

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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| In the Matter of |) | |
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| Holtec Decommissioning International, LLC |) | |
| Oyster Creek Environmental Protection, LLC |) | Docket Nos.: 50-219 and 72-15 |
| |) | License No.: DPR-16 |
| Oyster Creek Nuclear Generating Station |) | |
| |) | |

ORDER APPROVING THE TRANSFER OF LICENSE
AND CONFORMING AMENDMENT

I.

Exelon Generation Company, LLC (Exelon) is the holder of Renewed Facility Operating License No. DPR-16, for the Oyster Creek Nuclear Generating Station (Oyster Creek), and the general license for the Oyster Creek Independent Spent Fuel Storage Installation (ISFSI). Oyster Creek permanently ceased operations on September 17, 2018. Pursuant to Sections 50.82(a)(1)(i) and (a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR), by letter dated September 25, 2018 (ADAMS Accession No. ML18268A258), Exelon certified to the NRC that it had permanently ceased operations at Oyster Creek and that all fuel had been permanently removed from the reactor. Therefore, pursuant to 10 CFR 50.82(a)(2), operations at Oyster Creek are no longer authorized under the 10 CFR Part 50 license, and Exelon is licensed to possess, but not use or operate, Oyster Creek under Renewed Facility Operating License No. DPR-16, subject to the conditions specified therein. The Oyster Creek site is located approximately two miles south of Forked River, New Jersey.

II.

By letter dated August 31, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18243A489), including proprietary financial information provided as Enclosure 2A, "Asset Purchase and Sale Agreement" (ADAMS Accession No. ML18243A490, non-public pursuant to 10 CFR 2.390), Exelon, OCEP and HDI (together, "Applicants") requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the proposed direct transfer of the Oyster Creek Renewed Facility Operating License No. DPR-16 and the Oyster Creek ISFSI general license (collectively referred to as the facility) from Exelon to OCEP as the licensed owner and to HDI as the licensed operator for decommissioning. The direct transfer request is submitted to NRC for approval pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), "Inalienability of Licenses," and Title 10 of the Code of Federal Regulations (10 CFR) 50.80, "Transfer of licenses," 10 CFR 72.50, "Transfer of licenses," and 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit." The applicants also requested that NRC approve a conforming administrative amendment to the facility license to reflect the proposed direct transfer.

Following approval of the proposed direct transfer of control, OCEP, an indirect wholly-owned subsidiary of Holtec International (Holtec), would acquire Oyster Creek, including the ISFSI, from Exelon as an asset purchase. In addition, HDI, an indirect wholly-owned subsidiary of Holtec, will be the decommissioning operator of Oyster Creek with licensed responsibility for maintaining and decommissioning the facility. HDI's licensed activities will involve possessing and disposing of radioactive material, maintaining the facility in a safe condition (including handling, storing, controlling, and protecting the spent fuel), decommissioning and decontaminating the facility, and maintaining the ISFSI until it can be decommissioned, each in accordance with the License and NRC regulations.

Upon closing of the proposed transaction, OCEP and HDI will assume licensed responsibility for Oyster Creek. OCEP will enter into a decommissioning operator services agreement with HDI, which will provide for HDI to act as OCEP's agent and for OCEP to pay HDI's costs of post-shutdown operations, including decommissioning costs and spent fuel management costs. OCEP will own the Oyster Creek facility, as well as its associated assets and real estate, and title to spent nuclear fuel. The applicable U.S. Department of Energy Standard Contract will be assigned to OCEP. The assets from the Oyster Creek Nuclear Decommissioning Trust (non-qualified and qualified) will be transferred to OCEP.

Upon completion of the proposed license transfer, HDI would assume responsibility for compliance with the current licensing basis, including regulatory commitments that exist at the closing of the transaction between the Applicants, and would implement any changes under applicable regulatory requirements and practices.

Notice of NRC consideration of the license transfer application was published in the *Federal Register* (FR) on October 19, 2018 (83 FR 53119) and included an opportunity to comment, request a hearing, and petition for leave to intervene. The comment period was re-opened on December 10, 2018 (83 FR 63544) for an additional 30-days. Two hearing requests were received. These requests can be found at ADAMS Accession Numbers ML18306A866 and ML18312A251. These hearing requests are currently pending before the Commission. Public comments were also received on this application for license transfer. They are summarized in the safety evaluation for this license transfer request.

The staff notes that, by letter dated November 30, 2018 (ADAMS Accession No. ML18334A215), in support of the license transfer request, HDI submitted a request for exemptions, pursuant to 10 CFR 50.12, from certain requirements in 10 CFR 50.82(a)(8)(i)(A)

and 10 CFR 50.75(h)(1)(iv) to allow the use of a portion of the funds from Oyster Creek decommissioning trust funds (DTF) for management of spent fuel and site restoration activities. The submittal also requests an exemption from 10 CFR 50.75(h)(1)(iv) to allow Oyster Creek DTF disbursements for spent fuel management and site restoration activities to be made without prior notice, similar to withdrawals in accordance with 10 CFR 50.82(a)(8). The staff approved the exemption requests on June 20, 2019 (ADAMS Accession No. ML19113A204 (Pkg)). The exemption is being issued simultaneously with this Order.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that HDI and OCEP are qualified to be the holders of the license, and that the direct transfer of the license, as described in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

Upon review of the application for a conforming amendment to the Oyster Creek license to reflect the direct transfer of the Oyster Creek license, the NRC staff determined the following:

- (1) The application for the proposed license amendment complies with the standards and requirements of the AEA, and the Commission's rules and regulations set forth in 10 CFR Chapter I.

- (2) There is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations.
- (3) The issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public.
- (4) The issuance of the proposed license amendment is in accordance with 10 CFR Part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The findings set forth above are supported by the NRC safety evaluation dated June 20, 2019, which is available at ADAMS Accession No. ML19095A457.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the AEA, 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 50.90, IT IS HEREBY ORDERED that the application for the direct transfer of the license, as described herein is approved for Oyster Creek and the ISFSI, subject to the following condition:

Prior to the closing of the license transfer, OCEP and HDI shall provide the Directors of NRC's Office of Nuclear Material Safety and Safeguards (NMSS) and Office of Nuclear Reactor Regulation (NRR) satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of a licensee under 10 CFR 140.11(a)(4)

and 10 CFR 50.54(w) of the Commission's regulations, consistent with the exemptions issued to Oyster Creek on June 12, 2019.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct license transfer, is approved. The amendment shall be issued and made effective within 30 days of the date of when the proposed direct license transfer action is completed.

IT IS FURTHER ORDERED that HDI and OCEP shall, at least 2 business days prior to closing, inform the Directors of NMSS and NRR in writing of the date of closing of the license transfer for Oyster Creek and the ISFSI. Should the transfer of the license not be completed within 1 year of this Order's date of issuance, this Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated August 31, 2018, and the associated NRC safety evaluations, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who encounter problems with ADAMS should contact the NRC's PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this 20 day of June 2019.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

John W. Lubinski, Director
Office of Nuclear Material Safety
and Safeguards