

**ENVIRONMENTAL APPEALS BOARD
 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 WASHINGTON, D.C.**

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In re:)	
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Holtec Decommissioning International, L.L.C.)	NPDES Appeal No. 20-03
)	
NPDES Permit No. MA0003557)	
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**ORDER GRANTING MOTION FOR PARTIAL WITHDRAWAL OF PETITION,
 MOTION FOR WITHDRAWAL OF ENTERGY AS PETITIONER, AND JOINT
 MOTION FOR EXTENSION OF STAY**

On March 6, 2020, three parties—Holtec Decommissioning International, L.L.C., Holtec Pilgrim, L.L.C., and Entergy Nuclear Operations, Inc. (jointly, “Petitioners”)—filed a petition with the Environmental Appeals Board (“Board”) seeking review of a permit renewal (“Permit”) issued jointly by U.S. EPA Region 1 (“Region”) and Massachusetts Department of Environmental Protection (“MassDEP”) pursuant to the federal Clean Water Act’s National Pollutant Discharge Elimination System and the Massachusetts Clean Waters Act. The Permit was issued to Holtec Decommissioning International, L.L.C, and authorizes the continued intake of surface water and certain continued discharges from the Pilgrim Nuclear Power Station (“Facility”) into Cape Cod Bay. The Facility has ceased generating electricity and, as of June 1, 2019, has entered its shutdown phase. *See* Region 1, U.S. EPA, *Pilgrim Nuclear Power Station, NPDES Permit No. MA0003557*, at 28 (issued Jan. 30, 2020).

Shortly after the Petition was filed, Petitioners and the Region submitted a joint motion to stay the proceedings for a period of 120 days, representing that the parties intended to enter into settlement discussions in order to try to resolve some or all of the issues presented. Joint Motion

for Stay of the Proceedings 1-2 (Mar. 26, 2020). The Board granted the motion, stayed the matter until July 24, 2020, and required the parties to submit periodic status reports. Order Granting Joint Motion to Stay Proceedings 2 (Mar. 31, 2020). The Board specified that if the parties seek to extend the stay, they must file a motion no later than June 17, 2020, in which they provide a basis for a further stay and the length of the stay being sought. *Id.* To date, the parties have submitted two joint status reports apprising the Board of their progress towards resolving the issues raised in the Petition. *See* First Joint Status Report (May 15, 2020); Second Joint Status Report (June 29, 2020).

There are three motions currently pending before the Board.

First, on June 30, 2020, Petitioners Holtec Decommissioning International, L.L.C., and Holtec Pilgrim, L.L.C., (jointly “Holtec”) submitted a motion to withdraw the challenge denoted as issue seven in the Petition, together with “any other challenges to the state only conditions” in the Permit. Motion for Partial Withdrawal of Petition for Review 1 (June 30, 2020). Holtec informs the Board that it entered into a settlement agreement with the Commonwealth of Massachusetts (“Commonwealth”) on June 16, 2020, related to the Facility’s decommissioning. *Id.* at 2. Holtec represents that, as part of the settlement agreement, it agreed to seek to withdraw its challenge to certain Permit conditions pertaining solely to state issues and that the Commonwealth agreed to remove certain state-only conditions from the Permit, either before or at the conclusion of the Board proceedings in this matter. *Id.* Holtec explains that its pending motion is “intended to effectuate those terms of the Settlement Agreement” and that it is also filing a joint stipulation for dismissal in the corresponding appeal before MassDEP’s Office of Appeals and Dispute Resolution (“MassDEP Appeal”) with respect to its challenge to the same

Permit conditions. *Id.* Holtec represents that the Region “concur[s] in the request to dismiss Holtec’s appeal of the state conditions.” *Id.* at 3.

Second, on July 8, 2020, Petitioner Entergy Nuclear Operations, Inc. (“Entergy”), submitted a motion seeking to withdraw as petitioner, without prejudice. Motion for Withdrawal of Entergy as Petitioner (July 8, 2020). According to Entergy, Holtec acquired the Facility in a transaction involving various Entergy affiliated entities and Holtec now possesses “the benefit of, all rights to and obligations under the historic and renewed Permit.” *Id.* at 1-2. Entergy represents that it joined in the present appeal before the Board, and also in the MassDEP Appeal, “out of an abundance of caution” based on uncertainty concerning transfer of the Permit to Holtec. *Id.* at 2. Entergy informs the Board that it has since resolved its uncertainties “via stipulation and correspondence” with MassDEP and now seeks to withdraw as a petitioner in the Board proceedings, having already initiated a similar effort to withdraw from the MassDEP Appeal. *Id.* at 3; *see id.* attach. 2 (Letter from Elise N. Zoli, Jones Day, to Michael Curley, Ass’t Reg. Counsel, Region 1, U.S. EPA (July 1, 2020) (addressing understanding between Entergy and Region regarding Entergy’s anticipated request to withdraw as a Petitioner)). Entergy represents that both the Region and Holtec concur in its request to withdraw without prejudice, and Entergy states that its withdrawal “is intended to have no effect on Holtec’s continued Petitioner status in these proceedings.” *Id.* at 3.

Third, on July 17, 2020, the Region and Holtec submitted a joint motion to extend the stay of proceedings for an additional ninety days. Joint Motion to Extend Stay of Proceedings (July 17, 2020). The Region and Holtec represent that they have diligently continued to pursue settlement of the issues raised in the appeal, have participated in six main negotiation sessions as well as additional outside discussions, and have made “significant progress” towards resolving

the issues, including “conceptual agreement” on all but one of the remaining issues. *Id.* at 2. They state that a further stay of an additional ninety days would allow them “sufficient time to develop necessary technical information and to agree on specific details in the papers being drafted to resolve the appeal.” *Id.*


For the reasons stated in the pending motions, and for good cause shown, the Board **GRANTS** the Motion for Partial Withdrawal of Petition for Review, the Motion for Withdrawal of Entergy as Petitioner, and the Joint Motion to Stay the Proceedings. The Motion for Withdrawal of Entergy as Petitioner is granted without prejudice.

This matter is stayed until **Thursday, October 22, 2020**. The remaining parties are directed to file status reports at least every forty-five days, with the first status report due by **Tuesday, September 8, 2020**. Each status report must apprise the Board of the progress of settlement discussions, including the parties’ plan and anticipated timeframe for concluding settlement discussions and whether it is appropriate to continue the stay or lift it and establish a schedule for the Region to file its response and other materials. To the extent the parties seek a further stay beyond October 22, 2020, they must file a motion with the Board by **Thursday, October 15, 2020**, in which they provide the basis for a further stay and the length of the further stay being sought. The parties may, at any time, file a motion seeking dismissal of the Petition.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Date: July 22, 2020

By: 
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER GRANTING MOTION FOR PARTIAL WITHDRAWAL OF PETITION, MOTION FOR WITHDRAWAL OF ENTERGY AS PETITIONER, AND JOINT MOTION FOR EXTENSION OF STAY in the matter of *Holtec Decommissioning International, L.L.C.*, NPDES Appeal No. 20-03, were sent to the following persons by email:

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Dated: July 22, 2020



Eurika Durr
Clerk of the Board