UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 50-271-LT-2
ENTERGY NUCLEAR VERMONT YANKEE, LLC, ENTERGY NUCLEAR OPERATIONS, INC. and NORTHSTAR NUCLEAR DECOMMISSIONING COMPANY, LLC	)	July 10, 2017
(Vermont Yankee Nuclear Power Station)	)	

APPLICANTS' ANSWER OPPOSING JUNE 13, 2017 PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST FILED BY THE STATE OF VERMONT

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. ("ENOI" or "Entergy"), on behalf of itself and Entergy Nuclear Vermont Yankee, LLC ("ENVY"), and NorthStar Nuclear Decommissioning Company, LLC ("NorthStar NDC") (together, "Applicants") submit this Answer opposing the Petition for Leave to Intervene and Hearing Request ("Petition") filed by the State of Vermont ("Vermont" or "Petitioner") on June 13, 2017.[1] Petitioner seeks to intervene in the proceeding associated with the Applicants' February 9, 2017, license transfer application ("LTA" or "Application").[2] In the LTA, Applicants have requested that the U.S. Nuclear Regulatory Commission ("NRC") consent to direct and indirect transfers of control of ENOI's and ENVY's Renewed Facility Operating License No. DPR-28 for the Vermont Yankee

[1] *State of Vermont's Petition for Leave to Intervene and Hearing Request* (June 13, 2017) (ML17164A419) ("Petition"). The Petition includes three affidavits and various attachments to those affidavits. *See* Affidavit of Warren K. Brewer (June 12, 2017) (ML17164A420) ("Brewer Affidavit"); Affidavit of William Irwin, Sc.D., CHP (June 12, 2017) (ML17164A422) ("Irwin Affidavit"); Affidavit of Charles B. Schwer (June 12, 2017) (ML17164A423) ("Schwer Affidavit").

[2] *See* BVY 17-005, Letter from A. Christopher Bakken III, President and Chief Executive Officer, Entergy, to NRC Document Control Desk, Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and Approving Conforming License Amendment and Notification of Amendment to Decommissioning Trust Agreement (Feb. 9, 2017) (ML17045A140) ("LTA" or "Application").

Nuclear Power Station ("Vermont Yankee" or "VYNPS"), as well as the general license for the Vermont Yankee Independent Spent Fuel Storage Installation ("ISFSI"). They further have requested that the NRC approve a conforming administrative amendment to the facility license to reflect the proposed direct transfer of the license from ENOI to NorthStar NDC as well as a planned name change for ENVY from ENVY to "NorthStar Vermont Yankee, LLC" ("NorthStar VY").

In its Petition, Vermont proffers two proposed contentions—a safety contention (Contention 1) and an environmental contention (Contention 2). Contention 1 alleges that the LTA and associated conforming license amendment request involve a potential significant safety and environmental hazard, do not comply with certain Part 50 regulations, and do not demonstrate reasonable assurance of adequate protection of the public health and safety. Contention 2 alleges that the LTA is deficient because it does not include an environmental report, and that the NRC Staff must prepare an environmental analysis of the proposed license transfer and associated license amendment to comply with the requirements of the National Environmental Policy Act ("NEPA") and 10 C.F.R. Part 51.

For the reasons set forth below, the Commission should deny the Petition in its entirety. Although Applicants do not contest Vermont's standing to intervene in this proceeding, Petitioner has failed to submit an admissible contention.[3] As an initial matter, the proposed contentions raise issues that are neither within the scope of this license transfer proceeding nor material to the Staff's required findings, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii) and (iv). In short, Contention 1 inappropriately challenges the NRC's no significant hazards consideration determination for the proposed action, the adequacy of the recently-updated Post-Shutdown Decommissioning Activities Report ("PSDAR"), the validity of a previously-issued exemption, and

[3] Vermont has standing under 10 C.F.R. § 2.309(h)(2), which states in relevant part: "If the proceeding pertains to a production or utilization facility (as defined in § 50.2 of this chapter) located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, no further demonstration of standing is required."

Entergy's compliance with 10 C.F.R. § 50.54(bb). These particular challenges are subsumed in Vermont's broader attack on the NRC's overall regulatory framework for decommissioning financial assurance. Contention 2, in turn, improperly challenges the categorical exclusion in 10 C.F.R. § 51.22(c)(21), the express terms of the hearing notice for this proceeding, and generic decommissioning environmental impact findings made by the Commission via rulemaking.

In addition, contrary to the requirement of 10 C.F.R. § 2.309(f)(1)(vi), Vermont fails to challenge and demonstrate any genuine material dispute with the specific portions of the LTA that discuss in detail the basis for Applicants' compliance with applicable NRC license transfer requirements.[4] That discussion includes information regarding the financial qualifications of NorthStar VY as well as the required financial assurance for decommissioning and funding plan for spent fuel management. Instead of attempting to identify specific, material deficiencies in the information provided by the Applicants, Vermont relies on vague and unsubstantiated claims of the purported "significant risk" of shortfalls in the VYNPS decommissioning trust fund and resulting adverse impacts to the public health and safety and environment. The risks identified by Vermont apply generally to owners of all merchant plants, including the existing owner of VYNPS, and are not unique to or interposed by the proposed transfer. Vermont completely ignores and fails to dispute the adequacy of the specific measures described in the LTA that maintain the sufficiency of the funding for decommissioning and spent fuel management, which establish the financial qualifications of NorthStar VY and NorthStar NDC.

Finally, Petitioner does not provide adequate support for its numerous (but unfounded) factual and legal claims. Although Vermont includes three affidavits with its Petition, those affidavits rely heavily on general arguments, conclusory assertions, and in many instances pure

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[4] *See generally*, LTA, attach. 1 (Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and Approving Conforming License Amendment (NRC Renewed Facility Operating License No. DPR-28 and General License for Independent Spent Fuel Storage Installation)).

speculation that lack clear relevance or applicability to VYNPS and that, in any event, fail to show any material deficiencies in the LTA. The Commission has held that "[u]nsupported hypothetical theories or projections, even in the form of an affidavit, will not support invocation of the hearing process."[5] Therefore, the Petition also fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v) to provide support for its positions, and 10 C.F.R. § 2.309(f)(1)(vi) to provide sufficient information to show that a genuine issue exists on a material issue of law or fact.

For all of these reasons, the Petition should be denied in its entirety.

II. PROCEDURAL HISTORY

On February 9, 2017, Applicants filed the aforementioned LTA, which seeks NRC approval of the direct transfer of the VYNPS operating license, a conforming amendment to that license, and the indirect transfer of control of the current licensed owner of VYNPS.[6] The primary purpose of the LTA and associated administrative license amendment request is to effectuate the transfer of the NRC-licensed possession, maintenance, and decommissioning authorities for VYNPS so that NorthStar NDC may undertake expedited decommissioning of the Vermont Yankee site.[7]

By letter dated April 6, 2017, the NRC Staff notified the Applicants that the Staff had completed its acceptance review of the LTA and concluded that it provides sufficiently detailed technical information to enable the Staff to perform its detailed technical review and ultimately issue a decision on the acceptability of the Application.[8] Subsequently, on May 24, 2017, the NRC published in the *Federal Register* a notice informing the public that it is considering the LTA for

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5 *See Power Auth. of N.Y.* (James A. Fitzpatrick Nuclear Power Plant & Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 315 (2000).

6 *See* LTA, Transmittal Letter at 1-2.

7 *See id.* at 1.

8 *See* Letter from Jack D. Parrott, Senior Project Manager, NRC, to A. Christopher Bakken, III, President and Chief Executive Officer, Entergy, Vermont Yankee Nuclear Power Station – Acceptance Review of the Entergy and NorthStar License Transfer Application and Associated Conforming Administrative License Amendments (CAC No. L53175) (Apr. 6, 2017) (ML17094A848).

approval, announcing the Staff's planned participation May 25, 2017 public meeting of the Vermont Nuclear Decommissioning Citizens Advisory Panel in Brattleboro, VT, seeking oral and written comments on the LTA, and offering an opportunity for potentially affected persons to file (within 20 days of the notice) hearing requests and intervention petitions.[9]

Vermont timely filed its Petition on June 13, 2017. As noted above, the Petition contains two proposed contentions—Contention 1 and Contention 2—that allege violations of NRC safety and environmental review requirements, respectively.

Entergy timely files this Answer opposing the Petition in accordance with the provisions of 10 C.F.R. § 2.309(i)(1).

III. REGULATORY FRAMEWORK

A. NRC Decommissioning and Related Financial Assurance Requirements

Under NRC regulations, decommissioning a nuclear reactor means to safely remove the facility from service, reduce residual radioactivity to a level that allows releasing the property for unrestricted use (or restricted use subject to conditions, not proposed here), and terminate the license.[10] NRC regulations require that applicants and licensees provide reasonable assurance that funds will be available for the decommissioning process.[11] The primary methods of providing financial assurance for decommissioning permitted by the NRC are through (1) prepayment; (2) an external sinking fund; (3) a surety, insurance, or other guarantee; or (4) a combination of these or equivalent mechanisms.[12]

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9 Vermont Yankee Nuclear Power Station; Entergy Nuclear Operations, Inc.; Consideration of Approval of Transfer of License and Conforming Amendment, 82 Fed. Reg. 23,845 (May 24, 2017) ("Hearing Notice").

10 10 C.F.R. § 50.2.

11 *Id.* § 50.75(a). The NRC requires nuclear power plant licensees to report to the agency the status of their decommissioning funds at least once every two (2) years, annually within five (5) years of the planned shutdown, and annually once the plant ceases operation.

12 *Id.* § 50.75(e)(1)(i)-(iii), (vi).

Once a licensee decides to cease operations permanently, NRC regulations impose additional requirements that govern three sequential phases for decommissioning activities: (1) initial activities; (2) major decommissioning and storage activities; and (3) license termination activities.[13] The decommissioning process begins when a licensee certifies to the NRC Staff that it has permanently ceased operations and it has permanently removed fuel from the reactor vessel.[14] NRC regulations require a licensee to submit a post-shutdown decommissioning activities report, or PSDAR, prior to or within two years following the permanent cessation of operations.[15] The Staff notices its receipt of the PSDAR, makes the PSDAR available for public comment, and holds a public meeting on its contents.[16] The PSDAR serves to inform the public and NRC Staff of the licensee's proposed activities,[17] but approval is not required under the NRC rules.

Thus, absent any objections from the NRC Staff, the licensee may commence "major decommissioning activities" ninety (90) days after the Staff receives the PSDAR.[18] Under NRC regulations, a licensee may not perform decommissioning activities that would foreclose the release of the site for possible unrestricted use, result in significant environmental impacts not previously

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13 *See generally id.* § 50.82(a).

14 *Id.* § 50.82(a)(1)(i)-(ii).

15 *Id.* § 50.82(a)(4)(i).

16 *Id.* § 50.82(a)(4)(ii). The Staff presents comments received at the public meeting held on the PSDAR and makes available to the public a written transcript of the meeting. *See* "Standard Format and Content for Post-Shutdown Decommissioning Activities Report," Regulatory Guide 1.185, Rev. 1 at 4 (June 2013) (ML13140A038). As discussed further below, the PSDAR process does not give rise to a hearing opportunity.

17 Decommissioning of Nuclear Power Reactors, Final Rule, 61 Fed. Reg. 39,278, 39,281 (July 29, 1996) ("1996 Decommissioning Rule"). In establishing the current process governing decommissioning, the NRC "eliminate[d] the need for an approved decommissioning plan before major decommissioning activities can be performed." *Id.*

18 10 C.F.R. § 50.82(a)(5). A "major decommissioning activity" for a nuclear power plant such as Vermont Yankee is defined as "any activity that results in permanent removal of major radioactive components, permanently modifies the structure of the containment, or results in dismantling components for shipment containing greater than class C waste in accordance with [10 C.F.R. § 61.55]." *Id.* § 50.2.

reviewed, or result in the lack of reasonable assurance that adequate funds will be available for decommissioning.[19]

The PSDAR must include a site-specific decommissioning cost estimate.[20] Once a licensee submits its decommissioning cost estimate, it generally is allowed access to the balance of the nuclear decommissioning trust ("NDT") fund monies for the remaining decommissioning activities with "broad flexibility."[21] However, the use of the NDT fund is limited in three important respects. First, withdrawals from the fund must be for expenses for "legitimate decommissioning activities" consistent with the definition of decommissioning in 10 C.F.R. § 50.2.[22] Second, the expenditure must not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise.[23] Finally, the withdrawals must not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.[24]

Additionally, the Staff monitors the licensee's use of the decommissioning trust fund via its review of the licensee's annual financial assurance status reports.[25] Those reports must include, among other information, the amount spent on decommissioning activities, the amount remaining in the fund, and an updated estimate of the costs required to complete decommissioning.[26] If the licensee or NRC identifies a shortfall between the remaining funds and the updated cost to complete

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19 *Id.* § 50.82(a)(6).

20 *Id.* § 50.82(a)(4)(i).

21 *See* 1996 Decommissioning Rule, 61 Fed. Reg. at 39,285.

22 10 C.F.R. § 50.82(a)(8)(i)(A).

23 *Id.* § 50.82(a)(8)(i)(B).

24 *Id.* § 50.82(a)(8)(i)(C).

25 *Id.* § 50.82(a)(8)(v).

26 *Id.* § 50.82(a)(8)(v)(A)-(B).

decommissioning (as a result of these annual status reports or otherwise), then the licensee must provide additional financial assurance.[27]

Unless otherwise authorized, the site must be decommissioned within sixty (60) years.[28] The licensee remains subject to NRC oversight until decommissioning is completed and the license is terminated. The licensee must submit a license termination plan ("LTP") at least two (2) years before the planned license termination date.[29] The NRC, in turn, must notice receipt of the LTP in the *Federal Register*, make the plan available to the public for comment, schedule a public meeting near the facility to discuss the plan's contents, and offer an opportunity for a public hearing on the license amendment associated with the LTP.[30] The Commission may not approve the LTP (via license amendment) and terminate the license until it makes the findings set forth in 10 C.F.R. § 50.82(a)(10) and (a)(11), respectively.[31]

B. NRC Spent Nuclear Fuel Management Requirements

NRC regulations also address the need to ensure adequate funds for the management of spent nuclear fuel. Within two (2) years following permanent cessation of operations or five (5) years before expiration of the reactor operating license, whichever occurs first, a licensee must submit written notification to the NRC for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until such fuel is transferred to the U.S. Department of Energy ("DOE").[32] Licensees also must notify the NRC of any

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27 *Id.* § 50.82(a)(8)(vi). The determination whether a shortfall exists takes into account a two (2) percent annual real rate of return.

28 *Id.* § 50.82(a)(3).

29 *Id.* § 50.82(a)(9)(i).

30 *Id.* § 50.82(a)(9)(iii).

31 *Id.* § 50.82(a)(10), (11).

32 *Id.* § 50.54(bb).

significant changes in the proposed Irradiated Fuel Management Plan ("IFMP") as described in the initial notification.[33] The decommissioning cost estimate required by the PSDAR must include the projected costs of managing spent fuel.[34] Once a licensee files that decommissioning cost estimate, it must report annually to the NRC on the status of its funding to manage spent fuel, including the amount of funds available, the projected cost of managing spent fuel until it is removed by the DOE and, if there is a funding shortfall, a plan to obtain additional funds to cover the cost.[35]

C. NRC Reactor License Transfer Requirements

Under AEA Section 184, an NRC reactor license, or any right thereunder, may not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the NRC first gives its consent in writing.[36] This statutory requirement is codified in 10 C.F.R. § 50.80 and applies to both direct and indirect license transfers.[37] A transfer of control may involve either the licensed operator or any individual licensed owner of the facility.[38] Before approving a license transfer, the NRC reviews, among other things, the technical and financial qualifications of the proposed transferees.[39] The transfer review, in other words, focuses on the potential impact on the licensee's ability both to

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33 *Id.*

34 *Id.* § 50.82(a)(4)(i).

35 *Id.* § 50.82(a)(8)(vii).

36 42 U.S.C. § 2234.

37 *See* NRC Backgrounder, "Reactor License Transfers," at 1-2 (Apr. 2016) (ML040160803). A direct license transfer occurs when an entity seeks to transfer a license it holds to a different entity (*e.g.*, when a plant is to be sold or transferred to a new licensee in whole or part). *See id*. An indirect license transfer takes place when there is a transfer of "control" of the license or of a license holder (*e.g.*, as a result of a merger or acquisition at high levels within or among corporations. *See id.*

38 *See id.* at 1.

39 *See* 10 C.F.R. §§ 50.80(b)(1), (c)(1); *see also* "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NUREG-1577, Revision 1 (2001) (ML013330264).

maintain adequate technical qualifications and organizational control and authority over the facility, and to provide adequate funds for safe operation and decommissioning.[40]

Section 189.a of the AEA requires that the NRC offer an opportunity for hearing on a license transfer.[41] In 1998, the NRC adopted Subpart M of 10 C.F.R. Part 2 (10 C.F.R. §§ 2.1300 to 2.1331) authorizing the use of a streamlined license transfer process with informal legislative-type hearings, rather than formal adjudicatory hearings.[42] These rules cover any direct or indirect license transfer for which NRC approval is required, including those transfers that require license amendments and those that do not.[43] Section 2.1315 codifies the Commission's generic determination that any conforming amendment to an operating license that only reflects the license transfer action involves a "no significant hazards consideration."[44] That same regulation expressly provides that "[a]ny challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer."[45]

As part of the same rulemaking to streamline license transfer proceedings, the Commission also promulgated 10 C.F.R. § 51.22(c)(21). That regulation categorically excludes from environmental review "approvals of direct and indirect transfers of any license issued by the NRC and any associated amendments of license required to reflect the approval of a direct or indirect

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40 *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).

41 42 U.S.C. § 2239(a)(1)(A) ("[I]n any proceeding under this chapter, for . . . application to transfer control, . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.").

42 *See* Streamlined Hearing Process for NRC Approval of License Transfers; Final Rule, 63 Fed. Reg. 66,721, 66,722 (Dec. 3, 1998) ("Subpart M Rule"); *see also* Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2182, 2214 (Jan. 14, 2004) (retaining streamlined process for license transfers without substantive changes).

43 *See* Subpart M Rule, 63 Fed. Reg. at 66,727.

44 10 C.F.R. § 2.1315(a).

45 *Id* § 2.1315(b).

transfer of an NRC license," and the regulation reflects the NRC's finding that this category of action does not individually or cumulatively have a significant effect on the human environment.[46]

IV. OVERVIEW OF DECOMMISSIONING FINANCIAL ASSURANCE AT VERMONT YANKEE AND RELATED NRC LITIGATION

A. Entergy's Purchase of Vermont Yankee and License Condition 3.J

On May 17, 2002, the NRC issued an Order approving the transfer of the Vermont Yankee operating license from Vermont Yankee Nuclear Power Corporation ("VYNPC"), a rate-regulated utility, to ENVY and ENOI ("Transfer Order").[47] The Transfer Order required the NDT to be subject to or consistent with certain requirements.[48] On July 31, 2002, the NRC issued a conforming amendment to the Vermont Yankee operating license, incorporating each of these requirements as part of a license condition ("Condition 3.J.").[49]

B. Vermont Yankee Initial Decommissioning Activities

By letter dated September 23, 2013, Entergy informed the NRC that Vermont Yankee would permanently cease operations at the end of the operating cycle.[50] Entergy ceased power operations at Vermont Yankee on December 29, 2014, and subsequently submitted its certifications of

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46 *See* Subpart M Rule, 63 Fed. Reg. at 66,728.

47 Letter from Robert M. Pulsifer, NRC, to Ross P. Barkhurst and Michael R. Kansler, Entergy, Order Approving Transfer of License for Vermont Yankee Nuclear Power Station from Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., and Approving Conforming Amendment (May 17, 2002) ("Transfer Order") (ML020390198); *see also* Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Order Approving Transfer of License and Conforming Amendment, 67 Fed. Reg. 36,269 (May 23, 2002) ("Transfer Order Notice").

48 Among other things, the Transfer Order required that decommissioning trust agreement be in a form acceptable to the NRC, and that no disbursements or payments from the trust, other than for ordinary administrative expenses, be made by the trustee until the trustee has first given the NRC thirty (30) days prior written notice of payment. Transfer Order Notice, 67 Fed. Reg. at 36,270.

49 Letter from Robert M. Pulsifer, NRC to Michael A. Balduzzi, Entergy, Vermont Yankee Nuclear Power Station – Issuance of Amendment re: Transfer of Ownership and Operating Authority Under Facility Operating License from Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Enclosure 1, Amendment No. 208 to License No. DPR-28 at 8 (July 31, 2002) (ML022100395).

50 BVY 13-079, Letter from Christopher J. Wamser, Entergy, to NRC Document Control Desk, Notification of Permanent Cessation of Power Operations (Sept. 23, 2013) (ML13273A204).

permanent cessation of power operations and permanent removal of fuel from the reactor vessel to the NRC on January 12, 2015.[51]

Entergy submitted, in December 2014: (1) an update to the Vermont Yankee IFMP,[52] and (2) the Vermont Yankee PSDAR with the site-specific decommissioning cost estimate.[53] Among other things, the PSDAR explained that Entergy will use the NRC-authorized "SAFSTOR" decommissioning approach under which the facility is placed in a safe and stable condition and maintained in that state to allow levels of radioactivity to decrease through radioactive decay, followed by decontamination and dismantlement.[54]

C. Entergy's September 2014 License Amendment and January 2015 Exemption Requests Related to the Vermont Yankee Nuclear Decommissioning Trust

Following the 2002 amendment incorporating Condition 3.J. into the Vermont Yankee operating license, the NRC amended its regulations to add a new provision at 10 C.F.R. § 50.75(h) governing NDT agreements ("NDT Rulemaking").[55] The new regulations specified requirements very similar to those in Condition 3.J(a)., with one exception.[56] The Commission explicitly stated in the NDT Rulemaking that "licensees will have the option of maintaining their existing license

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51 BVY 15-001, Letter from Christopher J. Wamser, Entergy, to NRC Document Control Desk, Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel (Jan. 12, 2015) (ML15013A426).

52 BVY 14-085, Letter from Christopher J. Wamser, Entergy, to NRC Document Control Desk, Update to Irradiated Fuel Management Program Pursuant to 10 CFR 50.54(bb) (Dec. 19, 2014) (ML14358A251).

53 BVY 14-078, Letter from Christopher J. Wamser, Entergy, to NRC Document Control Desk, Post Shutdown Decommissioning Activities Report (Dec. 19, 2014) ("Vermont Yankee PSDAR") (ML14357A110).

54 *Id.*, Enclosure at 4.

55 Decommissioning Trust Provisions; Final Rule, 67 Fed. Reg. 78,332 (Dec. 24, 2002) ("Decommissioning Trust Provisions").

56 Unlike Condition 3.J(a)(iii), the regulations do not require "30 days prior written notice" for all disbursements from the NDT. In the NDT Rulemaking, the Commission generically determined that, for "licensees who have complied with 10 CFR 50.82(a)(4)," *i.e.*, have submitted a PSDAR, the requirement for a "30-day disbursement notice" "would not add *any* assurances that funding is available and would duplicate notification requirements at § 50.82." Decommissioning Trust Provisions, 67 Fed. Reg. at 78,336. Accordingly, 10 C.F.R. § 50.75(h)(1) and (2) except withdrawals being made under 10 C.F.R. § 50.82(a)(8) from the 30-day disbursement notice requirement, and specify that "[a]fter decommissioning has begun and withdrawals from the decommissioning fund are made under § 50.82(a)(8), no further notifications need be made to the NRC." 10 C.F.R. § 50.75(h)(1)(iv).

conditions or submitting to the new requirements,"[57] and "will be able to decide for themselves whether they prefer to keep or eliminate their specific license conditions."[58] Accordingly, on September 4, 2014, Entergy submitted a license amendment request seeking NRC approval to exercise its option to eliminate portions of Condition 3.J. from the Vermont Yankee operating license in favor of complying with the regulatory requirements in 10 C.F.R. § 50.75(h).[59]

While its license amendment request was still pending, Entergy requested an exemption from section 50.82(a)(8)(i)(A) to allow it to make withdrawals from the Vermont Yankee decommissioning trust fund for certain irradiated fuel management costs.[60] The exemption request also sought relief from two of the requirements in section 50.75(h)(1)(iv), which were to become applicable to Entergy (in place of its existing license conditions) upon issuance of the license amendment. First, Entergy requested an exemption from the requirement that the decommissioning trust agreement provide that disbursement from the trust be restricted to decommissioning expenses until final decommissioning has been completed. Second, it requested an exemption from the requirement that it provide 30 working days' advance notice to the NRC of intended disbursements.

The Staff approved the exemption request in June 2015.[61] In so doing, the Staff determined that the exemption request met the criteria for a categorical exclusion and therefore required neither an environmental assessment ("EA") nor an environmental impact statement ("EIS") to comply

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57 Decommissioning Trust Provisions, 67 Fed. Reg. at 78,335.

58 *Id*. at 78,339.

59 *See* BVY 14-062, Letter from Christopher J. Wamser, Entergy, to NRC Document Control Desk, Proposed Change No. 310 – Deletion of Renewed Facility Operating License Conditions Related to Decommissioning Trust Provisions (Sept. 4, 2014) (ML14254A405).

60 Letter from Christopher J. Wamser, Entergy, to NRC Document Control Desk, Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), Vermont Yankee Nuclear Power Station, Docket No. 50-271, License No. DPR-28 (Jan. 6, 2015) (ML15013A171).

61 Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station; Exemption; Issuance, 80 Fed. Reg. 35,992 (June 23, 2015).

with NEPA.[62] Entergy thereafter was permitted to make withdrawals from the Vermont Yankee decommissioning trust fund for operational spent fuel management expenses, because it was exempted from 10 C.F.R. § 50.82(a)(8)(i)(A).[63] However, because the Staff had not yet granted the license amendment request subjecting Entergy to 10 C.F.R. § 50.75(h)(1)(iv), the license condition requiring 30-day notices of withdrawals for non-administrative expenses remained in effect.[64] As discussed below, Entergy later withdrew its then-pending license amendment request.

D. <u>The State of Vermont's Related Adjudicatory Challenges</u>

In February 2015, the NRC published a notice of opportunity to request a hearing on Entergy's September 2014 license amendment application.[65] In response, Vermont requested a hearing, proffering four contentions in its initial petition and proposed a fifth contention in a later filing.[66] Entergy and the Staff opposed admission of all five contentions.[67]

In August 2015, the Board issued LBP-15-24, in which it granted Vermont's hearing request and admitted two contentions.[68] In September 2015, Entergy moved to withdraw its license amendment request and to dismiss the proceeding.[69] The Board granted the motion without

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62 *Id.*at 35,994.

63 Id. at 35,995 ("Therefore, the Commission hereby grants ENO exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) to allow withdrawals from the VY Trust for irradiated fuel management without prior NRC notification.").

64 *See Entergy Nuclear Vt. Yankee, LLC, & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), LBP-15-24, 82 NRC 68, 100 (2015), *vacated as moot*, CLI-16-8, 83 NRC __ (June 2, 2016) (slip op.).

65 Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 80 Fed. Reg. 8,355, 8,656, 8,359 (Feb. 17, 2015).

66 *See State of Vermont's Petition for Leave to Intervene and Hearing Request* (Apr. 20, 2015) (ML15111A087); *State of Vermont's Motion for Leave to File a New Contention Including the Proposed New Contention and to Add Additional Bases and Support to Existing Contentions I, III, and IV* (July 6, 2015) (ML15187A350).

67 *See NRC Staff Answer to State of Vermont Petition for Leave to Intervene and Hearing Request* (May 15, 2015) (ML15135A523); *Entergy's Answer Opposing State of Vermont's Petition for Leave to Intervene and Hearing Request* (May 15, 2015) (ML15135A498); *NRC Staff's Answer to the State of Vermont's Motion for Leave to File New and Amended Contentions* (July 31, 2015) (ML15212A281); *Entergy's Answer Opposing State of Vermont's New Contention V and Additional Bases for Pending Contentions I, III, and IV* (July 31, 2015) (ML15212A825).

68 *Vt. Yankee*, LBP-15-24, 82 NRC at 104.

69 *Entergy's Motion to Withdraw its September 4, 2014 License Amendment Request* (Sept. 22, 2015) (ML15265A583).

prejudice and terminated the proceeding, but imposed two conditions on the withdrawal.[70] First, it directed Entergy to provide written notice to Vermont of any new license amendment application relating to the Vermont Yankee decommissioning trust fund at the time of the application.[71] Second, the Board directed Entergy to specify in its 30-day notices if any of the proposed disbursements are to be used for particular expenses.[72]

In October 2015, the Staff moved to vacate LBP-15-24, in which the Board had granted Vermont's hearing request.[73] The Commission granted the Staff's motion in CLI-16-8, holding that the proceeding had become moot while LBP-15-24 was still subject to appeal because Entergy had withdrawn the contested license amendment.[74] Thus, although Vermont cites LBP-15-24 numerous times in its Petition, that decision has no controlling precedential value relative to the issues raised by Vermont in its proposed contentions.[75]

On November 4, 2015, Vermont and two other entities jointly filed a petition seeking review of, and a discretionary hearing on, a number of issues associated with the use of

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70 *Entergy Nuclear Vt. Yankee, LLC, & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), LBP-15-28, 82 NRC 233, 244 (2015).

71 *Id.*

72 *Id.* Those expenses, which were challenged as part of one of Vermont's contentions that was admitted, but not litigated, were: a $5 million settlement payment, emergency preparedness costs, shipments of non-radiological asbestos waste, insurance, property taxes, and replacement of structures during SAFSTOR. *Vt. Yankee*, CLI-16-8, 82 NRC at __ (slip op. at 4 n.17); *Vt. Yankee*, LBP-15-28, 82 NRC at 242.

73 *See NRC Staff Motion to Vacate LBP-15-24* (Oct. 26, 2015) (ML15299A260).

74 *Vt. Yankee*, CLI-16-8, 83 NRC at __ (slip op. at 1, 10). The Commission explained that the hearing opportunity that the Board granted in LBP-15-24 "was limited to the September 2014 license amendment request," and that "[d]isagreement regarding use of decommissioning trust funds apart from that request does not convert this matter into a live controversy." *Id.* at 6-7. The Commission further stated that vacatur of LBP-15-24 does not affect the conditions that the Board imposed on the withdrawal in LBP-15-28, which binds the parties, and that Entergy must comply with the conditions of withdrawal set forth therein. *Id*. at 7.

75 *See id.* at 10 (citing *S. Cal. Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 558 (2013)) ("While unreviewed Board decisions do not create binding legal precedent, we nonetheless customarily vacate such decisions as a prudential matter when appellate review is cut short by mootness."). *See also San Onofre*, CLI-13-9, 78 NRC at 559 ("When vacating for mootness, we neither approve nor disapprove the underlying Board ruling; therefore, we take no position on the Board's decision."); *La. Energy Servs., L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113, 114 (1998) (noting that Commission orders vacating licensing board decisions "eliminate any future confusion and dispute over their meaning or effect").

decommissioning trust funds at Vermont Yankee.[76] In CLI-16-17, the Commission held that the Petitioners had not shown that they were entitled to a hearing under the AEA.[77] It also "decline[d] to convene a discretionary hearing to perform the various reviews requested by Petitioners" because the "Petitioners' concerns about the use of decommissioning trust funds largely raise oversight matters that are appropriately addressed via requests for enforcement action under 10 C.F.R. § 2.206."[78] Finally, the Commission determined that the issued exemption allowing use of the decommissioning trust fund for spent fuel management exceeded the scope of the categorical exclusion and therefore directed the Staff to perform an environmental assessment to examine the environmental impacts, if any, associated with the exemption.[79]

E. The Current License Transfer Application

As submitted on February 9, 2017, the LTA seeks NRC approval of the direct transfer of the Vermont Yankee facility operating license and the general license for the Vermont Yankee ISFSI from ENOI, the current licensed operator, to NorthStar NDC, a wholly-owned subsidiary of NorthStar Group Services, Inc. ("NorthStar").[80] As a result of the proposed transaction, NorthStar NDC will assume licensed responsibility for Vermont Yankee through a direct transfer of ENOI's responsibility for licensed activities at the plant to NorthStar NDC.[81] NorthStar VY (the renamed ENVY, as discussed below) will enter into an operating agreement with NorthStar NDC,[82] under

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76 *See Petition of the State of Vermont, the Vermont Yankee Nuclear Power Corporation, and Green Mountain Power Corporation for Review of Entergy Nuclear Operations, Inc.'s Planned Use of the Vermont Yankee Nuclear Decommissioning Trust Fund* (Nov. 4, 2015) (ML16137A554).

77 *Entergy Nuclear Vt. Yankee, LLC, & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), CLI-16-17, 84 NRC __, __ (Oct. 27, 2016) (slip op. at 19-20, 42).

78 *Id.* at 1-2.

79 *See id.* at 37-41.

80 LTA, attach. 1 at 1.

81 *Id.* at 2.

82 *Id.*

which NorthStar NDC will act as NorthStar VY's agent, and NorthStar VY will pay for NorthStar NDC's costs of operation, including all decommissioning costs.[83]

The LTA also seeks NRC consent to the indirect transfer of control of ENVY, the current licensed owner of Vermont Yankee, from ENVY's Entergy parent companies to NorthStar Decommissioning Holdings, LLC and its parents, NorthStar, LVI Parent Corp. and NorthStar Group Holdings, LLC.[84] Subject to NRC approval, NorthStar Decommissioning Holdings, LLC will acquire 100% of the membership interests in ENVY pursuant to the terms of a Membership Interest Purchase and Sale Agreement ("MIPA").[85] As such, indirect control of ENVY will be transferred from ENVY's current Entergy parent companies to NorthStar Decommissioning Holdings, LLC and its parents NorthStar, LVI and Holdings.[86] ENVY will immediately change its name to NorthStar VY, but the same legal entity will continue to exist and will remain the licensed owner of Vermont Yankee that is responsible for decommissioning the facility before and after the proposed transfer.[87]

Under the terms of the proposed transaction, ENVY would make reasonable efforts to accelerate the transfer of spent fuel to dry cask storage by two years ahead of its original plan and complete fuel transfer before the closing of the transaction at the end of 2018.[88] Assuming that the transfer to dry storage proceeds as planned, NorthStar NDC would become responsible for an ISFSI that contains all of the VYNPS spent fuel.[89] NorthStar NDC then would begin decommissioning

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83 *Id.*

84 *Id.*

85 *Id.* A redacted version of the MIPA, suitable for public disclosure, is provided as Enclosure 1 to the LTA.

86 *Id.*

87 *Id.* NorthStar VY will continue to own VYNPS as well as its associated assets and real estate, including its nuclear decommissioning trust fund, title to spent nuclear fuel, and rights pursuant to the terms of its Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the DOE, Certain off-site assets and real estate of ENVY (*e.g.*, administrative offices, off-site training facilities) are excluded. *Id.* at 2-3.

88 *Id.* at 4.

89 *Id.*

activities promptly and would plan to complete radiological decommissioning and restoration of the non-ISFSI portions of the VY site by the end of 2030—approximately 40 years sooner than described in the 2014 PSDAR, which assumed use of the SAFSTOR method.[90] Consistent with representations contained in the LTA, on April 6, 2017, NorthStar submitted prospectively a Revised PSDAR "to notify the NRC of changes in the actions and schedules previously described in the PSDAR for VYNPS submitted on December 19, 2014."[91] As described in the Revised PSDAR (which would apply only if the NRC approves NorthStar VY and NorthStar NDC as the VYNPS licensee), NorthStar VY has selected the DECON method, with decontamination and dismantlement activities commencing promptly after completion of the transfer of spent fuel to dry cask storage.[92]

As discussed further herein, the LTA provides detailed information regarding the financial qualifications of NorthStar VY and NorthStar NDC, and the required financial assurance for decommissioning and funding plan for spent fuel management. The LTA describes the planned use of performance-bonded, fixed-price/fixed-rate contracts, and the planned use of a pay-item disbursement approach with milestones that require work progress and actual performance before funds will be withdrawn from the NDT, reasonably assuring the sufficiency of the NDT to complete decommissioning. The LTA limits NDT withdrawals for spent fuel management to $20 million in revolving funds, replenished from recoveries from the DOE. It also describes the $125 million parent Support Agreement that NorthStar will enter into, providing additional financial support for decommissioning and spent fuel management. In addition, the LTA submittal contains proposed

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90 *Id.*

91 Letter from Scott E. State, NorthStar Group Services, Inc., to NRC Document Control Desk and Director of the Office of Nuclear Reactor Regulation, Notification of Revised Post-Shutdown Decommissioning Activities Report, Vermont Yankee Nuclear Power Station, Docket Nos. 50-271 and 72-59, License No. DPR-28, encl. at 4 (Apr. 6, 2017) (ML17096A394) ("Revised PSDAR").

92 *Id.* at 6.

administrative amendments to the VYNPS operating license and certain proposed amendments to the decommissioning trust agreement.

V. VERMONT'S PROPOSED CONTENTIONS ARE INADMISSIBLE

A. Governing Legal Standards for Contention Admissibility

Petitions to intervene must "set forth with particularity" the contentions a petitioner seeks to have litigated in a hearing.[93] The requirements for an admissible contention are set forth in 10 C.F.R. § 2.309(f)(1)(i)-(vi) and also described in the Hearing Notice.[94] The Commission's contention admissibility requirements are "strict by design."[95] They seek "to ensure that NRC hearings 'serve the purpose for which they are intended: to adjudicate *genuine, substantive safety and environmental* issues placed in contention by qualified intervenors.'"[96] The requirements thus reflect a deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly-supported contentions that were admitted for hearing although "based on little more than speculation."[97] To warrant an adjudicatory hearing, proposed contentions thus must have "some reasonably specific factual or legal basis."[98]

Under 10 C.F.R. § 2.309(f)(1), a petitioner must explain the basis for each proffered contention by stating alleged facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely in litigating the contention at hearing.[99] To be admissible, the

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93 *PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 NRC 500, 503-04 (2015) (quoting 10 C.F.R. § 2.309(f)(1)).

94 *See* Hearing Notice, 82 Fed. Reg. at 23,847-48; *Susquehanna Nuclear, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-17-4, 85 NRC __, __ (Mar. 24, 2017) (slip op. at 20).

95 *Dominion Nuclear Conn., Inc*. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

96 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 334 (1999)) (emphasis added).

97 *Susquehanna*, CLI-15-8, 81 NRC at 504 (quoting *Oconee*, CLI-99-11, 49 NRC at 334).

98 *Id.* (quoting *Millstone*, CLI-03-14, 58 NRC at 213).

99 10 C.F.R. § 2.309(f)(1)(ii), (v).

issue raised must fall within the scope of the proceeding and be material to the findings that the NRC must make with respect to the application.[100] A contention, therefore, must provide sufficient information to show a genuine dispute with the applicant on a material issue of law or fact.[101] The contention must refer to the specific portions of the application that the petitioner disputes along with the supporting reasons for each dispute; or, if the petitioner believes that an application fails altogether to contain information required by law, the petitioner must identify each failure and provide supporting reasons for the petitioner's belief.[102]

B. Proposed Contention 1 Is Inadmissible Because It Fails to the Meet the Requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi)

In Contention 1, Petitioner alleges that the LTA (including the associated license amendment request) involves a potential significant safety and environmental hazard; does not comply with 10 C.F.R. §§ 50.54(bb), 50.75(h)(1)(iv), and 50.82(8)(i)(A)-(C); and does not demonstrate reasonable assurance of adequate protection of the public health and safety in purported contravention of the AEA. For the reasons detailed below, Contention 1 fails to satisfy the Commission's contention admissibility criteria in 10 C.F.R. § 2.309(f)(1) in multiple respects.

1. Proposed Contention 1 Raises Issues That Are Neither Within the Scope of This Proceeding Nor Material to the NRC Staff's Required Findings

Vermont's Petition contains myriad assertions concerning the alleged "significant risk" to the public health and safety posed by the proposed license transfer, including dire prognostications regarding the ultimate fate of the VYNPS site.[103] The majority of those assertions, however, are variants of the same overarching claim; *i.e.*, that "the proposed license transfer and amendment, and Revised PSDAR, if approved, could lead to a shortfall in the amount of funding available to fully

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100 10 C.F.R. § 2.309(f)(1)(iii)-(iv); *Susquehanna*, CLI-17-4, 85 NRC at __ (slip op. at 20).

101 10 C.F.R. § 2.309(f)(1)(vi); *Susquehanna*, CLI-17-4, 85 NRC at __ (slip op. at 20).

102 10 C.F.R. § 2.309(f)(1)(vi); *Susquehanna*, CLI-17-4, 85 NRC at __ (slip op. at 20-21).

103 Petition at 3, 21, 24, 29, 30, 41.

and safely decommission and radiologically decontaminate Vermont Yankee and manage its spent nuclear fuel," thereby placing "public health, safety, and the environment at risk."[104] Insofar as Contention 1 (or Contention 2) rests on this core argument, it raises numerous issues that are neither within the scope of this proceeding nor material to the Staff's findings on the LTA. As such, the contention contravenes the requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(iv) and 2.335(a).

a. Vermont Incorrectly Asserts That the Requested License Amendment Involves a Substantive Change to the License and a Significant Hazards Consideration Determination That Are Litigable in This Proceeding

As an initial matter, the conforming license amendment requested by Entergy is strictly administrative in nature. It does not involve, as Vermont incorrectly suggests, a "substantive change" to the license.[105] Applicants have requested only that the NRC amend the facility license "to reflect the proposed direct transfer of the license from ENOI to NorthStar NDC as well as a planned name change for ENVY from ENVY to NorthStar VY."[106] The generic determinations codified in 10 C.F.R. § 2.1315 thus fully apply to the requested amendment, and therefore any challenge to the license amendment sought by Entergy "is limited to the question of whether the license amendment accurately reflects the [proposed] transfer."[107] Furthermore, section 2.1315(a) provides that such conforming amendments to reactor and ISFSI facility licenses "involve[] respectively, 'no significant hazards consideration,' or 'no genuine issue as to whether the health and safety of the public will be significantly affected.'"[108] Accordingly, Vermont's claims that the

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104 *Id.* at 9, 10, 31.

105 *Id.* at 5, 6.

106 LTA, attach. 1 at 1.

107 10 C.F.R. § 2.1315(b). *See also* Subpart M Rule, 63 Fed. Reg. at 66,727-28 ("Substantive issues regarding requests for a hearing on the appropriateness of the transfer itself may only be considered using the procedures in this rule. The Commission has previously noted that issuance of such an administrative amendment, following the review and approval of the transfer itself, 'presents no safety questions and clearly involves no significant hazards considerations.'") (citation omitted).

108 10 C.F.R. § 2.1315(a).

requested license amendment is substantive in nature are contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii) and (iv) and thus are not litigable in this Subpart M license transfer proceeding.

Vermont seeks to avoid this result through two arguments. Both lack merit. First, it asserts that section 2.1315 does not apply because the proposed license amendment makes a "substantive change" beyond what is required to conform the license to reflect the transfer by seeking to delete the requirement to maintain "the lines of credit" provided by Entergy Global Investments, Inc., or Entergy International Holdings, Ltd. LLC, or their parent companies.[109] Vermont posits that the requested amendment involves a "substantive change" because "NorthStar proposes to replace those parental guarantees" with a $125 million Support Agreement that "is not a parental guarantee."[110]

This argument is factually groundless. Contrary to Vermont's claims, the requested amendment is administrative in nature, because the proposed amendment to the license condition in question (part of Condition 3.J) merely conforms the license to reflect the proposed transfer, which includes NorthStar providing the new Support Agreement described in the LTA. It does not reflect any replacement of existing financial support arrangements, because there are no current lines of credit in effect. Rather, the lines of credit previously provided by the Entergy affiliates were terminated in April 2015 with NRC's prior approval,[111] in accordance with terms and purpose of the license condition.[112]

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109 Petition at 5-6.

110 *Id.* at 6.

111 *See* Letter from William M. Dean, Director, Office of Nuclear Reactor Regulation, NRC, to Site Vice President, VYNPS, Entergy, Vermont Yankee Nuclear Power Station – Request for Consent to Cancel Lines of Credit (TAC No. MF5490) (Apr. 16, 2015) (ML15097A361) ("Apr. 16, 2015 NRC Letter"); BVY 14-087, Letter from Steven C. McNeal, Entergy, to William M. Dean, Director, Office of Nuclear Reactor Regulation, NRC, Request for Consent to Cancel Lines of Credit, Vermont Yankee Nuclear Power Station, Docket No. 50-271, License No. DPR-28 (Dec. 19, 2014) (ML14365A041).

112 Condition 3.J states: "Entergy Nuclear VY, and ENO, Inc. shall take no action to cause Entergy Global Investments, Inc. or Entergy International Holdings Ltd. LLC, or their parent companies to void, cancel, or modify the lines of credit to provide funding for Vermont Yankee as represented in the application *without prior written consent* of the Director of the Office of Nuclear Reactor Regulation." (Emphasis added).

Further, the canceled lines of credit referenced in License Condition 3.J had nothing to do with decommissioning funding or spent fuel management. As explained in the NRC Staff's safety evaluation supporting the cancellation of the lines of credit, that license condition, which was carried forth from Condition (4) of the May 17, 2002 Transfer Order, "required ENVY and ENO to maintain two lines of credit, as represented in the license transfer application, to provide working capital and additional financial resources [totaling $70 million], if needed, for the safe *operation and maintenance of VY*."[113] Given Entergy's docketing of the certifications of permanent cessation of power operations and permanent removal of fuel from the VYNPS reactor vessel, the Staff concluded that "operational and associated operational maintenance funding is no longer necessary and costs for remaining activities associated with the decommissioning of VY will be funded from the VY [NDT]."[114] The Staff also found that ENO had provided adequate assurance that funds will be available for radiological decommissioning and spent fuel management.[115]

Vermont also contends that section § 2.1315(a) "explicitly allows for evaluating whether a specific license transfer and amendment warrants a different determination"—*i.e.*, a significant hazards determination—because it includes the prefatory phrase "[u]nless otherwise determined by the Commission with regard to a specific application."[116] In making that argument, however, Vermont ignores the express terms of the Hearing Notice, which states in pertinent part:

> As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety

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113 Apr. 16, 2015 NRC Letter, encl. (Safety Evaluation) at 1 (emphasis added).

114 *Id.* at 2.

115 *See id.* at 2-3 ("The NRC staff further finds that there is no longer a need to provide lines of credit for operations and operational maintenance costs and that ENO has provided adequate assurance that funds will be available for radiological decommissioning and spent fuel management.").

116 Petition at 5 (quoting 10 C.F.R. § 2.1315(a)).

> of the public will be significantly affected. *No contrary determination has been made with respect to this specific license amendment application*.[117]

As set forth in 10 CFR § 50.58(b)(6), a determination that an amendment involves no significant hazards consideration may not be challenged in any hearing request. Thus, insofar as Contention 1 raises alleged safety concerns purportedly stemming from the requested administrative license amendment, it contravenes both NRC regulations and the express terms of the Hearing Notice and accordingly should be rejected.[118]

b. Vermont's Claims Regarding the Adequacy of the Revised PSDAR Are Not Cognizable in This Proceeding

Vermont's claims concerning the adequacy of the Revised PSDAR submitted by NorthStar in April 2017 also fall outside the scope of, and are immaterial to, this proceeding. Vermont argues, in principal part, that the Revised PSDAR violates 10 C.F.R. § 50.82(a)(8)(i)(B) and (C) and, if approved, could lead to a shortfall in the amount of funding available for full and safe decommissioning and spent fuel management at VYNPS.[119] However, it misunderstands the purpose of the PSDAR, which is "to provide a general overview for the public and the NRC of the licensee's proposed decommissioning activities until [two] years before termination of the license."[120] As the Commission explained in CLI-16-17—a decision prompted by a previous Vermont petition—NRC regulations provide an opportunity for public comment when a licensee submits its PSDAR (an opportunity that Vermont has used in the past).[121] However, because "the PSDAR does not amend the license" or otherwise require formal NRC Staff approval, "[NRC]

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117 Hearing Notice, 82 Fed. Reg. at 23,847 (emphasis added).

118 *See* 10 C.F.R. § 2.335(a); 10 C.F.R. § 2.309(f)(1)(iii); *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), LBP-91-19, 33 NRC 397, 411-12 (1991), *appeal denied on other grounds,* CLI-91-12, 34 NRC 149 (1991).

119 Petition at 23.

120 1996 Decommissioning Rule, 61 Fed. Reg. at 39,281.

121 *Vt. Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 3, 32).

regulations do not provide a hearing opportunity on it."[122] Thus, to the extent that Vermont seeks to contest the contents of the Revised PSDAR in this license transfer proceeding, it inappropriately challenges NRC regulations and raises issues outside the scope of the proceeding.[123] Any concerns related to the Revised PSDAR should be presented via the applicable NRC processes, including the PSDAR-specific public comment process and the rulemaking process.

c. Vermont Inappropriately Challenges the Validity and Continued Applicability of the Exemption Granted by the NRC in June 2015

Also outside the scope of this proceeding is Vermont's claim that NorthStar must file an exemption request to use the NDT fund for spent fuel management expenses.[124] According to Vermont, "until NorthStar applies for and receives such an exemption, the regulatory requirements of Disbursements from the NDT Fund 'are restricted to decommissioning expenses.'"[125] Vermont claims that NorthStar cannot benefit from the exemption, because (1) "it is not final" since the NRC NEPA-required environmental analysis of the exemption is still in progress;[126] and (2) the NRC Staff's analysis of that exemption was based on "Entergy's 'specific financial situation,' not NorthStar's."[127] Petitioner further asserts that it "is entitled to a hearing on that matter because it is 'directly related' and inextricably intertwined with this license transfer and amendment."[128]

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122 *Id.* at 32 (citing 10 C.F.R. § 50.82(a)(4)(ii)); *see also* 42 U.S.C. § 2239. In the 1996 rulemaking that expanded opportunities for public participation in the decommissioning process, the Commission explicitly rejected the idea of a hearing and intervention opportunity at the PSDAR review stage because "initial decommissioning activities (dismantlement) are not significantly different from routine operational activities . . . [and] do not present significant safety issues for which an NRC decision would be warranted." 1996 Decommissioning Rule, 61 Fed. Reg. at 39,284. It explained that "[a] more formal public participation process is appropriate at the termination stage of decommissioning." *Id.* At the license termination stage, the licensee must submit a license amendment request in order to terminate its license. *Id.* That request provides an opportunity for a hearing on the license termination plan. *Id.* at 39,284, 39,286.

123 *See* 10 C.F.R. §§ 2.309(f)(iii), 2.335(a).

124 *See* Petition at 19.

125 *Id.* at 19-20 (quoting 10 C.F.R. § 50.75(h)(1)(iv)).

126 *Id.* at 17, 18.

127 *Id.* at 17.

128 *Id.* at 19.

In making these arguments, Vermont plainly seeks to challenge (again) the validity and continuing applicability of an exemption that the NRC *already* has granted, and it does so within the context of this limited-scope license transfer proceeding. Although it correctly notes that the Staff's NEPA review is still in progress (per the Commission's directive in CLI-16-17), it wrongly states that the exemption is not final. On the contrary, the NRC Staff issued the exemption on June 17, 2015, as documented in the associated *Federal Register* notice.[129] Thus, at that time, the Staff permitted Entergy to make withdrawals from the Vermont Yankee NDT fund for spent fuel management expenses, because it was exempted from 10 C.F.R. § 50.82(a)(8)(i)(A). Furthermore, in CLI-16-17, the Commission, which concluded that the Staff had "articulated a reasonable basis for granting the exemption," denied Vermont's "request that [it] reverse the Staff's approval of Entergy's exemption request to use decommissioning trust funds for spent fuel management expenses."[130] Notably, while the Commission directed the Staff to conduct an EA to examine the environmental impacts (if any) of the exemption under NEPA, it expressly refrained from staying or vacating the exemption at that time.[131] Therefore, Vermont's claim that the exemption is not final or effective is factually baseless.

Applicants recognize that the Staff's approval of the exemption was based, in part, on Entergy's previous plan to utilize the SAFSTOR method, and that NorthStar now proposes to pursue expedited decommissioning of the VYNPS site through use of the DECON method. That fact alone, however, does not trigger the need for a new or revised exemption request. As discussed more fully in Section V.B.2 below, the LTA fully describes the manner in which the relevant NorthStar entities will provide decommissioning funding assurance and ensure that adequate

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129 *See* Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station; Exemption; issuance, 80 Fed. Reg. 35,992 (June 23, 2015).

130 *Vt. Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 28-29).

131 *See id.* at 41 n.157.

funding is available for spent fuel dry storage transfer costs and spent fuel management costs. As summarized in the LTA, "[b]ased upon its ability to fund decommissioning and spent fuel management from the NDT, the pay-item approach, performance bonds, and the additional parental support committed by NorthStar, NorthStar VY [which will be required to pay for all of NorthStar NDC's operating costs] will be financially qualified to remain VY's licensed owner."[132] If the Staff determines that, given the NDT balances and the financial support otherwise provided, the NDT is sufficient for the very limited spent fuel management expenditures proposed,[133] there is no apparent reason why the existing exemption should not continue in effect.

As also discussed below, Vermont has failed to directly controvert any of the detailed financial qualifications information, including the proposed methods for funding spent fuel management costs, provided in the LTA. Because it has been given the opportunity to challenge this information, and has simply failed to do so, no material issue or "critical safety question" is being excluded from the scope of this proceeding, as Vermont suggests, nor is any violation of its AEA hearing rights occurring.[134] Importantly, in reviewing the LTA, the Staff will evaluate the adequacy of Applicants' financial qualifications, which includes making a finding that the financial assurance provided for decommissioning funding is in compliance with applicable NRC requirements. Thus, the question of NorthStar's financial qualifications *is* subject to challenge in this proceeding, but Vermont has not identified any specific dispute with the LTA on this issue.

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132 LTA, attach. 1 at 6.

133 Vermont suggests that the exemption would allow $225 million to be diverted from the NDT. Petition at 12, 20. This claim relates to the expenditures that were projected for the current SAFSTOR method adopted by Entergy (including spent fuel pool costs already incurred). In contrast, the funding assurance provided in the LTA limits the use of the NDT for spent fuel management to $20 million in revolving funds. Thus, Vermont's suggestion that $225 million could be diverted lacks a factual basis and fails to present any genuine dispute with the Application.

134 Petition at 19 & n.31.

Moreover, even if the Staff approves the LTA, NRC regulations require annual review of expenses and funding by both the Staff and the licensee through license termination.[135] If the NRC determines at any time that decommissioning costs exceed the remaining decommissioning funds, "then the licensee must provide additional financial assurance to cover the estimated cost of completion."[136]

Even assuming *arguendo* that the Staff determines as part of its LTA review that NorthStar VY and NorthStar NDC should submit a revised or new exemption request in light of the proposed license transfers, such a determination would not make the exemption request subject to challenge in this license transfer proceeding.[137] Controlling Commission case law holds unequivocally that neither the AEA nor the Commission's Rules of Practice provide third parties with a right to an adjudicatory hearing on an exemption request.[138]

Vermont cites two Commission decisions, CLI-01-12 and CLI-13-1, for the proposition that it is entitled to a hearing on the putative exemption request, because such a request is "directly related to" or "inextricably intertwined with" the LTA.[139] Those cases, however, are readily distinguishable, insofar as they involved, respectively, an exemption necessary to the initial licensing of a proposed away-from-reactor ISFSI, and an exemption submitted as part of a substantive license amendment request. Neither circumstance is present here. Indeed, in CLI-13-1, the Commission plainly stated that "when a *licensee requests an exemption in a related license amendment application*, we consider the hearing rights on the amendment application to encompass

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135 *See Vt. Yankee,* CLI-16-17, 84 NRC at __ (slip op. at 28) (citations omitted); 10 C.F.R. § 50.82(a)(8)(v), (vi).

136 *Vt. Yankee,* CLI-16-17, 84 NRC at __ (slip op. at 28) (citations omitted).

137 Presumably, such an exemption request, if needed, would conform with the plans that are described in the LTA.

138 *See*, *e.g., Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 96–97 (2000); *see also Brodsky v. NRC,* 578 F.3d 175, 180 (2d Cir. 2009) (citing 42 U.S.C. § 2239(a)(1)(A)) (holding that exemption requests do not give rise to hearing rights).

139 Petition at 19 (citing *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 476 (2001) and *Honeywell Int'l, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 7 (2013)).

the exemption request as well."[140] For the reasons explained above, Applicants have not filed a substantive license amendment request to which AEA hearing rights would apply.

Finally, Vermont has not explained why a revised or new exemption is "necessary for the sale to occur or the transfer to proceed."[141] As the Commission held in a 2000 decision involving a transfer of the Oyster Creek facility operating license, arguments concerning the need for additional NRC regulatory approvals or licensing actions (in that case, an amendment or other action to expand spent fuel storage capacity as well as refueling outage-related Technical Specification changes) are outside the scope of a license transfer proceeding.[142] On this issue, the Commission clearly stated: "A license transfer proceeding is not a forum for a full review of all aspects of current plant operation."[143] The Commission reiterated this principle in a more recent license transfer proceeding involving the Susquehanna Steam Electric Station, stating in CLI-15-8 that "a license transfer proceeding focuses on the *impact of the license transfer*, not ongoing operational issues or other concerns unrelated to the transfer."[144]

d. Vermont's Arguments Concerning Alleged Non-Compliance with 10 C.F.R. § 50.54(bb) Are Not Cognizable in This Proceeding

Vermont contends that Applicants have not demonstrated compliance with 10 C.F.R. § 50.54(bb), and that the Staff cannot approve the LTA until NorthStar submits an IFMP that complies with that regulation.[145] That claim should be rejected as outside the scope of this proceeding and lacking materiality to the proposed transfer for the same reasons set forth above in connection with Vermont's exemption-related arguments. In short, the submittal of the IFMP is a

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140 *Honeywell*, CLI-13-1, 77 NRC at 10 (citations omitted) (emphasis added).

141 *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 214 (2000).

142 *See id.* at 212-14.

143 *Id.* at 213.

144 *Susquehanna*, CLI-15-8, 81 NRC at 511 (emphasis in original).

145 *See* Petition at 14-16.

requirement that is specific to the plant's current licensing basis and current operation.[146] The submittal of a new or revised IFMP (which, again, presumably will conform to the information presented in the LTA) is not necessary for the proposed sale to occur or the transfer to proceed.[147] Indeed, it has no direct bearing on the financial qualifications of the new owners or the adequacy of financial assurance as assessed under 10 C.F.R. § 50.75(e), as section 50.54(bb) requires submittal of "the *program* by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor."[148] Entergy's current IFMP reflects its current program for funding spent fuel management, in compliance with section 50.54(bb), and it will continue to do so until the licenses are transferred.

Section 50.54(bb) does require that the licensee "notify the NRC of any significant changes in the proposed waste management program as described in the initial notification."[149] As a practical matter, the LTA and Revised PSDAR (submitted for informational purposes but not yet in effect) already have informed the Staff of the proposed changes to the spent fuel management program that would occur if and when the license transfers occur and described the bases for those changes vis-à-vis applicable NRC regulations. In arguing that NorthStar must submit an updated IFMP as a prerequisite to LTA approval, Vermont in essence elevates form over substance. Indeed, if NorthStar were to submit an updated IFMP at this juncture, that document, much like the Revised

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146 As noted above, in accordance with 10 C.F.R. § 50.54(bb), Entergy timely submitted an Updated IFMP on December 12, 2014, after its decision to permanently cease VYNPS operations. Since that time, Entergy also has submitted a report on the status of its funding for managing irradiated fuel (pursuant to 10 C.F.R. § 50.82(a)(8)(vii)) and notification of schedule change for the dry fuel loading campaign (pursuant to 10 C.F.R. § 50.82(a)(7) and § 50.54(bb)). *See* Letter from Bryan S. Ford, Entergy, to NRC Document Control Desk, Status of Funding for Managing Irradiated Fuel For Year Ending December 31, 2016 – 10 CFR 50.82(a)(8)(vii) (March 30, 2017) (ML17089A717); Letter from John W. Boyle, Entergy, to NRC Document Control Desk, Notification of Schedule Change for Dry Fuel Loading Campaign, Vermont Yankee Nuclear Power Station, Docket No. 50-271, License No. DPR-28 (Apr. 12, 2017) (ML17104A050). These submittals underscore the fact that submittal of the IFMP, including any updates thereto as required by 10 C.F.R. § 50.54(bb), is an "ongoing operational issue[]" that is outside the scope of this proceeding. *Susquehanna*, CLI-15-8, 81 NRC at 511.

147 *Oyster Creek*, CLI-00-6, 51 NRC at 214.

148 10 C.F.R. § 50.54(bb) (emphasis added).

149 *Id.*

PSDAR filed on April 6, 2017, essentially would be informational in nature and only prospectively-applicable because it also would be contingent upon NRC approval of NorthStar VY and NorthStar NDC as the new licensees for VYNPS.

e. Contention 1 Generally Challenges the NRC's Decommissioning Financial Assurance Regulations and Raises Issues That Would Be More Appropriately Raised Through Other Procedural Channels

The NRC's regulatory scheme plainly permits Entergy to seek—and, indeed, contemplates that licensees will seek—separate approvals for separate regulatory actions. The PSDAR, IFMP, 2015 exemption, and current LTA each is governed by separate NRC regulations, and each was submitted consistent with the respective NRC regulations.[150] Insofar as Petitioners challenge these processes, such challenges constitute impermissible collateral attacks on the NRC's regulatory authority and processes.[151] Specifically, 10 C.F.R. § 2.335 specifies that, absent a waiver, "no rule or regulation of the Commission, or any provision thereof . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part."[152] Further, a waiver will only be granted upon a demonstration, through submission of an affidavit, that "application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted."[153] Vermont has made no such waiver request here.

As the Commission aptly noted in CLI-16-7, "[a]t the heart of the petition is [Vermont's] concern that Entergy plans to use the decommissioning trust fund for impermissible purposes and that such expenditures may lead to premature depletion of the fund" and related health, safety, and

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150 *See, e.g.*, 10 C.F.R. § 50.82(a)(4)(i), 50.54(bb), 50.12, 50.90, 50.4.

151 *See Entergy Nuclear Vt. Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 338 n.21 (2011); *Vt. Yankee Nuclear Power Corp. & AmerGen Vt., LLC* (Vt. Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 165 (2000) ("[Petitioner's] general attacks on the agency's regulations and competence do not raise an admissible issue in this license transfer proceeding.").

152 10 C.F.R. § 2.335(a).

153 *Id.*

environmental consequences.[154] As it explained in that same decision, the Commission promulgated its decommissioning financial assurance regulations "to ensure that licensees would retain adequate funding to complete decommissioning," and the NRC's "ongoing oversight of Entergy's compliance with our regulatory structure provides reasonable assurance that sufficient funds will be available to decommission Vermont Yankee in accordance with [NRC] regulations."[155] The Commission's observations in CLI-16-7 apply *a fortiori* to the instant Petition. Inasmuch as Vermont believes that Entergy is not currently complying with NRC regulations, or that the regulations are inadequate, its recourse lies in the 10 C.F.R. § 2.206 enforcement petition and 10 C.F.R. § 2.802 rulemaking petition processes, respectively.

2. Proposed Contention 1 Fails to Establish a Genuine Dispute on a Material Issue of Law or Fact Because It Does Not Present Any Specific, Fact-Based Challenges to the License Transfer Application

Proposed Contention 1 suffers from another critical flaw that precludes its admission: it altogether fails to raise any "particularized challenge to the application" as required by of 10 C.F.R. § 2.309(f)(1)(vi) and controlling legal precedent.[156] The Commission long has emphasized that 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 disagrees with the applicant.[157] If a petitioner believes the application fails to adequately address a relevant issue, then the petitioner must "explain why the application is deficient."[158] That is, to raise a genuine dispute with an

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154 *Vt. Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 10-11).

155 *Id.* at 11.

156 *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 587 (2009).

157 Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989) ("Hearing Process Changes"); *see also Millstone*, CLI-01-24, 54 NRC at 358.

158 Hearing Process Changes, 54 Fed. Reg. at 33,170; *see also Palo Verde*, CLI-91-12, 34 NRC at 156.

applicant's analysis, a petitioner must make at least a "minimal demonstration" that the "analysis fails to meet a statutory or regulatory requirement."[159] Vermont has not done so here.

Contrary to Vermont's unsupported claim, the LTA contains detailed, publicly-available information concerning the proposed license transfers as well as discussion of how that information demonstrates compliance with applicable NRC requirements. As discussed above, Vermont alleges non-compliance with NRC requirements that have no relevance to the acceptability of the proposed transfers. It also repeatedly cites the (unsubstantiated) potential for significant and unaccounted cost overruns.[160] At no point, however, does it engage in any meaningful assessment of the LTA's contents or analyses, especially as they relate to the issue of decommissioning financial assurance—the focus of its Petition—and explain why they are deficient.[161]

A license transfer applicant must show reasonable assurance of sufficient funds to decommission the facility.[162] NRC regulations permit licensees to provided financial assurance for decommissioning through several methods, including prepayment. As stated in the LTA, the financial assurance required by 10 C.F.R. § 50.75, 50.82(a)(8)(vi), and 72.30(b) & (c) for decommissioning VYNPS, including eventually the ISFSI, will be provided by NorthStar VY using the prepayment method.[163] Section 50.75(e)(1)(i) defines prepayment as follows:

> Prepayment is the deposit made preceding the start of operation *or the transfer of a license under § 50.80* into an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates of cash or liquid assets *such that the amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected*. Prepayment may be in the form of a trust, escrow

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159 *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 187 (2008).

160 Petition at 10, 30.

161 *See Vt. Yankee*, CLI-00-20, 52 NRC at 165 ("[Petitioner] neither challenges the accuracy of [the licensee's calculations] nor addresses its additional guarantee.").

162 *See* 10 C.F.R. §§ 50.33(k)(1), 50.75, 50.80(b)(i).

163 LTA, attach. 1 at 6, 20.

> account, or Government fund with payment by, certificate of deposit, deposit of government or other securities or other method acceptable to the NRC.[164]

For reasons explained in the LTA, Applicants have demonstrated compliance with the prepayment method, and the Petition identifies no deficiency in this demonstration. Specifically, the LTA includes a "Schedule and Financial Information for Decommissioning."[165] That document provides financial projections for the duration of the VYNPS decommissioning project, and shows that the amount of the funds in the VYNPS NDT required at the time of transfer will be adequate to fund the costs of decommissioning of the facility, spent fuel management costs up to $20 million at any one time, and the eventual costs of decommissioning the ISFSI.[166]

The LTA states that as of December 31, 2016, the assets in the Vermont Yankee NDT had an approximate market value of $562 million.[167] Prior to the license transfers to the NorthStar Companies, ENVY will make withdrawals from the trust funds to pay for any accrued but unpaid decommissioning expenses, including decommissioning planning activities.[168] However, the terms of the MIPA require that the NDT asset value meet or exceed a required minimum amount on a net liquidation after tax basis (*i.e.*, after income taxes for any unrealized gains in the NDT are taken into account, subject to certain adjustments and assuming that certain scopes of work are completed prior to closing.).[169] The cash flow analysis provided in the Schedule and Financial Information for Decommissioning shows that this minimum balance with a credit for projected earnings assuming earnings at a 2% real rate of return as allowed by NRC regulations, is sufficient to fund the entire estimated cost of decommissioning and up to $20 million in revolving funds for spent fuel

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164 10 C.F.R. § 50.75(e)(1)(i) (emphasis added).

165 *See* LTA, attach. 1 at 19 & encl. 4 (Schedule & Financial Information for Decommissioning).

166 *See id.*

167 *Id.*, attach. 1 at 19.

168 *Id.*

169 *Id.*

management costs necessary to maintain the ISFSI, subject to anticipated replenishment from recovery of claims under the Standard Contract. Vermont makes no attempt to contest any aspect of the aforementioned cash flow analysis.[170]

As noted in the LTA, NorthStar's projected costs are based upon a detailed, site-specific cost estimate that provides costs for each projected work activity based upon a level 4 work breakdown structure or lower, so that each work package is 8 to 80 hours.[171] These estimates provide a conservative and realistic estimate of expected costs that NorthStar believes is very reliable and should be viewed as bounding the potential costs.[172] For example, the cost estimates reflect the following conservatisms:

- The cost estimates assume that the waste from all contaminated structures will be disposed in a low-level radioactive waste disposal facility (Class A, B or C). This assumption is conservative because NorthStar believes significant volumes of waste can be cleared for "free release" and/or disposed as low activity waste that does not require disposal in a licensed Class A low-level radioactive waste disposal facility.[173]

- The cost estimates include consideration of the records required by 10 C.F.R. § 50.75(g), groundwater monitoring data including the information described in the PSDAR, the results of a 2014 Site Assessment study, and other information characterizing the site, all of which supports the ability to complete decommissioning of the site for unrestricted release consistent with the estimated costs and proposed schedule.[174]

- The cost estimates rely upon costs generated by either affiliates of NorthStar NDC or NorthStar's partners, and ultimately will be specified in fixed price or fixed rate contracts that will be entered into and bonded. Those contractors, including any affiliate, will be required to post performance bonds (or insurance, where appropriate) issued by Treasury-rated surety companies to guarantee the performance of the tasks that assure the work is performed at the specified costs.[175]

- NorthStar NDC's contract terms, whether with an affiliate, partner or other, will specify a "pay-item approach" with milestones that require work progress and actual performance

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170 *Id.* at 19-20.

171 *Id*. at 20.

172 *Id.*

173 *Id.*

174 *Id.*

175 *Id.* at 21.

> before funds will be withdrawn from the trust fund to pay for the work. Under this pay-item approach, the trust funds will be adequate to cover costs, because NorthStar VY and its contractors performing work have agreed upon the pay-items. This includes work performed by NorthStar, whether by NorthStar NDC or an affiliate, as well as work performed by the various team partners (*i.e.*, AREVA, Burns & McDonnell and WCS or their affiliates) whose technical qualifications are described in the LTA.[176]

Significantly, Vermont fails to challenge any of these cost estimate assumptions through *sufficiently-supported* facts, reasoned analysis, or non-conclusory expert opinion that target specific portions or aspects of the Application.

Moreover, in addition to the NDT funds, NorthStar VY will have access to additional financial support provided by its parent, NorthStar, via a financial Support Agreement in the amount of $125 million.[177] Those funds will be available, if needed, for NorthStar VY to meet any of its obligations to fund NorthStar NDC so that VYNPS is maintained and decommissioned in compliance with NRC requirements of the NRC.[178] Importantly, those obligations include spent fuel management costs. As explained in the LTA, withdrawals from the NDT for spent fuel management expenses will not exceed $20 million at any one time. (If recoveries from DOE for breach of the Standard Contract are contributed back to the NDT, as anticipated, then NorthStar VY's future withdrawals can again be made up to the $20 million revolving cap.).[179]

The LTA further provides that "to the extent that the actual recoveries from DOE do not suffice to fund these expenses, NorthStar is committed to funding these costs from its own resources," and that "[t]his commitment is backed by the $125 million Support Agreement."[180] Those resources are substantial as evidenced by the fact that NorthStar has annual revenues

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176 *Id.*

177 *Id.* at 22. The form of the Support Agreement is included as Enclosure 6 to Attachment 1 in the LTA package.

178 *Id.*

179 *Id.*

180 *Id*. at 25.

exceeding $600 million, has obtained more than $250 million in performance bonds since 2014, and has completed more than $5 billion in projects since 1986.[181]

Finally, the LTA provides the basis for the Applicants' conclusion that the ongoing VYNPS spent fuel dry storage transfer project will not adversely affect the sufficiency of the NDT or NorthStar VY's financial qualifications. Specifically, the project to transfer spent fuel has been and will continue to be funded from credit facilities (not from the NDT) that will be replaced by a note by NorthStar VY at the time of transaction closing.[182] Upon receipt of proceeds from DOE for reimbursement of the dry fuel storage project costs, NorthStar VY will use those proceeds to pay down the note, with payment for any shortfall in recovery not due until after decommissioning and release of all portions of the site other than the ISFSI.[183]

In conclusion, the right of NorthStar VY to draw on the source of funds and the *pro forma* projected costs for the planned decommissioning period (as presented in the LTA) provide the information necessary to demonstrate reasonable assurance of funding for decommissioning of the facility, spent fuel management, and ISFSI decommissioning at Vermont Yankee, consistent with the requirements of 10 C.F.R. §§ 50.75, 50.82(a)(8)(vi), and 72.30(b) and (c).[184] Although Vermont alleges a lack of decommissioning funding assurance, it does not support that claim through plausible, fact-based challenges to the relevant portions of the LTA. For example, Vermont does not directly contest use of the prepayment method, the adequacy of the cash flow analysis and site-specific cost estimates described in the LTA, or the acceptability of the pay-item approach, performance bonds, and parental support agreement. Instead, it makes vague and conclusory claims about the potential for cost overruns and alleged non-compliances with NRC requirements that are

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181 *Id.* at 22.

182 *Id.* at 25.

183 *Id.* at 6, 25.

184 *See id.* at 18-20.

not relevant or material to the Staff's financial qualifications and decommissioning funding assurance findings. As a result, Vermont fails to raise a genuine dispute on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

3. Proposed Contention 1 Lacks Adequate Factual and Expert Opinion Support

The majority of the issues raised in Contention 1 are not within the limited scope of this license transfer proceeding and, moreover, constitute impermissible collateral attacks on the NRC's decommissioning funding assurance regulations. Vermont's arguments also lack adequate factual or legal support, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(v). As discussed below, despite its inclusion of three affidavits in ostensible support of its Petition, Vermont still relies on vague and unsupported assertions concerning: (1) the adequacy of the cost estimate underlying the Vermont Yankee NDT fund in light of the potential for "cost overruns;" (2) the possible presence of groundwater contamination at VYNPS; (3) the sources of decommissioning funding on which Applicants purportedly will rely, including the nature and purpose of the $125 million Support Agreement; (4) the financial assets available to the proposed transferees; and (5) the financial impacts of "potentially indefinite storage" of spent fuel at the Vermont Yankee site.[185] Applicants address each of these arguments below and explain why they lack any support.

a. Vermont Fails to Provide Adequate Support for Its Claim That "Cost Overruns" Could Lead to a Shortfall in Decommissioning Funding

A recurring theme in Vermont's Petition is the notion that "significant, unaccounted for, cost overruns" could result in a decommissioning funding shortfall that detrimentally affects public health and safety and the environment.[186] According to Vermont, such cost overruns could result from at least eight sources: (1) delays in work schedules; (2) state law requirements for site restoration costs; (3) the discovery of new or unknown radiological or non-radiological

185 *See generally* Petition at 7-32.

186 *Id.* at 10, 30.

contamination; (4) a radiological incident at the site; (5) unanticipated reductions and/or delays in expected monetary recoveries from DOE under the Standard Contract; (6) the possibility that DOE may require repackaging of spent nuclear fuel into DOE-approved transportation containers; (7) the possibility that DOE may recover all or some of its past payments for the packaging of spent fuel into dry casks; and (8) the possibility that DOE fails to remove all spent fuel by 2052.[187]

None of these claims is sufficiently supported, particularly when viewed through the lens of the Commission's strict contention admissibility criteria. As an initial matter, all of these claims, while drawn from Vermont's three proffered affidavits, are on their face speculative and conclusory. The Commission has held that "an expert opinion that merely states a conclusion … without providing *a reasoned basis or explanation* for that conclusion is inadequate because it deprives the [presiding officer] of the ability to make the necessary, reflective assessment of the opinion" as it is alleged to provide a basis for the contention.[188] Such is the case here.

A petitioner, including its proffered experts, must explain the significance of any factual information upon which it relies, particularly as it relates to the application in question.[189] Vermont and its experts miss the mark in this respect too. Specifically, they fail to explain *how* the alleged sources of potential cost overruns apply specifically to VYNPS, how they are unaccounted for in the Applicants' cost estimates, and why they could result in a significant shortfall in decommissioning funding, especially in light of the applicable NRC requirements.

First, the postulated sources of potential cost overruns cited by Vermont are not unique to VYNPS. Indeed, they could apply equally to any decommissioning power reactor. The same risks,

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187 *Id*. at 10-11.

188 *USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) (emphasis added) (quoting *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998)).

189 *See Fansteel, Inc.* (Muskogee, Okla., Site), CLI-03-13, 58 NRC 195, 204-05 (2003) (rejecting a contention regarding decommissioning funding assurance where petitioner relied on its brief reference to applicant's "Disclosure Statement and Reorganization Plan" without explaining how that document undermined the applicant's assurance of funding).

moreover, exist irrespective of the proposed transfer of the VYNPS reactor and ISFSI licenses. The same legal entity—whether it is referred to as ENVY or NorthStar VY post-closing—faces the same risks today as it will in the future if the LTA is approved. Under NorthStar ownership, however, the NorthStar VY entity will be better positioned to mitigate those risks, because it will have the benefit of the additional financial support provided by the $125 million Support Agreement. As discussed above, ENVY currently does not have in place any additional formally committed financial support instruments from its parent company or affiliates that can be drawn on in the event of a shortfall in available funding.

Vermont also fails to explain how the alleged risks are unaccounted for or why they are not otherwise bounded by the decommissioning cost estimate summarized in the LTA. The LTA discussion of the conservatisms included in that cost estimate rebuts Vermont's claims. As discussed above, they include conservative assumptions regarding the volume of waste requiring disposal as low-level radioactive waste, consideration of the records required by 10 C.F.R. § 50.75(g) and other available site characterization data, the planned use of performance bonded fixed-price/fixed-rate contracts, and the planned use of a pay-item approach with milestones that require work progress and actual performance before funds will be withdrawn from the NDT fund. Vermont and its experts fail to acknowledge these items in portending "enormous" cost overruns.

Vermont and its experts fail to explain why the postulated risks and uncertainties cited in the Contention 1 are likely to lead to a "significant" decommissioning funding shortfall with adverse public health and safety consequences. The NRC's decommissioning funding assurance regulations, by design, seek to avoid that outcome by imposing strict oversight and reporting requirements. For that reason, the Commission rejected a similar claim by Vermont in CLI-16-17:

> [E]ven after the Staff granted the exemption, the regulations still prohibit Entergy from making a withdrawal that would "inhibit its ability to complete funding of any shortfalls in the decommissioning trust," require Entergy to submit an annual financial assurance report, and require Entergy to provide

> additional funds if the report reveals insufficient funds to complete decommissioning. Therefore, the applicable regulations provide reasonable assurance that adequate funds will remain to complete decommissioning by requiring Entergy and the Staff to monitor the projected cost of decommissioning and available funding and ensure more funding is available as needed.[190]

With respect to spent fuel in particular, the Commission further noted that a licensee is required to submit to the Staff annual reports regarding the status of its funding for irradiated fuel management, including a plan to obtain additional funds to cover any expected shortfalls.[191]

Finally, Vermont's self-evident assertion that a decommissioning estimate is "not a guarantee" and could "turn out to be wrong" is not grounds for an admissible contention.[192] The Commission also has spoken directly to this issue, and explained that it does not require absolute certainty in licensees' financial projections:

> [T]he level of assurance the Commission finds it reasonable to require regarding a licensee's ability to meet financial obligations is less than the extremely high assurance the Commission requires regarding the safety of reactor design, construction, and operation. The Commission will accept financial assurances based on plausible assumptions and forecasts, even though the possibility is not insignificant that things will turn out less favorably than expected. Thus, the mere casting of doubt on some aspects of proposed funding plans is not by itself sufficient to defeat a finding of reasonable assurance.[193]

Vermont has furnished no information showing that Applicants' cost projections rely on implausible assumptions or forecasts.

Further, none of the eight sources of potential cost overruns to which Vermont vaguely alludes demonstrates a genuine, material dispute with the adequacy of the funding assurance for decommissioning and spent fuel management. The possibility of work schedule delays is addressed by the use of performance bonded fixed-price/fixed-rate contracts, and the planned use of a pay-

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190 *Vt. Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 24).

191 *Id.* at 5 n.13 (citing 10 C.F.R. § 50.82(a)(8)(vii)).

192 Petition at 12.

193 *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 221-22 (1999).

item disbursement approach with milestones that require work progress and actual performance before funds will be withdrawn from the NDT fund. Vermont does not explain why this approach is inadequate, or in light of it, how the sufficiency of the NDT funds would be compromised. Indeed, the Petition does not even mention the contractual approach discussed in the Application.

Similarly, Vermont fails to explain how state law requirements for site restoration costs would affect the sufficiency of funds set aside in the NDT for radiological decommissioning (or spent fuel management). As a threshold matter, Vermont makes no attempt to identify what those state requirements might be. In any event, because the NRC rules do not allow funds set aside for radiological decommissioning to be used for site restoration costs beyond that necessary to terminate the license, there is no apparent way that state requirements for site restoration would affect the sufficiency of the decommissioning funding.[194] To the extent that Vermont may be concerned about the sufficiency of funds for site restoration, its concerns are beyond the NRC's jurisdiction and the scope of this proceeding.

Vermont's speculation as to the possibility of discovery of previously unknown radiological or non-radiological contamination raises no genuine material dispute with the Application. Vermont does not explain how the discovery of non-radiological contamination would affect the sufficiency of the funds set aside for decommissioning, since such funds cannot be used for site restoration including remediation of non-radiological contamination.

With regard to potential radiological contamination, Vermont asserts that the VYNPS site "is known to have had a number of significant spills or leaks or radiological contamination, including strontium-90—the same contaminant that led to 'enormous cost overruns' at Connecticut Yankee."[195] According to Petitioner and one of its affiants, "there is a significant risk that the

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[194] *See* 10 C.F.R. § 50.75(c) n.1.

[195] Petition at 29.

Vermont Yankee site will experience similar cost overruns" and experience a resultant shortfall in decommissioning funding.[196] As both Entergy and the Staff explained in response to a previous, similar claim by Vermont, the level of strontium-90 detected at VYNPS is well below the drinking water standards set by the Environmental Protection Agency, and Vermont itself has acknowledged that "[t]he water is not available for consumption, the levels detected are well below the EPA's safe drinking water threshold, and there is no immediate risk to health."[197] Further, Vermont has conceded that strontium-90 "is found in low levels all around the world" and that "the specific source of the [strontium-90] is unclear."[198] Vermont still fails to explain how the detection of very low levels of strontium-90, the source of which remains "unclear," demonstrates any likelihood of "enormous cost overruns" and decommissioning shortfalls. In CLI-16-17, the Commission agreed with Entergy and the Staff in rejecting the same claim, finding that Vermont had not "shown how the identified contaminants will elevate decommissioning costs."[199]

In a related vein, Vermont and its affiants assert that a full investigation and characterization of the Vermont Yankee site (radiological and non-radiological) has not yet occurred, and that the lack of a complete site investigation and characterization creates significant uncertainties regarding what is required and what it will ultimately cost to complete site remediation and restoration activities.[200] Again, the LTA indicates that the decommissioning cost estimates include

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196 *Id.* (citing Irwin Affidavit at ¶ 7(a)-(q)).

197 Vermont Department of Health Communications Office, *Strontium-90 Detected in Ground Water Monitoring Wells at Vermont Yankee* (Feb. 9, 2015), *available at* http://www.healthvermont.gov/sites/default/files/documents/2016/11/Strontium-90%20Detected%20in%20Ground%20Water%20Monitoring%20Wells%20at%20Vermont%20Yankee.pdf. The highest concentration of strontium-90 measured in the samples was 3.5 picocuries per liter (pCi/l). *Id.* The EPA's safe drinking water standard for strontium is an 8 pCi/l concentration limit that would produce a total body or organ dose of 4 millirem/year. *See* Promulgation of Regulations on Radionuclides, 41 Fed. Reg. 28,402, 28,404 (July 9, 1976). Thus, the measured levels are more than an order of magnitude below the NRC's 25 millirem/year radiological criterion for unrestricted release. *See* 10 C.F.R. § 20.1402.

198 *Id.*

199 *Vt. Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 24).

200 Petition at 29-31 (quoting Irwin Affidavit at ¶ 7(a) and Schwer Affidavit at ¶ 12).

consideration of the records required by 10 C.F.R. § 50.75(g), groundwater monitoring data including the information described in the PSDAR, the results of a 2014 Site Assessment study, and other information characterizing the site.[201] Vermont and its affiants provide no concrete and site-specific information indicating that Applicants have overlooked significant sources of radiological or non-radiological contamination at the VYNPS site. Nor have they shown that such alleged oversights would cause site remediation and restoration costs to exceed current LTA cost estimates, which include separate estimates for decontamination and decommissioning (approximately $237 million in total) and site restoration and remediation (approximately $12 million).[202] As noted in the LTA, the breakdown of work and cost estimates relied upon costs generated by either affiliates of NorthStar NDC or NorthStar's strategic partners, which include well-established firms with substantial relevant technical expertise (*i.e.*, NorthStar Services Group, Inc., AREVA, Inc., Burns & McDonnell, and Waste Control Specialists, LLC).[203]

Vermont's argument that NorthStar must complete a "full" site investigation and characterization prior to the proposed license transfer also reflects a fundamental misunderstanding of—and improper challenge to—the NRC's license termination regulations. Those regulations require that the LTP to be submitted at least two years before the scheduled termination of the license include: (1) a site characterization; (2) identification of remaining dismantlement activities; plans for site remediation; (3) detailed plans for the final radiation survey; (4) a description of the end use of the site, if restricted; (5) an updated site-specific estimate of remaining decommissioning costs; (6) a supplement to the environmental report, pursuant to 10 C.F.R. § 51.53, describing any new information or significant environmental change associated with the licensee's proposed termination activities; and (7) identification of parts, if any, of the facility or site that were released

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201 LTA, attach. 1 at 20.

202 *See id.*, encl. 4 (table entitled "Vermont Nuclear Power Station Decommissioning Cost Estimate Summary").

203 *See id.* at 21.

for use before approval of the LTP.[204] This is precisely the type of information that Vermont and its experts (wrongly) claim is required now.[205]

Vermont's reference to the possibility of a radiological incident occurring at the site, such as during the transfer of spent fuel into dry casks, does not raise a genuine dispute with the Application. First, as reflected in the LTA, NorthStar NDC will carry onsite property damage and offsite nuclear liability insurance meeting the coverage amounts required by the NRC.[206] Vermont provides no explanation why this coverage would be insufficient. Moreover, as the LTA explains, Entergy has accelerated its efforts to move all spent fuel into dry storage, with the goal of completing this transfer in 2018, before the licenses are transferred to NorthStar.

Vermont's speculation of unanticipated reductions and/or delays in anticipated monetary recoveries from DOE under the Standard Contract raise no genuine dispute with the sufficiency of funding for spent fuel management. Vermont does not dispute that the DOE has breached the Standard Contract and is liable for the expenses attributable to that breach.[207] Vermont does not identify any significant shortfall in the recovery of dry storage costs by numerous other licensees that have permanently ceased operation. Indeed, Vermont's affiant admits that "[i]t is true that DOE is in breach of the Standard Contract and that NorthStar will likely recover a significant

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204 10 C.F.R. § 50.82(a)(9)(ii); *see also* "Standard Review Plan for Evaluating Nuclear Power Reactor License Termination Plans," NUREG-1700, Revision 1 (Apr. 2003) (https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1700/sr1700r1.pdf); "Consolidated Decommissioning Guidance," NUREG-1757, Vol. 2, Rev. 1, "Characterization, Survey, and Determination of Radiological Criteria" (Sept. 2006) (ML063000252); "Standard Format and Content of License Termination Plans for Nuclear Power Reactors," Regulatory Guide 1.179, Rev. 1 (June 2011) (ML110490419).

205 *Cf. Consolidated Edison Co. of N.Y. & Entergy Nuclear Indian Point 2, LLC & Entergy Nuclear Operations, Inc.* (Indian Point Units 1 & 2), CLI-01-19, 54 NRC 109, 145 (2001) ("The intervenors have not alleged any specific remediation that is likely to be undertaken in the next 5 years and the references to 'environmental problems' are too vague to provide a basis for a litigable issue. Substantive questions relating to plant operations, such as whether environmental remediation may be necessary in the future, are not within the scope of license transfer proceedings.") (citations omitted).

206 *See* LTA, attach. 1 at 24.

207 *See generally Vt. Yankee Nuclear Power Corp. v. United States*, 683 F.3d 1330 (Fed. Cir. 2012).

portion of spent fuel expenses from DOE."[208] Instead, Vermont only claims that "any litigation, recoveries are not *guaranteed*."[209] This concern appears inconsistent with the "reasonable assurance" standard employed in NRC licensing, and in light of the additional $125 million parent support agreement, fails to raise any genuine material dispute with the Application.[210]

Vermont's reference to the possibility that DOE may require repackaging of spent nuclear fuel into new DOE-approved transportation containers does not raise any genuine dispute with the adequacy of the funding for spent fuel management. Vermont does not dispute that Vermont Yankee's spent fuel is being transferred into multi-purpose canisters suitable for onsite storage, transportation, and disposal. Nor does it provide any information indicating any likelihood that DOE would require the industry to repackage spent fuel. More importantly, Vermont does not provide any information to suggest that, even if repackaging were required, the Federal Government would not be liable for those additional costs.

Vermont speculates that if DOE removes all spent fuel without requiring repackaging, DOE might then pursue recovery of all or some of its past payments for the packaging of spent nuclear fuel into dry casks.[211] But, it identifies no legal theory that would allow DOE to reverse prior judgments or recoup any portion of the past damages that the Courts have awarded to the owners of

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208 Brewer Affidavit at 5.

209 *Id.* (emphasis added).

210 Citing 10 C.F.R. § 50.75, Vermont also argues that the "NRC . . . does not allow licensees to demonstrate financial assurance based on the assumption that they will recover funds in future litigation." Petition at 16. The requirements in section 50.75 are not applicable to spent fuel management, which is beyond the NRC's definition of decommissioning. Vermont does not address the applicable requirement in 10 C.F.R. § 50.54(bb) or explain why DOE recoveries may not be credited as part of the "program by which the licensee intends to . . . provide funding" for spent fuel management, as required by that rule. Furthermore, the NRC has indeed allowed reliance on DOE recoveries. *See, e.g.*, Letter from Karl Feintuch, NRC to Christopher R. Costanzo, FPL Energy Duane Arnold, LLC, "Duane Arnold Energy Center – Safety Evaluation Re: Spent Fuel Management Program and Decommissioning Cost Estimate (TAC No. ME1148)," Safety Evaluation at 4 (Mar. 29, 2010) (ML100770505) ("Duane Arnold Letter") (accepting a plan for funding spent fuel management costs that relies upon future recoveries from DOE under a settlement). In any event, NorthStar's program for funding spent fuel management is backstopped by the $125 million Support Agreement. Vermont's arguments thus fail to demonstrate any genuine material dispute with the Application.

211 Brewer Affidavit at 6.

Vermont Yankee. Nor does it explain how the speculated recovery by DOE after "DOE removes all spent nuclear fuel without requiring packaging" would in any way impact the funding needed for decommissioning. Decommissioning of all portions of the site other than the ISFSI would have been completed long before, and any funds in the NDT set aside for the minimal cost of radiologically decommissioning the ISFSI should be beyond the reach of creditors, including DOE if it had any residual claim against NorthStar VY. Thus, Vermont's speculation fails to demonstrate any genuine dispute with the Application on a material issue of law or fact.

Finally, Vermont's reference to the possibility that DOE fails to remove all spent nuclear fuel by 2052 raises no genuine material dispute with the Application. The Application proposes using $20 million in revolving funds from the NDT for dry storage costs, as replenished from recoveries from DOE. If DOE fails to remove spent fuel by 2052, this same funding would continue. NorthStar is assuming that the primary litigation risk under the Standard Contract will relate to the initial construction of the ISFSI that is being funded by the Entergy credit facility. Once that litigation is resolved, DOE will likely enter into a settlement to fund ongoing ISFSI maintenance costs, as it has with many other licensees.[212]

Vermont again asserts that these costs could go on for "many decades, perhaps even centuries" and "could at some point include having to repackage dry casks," raising the risk of much larger cost overruns, on the order of hundreds of millions of dollars.[213] Again, Vermont appears to be seeking funding assurance based on remote and speculative future events, is assuming that the Federal Government will ignore its responsibility, and overlooks the ability of the plant owner to continue to recover costs incurred as a result of DOE's breach of the Standard Contract. The level of funding assurance that Vermont is advocating far exceeds the requirement in 10 C.F.R.

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212 *See, e.g.,* Duane Arnold Letter, Safety Evaluation at 4 (discussing Duane Arnold settlement).

213 *Id.* at 1, 11.

§ 50.54(bb) for a licensee to "provide a program by which the licensee intends to manage and provide funding for the management" of irradiated fuel following permanent cessation of operation until transfer to DOE.[214]

Citing the Licensing Board's vacated ruling in LBP-15-24 and the Continued Storage Rule, Vermont avers that "[t]he uncertain, but potentially indefinite storage, of spent fuel presents another potential expense that could lead to a shortfall in the Decommissioning Fund, with significant environmental and economic impacts."[215] Vermont yet again provides no verifiable facts to bolster its speculative and conclusory argument—an argument that it unsuccessfully made in a previous adjudicatory filing with the Commission. In CLI-16-17, the Commission stated that "with regard to the fuel-costs claim, while the Continued Storage generic environmental impact statement acknowledges for purposes of NEPA that fuel could remain on site indefinitely, it finds the short-term period of storage [*i.e.*, sixty years after a facility's license expires] most likely."[216]

b. Vermont Incorrectly Characterizes the Decommissioning Funding and Spent Fuel Management Funding Sources Discussed in the Application

In addition to failing to demonstrate any genuine material dispute with the LTA, Vermont also incorrectly describes the decommissioning and spent fuel management mechanisms discussed therein. Vermont claims that "NorthStar plans to use the same three funding sources (the Vermont Yankee decommissioning trust fund, potential litigation or settlement recoveries from DOE, and the Vermont Yankee site restoration fund) for all license termination, spent fuel management, and site restoration expenses."[217] It further asserts that given "the concurrent nature of the NorthStar plan

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214 Applicants are not aware of any licensee, including ENVY, that has been required to provide funding assurance for potentially indefinite storage of spent nuclear fuel. Nor would ENVY have any greater ability to fund indefinite storage costs if the license transfers were denied, because, as Vermont acknowledges, "'NRC does not have the authority to require a parent to pay for the decommissioning expenses of its subsidiary-licensee, except to the extent the parent may voluntarily provide' a parent company guarantee." Petition at 22-23 (citation omitted).

215 Petition at 26-27 (citing *Vt. Yankee*, LBP-15-24).

216 *Vt. Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 24).

217 Petition at 31 (quoting Brewer Affidavit at ¶ 7(l)).

for performing license termination, spent fuel management, and site restoration, a cost overrun or delay in any of these three categories has the potential to jeopardize funding for the other areas."[218]

Those assertions are incorrect. As discussed in the LTA, financial assurance for decommissioning the facility, including the ISFSI, will be provided by NorthStar VY using the prepayment method in accordance with 10 C.F.R. § 50.75(e)(1)(i).[219] The NDT will also provide up to $20 million in revolving funds for the spent fuel management costs necessary to maintain the ISFSI, subject to replenishment from recovery of claims under the DOE Standard Contract.[220] Thus, contrary to Vermont's suggestion, NorthStar will not rely on monies recovered from DOE as a primary source of funds for spent fuel management costs. Instead, it will rely on the $20 million in revolving funds. Furthermore, the LTA provides that to the extent the actual recoveries from DOE do not suffice to fund these expenses, *NorthStar is committed to funding these costs from its own resources, and that this commitment is backed by the $125 million Support Agreement*.[221]

With respect to site restoration costs, the LTA reflects plans to create a separate site restoration subaccount within the tax-qualified fund in the NDT, from funds currently in a separate site restoration trust and subject to the terms governing usage of such funds set forth in the April 24, 2014 VY Site Restoration Trust Agreement.[222] Neither NRC rules nor the granted exemption would allow any other funds in the NDT (*i.e.*, the funds set aside for license termination) to be used for site restoration). As such, there is no factual basis for Vermont's claim that the funding sources upon which NorthStar VY and NorthStar NDC will rely are "concurrent" or overlapping in nature, and

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218 *Id.*

219 LTA, attach. 1 at 6, 20.

220 *Id.* at 5-6, 19-20, 25.

221 *Id.* at 25.

222 *Id.* at 21-22.

that postulated cost overruns or delays affecting one of these funding sources may "jeopardize" the other funding sources.

c. Vermont's Concerns Regarding the Alleged Lack of Financial Assets Available to the Proposed Transferees Lack Factual Support

Vermont expresses concern that the proposed license transfer would be to a new owner and operator that are both structured as limited liability corporations that do not have any assets beyond the NDT and the Vermont Yankee site.[223] It claims that this issues raises a "significant risk" that the owner's and operator's liabilities will "outstrip" their assets and cause them to enter bankruptcy before completing site decommissioning and restoration, thereby raising "numerous thus-far-unanalyzed health, safety, and environmental concerns."[224] On this issue, Vermont further asserts that: (1) the $125 million Support Agreement does not appear to be a parental guarantee and does not satisfy 10 C.F.R. § 50.75(e), because it does not guarantee that decommissioning costs will be paid;[225] (2) the $125 million amount may prove to be inadequate, especially given the Support Agreement's lack of an escalation clause to address the difference in buying power between current and future dollars;[226] and (3) the lack of a guaranteed ratepayer base and a non-licensee parent company that is liable for any cost overruns further increases the potential for funding shortfalls.[227]

Again, Vermont's arguments are patently incorrect, lack support, and disregard the NRC's robust decommissioning oversight regime. As an initial matter, Vermont's claim that decommissioning-related liabilities will "outstrip" available funding sources and assets, because the proposed transferees are limited liability corporations, is a *non sequitur* and rooted in conjecture. ENVY is a limited liability company today, and it will remain a limited liability with a new name

223 Petition at 21.

224 *Id.*

225 *Id.* at 21-22.

226 *Id.* at 22.

227 *Id.* at 22-23.

following the proposed transfer. The use of limited liability corporations in the nuclear industry (and many other industries) is hardly unusual; indeed, it is very common, and such corporations are routinely approved by the NRC as licensed owners and operators of nuclear power plants.[228]

Vermont's concerns regarding the Support Agreement and availability of sufficient financial assets also are unfounded. To begin with, Applicants are not relying on the Support Agreement to provide decommissioning funding using the parent guaranty method specified in 10 C.F.R. § 50.75(e)(1)(iii)(B). Rather, financial assurance for decommissioning is being provided by the prepayment method specified in 10 C.F.R. § 50.75(e)(1)(i). The Support Agreement provides additional financial support beyond what is required to satisfy the prepayment method of decommissioning funding assurance, in order to bolster the financial qualifications of NorthStar VY and NorthStar NDC and their ability to fund other costs, such as spent fuel management costs.[229] Regardless, the Support Agreement states that ENVY/NorthStar VY will have access up to $125 million of guaranteed funds to pay Operating Costs, which are defined to include "the expenses of maintaining and *decommissioning* VYNPS safely and protecting the public health and safety and to meet [NRC] requirements until the NRC License is terminated."[230]

Vermont's concern that the $125 million may prove to be inadequate also is speculative. As discussed elsewhere in this Answer, Vermont has provided no valid factual or expert opinion support for the claim that actual decommissioning costs will exceed the projected or estimated costs

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228 *See Oyster Creek*, CLI-00-6, 51 NRC at 208 ("The Commission has issued reactor licenses to limited liability organizations for decades and [petitioner] has given us no reason to depart from that practice."); *Power Auth. of N.Y.*, CLI-00-22, 52 NRC at 298 ("[Petitioner] acknowledges that we have issued reactor operating licenses to limited liability corporations in the past and that we have recently approved a transfer of such a license to an LLC whose only asset was the generating facility.").

229 *See* LTA, attach. 1 at 6, 25; *see also id.*, encl. 6 (Form of Support Agreement) at 1 ("This Agreement may, however, be relied upon by the NRC in determining the financial qualifications of the Subsidiary to hold the NRC License.").

230 LTA, attach. 1, encl. 6 at 1 (emphasis added). The Support Agreement is a binding legal agreement that is expressly referenced and relied upon in the LTA and that is the subject of a proposed license condition in the Application. As such, it need not be listed as a "regulatory commitment," as Vermont asserts in its Petition.

presented in the LTA, much less by an amount as substantial as $125 million. Thus, there is no demonstrated need for an escalation clause in the Support Agreement.

Finally, Vermont's concerns regarding a lack of access to ratepayer funds and parent company assets are similarly groundless. Many current licensed owners/operators of nuclear power plants—including the current VYNPS owner and operator—are owned by merchant companies that do not have access to a guaranteed rate base. This fact has not proven to be an obstacle to their ability to demonstrate compliance with the NRC financial qualifications and decommissioning funding assurance requirements. With regard to the issue of parent company assets, Vermont provides no reason to conclude, as a factual or legal matter, that NorthStar, a company with annual revenues exceeding $600 million, will be unwilling or unable to meet its legally-binding obligation under the Support Agreement to fund NorthStar NDC so that VYNPS is maintained and decommissioned in compliance with the requirements of the NRC, as stated in the LTA.

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In summary, Proposed Contention 1 raises issues that are not within the scope of this proceeding or material to the Staff's findings, fails to raise a genuine dispute on a material issue of fact or law, and lacks adequate factual or legal support. Therefore, it is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

C. Proposed Contention 2 Is Inadmissible Because It Fails to the Meet the Requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi)

Contention 2 alleges that the LTA is deficient, because it does not include an environmental report, and that in order to meet the requirements of NEPA and 10 C.F.R. Part 51, the NRC Staff must prepare an environmental analysis of the proposed license transfer and associated license amendment.[231] Among other things, Vermont contends that the Staff must evaluate reasonable

[231] Petition at 32.

alternatives to the proposed action, cumulative impacts, and "segmentation" concerns.[232] In support of the proposed contention, Vermont cites various NRC regulations in 10 C.F.R. Part 51, Council on Environmental Quality ("CEQ") regulations, and federal NEPA case law.[233] As demonstrated below, Contention 2 also should be rejected as inadmissible because it fails to meet the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

1. Proposed Contention 2 Raises Issues That Are Neither Within the Scope of This Proceeding Nor Material to the NRC Staff's Required Findings

Contention 2 should be rejected *ab initio* because it raises an issue that falls outside the scope of this proceeding and is not material to the findings the NRC must make to support the action giving rise to this proceeding.[234] The instant action involves the proposed direct and indirect license transfers and a conforming *administrative* license amendment. Therefore, the proposed action is exempt from environmental review under Part 51 because it falls within the categorical exclusion in 10 C.F.R. § 51.22(c)(21), which applies to "[a]pprovals of direct or indirect transfers of any license issued by NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license."[235] By definition, the proposed action belongs to a category of actions that the Commission, through rulemaking, has found does "not individually or cumulatively have a significant effect on the human environment."[236]

By asserting that the proposed license transfers and amendment require the preparation of an environmental report by the Applicants and an EA or EIS by the Staff, Vermont inappropriately

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232 *Id.*at 39-41, 45-46.

233 *See generally id.* at 32-46.

234 10 C.F.R. § 2.309(f)(1)(iii), (iv).

235 10 C.F.R. § 51.22(c)(21).

236 *Id.* § 51.22(a).

challenges 10 C.F.R. § 51.22(c)(21).[237] Absent a waiver granted pursuant to the procedures set forth in section 2.335(b), no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding.[238] Vermont has not sought or obtained such a waiver in this proceeding. Nor has it alleged, in accordance with 10 C.F.R. § 51.22(b), that "special circumstances" exist that would justify excepting the proposed license transfers and conforming license amendment from the categorical exclusion of 10 C.F.R. § 51.22(c)(21).[239] Thus, the issues raised in Contention 2 are not within the scope of the proceeding or material to the Staff's findings on the proposed action.

Vermont also disregards the language of the Hearing Notice, which states that the requested license amendment is "for *administrative* purposes to reflect the proposed transfer."[240] It accordingly further states that "[a]n Environmental Assessment will not be performed because, pursuant to 10 [C.F.R. §] 51.22(c)(21), license transfer approvals and the associated license amendments are categorically excluded from the requirements to perform an environmental assessment."[241] The scope of the proceeding is defined by the Commission's notice of opportunity for a hearing.[242] Contention 2 thus improperly contravenes the express terms of the Hearing Notice.

2. Proposed Contention 2 Fails to Establish a Genuine Dispute With the Application on a Material Issue of Law or Fact

The LTA includes a section entitled "Environmental Considerations." That section states, in its entirety:

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237 *See Vt. Yankee*, CLI-00-20, 52 NRC at 167 ("Nor has [petitioner] reconciled its demand for a NEPA review with our rules' 'categorical exclusion' of license transfers from NEPA requirements.") (citing 10 C.F.R. § 51.22(a)(21)).

238 10 C.F.R. § 2.335(a).

239 Section 51.22(b) provides, in pertinent part, that an environmental review need not be performed for any action that falls within the list of categorical exclusions, "[e]xcept in special circumstances, as determined by the Commission upon its own initiative or upon request of any interested person." 10 C.F.R. § 51.22(b).

240 Hearing Notice, 82 Fed. Reg. at 23,845 (emphasis added).

241 *Id.*at 23,847.

242 *See Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790-91 (1985).

> This Application and accompanying administrative amendments are exempt from environmental review, because they fall within the categorical exclusion appearing at 10 CFR 51.22(c)(21), "Approvals of direct or indirect transfers of any license issued by NRC and any associated amendments required to reflect the approval of a direct or indirect transfer of an NRC license," for which neither an Environmental Assessment nor an Environmental Impact Statement is required.[243]

To establish a genuine material dispute with the Application, Vermont must show that the LTA fails to meet a statutory or regulatory requirement.[244] It has not—and cannot—do so here. For the reasons explained above, the LTA correctly states that proposed license transfers and administrative license amendment are exempt from environmental review under 10 C.F.R. § 51.22(c)(21).

3. Proposed Contention 2 Lacks Adequate Support

Given that the proposed license transfers and conforming license amendment are categorically excluded from environmental review under Part 51, Vermont's legal arguments are irrelevant and fail to support admission of Contention 2. The NRC and CEQ regulations cited by Vermont do not apply because no EA or EIS is required.[245] Moreover, the numerous federal NEPA cases cited by Vermont are irrelevant for the same reason and need not be discussed in detail here. However, Applicants do address a few of Vermont's legal arguments below and explain why they lack merit or fail to demonstrate a genuine material dispute with the Application.

The gravamen of Vermont's argument is that an EIS must be prepared on the proposed license transfer, because it allegedly gives rise to the reasonably foreseeable possibility of a decommissioning funding shortfall and associated environmental and economic effects.[246] Apart

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243 LTA, attach. 1 at 28-29.

244 *Indian Point*, LBP-08-13, 68 NRC at 187.

245 The cited NRC regulations include 10 C.F.R. § 51.20 (Criteria for and identification of licensing and regulatory actions requiring EISs), § 51.53 (Post-construction environmental reports), § 51.70 (Draft environmental impact – general), § 51.101 (Limitations on actions), and 51.103 (51.103 Record of decision–general). The cited CEQ regulations include 40 C.F.R. § 1501.4 (Whether to prepare an EIS), § 1508.8 (Effects), § 1508.9 (EA), § 1508.13 (Finding of no significant impact), § 1508.14 (Human environment), § 1508.18 (Major Federal action), and § 1508.27 (Significantly). As is evident from the titles of these NRC and CEQ actions, none of them applies to the proposed action at issue here.

246 *See* Petition at 41.

from Vermont's failure to seek a waiver of the categorical exclusion (which failure bars this claim), Vermont ignores the mechanisms described in the LTA that prevent the NDT from being depleted. Vermont does not explain how the LTA might result in a shortfall in the NDT when the approach it describes requires decommissioning to be completed under bonded, fixed-price contracts that use a pay-item disbursement approach with milestones that require work progress and actual performance before funds will be withdrawn from the NDT fund.

Vermont also ignores the NRC's oversight of the use of the NDT (which includes the requirement in the Vermont Yankee license requiring notification of any disbursement, the NRC's inspections, and the annual reporting requirements), as well the provisions in the NRC's rules that prohibit withdrawals that would inhibit the ability of the licensee to complete the funding of any shortfalls.[247] "[T]he NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises."[248]

Finally, Vermont appears to be assuming that the licensee would have less financial ability to fund decommissioning after the license transfer. That is not the case. As Vermont itself acknowledges, the NRC does not have the authority to require a parent company to pay for decommissioning. Therefore, its argument lacks a basis in law. Furthermore, as discussed above, the post-transfer licensee will in fact have greater financial support due the availability of the $125 million Support Agreement.

In short, a shortfall in decommissioning funding is not a reasonably foreseeable consequence of the license transfer. On the contrary, it is a remote and speculative claim that is

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247 *See* 10 C.F.R. § 50.82(a)(8)(i)(C).

248 *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235 (2001); *see also Oyster Creek*, CLI-00-6, 51 NRC at 207 ("NIRS also fails to offer documentary support for its argument that AmerGen is likely to violate our safety regulations. Absent such support, this agency has declined to assume that licensees will contravene our regulations.").

inconsistent with the decommissioning funding assurance required by NRC rules, the NRC's oversight, and the other financial support mechanisms that are described in the LTA.

In an apparent effort to circumvent the categorical exclusion discussed above, Vermont also asserts that the LTA is "accompanied by a Revised PSDAR that is contingent upon the proposed license transfer and amendment,"[249] and that "[t]he NRC's approval of this proposal as a whole constitutes a 'major federal action.'"[250] That assertion is both factually and legally erroneous. The LTA states that "NorthStar NDC plans to submit an updated PSDAR that will reflect its plans for an accelerated decommissioning schedule,"[251] and that "[t]his updated PSDAR will be submitted and can be reviewed by the NRC staff in parallel with this Application."[252] This statement makes clear that the PSDAR is a separate regulatory filing that is submitted pursuant to another regulation (10 C.F.R. § 50.82) and subject to separate Staff review and public participation processes.[253] Moreover, the PSDAR is an informational document that is not subject to any approval.

Furthermore, the Commission already has rejected Vermont's argument that the PSDAR is a major federal action that requires a separate NEPA review. As it explained in CLI-16-17:

> In promulgating the Final Decommissioning Rule, *the NRC specifically considered and rejected the idea that review of the PSDAR should be defined as a major federal action under NEPA* because environmental analysis of activities to be performed under the PSDAR will necessarily have been performed in accordance with prior site-specific or generic analysis. Unless the environmental impacts of particular decommissioning activities will fall outside the previously performed analysis, the rule does not contemplate additional NEPA analysis at the PSDAR stage. . . . Entergy's PSDAR for Vermont Yankee states that it "has concluded that the environmental impacts associated with planned [Vermont Yankee Nuclear Power Station]

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249 Petition at 34-35.

250 *Id.* at 35.

251 LTA, attach. 1 at 26.

252 *Id.*

253 NRC regulations require that the Staff provide an opportunity for public comment when a licensee submits its PSDAR. However, because the PSDAR does not amend the license, a licensee is not required to submit a corresponding environmental report, and no hearing opportunity is required by the AEA or NRC regulations.

> site-specific decommissioning activities are less than and bounded by the impacts addressed by previously issued environmental impact statements." The PSDAR contains analysis of various environmental impacts and an explanation of how those impacts fall within the analysis in the GEIS.[254]

Thus, there is no legal basis for Vermont's claims that the LTA and Revised PSDAR, taken together, constitute a major federal action that triggers the need for further NEPA analysis, or that the NRC's separate reviews of these regulatory submittals improperly segments environmental analysis and fails to address cumulative impacts.[255]

Finally, Applicants note that the Revised PSDAR also concludes that the environmental impacts associated with planned VYNPS site-specific decommissioning activities are less than and bounded by the impacts addressed by previously issued EISs—the Decommissioning GEIS and the VYNPS-specific supplement to the NRC's GEIS for license renewal (referred to as the "SEIS").[256] More specifically, the Revised PSDAR states that: (1) the postulated impacts associated with the decommissioning method chosen, DECON, already have been considered in the SEIS and GEIS; (2) there are no unique aspects of VYNPS or of the decommissioning techniques to be used that would invalidate the conclusions reached in the SEIS and GEIS; and (3) the methods assumed to be

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254 *Vt. Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 35) (emphasis added). In so ruling, the Commission distinguished the *Citizens Awareness Network* and *Ramsey* cases that Vermont again cites in its current Petition and rejected Vermont's reliance on those cases as "unavailing." *Id.* at 34-36 (discussing *Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 284, 293 (1st Cir. 1995); *Ramsey v. Kantor*, 96 F.3d 434, 445 (9th Cir. 1996)). It explained that *Citizens Awareness Network* predated the 1996 Decommissioning Final Rule, and that NRC expressly addressed the First Circuit's decision in its revised regulations. *Id.* at 34. The revised regulations addressed the court's decision by prohibiting any major decommissioning activities that result in environmental impacts outside of the bounds of previous environmental analysis—*i.e.*, either the Generic Environmental Impact Statement ("GEIS") for decommissioning nuclear facilities or a site-specific EIS. *Id.* (citing 1996 Decommissioning Rule, 61 Fed. Reg. at 39,286). In distinguishing the *Ramsey* decision, the Commission noted that "the fact that the Staff did not find Entergy's PSDAR deficient does not result in the PSDAR attaining the force of law," because "the PSDAR does not permit Entergy to perform any task it could not already perform under 10 C.F.R. § 50.59." *Id.* at 36 (citations omitted).

255 Petition at 34-35, 46.

256 Revised PSDAR, encl. at 18. *See also* "Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, Supplement 1 Regarding the Decommissioning of Nuclear Power Reactors" (Final Report), NUREG-0586, Supplement 1, Vols. 1-2 (Nov. 2002) (ML023470304, ML023470323, ML023500187, ML023500211, ML023500223) ("Decommissioning GEIS") (supplementing the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, published in 1988); "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Vermont Yankee Nuclear Power Station" (Final Report), NUREG-1437, Supplement 30, Vols. 1-2 (Aug. 2007) (ML072050012, ML072050013) ("License Renewal SEIS").

employed to dismantle and decontaminate VYNPS are standard construction-based techniques fully considered in the SEIS and GEIS.[257] If Vermont disagrees with any of these conclusions, then the appropriate *fora* for conveying its concerns to the NRC would be the PSDAR public comment process or the rulemaking process (as it pertains to nuclear power plant decommissioning)—not this license transfer adjudication.[258] Moreover, plans regarding on-site storage of spent fuel are unaffected by the proposed license transfers *per se*, and this issue is not relevant to the NRC review of the proposed license transfer or any finding related to the transfer that the NRC Staff will make.

Even if the conclusions in the Revised PSDAR were subject to hearings (which they are not), Vermont fails to demonstrate any genuine material dispute with the conclusion that environmental impacts of the proposed decommissioning activities are bounded by previously issued EISs. Vermont makes two claims, neither of which contradicts the conclusion in the Revised PSDAR. Vermont refers to a plan to store radioactive water in the torus.[259] This claim purportedly relates to Entergy's PSDAR relating to activities during SAFSTOR,[260] and not to the activities proposed in the Revised PSDAR involving prompt decontamination and dismantlement of the

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257 Revised PSDAR, encl. at 18. As explained in Applicant's response to Contention 1, Vermont and its experts rely principally on vague and conclusory assertions regarding the possibility of "previously unknown radiological or non-radiological contamination" and "thus-far-unanalyzed health, safety, and environmental concerns" stemming from a postulated "shortfall in the Decommissioning Fund." Petition at 10, 21, 23. Such speculative claims neither support the admission of Contentions 1 and 2 nor call into question the bounding nature of the Decommissioning GEIS and License Renewal SEIS. In any case, as explained herein, this license transfer proceeding is not the proper forum for raising issues related to the Revised PSDAR or the NRC Staff's Decommissioning GEIS.

258 *See* 10 C.F.R. § 50.82(a)(4)(ii); 10 C.F.R. § 2.802(a). As stated above, the license termination process described in section 50.82 requires the licensee to file a supplement to the environmental report, pursuant to § 51.53, describing any new information or significant environmental change associated with the licensee's proposed termination activities. 10 C.F.R. § 50.82(a)(9)(ii)(G). That action triggers both public comment and hearing request opportunities. *Id.* § 50.82(a)(9)(iii); 1996 Decommissioning Rule, 61 Fed. Reg. at 39,280 ("The approval process for the termination plan, as in the current rule, would provide for a hearing opportunity under 10 CFR part 2.").

259 Petition at 45 n.124.

260 *See* Irwin Affidavit ¶ 7(m)).

plant. Thus, the claim is irrelevant.[261] Vermont also refers to the potential impacts from lead and asbestos during building demolition, but the Decommissioning GEIS addresses dust from demolition of buildings and structures.[262] The GEIS "assumes strict adherence to NRC, OSHA, and State safety standards, practices, and procedures during decommissioning,"[263] and Vermont provides no information to suggest that the strict standards applicable to lead and asbestos abatement would not be followed.

* * *

In summary, Proposed Contention 2 raises issues that are not within the scope of this proceeding or material to the Staff's findings, fails to raise a genuine dispute on a material issue of fact or law, and lacks adequate factual or legal support. Therefore, it is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

VI. CONCLUSION

As demonstrated above, Vermont has not proffered a contention that satisfies the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Therefore, the Commission should reject Vermont's Petition in its entirety.

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261 The claim also mischaracterizes Entergy's December 19, 2014 PSDAR, which makes no statement that 1.3 million gallons of water will be stored in the torus during SAFSTOR, as Dr. Irwin claims. *See generally* Vermont Yankee PSDAR, *supra* note 53. Moreover, Entergy already has identified appropriate means for disposing of waste water in the torus associated with decommissioning activities, as well as an alternative. *See*, *e.g.*, Letter from John R. Tappert, NRC, to Joseph J. Weismann, U.S. Ecology, Inc., "Request for Exemptions from 10 CFR 30.11 for Vermont Yankee Alternate Disposal of Low-Activity Waste Water at US Ecology Idaho" (June 20, 2017) (ML17082A310).

262 *See, e.g.*, Decommissioning GEIS at 4-18 to 4-20, 4-47 to 4-49.

263 *Id.* at 4-49

Respectfully submitted,

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

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Dated in Washington, DC
this 10th day of July 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 50-271-LT-2
ENTERGY NUCLEAR VERMONT YANKEE, LLC ENTERGY NUCLEAR OPERATIONS, INC. and NORTHSTAR NUCLEAR DECOMMISSIONING COMPANY LLC	)	July 10, 2017
(Vermont Yankee Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Applicants' Answer Opposing June 13, 2017 Petition for Leave to Intervene and Hearing Request Filed by the State of Vermont" was served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

Signed (electronically) by Martin J. O'Neill

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