riverkeeper does not allege that any of the officers in the HDI organization or any of the incumbent plant leadership or personnel have been involved in any of its allegations of historical misconduct. The responsibilities those officers would have over licensed activities at IPEC are described in detail in the Application. (*See* First Supplement at 7–11). But Riverkeeper does not and cannot cite a single act of misconduct by any of those officers in its litany of alleged misconduct. Without that, Riverkeeper cannot show any connection between its allegations and this proceeding and, as a result, it has failed to raise a character contention that is relevant here.

An NRC proceeding is not a forum for litigating “historical allegations or past events with no direct bearing on the challenged licensing action.”³² Because Riverkeeper has failed to establish any nexus between its allegations and HDI's conduct of licensed activities at IPEC, it has failed to meet its burden under 10 C.F.R. § 2.309(f)(1)(iii), (iv) and (vi).

2. Riverkeeper's Allegations Do Not Relate to the Safe Operation of a Nuclear Plant or Willful Violations of NRC Regulations by Holtec, Much Less HDI

Not only does Riverkeeper fail to connect any of its claims to the Application or proposed licensees, but a closer look at Riverkeeper's allegations shows that it cannot even support its contention that HDI will *willfully* violate NRC regulations in its conduct of licensed

³¹ As explained in the Application, HDI will adopt existing ENOI compliance policies, programs, and procedures, with any changes (to standardize procedures consistent with HDI's fleet approach) made as appropriate and in accordance with NRC regulations. *See* Application at 14–15.

³² *Millstone*, CLI-01-24, 54 N.R.C. at 366 (quotations and citations omitted); *U.S. Dep't of Energy* (High Level Waste Repository), CLI-09-14, 69 N.R.C. 580, 606 (2009) (“[I]t is not sensible for us to divert scarce licensing resources to potentially complex mini-trials on alleged past [applicant] misdeeds—some entirely unrelated to the [licensing matter before the Commission].”).

activities at IPEC. Neither does it meet the NRC’s standard for character contentions, which requires demonstration of the same.

Riverkeeper’s contention is based on historical allegations related to five events or actions:

- (1) Holtec’s design configuration and control processes for spent nuclear fuel casks;
- (2) a spent fuel canister loading incident involving Holtec and Southern California Edison (“SCE”) employees at SONGS;
- (3) a contract for spent fuel management services at Browns Ferry Nuclear Plant nearly twenty years ago;
- (4) Holtec’s application for New Jersey tax credits to construct its corporate headquarters; and
- (5) Holtec’s pending application to build a consolidated interim spent fuel storage facility in New Mexico.

None of those allegations relate to operation or decommissioning of a nuclear power plant or demonstrate willful violations of NRC regulations.

The Commission has made clear that, when the character or integrity of a licensee is questioned, it will “consider[] evidence regarding licensee behavior *having a rational connection to the safe operation of a nuclear power plant.*”³³ Even where petitioners have alleged misconduct in the performance of licensed activities at a nuclear power plant, the Commission has rejected contentions that merely resurrect past NRC inspection findings or violations (which themselves are subject to rigorous review, corrective action, and closure under the NRC’s ongoing oversight) as relevant evidence to a licensee’s fundamental character to hold an NRC license.³⁴

³³ *Three Mile Island*, CLI-85-9, 21 N.R.C. at 1136–37 (emphasis added).

³⁴ *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-10-27, 72 N.R.C. 481, 491 (2010) (“[T]o permit [a collection of fundamentally routine inspection findings and regulatory determinations] to form the basis for a “safety culture” contention could result in a potentially never-ending stream

Instead of turning licensing actions into an omnibus evidentiary hearing on the historical compliance record of the licensee and its affiliates, the Commission's precedent makes clear that "character and integrity" contentions are appropriate only in the context of claims of *willful* violations of NRC requirements by the managers and personnel entrusted with operation of the plant.³⁵

Riverkeeper attempts to maintain consistency with the Commission's standard only so far as its conclusory assertion—that HDI lacks the "character, competence, . . . integrity, . . . candor, truthfulness and willingness to abide by NRC regulatory requirements."³⁶ (Petition at 9). But none of Riverkeeper's historical allegations actually impute Holtec (much less HDI) of such conduct.

For starters, Riverkeeper does not explain how Holtec's cask design configuration and control program (Holtec holds numerous Certificates of Compliance for spent fuel storage casks) or Holtec's failure to obtain NRC pre-approval of a cask design change is probative of HDI's propensity to comply with NRC regulations in decommissioning IPEC. That is because it cannot. Even ignoring this fatal flaw, Riverkeeper's claims do not show any integrity defect by Holtec. Riverkeeper's suggestion that Holtec "falsely claim[ed] the change was not safety significant" and nefariously withheld it from NRC scrutiny (*see* Petition at 13–14) ignores the applicable regulatory framework and the readily-available facts in the NRC public record. NRC

of mini-trials on operational issues, in which the applicant would be required to demonstrate how each issue was satisfactorily resolved.").

³⁵ *See Big Rock Point*, CLI-07-21, 65 N.R.C. at 523; *Millstone*, CLI-01-24, 54 N.R.C. at 366; *see, e.g., Georgia Tech*, CLI-95-12, 42 N.R.C. 111, 121 (1995) (admitting a character contention where the petitioner alleged deliberate violations of NRC regulations by the project director with support from NRC inspection reports and an expert witness).

³⁶ It bears noting that Riverkeeper does not challenge the technical qualifications of HDI, or any of the individuals listed in the Application; rather, the contention is solely aimed at HDI's integrity and willingness to comply with NRC regulations.

regulations allow cask designers like Holtec to implement certain design changes without NRC approval.³⁷ In the NRC notice cited by Riverkeeper, staff explained that Holtec conducted an engineering assessment of the design change and screening to determine if NRC approval was required.³⁸ Although staff disagreed with Holtec’s engineering judgment that the design could be implemented without NRC pre-approval, they found no evidence that Holtec personnel willfully violated NRC requirements.³⁹ What’s more, technical staff’s detailed review of the design change actually confirmed Holtec’s ultimate conclusion—that the design change characteristics were adequate and “did not result in an actual significant safety concern”⁴⁰—and staff determined that no civil penalties were warranted in light of Holtec’s past compliance record and “prompt and comprehensive correction of the violation.”⁴¹

In a similar vein, Riverkeeper’s spin on the SONGS canister loading incident mischaracterizes the NRC’s regulatory framework, is contradicted by the substantial NRC record, and shows no willful violation of NRC regulations by either Holtec or the actual licensee, SCE (and again Riverkeeper makes no attempt to explain how HDI’s integrity is implicated). Riverkeeper claims that Holtec did not report the incident and instead a whistleblower brought the issue to light. (Petition at 15). As the facility licensee, SCE held the reporting obligation for the incident—not Holtec. And as documented in NRC’s inspection report, SCE plant staff reported the incident to the NRC region the Monday following the incident (occurring on a

³⁷ See 10 C.F.R. § 72.48(c)(1).

³⁸ Notice of Violation, NRC Inspection Report No. 07201014/2018-201, EA-18-151 at 2 (April 24, 2019) (ADAMS Accession No. ML19072A128) (cited in Petition at 14 n.3) (“Design Change NOV”); *see also* NRC Inspection Report 07201014/2018-201, EA-18-151 at 13 (Nov. 28, 2018) (ADAMS Accession No. ML18306A853).

³⁹ *Id.* (both the notice of violation and initial inspection report).

⁴⁰ Design Change NOV at 2.

⁴¹ *Id.* at 3 (“This determination [not to issue civil penalties] is in recognition of no aggravating circumstances, Holtec’s prompt and comprehensive correction of the violation, and the absence of recent escalated enforcement action.”).

Friday).⁴² It's true that SCE received a violation due to its failure to provide a formal report to NRC headquarters within the period allowed by 10 C.F.R. § 72.75(d)(1),⁴³ but the inspection findings underlying the NRC press release cited by Riverkeeper clearly show that NRC did not find any intentional malfeasance by SCE, much less Holtec, in missing the deadline.⁴⁴ In fact, contrary to Riverkeeper's statement that NRC fined SCE \$116,000 for "failure to disclose" (Petition at 15), the underlying notice of violation states that in light of SCE's "sufficiently comprehensive and appropriate" corrective actions, "credit was warranted, which would not result in a civil penalty" for the reporting delay.⁴⁵ In other words, Riverkeeper got it wrong in every way possible: Holtec was not the licensee, SCE reported the incident, NRC found no malfeasance in SCE's late reporting, and NRC did not issue a civil penalty for the reporting delay. But most importantly, none of this has anything to do with HDI or IPEC.

The only other claim even remotely connected to NRC compliance is Riverkeeper's allegation that Holtec "made a string of self-serving false statements" in its application for a license to build and operate a consolidated interim storage facility ("CISF") in New Mexico. (Petition at 19). Putting aside the fact that Holtec's CISF application is the subject of a separate,

⁴² See Errata: San Onofre Nuclear Generating Station – NRC Special Inspection Report 050-00206/2018-005, 050-00361/2018-005, 050-00362/2018-005, 072-00041/2018-001 AND NOTICE OF VIOLATION, EA-18-155 (Dec. 19, 2018) (ADAMS Accession No. ML18341A172) ("SCE Inspection Report") (providing a timeline of the incident and SCE's communications with NRC).

⁴³ SCE Inspection Report at 17 ("After the incident, the licensee provided a courtesy notification to the NRC Region IV office at approximately 4 p.m. CDT on the afternoon of August 6, 2018. Section 10 CFR 72.75(d)(1), would have allowed for notification to be made to the NRC Operations Center as late as 0800 EDT on Monday, August 6, 2018.").

⁴⁴ SCE Inspection Report at 16–17; Notice of Violation and Proposed Imposition of Civil Penalty - \$116,000 and NRC Inspection Report 050-00206/2018-005, 050-00361/2018-005, 050-00362/2018-005, 072-00041/2018-001, EA-18-155 at 3 (Mar. 25, 2019) (ADAMS Accession ML 19080A208) ("SCE NOV"); see also NRC SUPPLEMENTAL INSPECTION REPORT 050-00206/2018-006, 050-00361/2018-006, 050-00362/2018-006, 072-00041/2018-002, EA-18-155 at 10, 22 (July 9, 2019) (closing the 10 C.F.R. § 72.75(d)(1) violation issued to SCE on the basis of corrective actions taken by the licensee to address the contributing causes: "(1) There was a lack of guidance to facilitate understanding of the wording in 10 CFR 72.75(d); and (2) SCE management did not encourage, and the organization did not demonstrate, a conservative bias for reporting")

⁴⁵ SCE NOV at 3.

ongoing NRC proceeding that has no relevance to HDI’s conduct of licensed activities at IPEC, Riverkeeper again gets it wrong in every relevant way. In an attempt to embellish and amplify the arguments raised (and in some cases, already rejected) in that proceeding, Riverkeeper claims—without citation—that Holtec “falsely claimed . . . it had full control over the intended site”; “falsely asserted . . . that it had secured third-party agreements to prevent any problematic mineral exploitation”; “falsely claimed . . . oil and gas drilling . . . would be restricted”; and “misrepresented the level of statewide support.” (Petition at 19). Each of these claims is, again, contradicted by the record that Riverkeeper ignores.

Holtec’s materials submitted in the CISF docket explain that “[t]he mineral rights for [the site] and certain adjacent areas are held in trust by the New Mexico Commissioner of State Lands”⁴⁶ and “[t]he minerals (including oil and gas) beneath the Site are owned by the state of New Mexico and are leased to production companies for development.”⁴⁷ Holtec’s application described oil and gas activity near the site⁴⁸ and contemplated “future oil drilling or fracking beneath the Site,”⁴⁹ including in its seismicity and subsistence analyses.⁵⁰ The licensing board rejected a contention challenging the adequacy of Holtec’s assessment of oil and gas activities

⁴⁶ Holtec License Application Responses to Requests for Supplemental Information (Apr. 9, 2019) (ADAMS Accession No. ML19081A082) Attachment 9, Potash Mining Lease Partial Relinquishment Agreement at 1 (Oct. 5, 2016) (ADAMS Accession No. ML19081A080).

⁴⁷ 2007 Eddy Lea Siting Study at 2.1-9 (ADAMS Accession No. ML102440738) (“ELEA 2007”); Environmental Report, Rev. 6 at 3-2 (ADAMS Accession No. ML19163A146) (“CISF ER”) (“The surface estate is privately owned (ELEA 2007, Section 2.1.1.1), and the subsurface minerals are owned by the state of New Mexico.”).

⁴⁸ See, e.g., Safety Analysis Report Rev. 0H at 2-3, 2-8 to 2-10, 2-12 (ADAMS Accession No. ML19163A062) (“CISF SAR”); CISF ER at 2-3, 3-2, 3-3, 3-120. The application included graphs of the potash mines, potash core holes and oil and gas wells near the site. CISF SAR at 2-36 (Figure 2.1.17), 2-37 (Figure 2.1.18), 2-39 (Figure 2.1.20).

⁴⁹ CISF ER at 3-2.

⁵⁰ CISF SAR at 2-109 to 2-112; CISF ER at 3-17, 3-19; see also *Holtec Int’l* (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, 89 N.R.C. __ (2019) (slip op. at 108) (ADAMS Accession No. ML19127A026). The ELEA 2007 report referenced in the CISF ER and included on the docket also includes a detailed analysis of the possibility of subsidence at the CISF site. ELEA 2007 at 2.3-48 to 2.3-52.

near the site,⁵¹ as well as a contention that Holtec misrepresented community support.⁵² Even entertaining Riverkeeper's premise that the Commission should allow these matters to be re-litigated in the completely separate and unrelated IPEC license transfer proceeding, Riverkeeper's claims are contradicted by the record and do not establish any propensity by Holtec to willfully violate NRC regulations.

Riverkeeper's final set of related allegations go well beyond NRC's jurisdiction and have nothing to do with Holtec's compliance with NRC requirements, much less HDI's integrity and willingness to decommission IPEC in accordance with NRC regulations.

Riverkeeper resurrects alleged misconduct in Holtec's business dealings with TVA nearly twenty years ago—matters long since investigated and closed, even by Riverkeeper's account—without any explanation of how those historical claims bear on Holtec's (much less HDI's) compliance with NRC regulations or business conduct today.⁵³ In fact, according to TVA's contemporaneous report (referenced by the blogpost Riverkeeper cites), Holtec implemented corrective actions in response to these events. Holtec appointed a corporate governance officer and independent monitor, implemented a new code of conduct and training for company personnel, added three new independent board members, and agreed to monitoring of its operations for a year.⁵⁴ And following these events, TVA resumed contracting with Holtec and

⁵¹ *Holtec Int'l*, LBP-19-4, 89 N.R.C. __ (slip op. at 105–108).

⁵² *Id.* at 129–131.

⁵³ To the extent Riverkeeper's speculation that "[o]vercharging by Holtec International would result in needless diversion of monies from decommissioning to private coffers," (Petition at 17), is construed as a challenge to HDI's financial qualifications or use of Holtec as a contractor, such claim fails to meet any of the requirements for pleadings under 2.309(f)(1).

⁵⁴ TVA Office of Inspector General, Semiannual Report, October 1, 2010 – March 31, 2011 at 8, 35 (available at <https://oig.tva.gov/reports/semi50.pdf>) (linked in Public Watchdogs post cited by Petition, n.7, and apparent basis for statement that "Holtec paid a \$2 million 'administrative fee' and agreed to submit to monitoring of its operations for twelve months" (Petition at 16)).

Holtec has maintained a successful ongoing business relationship with TVA that continues today. Even ignoring all the other flaws in Riverkeeper’s claim, the Commission has made clear that it will not entertain historical claims of misconduct in the abstract, particularly those that were the subject of investigation and corrective action.⁵⁵

Finally, Riverkeeper’s arguments related to Holtec’s application for New Jersey tax credits in constructing its corporate offices are well beyond NRC jurisdiction, have no bearing on Holtec’s or HDI’s compliance with NRC regulations, and do not even allege—much less substantiate—any intentional misstatements. While obviously not germane to the Application, it bears noting that Riverkeeper does not challenge Holtec’s denial of any wrongdoing, as reported by the press coverage Riverkeeper cites.⁵⁶ Rather than repeating the multitude of reasons why Riverkeeper’s claim fails to meet the Commission’s contention-admissibility requirements, it suffices to say here that any investigation into the details of an application submitted to the New Jersey Economic Development Authority is appropriately handled by the state of New Jersey, not the NRC.

In summary, Riverkeeper’s claims do not show that anyone at Holtec, much less HDI, willfully violated NRC regulations. Riverkeeper simply seeks to litigate Holtec’s compliance record as a cask certificate holder, the contents of its New Mexico CISF application, and its role as a contractor at a plant where it is not the licensee—all of which have been extensively reviewed in separate NRC proceedings and none of which bear on HDI’s fundamental ability and

⁵⁵ See *Three Mile Island*, CLI-85-9, 21 N.R.C. at 1137.

⁵⁶ Moreover, Riverkeeper’s attempt to suggest that Dr. Singh intentionally tried to hide Holtec’s past debarment by TVA (*see* Petition at 17–18) is belied by the findings of the New Jersey Governor’s task force, organized to investigate the New Jersey Economic Development Authority’s award of tax incentives under the prior administration, which found that “[a] simple internet search revealed that . . . Holtec International, had been debarred by the Tennessee Valley Authority.” Governor’s Task Force on EDA Tax Incentives, First Published Report at 4 (June 17, 2019) (available at https://www.njleg.state.nj.us/OPI/Reports_to_the_Legislature/eda_task_force_06172019.pdf) (referenced and linked in ProPublica coverage cited by Riverkeeper).

willingness to comply with NRC regulations. But beyond that, Riverkeeper has failed to explain why any of these historical issues involving its parent company renders HDI unqualified to conduct licensed activities at IPEC—particularly in light of the NRC’s ongoing oversight. To admit such a contention would turn every license transfer proceeding into a review of the proposed licensee’s and its affiliates’ full compliance record and a searching inquiry in business activities wholly unrelated from those regulated by NRC. That approach has been rejected by the Commission.⁵⁷

At bottom, Riverkeeper has failed to link its claims to the matters within the scope of this license transfer proceeding, nor has it shown how its claims are material to this proceeding’s outcome. Riverkeeper simply has failed to raise any genuine dispute with HDI’s qualifications to conduct decommissioning activities at IPEC or HDI’s willingness to follow NRC’s regulations in doing so. As such, the contention should be rejected.

C. Riverkeeper’s Contention Lacks Adequate Factual Support

Section 2.309(f)(1) requires “a clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish” its validity.⁵⁸ A petitioner must show that “material facts are in dispute, thereby demonstrating that ‘an inquiry in depth’ is appropriate.”⁵⁹ Notice pleading is not enough.⁶⁰ “[A] petitioner’s issue will be ruled inadmissible if the petitioner ‘has offered no tangible information,

⁵⁷ See *Fitzpatrick & Indian Point*, CLI-00-22, 52 N.R.C. at 312; *Zion*, CLI-99-04, 49 N.R.C. at 189.

⁵⁸ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 N.R.C. 111, 118-119 (2006) (citations omitted).

⁵⁹ *Conn. Bankers Ass’n v. Bd. of Governors*, 627 F.2d 245, 251 (D.C. Cir. 1980) (citation omitted).

⁶⁰ *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 N.R.C. 195, 203 (2003) (“Mere ‘notice pleading’ is insufficient under these standards.”) (citing *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 208 (2000)).

no experts, no substantive affidavits’ but instead only ‘bare assertions and speculation.’”⁶¹ In proffering contentions, petitioners have an “ironclad obligation” to examine publicly available information.⁶² Although a detailed evaluation of a petitioner’s *evidentiary* bases is not required at the contention admissibility phase, the presiding officer is required to review whether the proffered bases stated in the petition *actually support* a petitioner’s claims.⁶³ Moreover, just as a presiding officer “may not make factual inference on [the] petitioner’s behalf,”⁶⁴ neither is the presiding officer bound to accept bare arguments that lack factual support or clearly misstate the record.⁶⁵

Riverkeeper does not provide any factual basis for its claim that HDI lacks integrity and has a propensity to willfully violate NRC regulations. Neither does Riverkeeper submit any affidavit or expert statement in support of its claims against Holtec. The sources cited—which primarily consist of online articles reporting events and quoting officials or member of the public expressing their opinion—do not support the culpability that Riverkeeper projects onto the events and do not provide the requisite support to satisfy § 2.309(f)(1)(v). And as demonstrated

⁶¹ *Id.*

⁶² *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 N.R.C. 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 N.R.C. 1401 (1983).

⁶³ See *Oyster Creek*, CLI-06-24, 64 N.R.C. at 118-19 (contentions require “supporting information and references...that establish the validity of the contention”) (quoting *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)); *Entergy Nuclear Generation Company* (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 355-56 (2006) (“[A] licensing board may not make factual inferences on [a] petitioner’s behalf, or supply information that is lacking, but must examine the information, alleged facts, and expert opinion proffered by the petitioner to confirm that it does indeed supply adequate support for the contention.” (quotations and citations omitted)).

⁶⁴ *Georgia Tech.*, LBP-95-6, 41 N.R.C. at 305 (citing *Palo Verde*, CLI-91-12, 34 N.R.C. 149); see also *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 N.R.C. 451, 472 (2006) (“references to articles or correspondence, without ‘explanation or analysis’ of their relevance, [do] not provide an adequate basis” for admitting a contention.”).

⁶⁵ See *Private Fuel Storage*, LBP-98-7, 47 N.R.C. at 181; *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant), LBP-85-49, 22 N.R.C. 899, 913 (1985) (rejecting a contention that “mischaracterizes the very documents on which it rests”); *Duke Power Co.* (Catawba Nuclear Power Station, Units 1 and 2), LBP-82-107A, 16 N.R.C. 1791, 1804 (1982) (rejecting a contention that mischaracterized the relevant NRC record).

in the previous section, the arguments Riverkeeper selectively extrapolates from its sources reveal fundamental misunderstandings of NRC regulations and are clearly contradicted by the NRC public record. This lack of factual support for Riverkeeper’s claim provides an independent basis for rejecting Riverkeeper’s contentions under § 2.309(f)(1)(v).

* * *

In sum, Riverkeeper’s petition falls outside the scope of the proceeding, fails to raise issues material to the Commission’s determination on the Application, fails to raise a material dispute with the Application, and lacks adequate factual support. For these reasons, the Commission should reject Riverkeeper’s petition and contention.

III. RIVERKEEPER LACKS STANDING

Because Riverkeeper has not posed at least one admissible contention, the Commission need not address the question of Riverkeeper’s standing to intervene in this proceeding.⁶⁶ But as explained below, Riverkeeper also has not established standing to intervene in this proceeding as a matter of right under 10 C.F.R. § 2.309(d).⁶⁷

A. Applicable NRC Legal Standards and Precedent

Riverkeeper must show three things to establish that it has standing under 10 C.F.R. § 2.309(d): (1) the nature of its right under the Atomic Energy Act (“AEA”) to be made a party

⁶⁶ See *PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 N.R.C. 500 (2015) (“Because [the petitioner’s] contentions all fall far short of our contention admissibility standards, we need not address his standing to intervene.”). And establishing standing does not constitute proffering a valid contention justifying intervention. *Conn. Coal. Against Millstone v. NRC*, 114 F. App’x 36, 39 (2d Cir. 2004) (“What the Coalition has failed to acknowledge, and failed to remedy in subsequent arguments before the Commission and this Court, is that satisfaction of standing requirements, alone, falls short of meriting intervention.”) (citing *In re Fla. Power & Light Co.*, 54 N.R.C. 3, 26 (2001)).

⁶⁷ Riverkeeper argues only for intervention as of right. See Petition at 8 (“The environmental, recreational, and economic injuries the members describe provide the basis for standing under the Atomic Energy Act, 33 USC § 2239(a)(1)(A); under NRC’s regulations, 10 CFR § 2.309(d); and the case law.”). Riverkeeper makes no effort to address the six factors required for discretionary intervention under 10 C.F.R. § 2.309(e).

to the proceeding; (2) the nature and extent of its property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on its interest.⁶⁸ In practice, however, it must establish either (1) the traditional judicial elements of standing or (2) the proximity presumption (based on geographic proximity to the proposed facility).⁶⁹ And because Riverkeeper, as an organization, is acting on behalf of its members, it must further establish that it has representational standing.

As shown below, however, Riverkeeper is unable to satisfy any of the three.

1. Representational Standing Organizations

Organizations like Riverkeeper can only have standing on behalf of its members. To invoke representational standing—either through the proximity presumption or traditional standing – an organization must: (1) show that at least one of its members has standing in his or her own right (*i.e.*, by demonstrating geographic proximity in cases where the presumption applies or by demonstrating injury-in-fact within the zone of protected interests, causation, and redressability), (2) identify that member by name and address, and (3) show—preferably by affidavit—that the organization is authorized by that member to request a hearing on behalf of the member.⁷⁰ Where the affidavit of the member is devoid of any statement that he or she wants and has authorized the organization to represent his or her interests, the presiding officer should not infer such authorization.⁷¹

⁶⁸ 10 C.F.R. § 2.309(d)(1).

⁶⁹ See *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 N.R.C. 577, 579-83 (2005).

⁷⁰ See, e.g., *N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 & 2; Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 N.R.C. 37, 47 (2000); *Oyster Creek*, CLI-00-6, 51 N.R.C. at 202.

⁷¹ *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 N.R.C. 393, 411 (1984).

2. Traditional Standing

“[T]he Commission has long looked for guidance to current judicial concepts of standing” to determine whether a petitioner’s interest provides a sufficient basis for intervention.⁷² To demonstrate standing, a petitioner must show: (1) an actual or threatened injury that is concrete and particularized (as opposed to being conjectural and hypothetical), (2) which is fairly traceable to the challenged action, and (3) that is likely to be redressed by a favorable decision.⁷³ These criteria are commonly referred to as injury-in-fact, causality, and redressability, respectively. “[W]hen future harm is asserted, it must be ‘threatened,’ ‘certainly impending,’ and ‘real and immediate.’”⁷⁴ Although a petitioner is not required to show that the injury flows directly from the challenged action, it must nonetheless show that the “chain of causation is plausible.”⁷⁵ Finally, a petitioner must show that “its actual or threatened injuries can be cured by some action of the tribunal.”⁷⁶

3. Standing Based on Geographic Proximity

There is an alternative route to establish standing for proceedings under Part 50 involving reactor construction permits, operating licenses, or significant license amendments.⁷⁷ Under

⁷² *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, N.M.), CLI-98-11, 48 N.R.C. 1, 5-6 (1998), *aff’d sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999) (citations omitted).

⁷³ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 195 (1998) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1998)); *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 N.R.C. 116, 117 (1998) (citing *Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998); *Warth v. Seldin*, 422 U.S. 490, 501, 508, 509 (1975); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 72 (1994)).

⁷⁴ *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 N.R.C. 344, 349 (2001), *aff’d*, CLI-01-18, 54 N.R.C. 27 (2001) (citations omitted).

⁷⁵ *Sequoyah Fuels*, CLI-94-12, 40 N.R.C. at 75; see also *Crow Butte Res., Inc.* (Crow Butte II) (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 N.R.C. 331, 345 (2009).

⁷⁶ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 N.R.C. 9, 14 (2001).

⁷⁷ *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 N.R.C. 325, 329 (1989) (holding that the proximity presumption may be sufficient to confer standing on an individual or group in proceedings conducted under Part 50 for reactor construction permits, operating licenses, or significant license amendments) (citations omitted).

NRC case law, a petitioner may, in some instances, be presumed to have fulfilled the judicial standards for standing based on his or her geographic proximity to a facility or source of radioactivity.⁷⁸ “Proximity” standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite within a certain distance of that facility.⁷⁹ “The petitioner has the burden to show that the proximity presumption should apply.”⁸⁰

NRC tribunals have “recognized proximity standing at such close distances where a petitioner *frequently* (1) engages in *substantial* business and related activities in the vicinity of the facility, (2) engages in normal everyday activities in the vicinity, (3) has regular and frequent contacts in an area near a license facility, or (4) otherwise has visits of a length and nature showing an ongoing connection and presence.”⁸¹ The NRC has denied proximity-based standing, however, where a petitioner’s contact is limited to “mere occasional trips to areas located close to reactors.”⁸² Significant here, proximity standing requires a petitioner to provide “*fact-specific standing allegations*, not conclusory assertions.”⁸³ “[G]eneral assertions of proximity” are not enough for the Commission to “find the requisite ‘interest.’”⁸⁴

Although the NRC has applied a presumption of standing in initial reactor operating license proceedings for individuals who live within 50 miles of a plant, a more stringent standard

⁷⁸ *Peach Bottom*, CLI-05-26, 62 N.R.C. at 580.

⁷⁹ *Id.* (citations omitted).

⁸⁰ *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-17-7, 86 N.R.C. 59, 75 (2017).

⁸¹ *Big Rock Point*, CLI-07-21, 65 N.R.C. at 523-524 internal quotation marks and citations omitted) (emphasis in original).

⁸² *Id.* (citation omitted).

⁸³ *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 N.R.C. 399, 410 (2007) (emphasis added).

⁸⁴ *Id.*

applies to proceedings involving approvals lacking a “clear potential for offsite consequences.”⁸⁵ That includes license transfer proceedings, such as here, where the Commission “determine[s] on a case-by-case basis whether the proximity presumption should apply, considering the ‘obvious potential for offsite [radiological] consequences,’ or lack thereof, from the application at issue, and specifically ‘taking into account the nature of the proposed action and the significance of the radioactive source.’”⁸⁶

B. Riverkeeper Has Not Established Standing to Intervene as a Matter of Right Under Section 2.309(d)

Riverkeeper requests that it be admitted as a party to this proceeding as an advocate for two affected representative members; *i.e.*, it asserts representational standing to intervene.

Riverkeeper, however, does not make the requisite demonstrations to support either the proximity presumption or traditional forms of standing.

Riverkeeper does not expressly argue proximity standing, but does note the distances from IPEC to its members’ properties. Nonetheless, the physical proximity of Riverkeeper’s members’ residences does not by itself establish proximity-based injury. Even in a license transfer or amendment proceeding involving an *operating* reactor, a petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action “quite obvious[ly] entails an increased potential for offsite consequences.”⁸⁷ Here, given the shutdown

⁸⁵ *St. Lucie*, CLI-89-21, 30 N.R.C. at 329-30; *see also Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 N.R.C. 97, 98-99 (1985), *aff’d on other grounds*, ALAB-816, 22 N.R.C. 461 (1985) (residence 43 miles from the plant is inadequate for standing with respect to a spent fuel pool expansion).

⁸⁶ *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 N.R.C. 423, 426 (2007) (quoting *Peach Bottom*, CLI-05-26, 62 N.R.C. at 580-81).

⁸⁷ *Zion*, CLI-99-04, 49 N.R.C. at 191 (citing *St. Lucie*, CLI-89-21, 30 N.R.C. at 329-30) (internal quotation marks omitted); *see also Peach Bottom*, CLI-05-26, 62 N.R.C. at 580-81 (explaining how the Commission considers proximity-based standing in license transfer cases, and stating that “[i]f the petitioner fails to show that a particular licensing action raises an *obvious potential for offsite consequences*, then our standing inquiry reverts to a traditional standing analysis of whether the petitioner has made a specific showing of injury, causation and redressability”) (emphasis in original).

and defueled status of IPEC at the time of the license transfer, the proposed license transfers and conforming license amendment do not “on their face present any ‘obvious’ potential of offsite radiological consequences.”⁸⁸ At the time of the license transfer, the primary significant nuclear activities ongoing at IPEC will be the storage and handling of spent fuel bundles in the spent fuel pool and the transfer of spent fuel assemblies to dry cask storage. Because the reactors will not operate again, the scope of activities at the plant—and in turn, the risk of an offsite radiological release—will be greatly reduced. As a result, “the spectrum of accidents and events that remain credible is significantly reduced,” and it is incumbent upon Riverkeeper and its members to provide “some ‘plausible chain of causation,’ some scenario suggesting how these particular license [transfers and] amendments would result in a distinct new harm or threat to [them].”⁸⁹ It is also up to Riverkeeper to show that “its actual or threatened injuries can be cured by some action of the tribunal” on the license transfer.⁹⁰ It can do neither.

Riverkeeper’s claim of representational standing fails because Riverkeeper’s members rely on unsupported, conclusory assertions of hypothetical injury based on a series of “what ifs,” and fail to establish a plausible nexus between the alleged harms and the proposed license transfers.⁹¹ In particular, the two Riverkeeper members who submitted declarations purport to be “concerned” about several theoretical harms:

⁸⁸ *Zion*, CLI-99-04, 49 N.R.C. at 191.

⁸⁹ *Id.* at 192. The Commission has specifically noted that “the radiological effects of decommissioning a power plant are far less than those associated with the operation of a plant,” and that “[a]s a result, the decommissioning activities have considerably less potential to impact public health and safety.” *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235, 246 (1996).

⁹⁰ *Sequoyah Fuels Corp.*, CLI-01-2, 53 N.R.C. at 14.

⁹¹ Applicants recognize that past petitioners have established standing to intervene in proceedings to challenge the adequacy of facility decommissioning activities by alleging injuries that are not dissimilar to certain injuries alleged by Riverkeeper’s members here. *See, e.g., Yankee*, CLI-96-7, 43 N.R.C. at 247-48; *Sequoyah Fuels*, CLI-94-12, 40 N.R.C. at 71-75. However, those proceedings are procedurally and factually distinguishable. For example, *Yankee Rowe* predated the NRC’s implementation of the 1996 Decommissioning Rule and involved the issuance of an order approving the licensee’s decommissioning plan and related amendments to the facility Final

- “that the Indian Point site will not be opened to me in my lifetime, or that it will be open but that its condition will be misrepresented to the jeopardy of my health and safety and the health and safety of my children”;⁹²
- “that an incomplete or improper decommissioning at Indian Point will diminish the values of my property”;⁹³ and
- “that, if the site is not restored fully and safely, it cannot be redeveloped and my community will not benefit from tax revenues associated with the site.”⁹⁴

These generalized and speculative harms that Riverkeeper’s members believe may come to pass at some indeterminate time in the future are not sufficient for standing, particularly as several of the alleged harms are beyond the jurisdiction of the NRC. Indeed, in another paragraph of her declaration, one member tacitly admits that she cannot presently identify what injury the license transfer will cause: “I am very concerned about *what harms* an incomplete or unsafe decommissioning would cause to my children and the school generally.”⁹⁵ Instead, as discussed above, the members cobble together unrelated generalized allegations against HDI’s parent company, its officers, and its contractors to suggest that HDI *might someday do something*

Safety Analysis Report. And *Sequoyah Fuels* stemmed from an NRC enforcement order related to financial assurance for decommissioning an NRC materials licensee’s site. Neither of these proceedings involved a license transfer application, which by itself proposes no physical changes to IPEC and the ISFSI or operational changes. See Notice at 3948-49.

⁹² Decl. of Courtney M. Williams at ¶ 9 (Ex. A to Petition) (“Williams Decl.”). The Declaration of Nancy S. Vann repeats this alleged potential future injury almost verbatim, deleting only the reference to children. See Declaration of Nancy S. Vann at ¶ 6 (Ex. B to Petition) (“Vann Decl.”).

⁹³ Williams Decl. at ¶ 10; Vann Decl. at ¶ 7. This alleged economic harm—*i.e.*, diminished property value—is insufficient, by itself, to support a claim of standing. See *Ambrosia Lake*, CLI-98-11, 48 N.R.C. at 9 (“The fact that economic interest or motivation is involved will not preclude standing, but the petitioner must also be threatened by environmental harm.”); see also *Int’l Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 N.R.C. 259, 265 (1998) (“[I]t has long been our practice as an agency to reject standing for petitioners asserting a bare economic injury, unlinked to any radiological harm.”).

⁹⁴ Williams Decl. at ¶ 10; Vann Decl. at ¶ 7. As with diminished property value, the alleged potential that economic *benefit* may not materialize is insufficient to support a claim of standing. See *Kelly v. Gen. Motors Corp.*, 425 F. Supp. 13, 18 (E.D. Pa. 1976) (“We believe plaintiff and his class lack standing . . . since their theory of prospective economic benefit is too indirect and speculative.”); cf. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615–16 (1989) (explaining that the bare potential for plaintiff taxpayers and teachers to derive some “indirect economic benefit” from a favorable ruling was too remote and speculative).

⁹⁵ Williams Decl. at ¶ 4 (emphasis added).

that could injure *someone* in *some way*. The declarations themselves expressly acknowledge the series of “ifs” that must first occur before there is a risk of injury: “**If** the decommissioning fund is mismanaged or diverted, there **may** not be sufficient funds leftover to fully decommission the site. **And if** HDI conducts its decommissioning activities in the dishonest way, the condition of the site **may** be misrepresented.”⁹⁶ Yet, “an injury does not meet the imminence requirement if ‘one cannot describe how the [plaintiffs] will be injured without beginning the explanation with the word “if.”’”⁹⁷

Such unsubstantiated and conclusory assertions are insufficient to establish standing to intervene and trigger an adjudicatory hearing. Not only have Riverkeeper’s two members failed to establish that the alleged harms are “real and immediate,” but they do not explain how their concerns are plausibly linked to the proposed license transfers. After all, if the license authority is transferred to HDI, it would not be able to perform any decommissioning activities that the current licensed operator could not already perform under 10 C.F.R. § 50.59. For instance, although the declarants claim in unison that they “seek conditions on the license transfer that will ensure full transparency and accountability by HDI,”⁹⁸ they do not specify how their concerns regarding decommissioning could be redressed in the scope of a license transfer proceeding. If the tribunal were to deny the license transfer, then the site would still be decommissioned (more slowly through SAFSTOR) and there would be no change in the radiological risk profile, except

⁹⁶ *Id.* at ¶ 9 (emphases added); *see also* Vann Decl. at ¶ 6 (verbatim).

⁹⁷ *Williams v. Governor of Penn.*, 552 F. App’x 158, 162 (3d Cir. 2014); *see also In re Navy Chaplaincy*, 516 F. Supp. 2d 119, 126 (D.D.C. 2007), *aff’d*, 534 F.3d 756 (D.C. Cir. 2008) (“Even were they to allege that they might encounter such discrimination in the future, a case that rests on ‘ifs’ stands not on solid ground but on stilts of conjecture.”).

⁹⁸ *Williams Decl.* at ¶ 11; *Vann Decl.* at ¶ 8.

that the plant would be at the site even longer and most of the radiological decommissioning and restoration would not occur until after the dormancy period.

These statements also fail to establish a plausible chain of causation relative to the proposed action.⁹⁹ Indeed, the alleged harms derive solely from the *assumption* that Applicants will “mismanage[] or divert[]” funds and “conduct the decommissioning activities in a dishonest way,” and that those actions will result in some unspecified harm.¹⁰⁰ Neither declarant provides evidence or other factual support for her underlying assumptions, which are entirely unfounded, and provides no link between these concerns (related to decommissioning actions at the site) and the instant licensing action.¹⁰¹

In conclusion, Riverkeeper has failed to establish representational standing because its members cannot identify any real and immediate injuries in fact that are plausibly linked to the proposed license transfers. As noted in the Application, the proposed transfers are intended to place licensed responsibility in an organization (HDI) that will promptly decommission the site. In actuality, the proposed transaction will benefit local citizens because it will facilitate the decommissioning of IPEC and the release of all portions of the site other than the ISFSI on an accelerated schedule.

In contrast, if the Application were denied, Entergy would implement the SAFSTOR method of decommissioning, deferring most radiological decommissioning until after a dormancy period. Whatever concerns Riverkeeper’s members may have concerning use of the

⁹⁹ See *Peach Bottom*, CLI-05-26, 62 N.R.C. at 581 (“The initial question we need to address is whether the kind of action at issue, when considered in light of the radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products from the reactors.”).

¹⁰⁰ Williams Decl. at ¶¶ 9-10; Vann Decl. at ¶¶ 6-7.

¹⁰¹ And as noted above in section II, the examples Riverkeeper cites for concern about “mismanagement” or “diversion of funds” are unfounded and divorced from the individuals and entities that will actually be managing and operating IPEC.

property and the impact of the site on their property values would still exist, and indeed, would persist for a longer period. Further, to the extent that they are alleging that they would be injured if decommissioning is not completed properly, their concerns are hypothetical and conjectural, presupposing that HDI would at some point in the future violate NRC's rules. Such speculative concerns do not suffice, as the alleged injury is not "certainly impending," and "real and immediate." Consequently, none of the alleged injuries is concrete, fairly traceable to the license transfer, or likely to be redressed by a favorable decision.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should reject Riverkeeper's petition and contention.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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March 9, 2020

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of:

| | | |
|---|---|------------------------|
| ENTERGY NUCLEAR OPERATIONS, INC., |) | Docket Nos. 50-003-LT, |
| ENTERGY NUCLEAR INDIAN POINT 2, LLC, |) | 50-247-LT, |
| ENTERGY NUCLEAR INDIAN POINT 3, LLC, |) | 50-286-LT, and |
| HOLTEC INTERNATIONAL, and HOLTEC |) | 72-051-LT-2 |
| DECOMMISSIONING INTERNATIONAL, LLC |) | |
| |) | March 9, 2020 |
| (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3) |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing Riverkeeper, Inc.'s Petition to Intervene and for a Hearing has been served through the E-Filing system on the participants in the above-captioned proceeding this 9th day of March, 2020.

/signed electronically by Alan D. Lovett/