

August 12, 2019

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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

**Applicants’ Answer Opposing Pilgrim Watch’s  
Motion to File a New Contention**

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. (“ENOI”), Entergy Nuclear Generation Company (“ENGC” – to be renamed “Holtec Pilgrim”), Holtec International (“Holtec”), and Holtec Decommissioning International, LLC (“HDI”), (collectively, Applicants”) hereby submit this opposition to Pilgrim Watch’s motion to file a late-filed contention.<sup>1</sup> The Motion should be denied because Pilgrim Watch has failed to provide good cause for its untimeliness under the late-filed contention standards in 10 C.F.R. § 2.309(c)(1)(i)-(iii). And, even if the Commission should find good cause, Pilgrim Watch has not met the standards for an admissible contention under 10 C.F.R. 2.309(f)(1). As a result, the Commission should deny Pilgrim Watch’s motion and reject the late-filed contention.

**I. Legal Standards**

The Commission’s regulations explicitly prohibit the consideration of contentions filed after the initial deadline absent a finding of good cause for the late filing. Contentions filed after the

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<sup>1</sup> Pilgrim Watch Motion to File a New Contention (July 16, 2019) (the “Motion”).

intervention deadline “*will not be entertained* absent a determination by the presiding officer that a participant has demonstrated good cause” for the late filing.<sup>2</sup> The good cause demonstration requires a petitioner to show that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.<sup>3</sup>

“[N]ew or amended contentions must be *based on new facts* not previously available.”<sup>4</sup> This means that “previously available information cannot be used as the basis for a new or amended contention filed after the deadline.”<sup>5</sup> A document that collects, summarizes, and places into context the facts of previously available information does not make that information new or materially different.<sup>6</sup> To rule otherwise would “turn on its head” the requirement that new contentions be based on information *not previously available*,<sup>7</sup> and also be “inconsistent with [the Commission’s] longstanding policy that a petitioner has an *iron-clad obligation* to examine the publicly available documentary material . . . with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention.”<sup>8</sup> ““There simply would be no end to NRC licensing proceedings if petitioners could disregard [the Commission’s] timeliness requirements and add new

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<sup>2</sup> 10 C.F.R. § 2.309(c)(1) (emphasis added).

<sup>3</sup> 10 C.F.R. § 2.309(c)(1)(i)-(iii).

<sup>4</sup> *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Station), CLI-12-01, 75 NRC 479, 493 n.70 (2012) (emphasis in original).

<sup>5</sup> Final Rule, Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,566 (Aug. 3, 2012).

<sup>6</sup> *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. 481, 496 (2010) (footnote omitted).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (emphasis added) (quotation and footnote omitted).

contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding.”<sup>9</sup>

In addition to showing the requisite good cause for late filing, all late contentions must still meet the Commission’s admissibility requirements under 10 C.F.R. § 2.309(f)(1). Specifically, the contentions must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; [and]
- (vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner’s belief[.]<sup>10</sup>

These standards are enforced rigorously. “If any one . . . is not met, a contention must be rejected.”<sup>11</sup> A presiding officer is not to overlook a deficiency in a contention or assume the

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<sup>9</sup> *Id.* (quoting *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 271-72 (2009) (footnotes and internal quotation marks omitted)).

<sup>10</sup> 10 C.F.R. § 2.309(f)(1)(i)-(vi).

<sup>11</sup> *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); *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006)

existence of missing information. Under these standards, a petitioner “is obligated to provide the [technical] analyses and expert opinion showing why its bases support its contention.”<sup>12</sup> Where a petitioner has failed to do so, the presiding officer “may not make factual inferences on [the] petitioner’s behalf.”<sup>13</sup>

Admissible contentions “must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].”<sup>14</sup> In particular, this 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.<sup>15</sup> The Commission has defined a “material” issue as meaning one where “resolution of the dispute *would make a difference in the outcome* of the licensing proceeding.”<sup>16</sup>

Furthermore, a statement “that simply alleges that some matter ought to be considered” does not provide a sufficient basis for a contention.<sup>17</sup> Similarly, “[m]ere reference to documents does not provide an adequate basis for a contention.”<sup>18</sup> Rather, NRC’s pleading standards require a petitioner to read the pertinent portions of the license application, state the applicant’s position and the

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(“These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements.” (footnotes omitted)).

<sup>12</sup> *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).

<sup>13</sup> *Id.* (citing *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149 (1991). *See also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), 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)).

<sup>14</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001).

<sup>15</sup> 10 C.F.R. § 2.309(f)(1)(iv), (vi).

<sup>16</sup> 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).

<sup>17</sup> *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).

<sup>18</sup> *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

petitioner’s opposing view, and explain why it has a disagreement with the applicant.<sup>19</sup> If the petitioner does not believe these materials address a relevant issue, the petitioner is “to explain why the application is deficient.”<sup>20</sup> “[A]n allegation 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 some material respect.”<sup>21</sup> Likewise, mere speculation is not sufficient to raise a genuine dispute with the application.<sup>22</sup>

## II. Background

On November 16, 2018, Applicants submitted the license transfer application (the “Application”) that is the subject of these proceedings.<sup>23</sup> On January 31, 2019, the NRC 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.<sup>24</sup> On February 20, 2019, Pilgrim Watch filed a Petition for Leave to Intervene and Hearing Request that did not raise any “trustworthiness” issues.<sup>25</sup> On March 18, 2019, the Applicants filed an answer opposing Pilgrim Watch’s petition.<sup>26</sup> Pilgrim

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<sup>19</sup> 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); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001).

<sup>20</sup> 54 Fed. Reg. at 33,170. *See also Palo Verde*, CLI-91-12, 34 N.R.C. at 156.

<sup>21</sup> *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)).

<sup>22</sup> *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 N.R.C. 215, 225 (2017).

<sup>23</sup> *See Application for Order Approving 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)*, Pilgrim Nuclear Power Station, Docket Nos. 50-293 & 72-1044, Renewed License No. DPR-35 (Nov. 16, 2018) (ADAMS Accession No. ML18320A031).

<sup>24</sup> Pilgrim Nuclear Power Station; Consideration of Approval of Transfer of License and Conforming Amendment, 84 Fed. Reg. 816 (Jan. 31, 2019) (“Notice”).

<sup>25</sup> *Pilgrim Watch Petition to Intervene and Hearing Request* (Feb. 20, 2019) (ADAMS Accession No. ML19051A019).

<sup>26</sup> *Applicants’ Answer Opposing Pilgrim Watch Petition for Leave to Intervene and Hearing Request* (Mar. 18, 2019) (ADAMS Accession No. ML19077A235).

Watch filed a Motion to Supplement its Motion to Intervene and Request for Hearing on April 26, 2019.<sup>27</sup> On May 2, 2019, Applicants' filed an answer opposing Pilgrim Watch's motion to supplement its original hearing request.<sup>28</sup> Nearly five months after the February 20 deadline, on July 16, 2019, Pilgrim Watch filed this Motion to submit a late-filed contention.

### **III. Pilgrim Watch's Contention is Inexcusably Late and Inadmissible**

Pilgrim Watch's contention is out of time and Pilgrim Watch provides no good cause for its untimeliness. To the extent that the Commission even considers its admissibility, the Commission should find that the late-filed contention wholly fails to meet the admissibility requirements. Pilgrim Watch alleges "trustworthiness" concerns regarding Holtec and SNC-Lavalin ("SNCL") and attacks NRC's review of the Application as inadequate unless and until the NRC conducts an investigation to determine that Holtec, SNCL, HDI, and Comprehensive Decommissioning International ("CDI") are "trustworthy, reliable and of good character."<sup>29</sup> Pilgrim Watch could have raised this challenge at the outset of this proceeding and has offered no good cause for its failure to do so. As demonstrated below, the information on which Pilgrim Watch relies as justification for its late-filed contention is not new and not materially different than that previously available. In addition to Pilgrim Watch's failure to meet the standard for a late-filed contention, Pilgrim Watch has not satisfied the admissibility standard for a timely contention. On either basis, the Commission should reject the Motion and contention.

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<sup>27</sup> *Pilgrim Watch Motion to Supplement its Motion to Intervene and Request for Hearing* (Apr. 26, 2019) (ADAMS Accession No. ML19116A162).

<sup>28</sup> *Applicants' Answer Opposing Pilgrim Watch's Motion to Supplement its Motion to Intervene and Request for Hearing* (May 2, 2019) (ADAMS Accession No. 19122A126).

<sup>29</sup> Motion at 1-2.

**A. Pilgrim Watch Provides No Good Cause for the Late-Filed Contention.**

Pilgrim Watch claims information contained in three documents constitute “new” or previously unavailable information: (1) the NRC’s June 18, 2019 decision in the Oyster Creek license transfer application proceeding,<sup>30</sup> (2) a June 19, 2019 email from Mr. Neil Sheehan (NRC Public Affairs) to Mr. James Lampert,<sup>31</sup> and (3) a December 20, 2018 letter from the NRC Office of Enforcement (“OE”) to Mr. Kevin Kamps (of Beyond Nuclear).<sup>32</sup> Pilgrim Watch claims these are “new information” because Pilgrim Watch only recently learned that the NRC “has not conducted and has no intentions of conducting” investigations into Holtec and SNCL despite, according to Pilgrim Watch, “numerous allegations” showing the companies’ “long-standing history of malfeasance.”<sup>33</sup> While two of the documents cited by Pilgrim Watch are dated after February 20, 2019, the information contained in all of these documents is not “new”—they simply represent the direct outcome of applying NRC rules and procedures that were publicly available prior to Pilgrim Watch’s initial petition deadline on February 20, 2019.

**1. June 18, 2019 Oyster Creek Order**

The Oyster Creek license transfer application was filed on August 31, 2018.<sup>34</sup> On October 19, 2018, the NRC published a notice in the Federal Register regarding the application.<sup>35</sup> Petitions to intervene were filed by the Sierra Club on November 1, 2018<sup>36</sup> and

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<sup>30</sup> See *Exelon Generation Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-19-06 (2019).

<sup>31</sup> Motion, at Exhibit 1.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 3. Essentially, Pilgrim Watch is claiming that it has “recently learned” of the scope of license transfer review requirements. This cannot serve as an excuse for its obvious failure to review all publicly available information including NRC rules and regulations prior to submitting its initial petition.

<sup>34</sup> See *Application for Order Approving Direct Transfer of Renewed Facility Operating License and General License and Proposed Conforming Amendments* (Aug. 31, 2018) (ADAMS Accession No. ML 18243A489).

<sup>35</sup> 83 Fed. Reg. at 53,119.

<sup>36</sup> See *Sierra Club New Jersey Chapter Comments and Request for Public Hearing* (Nov. 1, 2018) (ADAMS Accession No. ML18306A866).

the Township of Lacey on November 8, 2018.<sup>37</sup> Answers to these petitions were filed on November 26, 2018 and December 3, 2018, respectively.<sup>38</sup> The issues in the Oyster Creek proceeding, including the “trustworthiness” issues raised by the Township of Lacey, were raised far in advance of Pilgrim Watch’s initial petition deadline of February 20, 2019 and the June 18, 2019 order approving the Oyster Creek license transfer.

Pilgrim Watch claims that, prior to issuance of the order, it “had no reason to believe” that the NRC would ignore the character of Holtec, SNCL, HDI and CDI.<sup>39</sup> In approving the Oyster Creek license transfer application, the Commission did not ignore, but in fact considered and rejected character claims raised by the intervenor in that proceeding based on well-established rules that had long provided the standard for character-based challenges.<sup>40</sup> The NRC reviewed the license transfer application pursuant to 10 C.F.R. § 50.80, the same way it reviews all license transfer applications.<sup>41</sup> Pilgrim Watch could have, and indeed based on its familiarity with the Oyster Creek filings should have, known of the standard for character claims and license transfer reviews well in advance of its February 20, 2019 petition deadline. Pilgrim Watch’s late-breaking understanding of long-standing NRC precedent does not constitute “new

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<sup>37</sup> See *Exelon Generation Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-19-06 at 2 (2019).

<sup>38</sup> See *Exelon Generation Company, LLC, Oyster Creek Environmental Protection, LLC and Holtec Decommissioning International, LLC’s Answer Opposing Sierra Club’s Letter Requesting a Hearing on the Proposed License Transfer of the Oyster Creek Nuclear Generating Station* (Nov. 26, 2018) (ADAMS Accession No. ML18330A294); *Exelon Generation Company, LLC, Oyster Creek Environmental Protection, LLC and Holtec Decommissioning International, LLC’s Answer Opposing the Township of Lacey’s Petition for Leave to Intervene and Request for a Hearing on the Proposed License Transfer of the Oyster Creek Nuclear Generating Station* (Dec. 3, 2018) (ADAMS Accession No. ML18337A419).

<sup>39</sup> Motion at 4-5.

<sup>40</sup> See *Exelon Generation Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-19-06 at 13-16 (2019) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365-66 (2001)). The Commission rejected a contention, very similar to this one, attacking the trustworthiness of SNCL based on bribery charges filed against the company by Canada in 2015. The bribery charges forming the basis of that contention have been public knowledge for over four years. See Pilgrim Watch’s Motion at Exhibit 2.

<sup>41</sup> *Id.* at 6.



information” to justify a late-filed contention. Intervenors have an obligation to understand NRC requirements and process.<sup>42</sup>

## **2. June 19, 2019 Email from NRC Public Affairs**

Likewise, the June 19 email from NRC Public Affairs does not include new and materially different information. The email simply provides a general description of NRC’s statutory authority to ensure license issuance is not inimical to the common defense and security or to the health and safety of the public and refers to existing NRC regulations on access authorization, while declining to provide legal advice to Pilgrim Watch. Like the Oyster Creek order, Pilgrim Watch argues that, through the NRC email, Pilgrim Watch became aware of new information that the NRC would ignore the character of Holtec, SNCL, HDI and CDI.<sup>43</sup> Even setting aside the fact that the NRC did consider the Town of Lacey’s character allegations in its Oyster Creek order, the response Pilgrim Watch received from the NRC does not provide any new or materially different information because it merely restates the scope of NRC’s authority under long-standing, existing regulations. Pilgrim Watch had a duty to review NRC regulations and requirements prior to submitting its initial petition and cannot now create “new” information by sending an email to the NRC eliciting an answer regarding existing requirements.<sup>44</sup> Clearly, the June 19 email does not constitute new or materially different information and, as such does not satisfy the late filed contention standard.

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<sup>42</sup> *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 271-72 (2009) (“[O]ur contention admissibility and timeliness rules require a high level of discipline and preparation by petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset.”).

<sup>43</sup> Notably, the NRC response was prompted by a June 17 email request (which included Pilgrim Watch’s director) asking for citation to existing NRC regulations.

<sup>44</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 N.R.C. 115, 126 (2009) (“[A] petitioner must show that the information on which the new contention is based was not reasonably available to the public, *not merely that the petitioner recently found out about it.*” (emphasis added)).

### 3. December 20, 2018 NRC Letter

The third document cited by Pilgrim Watch also fails to contain new and materially different information. The December 2018 Office of Enforcement (“OE”) letter is a response to an allegation against the CEO of Holtec by Beyond Nuclear activist Kevin Kamps. Based on citations provided in Pilgrim Watch’s motion, this allegation by Mr. Kamps has been in the public domain since at least 2015.<sup>45</sup> Pilgrim Watch therefore does not rely on Mr. Kamps’ underlying accusation as new information to justify a late-filed contention; instead, Pilgrim Watch believes the OE’s conclusion in December that Mr. Kamps’ allegation could not be evaluated because of insufficient information constitutes new information. Like the Oyster Creek order and NRC Public Affairs email, the Office of Enforcement response did not show any change in policy or procedure in how the NRC views such allegations. The Office of Enforcement was unable to evaluate Mr. Kamps’ allegations because he “did not provide specific information and/or details pertaining to any activities that would be in violation of NRC regulations” and the alleged recipient of the bribe was deceased and therefore unable to provide any additional information.<sup>46</sup> As with the other two cited documents, the December 20, 2018 letter does not contain previously unavailable or materially different information. Instead, it simply illustrates the NRC’s normal procedure of closing out an allegation that could not be substantiated. The fact that Pilgrim Watch disagrees with the outcome does not imbue the

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<sup>45</sup> See *FC1119 Public Comment Opposing Exelon Takeover of Pepco, re: Exelon’s abuse of whistleblowers* (Dec. 7, 2015) (<http://static1.1.sqspcdn.com/static/f/356082/26721045/1449520345260/12+6+15+DC+PSC+comment+re+Shirani.pdf?token=KTfRqQUhNzZygmUJQhnCD2pnVwA%3D>).

<sup>46</sup> See Motion at Exhibit 1.

decision with any relevance to this proceeding. Further, the OE letter was posted on Beyond Nuclear’s website in December, and therefore has been publicly available for months.<sup>47</sup>

#### **4. Pilgrim Watch’s Argument is Fundamentally Flawed**

On its face, Pilgrim Watch presents an argument that it did not understand NRC requirements until three recent revelations—and so the “new information” is only new from the subjective perspective of Pilgrim Watch—which of course cannot form the basis for late contentions or all intervenors could cite their unfamiliarity or disagreement with NRC rules to avoid the deadlines imposed by the same.<sup>48</sup> More fundamentally, Pilgrim Watch proves by its own logic that its late-filed contention could have been (and therefore was required to be) raised prior to the original deadline. Pilgrim Watch says they “had no reason to believe that the NRC, in deciding whether to grant the Application, would ignore the character” of the Applicants and their parent companies, including “numerous allegations and media reports” of “long-standing history of malfeasance”.<sup>49</sup> In other words, from the outset of this proceeding and prior to the original intervention deadline, Pilgrim Watch was aware of the information it now proffers and believed that NRC staff should investigate.<sup>50</sup> Yet inexplicably Pilgrim Watch did not raise these

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<sup>47</sup> See <http://www.beyondnuclear.org/centralized-storage/2018/12/20/the-nrc-staff-determined-that-nrc-regulations-do-not-specifi.html> (posted Dec. 20, 2018).

<sup>48</sup> Applicants have a fundamental duty to understand the framework in which NRC decisions are made and their conduct is governed. See *AmerGen Energy Co., LLC*, *supra* note 42. If Pilgrim Watch seeks to change that framework, the appropriate venue is the NRC’s rulemaking process. See e.g., *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-8, 29 N.R.C. 399 (1989) (“An adjudicatory licensing hearing is not a permissible forum for a challenge to the Commission regulations....Such a challenge may be brought by means of a petition for rulemaking.”); *Duke Energy Carolina, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 N.R.C. 431, 444-45 (2008); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 N.R.C. 427, 456 (2011).

<sup>49</sup> See Motion at 3-5.

<sup>50</sup> Pilgrim Watch does not rely on any of the articles and blog posts supposedly detailing Holtec’s and SNC-Lavalin’s “long-standing malfeasance” as new information to justify its late filing; however, it bears noting that the fact that certain articles or blog posts proffered by Pilgrim Watch post-date its February 2019 petition does not cure Pilgrim Watch’s failure to raise the subject matter in its original petition. Pilgrim Watch cannot base its late-filed contention on information that was available prior to the date of its original petition from other public

issues in its original filing.<sup>51</sup> Equally inexplicably, Pilgrim Watch now asserts as “new information” examples of NRC’s application of existing standards that, to Pilgrim Watch, indicate that the NRC will not investigate, to Pilgrim Watch’s satisfaction, these issues they could have but did not raise in their February 2019 petition. The internal logic of Pilgrim Watch’s argument proves that there is no basis for a late-filed contention; rather, it is a belated attempt to supplement its original petition with arguments and information that were available to Pilgrim Watch prior to the original deadline.

Pilgrim Watch has failed to satisfy the late-filed contention requirements in 10 C.F.R. § 2.309(c)(1). Accordingly, the Commission cannot entertain Pilgrim Watch’s Motion and should reject the late-filed contention.

**B. Pilgrim Watch’s Late-Filed Contention is Inadmissible**

As demonstrated above, Pilgrim Watch’s contention is late without cause and cannot be entertained by the Commission. But even if the contention had been timely, the contention is inadmissible. Specifically, the contention lacks an adequate basis as required by 10 C.F.R. § 2.309(f)(1)(ii), fails to demonstrate that the concern raised is within the scope of the proceeding in accordance with 10 C.F.R. § 2.309(f)(1)(iii), fails to demonstrate the issue raised in the contention is “material to the findings the NRC must make to support the action that is involved”

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sources. *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1043 (1983) (“[T]he unavailability of...documents does not constitute a showing of good cause for admitting a late filed contention when the factual predicate for that contention is available from other sources in a timely manner.”). Indeed, Pilgrim Watch refers (by ADAMS accession numbers) to the hearing request, comments and decision in the Oyster Creek proceeding relating to the 2015 charges that former SNC-Lavalin employees paid bribes in Libya. Motion at 10. These charges have been public for four years, and obviously if they were raised in the Oyster Creek license transfer proceeding, they could have been raised in the Pilgrim license transfer proceeding too. As previously discussed, Kevin Kamps’ allegation (which OE found insufficiently supported) was made in 2015. *See supra* note 45. And the allegation relating to temporary debarment at TVA is based on a July 2018 article (which in turn cites TVA reports and press releases dating back to 2007). *See* Motion at 17 n.11,

<sup>51</sup> *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-12-16, 76 N.R.C. 44, 50-51 (2012) (ASLB refused to excuse petitioners’ untimeliness after petitioners incorrectly relied on “*their own assumption of action by NRC*” (emphasis added)).

pursuant to 10 C.F.R. § 2.309(f)(1)(iv), fails to provide a concise statement or expert opinions which support the issue per 10 C.F.R. § 2.309(f)(1)(v), and fails to provide sufficient information to demonstrate a genuine dispute exists as required by 10 C.F.R. § 2.309(f)(1)(vi). If any one of the requirements in 10 C.F.R. § 2.309(f)(1) is not met “a contention must be rejected.”<sup>52</sup>

Pilgrim Watch’s contention boils down to a general assertion that “NRC should do something,” without attempting to connect its claims to the contents of the Application, the technical and financial qualifications of the proposed licensees, or the relevant regulations or precedent applicable to the Commission’s decision on the Application.<sup>53</sup> This failure alone is grounds for rejection of the contention.<sup>54</sup>

The NRC places “strict limits on ‘management’ and ‘character’ contentions”<sup>55</sup> and any such claims must have “some direct and obvious relationship between the character issues and the licensing action in dispute.”<sup>56</sup> Claims of prior actions or past violations must “be directly germane to the challenged licensing action.”<sup>57</sup> Any claims against character made in a license transfer proceeding must be connected to the technical and financial qualifications of the

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<sup>52</sup> *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); *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)).

<sup>53</sup> Pilgrim Watch states that its contention “does not seek to prove” Holtec, SNC-Lavalin, HDI and CDI are untrustworthy or that allowing the Application will present a risk to public health and safety. Motion at 2.

<sup>54</sup> The NRC has repeatedly stated that it will not make inferences or fill in missing information and analysis on behalf of intervenors. See *Georgia Inst. of Tech.*, *supra* notes 12 and 13.

<sup>55</sup> *Dominion Nuclear Connecticut Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365 (2001).

<sup>56</sup> *Id.* at 365-66. The cases cited by Pilgrim Watch 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.”).

<sup>57</sup> *Id.* at 366-67.

applicants in the proceeding.<sup>58</sup> Pilgrim Watch has not connected the claims to the licensee's ability to maintain adequate technical qualifications and organizational control and authority over the facility and to provide adequate funds for safe decommissioning.<sup>59</sup> Accordingly, because Pilgrim Watch fails to link its claims with the matters within the scope of or material to this license transfer proceeding, the contention should be rejected.

In support of its contention, Pilgrim Watch cites articles related to corruption charges brought against SNCL by Canada in 2015 as well as other documents it claims show SNCL has a "history of underestimating costs" and "cutting corners."<sup>60</sup> Pilgrim Watch does not connect these documents and the alleged activities of SNCL to HDI's technical ability to decommission the plant or Holtec Pilgrim's financial qualifications. HDI, not SNCL, will be the licensed operator ultimately responsible for decommissioning the facility. SNCL does not own HDI or Holtec Pilgrim; it indirectly (through its subsidiary Kentz USA) owns a minority stake in CDI, which will perform decommissioning activities under contract with HDI, "subject to HDI's direct oversight and control."<sup>61</sup> The technical qualifications of HDI (as well as CDI) are thoroughly described in the Application. Pilgrim Watch does not cite to or question any of these portions of the Application and does not attempt to connect any alleged SNCL activities to the Application or to any individuals involved in Pilgrim decommissioning.<sup>62</sup> The Application also

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<sup>58</sup> See *Exelon Generation Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-19-06 at 15 (2019).

<sup>59</sup> See Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44,071, 44,077 (Aug. 19, 1997).

<sup>60</sup> Motion at 10-13.

<sup>61</sup> Application at Enclosure 1, p.2.

<sup>62</sup> SNC-Lavalin has a workforce of over 50,000 operating in offices in over 50 countries. Application, Encl. 1 at 12. Pilgrim Watch provides no explanation why the misconduct of certain former employees impugns the integrity of the entire workforce. Nor does it offer any connection to employees involved in decommissioning work.

explains that decommissioning funding is the sole responsibility of Holtec Pilgrim, not SNCL.<sup>63</sup> Pilgrim Watch does not attempt to connect any SNCL allegations to Holtec Pilgrim's ability to provide decommissioning funding or the cost estimate developed by HDI.

The Commission recently rejected a similar claim in the Oyster Creek license transfer proceeding.<sup>64</sup> Petitioners in that case attacked SNCL's trustworthiness based on the same information cited here by Pilgrim Watch. The Commission denied the petition and concluded that the petitioners did not "link[] its concerns about SNCL...to the technical or financial qualification of the Applicants, or to any other matter within the scope of this proceeding."<sup>65</sup> For the same reasons, the Commission should reach the same conclusion here. Pilgrim Watch does not attempt to connect SNCL's alleged misconduct to this Application, the Applicants, CDI, the decommissioning organization at Pilgrim, or the availability of decommissioning funding. Instead, Pilgrim Watch suggests without support and contrary to the Application that SNCL will "be responsible for and control decommissioning" and therefore all activities of SNCL (a global company with tens of thousands of employees and dozens of subsidiaries) should be investigated by NRC prior to approving a license transfer to two unaffiliated companies who intend to contract with a minority-owned subsidiary of SNCL. The Commission has explicitly rejected these types of "free-ranging inquiries" into a licensee's character.<sup>66</sup>

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<sup>63</sup> *Id.* at Enclosure 1, p.16 ("Holtec Pilgrim will be responsible for funding the costs of decommissioning, spent fuel management and site restoration."). The Application demonstrates that the decommissioning trust fund value "at closing will be sufficient to pay for all radiological decommissioning costs, spent fuel management costs, and site restoration costs through the expected license termination date." *Id.* at 17.

<sup>64</sup> See *Exelon Generation Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-19-06 (2019).

<sup>65</sup> *Id.* at 14.

<sup>66</sup> See *supra* note 56.

Pilgrim Watch also cites various documents related to Holtec's CEO, alleging false statements and misrepresentations.<sup>67</sup> Again, Pilgrim Watch fails to connect these claims to the Application or the technical and financial qualification contained therein. In fact, the allegations relate to entirely separate projects and proceedings. One is related to a matter before the New Jersey Economic Development Authority and the other to Holtec's application for a Hi-Store Consolidated Interim Storage Facility in New Mexico – both matters are entirely disconnected from this proceeding. Further, Holtec's CEO is not an officer of HDI nor a member of its executive committee, as shown in the Application.<sup>68</sup> Pilgrim Watch does not allege that any of the officers and managers in the HDI organization have been involved in any allegations of misconduct. Pilgrim Watch simply fails to show how these claims against Holtec's CEO will have any effect on HDI as the proposed licensed operator of the facility.

Pilgrim Watch's contention is also outside the scope of the license transfer proceeding because it impermissibly challenges the NRC Staff's performance of its duties. Pilgrim Watch claims that "the NRC has not done its job" and requests that the NRC conduct an investigation to ensure Holtec, SNCL, HDI and CDI are trustworthy, reliable and of good character.<sup>69</sup> The license transfer application is in issue, not the adequacy of the Staff's review of the application, and an intervenor may not proceed on the basis of allegations that the Staff has somehow failed in its performance.<sup>70</sup> Further, it is well established that petitions to intervene should not raise "[a] complaint that the NRC failed to take enforcement or other regulatory oversight action."<sup>71</sup>

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<sup>67</sup> Motion at 14.

<sup>68</sup> Application, Encl.1 at 7 (Figure A-1) and Attachment C.

<sup>69</sup> Motion at 1–2.

<sup>70</sup> *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-728, 17 NRC 777, 807 (1983), *review denied*, CLI-83-32, 18 NRC 1309 (1983). *See* Curators of the Univ. of Missouri, LBP-91-31, 34 NRC 29, 108-59 (1991), *clarified*, LBP-91-34, 34 NRC 159 (1991), *aff'd*, CLI-95-1, 41 NRC 71, 121 (1995).

<sup>71</sup> *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 N.R.C. 479, 494 (2012).



Indeed, Pilgrim Watch states that its contention “does not seek to prove that Holtec, SNCL and the subsidiaries HDI and CDI that they are own and control, are in fact untrustworthy, unreliable, and lack good character. . . . This contention does not seek to provide that allowing the LTA will present a risk to the common defense, security, and public health and safety.”<sup>72</sup> Therefore, by Pilgrim Watch’s own admission, the new contention does not raise any genuine dispute with the application and is not raising any issue material to the findings that the NRC must make, rendering it inadmissible under 10 C.F.R § 2.309(f)(1)(iv), (vi).

Pilgrim Watch’s citation to 10 C.F.R. Parts 73 and 37 is also misplaced. Parts 73 and 37 address physical protection of plants and materials and apply to individuals accessing certain materials and areas of a nuclear plant.<sup>73</sup> These regulations are not applicable to the review of license transfer applications under 10 C.F.R. § 50.80. To the extent Pilgrim Watch is citing these regulations to challenge the regulatory framework related to license transfer approvals, such a challenge is not permissible in this proceeding.<sup>74</sup> Further, Pilgrim Watch does not make any claim that the HDI officers and managers identified in the application, or any other individuals in the HDI or CDI organizations, do not meet access authorization requirements.

In sum, Pilgrim Watch’s Motion falls outside the scope of the proceeding, fails to provide a concise statement of facts, and fails to demonstrate any genuine material dispute with the Application. For these reasons, the Commission should reject Pilgrim Watch’s Motion and contention.

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<sup>72</sup> Motion at 2.

<sup>73</sup> See 10 C.F.R. §§ 37.3, 73.1.

<sup>74</sup> 10 C.F.R. § 2.335(a); see also *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003) (“[N]o rule or regulation of the Commission...is subject to attack...in any adjudicatory proceeding.”).

#### IV. CONCLUSION

For all of the foregoing reasons, the Commission should reject Pilgrim Watch's Motion and late-filed contention.

Respectfully submitted,

*/signed electronically by Peter D. LeJeune/*

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August 12, 2019

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Applicants' Answer Opposing Pilgrim Watch's Motion to File a New Contention has been served through the E-Filing system on the participants in the above-captioned proceeding this 12<sup>th</sup> day of August, 2019.

*/signed electronically by Peter D. LeJeune/*