

December 9, 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 Supplement its Motion to Intervene and Request for Hearing

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. (“ENOI”), Holtec International (“Holtec”), Holtec Pilgrim LLC (formerly Entergy Nuclear Generation Company) (“Holtec Pilgrim”), and Holtec Decommissioning International, LLC (“HDI”) (collectively, “Applicants”) hereby answer and oppose Pilgrim Watch’s third late-filed motion to supplement its petition with new information in the Pilgrim Nuclear Power Station (“Pilgrim”) license transfer proceeding.¹

Pilgrim Watch seeks to supplement its original petition based on a project update given by Comprehensive Decommissioning International (“CDI”), HDI’s decommissioning general contractor, at a recent Pilgrim Nuclear Decommissioning Citizens Advisory Panel (“NDCAP”)

¹ Pilgrim Watch Motion to Supplement Its February 20, 2019 Motion to Intervene and Request for Hearing, Its April 1, 2019 Reply to Petitioners, and Its May 3, 2019 Motion to Supplement (Nov. 25, 2019) (ADAMS Accession No. ML19329B324) (“Motion”).

meeting in Plymouth, Massachusetts.² At the request of the NDCAP, CDI presented a “rough timeline”³ for major decommissioning activities leading up to partial site release⁴ within eight years of the license transfer (the project goal stated in the LTA, PSDAR, and DCE⁵). Pilgrim Watch ignores the multitude of publicly-available statements that HDI’s goal is to reach partial site release within eight years of the transfer and instead argues that CDI’s presentation reveals that “Holtec and CDI are already experiencing a delay” that will “plainly impact” HDI’s and Holtec Pilgrim’s financial qualifications. Motion at 5. Pilgrim Watch attempts to connect the NDCAP presentation to HDI’s and Holtec Pilgrim’s financial qualifications solely through conclusory statements like the one above and the aphorism, “[t]ime is money” (Motion at 2), that makes no attempt to meaningfully engage with the cost assumptions underlying the financial analysis in the LTA or demonstrate any material impact on the DCE. The Commission should deny Pilgrim Watch’s motion because the “new” information is not materially different from information previously available, and in any event does not demonstrate any genuine material dispute with the LTA.

² Pilgrim Watch includes the presentation made at the November 14, 2019 NDCAP meeting as Exhibit A to the Motion (“NDCAP Presentation”). A full recording of the NDCAP meeting is available at <https://videoplayer.telvue.com/player/SoyiaNCvnOa3EtFnUDtaDbkyi72cpHJx/media/525808?autostart=true&showtabssearch=true&fullscreen=false&jwsource=em> (“NDCAP Recording”).

³ NDCAP Recording at approximately 0.10.00 mark (statement by Patrick O’Brien).

⁴ Partial site release refers to the planned release for unrestricted use of all portions of the Pilgrim site, except the ISFSI.

⁵ Respectively, Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and Approving Conforming License Amendment, and Request for Exemption from 10 CFR 50.82(a)(8)(i)(A), Pilgrim Nuclear Power Station, Docket Nos. 50-293 & 72-1044, Renewed License No. DPR-35 (Nov. 16, 2018) (ADAMS Accession No. ML18320A031) (“LTA”); Notification of Revised Post-Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost Estimate for Pilgrim Nuclear Power Station (Nov. 16, 2018) (ADAMS Accession No. ML18320A040) (“PSDAR”); Pilgrim Nuclear Power Station DECON Site-Specific Decommissioning Cost Estimate, Encl. 1 to the PSDAR (“DCE”).

As an initial procedural matter, Pilgrim Watch describes its filing as a motion to “supplement the record” in support of its original motion to intervene, its reply to Applicants’ answer opposing its petition to intervene, and its first motion to supplement its petition to intervene.⁶ Such a motion is not contemplated under the Commission’s procedural regulations, and Pilgrim Watch cites no authority authorizing it. *See* 10 C.F.R. §§ 2.309, 2.323. Applicants are, therefore, treating the filing as a motion for leave to file an amended contention pursuant to 10 C.F.R. § 2.309(c). Pilgrim Watch has not provided any amended contention in the Motion but rather is seeking to “provide additional facts that support Contention 1.”⁷ Motion at 2.

With this clarification of the procedural posture, the Commission should find that Pilgrim Watch has not met the standards for its late-filed amended Contention 1 under 10 C.F.R. § 2.309(c)(1). And, even if its motion did meet those standards, it does not meet the requirements for an admissible amended contention under 10 C.F.R. § 2.309(f)(1). As a result, the Commission should reject Pilgrim Watch’s late-filed motion to amend its contention in addition to rejecting the original contention.⁸

II. PILGRIM WATCH HAS FAILED TO SHOW GOOD CAUSE FOR ITS LATE FILING

The NRC does not look with favor upon amended or new contentions made after the initial filing deadline. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2

⁶ *See*, respectively, Pilgrim Watch Petition to Intervene and Hearing Request (Feb. 20, 2019) (ADAMS Accession No. ML19051A019); Pilgrim Watch Reply to Applicant’s Answer Opposing Pilgrim Watch Petition for Leave to Intervene and Hearing Request (Apr. 1, 2019) (ADAMS Accession No. ML19091A189); Pilgrim Watch Motion to Supplement Its Motion to Intervene and Request for Hearing (April 26, 2019) (ADAMS Accession No. ML19116A162). Applicants assume Pilgrim Watch’s reference to a “May 3, 2019 Motion to Supplement” refers to the motion filed on April 26, 2019.

⁷ Contention 1 challenges the financial qualifications of HDI and Holtec Pilgrim.

⁸ If, as Applicants show below, the Commission finds no good cause for or genuine material dispute raised by Pilgrim Watch’s late-filed motion to amend, Contention 1 as originally submitted should be rejected for the reasons set forth in Applicants’ Answer Opposing Pilgrim Watch Petition for Leave to Intervene and Hearing Request (Mar. 18, 2019) (ADAMS Accession No. ML19077A232) (“Applicants’ Answer”).

and 3), CLI-04-36, 60 N.R.C. 631, 636 (2004). As the Commission has stressed, “[t]here simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new 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.” *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 272 (2009) (footnotes and internal quotation marks omitted).

The Commission should reject the Motion because it is untimely, and Pilgrim Watch has failed to demonstrate the required good cause for its untimely filing. A motion for leave to file a new or amended contention after the intervention deadline “*will not be entertained* absent a determination by the presiding officer that a participant has demonstrated good cause” for the late filing. 10 C.F.R. § 2.309(c)(1) (emphasis added). The good cause demonstration requires the 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.

10 C.F.R. § 2.309(c)(1).

Applicants do not dispute that the November 2019 NDCAP presentation was not previously available. However, the information presented is not materially different from information that was previously available to Pilgrim Watch. Pilgrim Watch falls short of demonstrating good cause, and the untimely Motion should thus be rejected. 10 C.F.R. § 2.309(c)(1)(ii).

As a threshold matter, because Pilgrim Watch relies on the general timeliness requirements in 10 C.F.R. §§ 2.323(a)(2) and 2.1017, both of which are inapplicable,⁹ to justify the timing of the Motion, Pilgrim Watch fails to even address the requirement in 10 C.F.R. § 2.309(c)(1)(ii) to show that the information upon which the Motion is based is materially different from information previously available. This failure to satisfy the pleading requirements alone warrants denial of the Motion.¹⁰

Moreover, the fact that partial site release could occur in 2027 was explicitly contemplated by the LTA and the PSDAR submitted in November 2018—the very document Pilgrim Watch attempts to contrast with the NDCAP presentation. The PSDAR states that HDI’s decommissioning plan is intended “to support partial release of the PNPS site, except for the ISFSI within *eight years* of license transfer and equity sale closure.” *See* PSDAR at 5. The LTA and DCE similarly explained that HDI’s objective is to reach partial site release within eight years. *See* DCE at 10 (“HDI has a project goal to complete all non-ISFSI decommissioning activities . . . within approximately eight years of license transfer.”); LTA at 3 (“The project goal for completing radiological decommissioning, restoration and release for unrestricted use of non-ISFSI portions is within eight (8) years of the license transfer.”). This same timeline was repeated in press releases and local reporting on the transfer—all of which were available prior to the original filing deadline

⁹ 10 C.F.R. § 2.323(a)(1) provides that motions for new or amended contentions filed after the filing deadline in 2.309(b) are not subject to the requirements of § 2.323. Section 2.1017 governs proceedings for licensing the receipt of high-level radioactive waste at a geological repository, which is clearly inapplicable here.

¹⁰ *Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 N.R.C. 30, 34 (2006) (a petitioner’s “failure to comply with our pleading requirements for late filings constitutes sufficient grounds for rejecting its [petition]”).

or well before the current Motion.¹¹ In fact, the first presentation the Applicants made to the NDCAP in August 2018 and the high-level project timeline shared with the NDCAP in September 2018 reported the same eight-year goal and a simplified timeline showing partial site release date in 2027.¹² Holtec’s presentation at the public meeting on the PSDAR, which Pilgrim Watch attended, specifically explained that “the project goal [is] to achieve Partial Site Release within 8 years” while the “[c]urrent schedule shows radiological decommissioning complete (except for the ISFSI) within approximately 5 years.”¹³

The November 2019 NDCAP presentation simply provides the latest information on CDI’s plan for achieving the project goal that had been consistently communicated to NRC and other stakeholders—with the benefit of knowing the actual license transfer date¹⁴ and with an additional year of work planning, schedule vs. cost optimization, and further definition and execution of subcontract scopes. “Materially” in the § 2.309(c)(1) context has been interpreted as, “describ[ing]

¹¹ See, e.g., *Decommissioning of Pilgrim Plant Will Likely Last Eight Years*, CAPECOD.COM (Aug. 6, 2018), <https://www.capecod.com/newscenter/decommissioning-of-pilgrim-plant-will-likely-last-8-years/> (“The company that plans to purchase the Pilgrim Nuclear Power Station in Plymouth after it shuts down next year expects that it will take up eight years for the sight [sic] to be fully decommissioned.”); Bruce Gellerman et al., *You Asked, We Answered: Questions About the Pilgrim Shutdown*, WBUR (May 28, 2019), <https://www.wbur.org/earthwhile/2019/05/28/plymouth-plant-decommissioning-questions> (“Holtec has proposed decommissioning the plant in about eight years”); David Abel, *Sale of Pilgrim Nuclear Plant Completed*, BOSTON GLOBE (Aug. 26, 2019), <https://www.bostonglobe.com/metro/2019/08/13/federal-regulators-poised-approve-sale-pilgrim-nuclear-plant/jaUJokAHPXhjRuOW5AQ50J/story.html> (“Holtec . . . has promised to decommission the site in eight years, well ahead of the 60 years allowed by federal rules.”).

¹² Holtec International et al., NDCAP Presentation at slide 18 (Aug. 15, 2018), Pilgrim Nuclear Decommissioning Citizens Advisory Panel Briefing, <https://www.mass.gov/doc/entergyholtec-presentation-to-ndcap/download>; Holtec International et al., Pilgrim Decommissioning Upcoming Milestones at slide 7, Pilgrim Nuclear Decommissioning Citizens Advisory Panel Briefing (Sept. 19, 2018), <https://www.mass.gov/doc/ndcap-meeting-september-status-and-upcoming-submittals/download>.

¹³ Holtec International, NRC Public Meeting Pilgrim Nuclear Power Station Holtec Post-Shutdown Activities Report, at slides 4–5 (Jan. 15, 2019) (ADAMS Accession No. ML19009A343); see also U.S. NRC Public Meeting Summary, Public Meeting to Discuss the Pilgrim Nuclear Power Station Post-Shutdown Decommissioning Activities Report and License Transfer Application, Encl. at 2 (Jan. 30, 2019) (ADAMS Accession No. ML19017A173) (listing Mary and James Lampert in attendance).

¹⁴ The PSDAR assumed a closing and license transfer date of July 31, 2019. PSDAR at 16. The actual closing date was August 26, 2019. See Email Notification of Pilgrim License Transfer (Aug. 26, 2019) (ADAMS Accession No. ML19239A037).

the type or degree of difference between the new information and previously available information that a petitioner must establish, and it is synonymous with, for example, ‘significantly,’ ‘considerably,’ or ‘importantly.’” *Florida Power & Light Co. (Turkey Point Units 6 and 7)*, LBP-17-6, 86 N.R.C. 37, 48 (2017). A project update (which by definition is intended to provide information that was not previously available) that simply provides more detail on a plan to achieve the high-level project objective stated in the LTA, PSDAR, and DCE is not “materially different” from the information previously and consistently broadcast by the Applicants.

In any event, the NDCAP update does nothing more than demonstrate the obvious fact that planning schedules for large construction projects, including Pilgrim decommissioning, are updated and refined as work activities are fully scoped and sequenced, cost and schedule efficiencies are identified, subcontracts are finalized, and work execution begins in earnest. The LTA, PSDAR, and DCE accounted for the possibility of further optimization of work sequencing and phasing as HDI and CDI completed planning and moved into work execution; hence, the eight-year objective for reaching partial site release.¹⁵

Pilgrim Watch has not shown that its late-filed proposal to amend its contention stems from information materially different from that previously available; therefore, the Motion should be denied. Pilgrim Watch’s failure to meet the criteria of 10 C.F.R. § 2.309(c)(1) is sufficient grounds by itself to reject the amended contention. However, as discussed below, the amended contention also does not meet the admissibility criteria of § 2.309(f)(1).

¹⁵ DCE at 41; *see also* Corrected Transcript of Public Meeting on Pilgrim Post-Shutdown Decommissioning Activities Report at 22 (Feb. 7, 2019) (ADAMS Accession No. ML19031C835) (“The [PSDAR] schedule reflects the project goal to achieve partial site release within eight years.” (statement by Ms. Andrea Sterdis of HDI)).

III. PILGRIM WATCH'S AMENDED CONTENTION IS INADMISSIBLE

Pilgrim Watch's proposal to amend its contentions with supplemental information also falls short of the Commission's contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). As 10 C.F.R. § 2.309(d)(4) provides, "[a] new or amended contention filed by a party or participant to the proceeding must also meet the applicable contention admissibility requirements in paragraph (f) of this section." Pilgrim Watch has failed to do so here, and for this reason too, its Motion should be denied.

First, Pilgrim Watch does not satisfy the contention admissibility requirements of § 2.309(f)(1), which sets out requirements related to the particularity of the contention. Pilgrim Watch's conclusory statements that the additional detail provided to the NDCAP "plainly impact[s]" HDI's and Holtec Pilgrim's financial qualifications amounts to little more than vague speculation. *See, e.g.*, Motion at 2 ("Time is money."); *id.* at 5 ("[C]hanges in the timing and duration of decommissioning plainly impact on whether the current licensees . . . has access to adequate funds . . ."); *id.* at 6 ("[T]hese new facts provide further evidence that Holtec has not proved the required financial assurance."). Conclusory statements like these are not sufficient to establish a material challenge to an LTA. *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 N.R.C. 321, 330 (2015). "[W]e cannot admit an issue for adjudication based on mere conjecture." *Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 N.R.C. 109, 140 (2001).¹⁶

¹⁶ The NRC rules bar contentions where petitioners have what amounts to only generalized suspicions. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003). "'Bald or conclusory allegation[s]' of a dispute with the applicant" are not enough. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001) (internal citations omitted).

To establish an admissible contention, a petitioner must provide sufficient information to show a genuine dispute with the applicants on a material issue of law or fact, including references to the specific portions of the application that the petitioner disputes and the supporting reasons for such dispute. 10 C.F.R. § 2.309(f)(1)(vi). Pilgrim Watch’s Motion boils down to a superficial comparison of the NDCAP summary timeline to a similar (but not equivalent) summary from the PSDAR,¹⁷ and an invitation for the Commission to blindly adopt Pilgrim Watch’s conclusion that “[t]he changes in the timing and duration of decommissioning plainly impact on whether [Holtec Pilgrim or HDI] has access to adequate funds.” Motion at 5. Pilgrim Watch does not attempt to connect the updated timelines to any of the relevant portions of the LTA discussing decommissioning costs. The Motion does not reference or challenge any of the detailed cost breakdowns in the LTA or DCE, fails to engage with the assumptions underlying the LTA’s financial qualification showing (including the relative timing of reductions to on-site staffing), and fails to provide any meaningful explanation for whether, and if so, why the schedule information (e.g., delaying waste generating activities such as reactor and turbine building demolition and associated NDT withdrawals) would result in any significant increase in decommissioning costs or negatively impact cash flow. As for Pilgrim Watch’s suggestion that “[a]t hearing” it will “demonstrate the additional deficiencies in Holtec’s PSDAR and DCE” (Motion at 6), the

¹⁷ Both the NDCAP Presentation and the PSDAR Figure 3-1 (PNPS Decommissioning Schedule) are summary-level communication tools that roll a number of activities up into a bar that illustrates the general timeframe for all the planning and execution activities tied to certain milestones. The NDCAP timeline and the PSDAR timeline roll-up related work activities into similar, but not identical, categories; e.g., the PSDAR rolls up reactor segmentation into three categories (RV/RVI Segmentation – Phase I, RV/RVI Segmentation & Spent Fuel Pool Cleanout – Phase II, Reactor Building Systems and Component Cleanout & Dismantlement) (PSDAR at 12, 17), while the NDCAP Presentation includes similar work scopes in three different categories (RFF Clearance, RVI Segmentation and Final Internals & RPV Segmentation categories) (NDCAP Presentation, slides 4, 8). Neither “schedule” provides any information regarding the sequencing of all the activities within the general categories or the relative spread of activities within each bar. *See generally* NDCAP Recording at 0.14.30 mark (explaining that the long bar for demolition reflects the need for early removal of smaller out-buildings that potentially interfere with decommissioning work, while removal of major nuclear island buildings will come later in the process).

Commission has long emphasized that the NRC rules, by design, prevent such fishing expeditions. *See, e.g., Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03- 17, 58 N.R.C. 419, 424 (2003). The Motion does not demonstrate a genuine material dispute with HDI’s financial analysis, which includes about \$165 million in contingency, shows that over \$200 million will remain in the nuclear decommissioning trust after the completion of partial site release, and takes no credit for the substantial additional cash flow from DOE recoveries.¹⁸

Lastly, an admissible contention must also include alleged facts or expert opinions that support the petitioner’s position, together with references to the specific sources and documents on which the petitioner intends to rely. 10 C.F.R. § 2.309(f)(1)(v); *see also GPU Nuclear, Inc., Jersey Cent. Power & Light Co. & AmerGen Energy Co., LLC*, (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 210 (2000) (finding no admissible contention where the petitioner “provided no expert opinion, references, or other information supporting its assertion that [the applicant] is at risk of being ‘stretched too thin’”). Pilgrim Watch does not provide any support in the form of a scheduling or cost expert, reference, or other source to support the only point that matters in this context: “whether either [Holtec Pilgrim or HDI] has or has access to adequate funds.” Motion at 5.

In sum, Pilgrim Watch does not address or demonstrate any material dispute with the LTA, thus failing to raise a genuine dispute as required by 10 C.F.R. § 2.309(f)(1)(vi). In addition, contrary to 10 C.F.R. § 2.309(f)(1)(v), Pilgrim Watch does not provide any expert opinion or analysis (or any analysis for that matter) to support the suggestion that the project update presented to the NDCAP is likely to have any effect on the cost of decommissioning Pilgrim. The

¹⁸ *See* LTA, Encl. 1, Attachment D.

supplemental information in the Motion therefore fails to satisfy the admissibility standards in 10 C.F.R. § 2.309(f)(1), and Petitioner's contentions remain inadmissible for all of the other reasons discussed previously in Applicants' Answer.

IV. CONCLUSION

For the reasons described above, the Commission should deny Pilgrim Watch's motion.

Respectfully submitted,

/signed electronically by Alan D. Lovett/

Katherine L. Perkins
Holtec International
Holtec Technology Campus
1 Holtec Boulevard
Camden, NJ 08104
Phone: 856-797-0900, x3792
E-mail: k.perkins@holtec.com

Peter D. Lejeune
Alan D. Lovett
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203-2015
Telephone: 205-226-8774
204-226-8769
Email: plejeune@balch.com
alovett@balch.com

Counsel for Holtec

Susan H. Raimo
Entergy Services, LLC
101 Constitution Avenue, NW
Suite 200 East
Washington, DC 20001
Tel. 202-530-7330
Email: sraimo@entergy.com

David R. Lewis
Meghan C. Hammond
Pillsbury Winthrop Shaw Pittman, LLP
1200 Seventeenth Street, N.W.
Washington, DC 20036-3006
Tel. 202-663-8474
E-mail: David.lewis@pillsburylaw.com

Counsel for Entergy

December 9, 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 Supplement its Motion to Intervene and Request for Hearing has been served through the E-Filing system on the participants in the above-captioned proceeding this 9th day of December 2019.

/signed electronically by Alan D. Lovett/
Alan D. Lovett