

April 20, 2021

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

| | | |
|---|---|-----------------------|
| In the Matter of |) | |
| |) | |
| Entergy Nuclear Operations, Inc., |) | |
| Entergy Nuclear Palisades, LLC, |) | Docket Nos. 50-255-LT |
| Holtec International, and |) | 50-155-LT |
| Holtec Decommissioning International, LLC |) | 72-007-LT |
| |) | 72-043-LT |
| (Palisades Nuclear Plant and |) | |
| Big Rock Point Site) |) | |

**Applicants' Answer Opposing Mark Muhich's
Request for Public Hearings**

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**Applicants’ Answer Opposing Mark Muhich’s
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I. Introduction

Pursuant to 10 CFR § 2.309(i)(1) and the Secretary’s March 29, 2021 Order,¹ Entergy Nuclear Operations, Inc. (“ENOI”), Entergy Nuclear Palisades, LLC, Holtec International (“Holtec”), and Holtec Decommissioning International, LLC (“HDI”) (collectively, “Applicants”) submit this answer to the comments filed by Mr. Mark Muhich (“Comments”)² in the license transfer proceeding for the Palisades Nuclear Plant (“Palisades”) and Big Rock Point Site (“BRP”). Mr. Muhich’s Comments, submitted via the federal rulemaking portal on regulations.gov, include a general list of concerns accompanied by a request that the Nuclear Regulatory Commission (“Commission” or “NRC”) “hold public hearings on the potential hazards to public health and the

¹ Secretary Order (Allowing the Opportunity for Answers to be Filed) (Mar. 29, 2021) (ADAMS Accession No. ML21088A382) (“Secretary Order”).

² Petition of Mark Muhich for Leave to Intervene and for a Hearing (Feb. 7, 2021) (ADAMS Accession No. ML21083A134), originally filed as Comments of Mark Muhich, Fed. Reg. Docket No. 2021-02357, Comment ID NRC-2021-0036-0002 (Feb. 16, 2021) (available at <https://www.regulations.gov/comment/NRC-2021-0036-0002>).

environment”³ posed by the license transfer request submitted by Applicants on December 23, 2020.⁴ On March 29, 2021, the Secretary Order was issued, providing notice of Mr. Muhich’s Comments on NRC’s hearing docket and an opportunity for Applicants to respond.

Mr. Muhich’s Comments express general concerns with the Application but do not conform to basic procedural requirements for intervention in this proceeding and do not propose any contentions or address any of the contention-admissibility criteria in 10 CFR § 2.309. The Comments do not comport with basic NRC rules applicable to a petition to intervene and hearing request, and they should not be treated as such—instead they should be considered as public comments under 10 CFR § 2.1305. Even if Mr. Muhich’s general concerns are examined under § 2.309(f)(1), he has not offered any basis to support an admissible contention. Similarly, Mr. Muhich has not demonstrated standing to participate in this proceeding under § 2.309(d). Accordingly, Mr. Muhich’s request for public hearings should be denied.

II. Background and Regulatory Framework

Applicants’ answer opposing the petition filed by the Michigan Attorney General describes Applicants’ submissions in this proceeding, the regulatory framework governing plant decommissioning and spent fuel management, the requirements for license transfers, and the Commission’s contention admissibility requirements.⁵ For brevity, Applicants incorporate that background discussion herein by reference.

³ Comments at 9.

⁴ Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments, Palisades Nuclear Plant, Docket Nos. 50-255 and 72-007, Renewed Facility Operating License No. DPR-20, Big Rock Point, Docket Nos. 50-155 and 72-043, License No. DPR-6 (Dec. 23, 2020) (ADAMS Accession No. ML20358A075) (hereinafter “Application” or “LTA”).

⁵ Applicants’ Answer Opposing the Michigan Attorney General’s Petition for Leave to Intervene and Request for a Hearing, § III (Mar. 22, 2021) (ADAMS Accession No. ML21081A308) (“Answer to AG Petition”).

III. Mr. Muhich's Comments Do Not Satisfy Basic Requirements for a Petition to Intervene and Hearing Request

The Comments fail to present a justiciable question of law or fact and are fundamentally flawed insofar as they are considered under the standards governing petitions to intervene and hearing requests in 10 CFR Part 2. While the Comments request “public hearings on the potential hazards to public health and the environment,”⁶ the Comments do not support the admission of Mr. Muhich as a party to litigate specific issues of law or fact in an evidentiary hearing under the Commission’s Subpart M rules. To the extent the Comments are treated as a petition to intervene, Mr. Muhich did not comply with the requirements explained in the Federal Register notice (“Notice”)⁷ and Commission regulations⁸ for filing such a petition. As the Notice states, a request for hearing and petition for leave to intervene must be filed in accordance with the NRC’s E-Filing rule, which requires submission and notice to other parties via the electronic hearing docket.⁹ The Notice includes instructions, links to additional guidance, and contact info for help in using the NRC’s E-Filing system.¹⁰ And the Notice cautions that “an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date,” February 24, 2021, unless the petitioner has good cause for making paper filings, in which case the petitioner should file an exemption request under 10 CFR § 2.302(g).¹¹

⁶ Comments at 9.

⁷ Palisades Nuclear Plant and Big Rock Point Plant Consideration of Approval of Transfer of Control of Licenses and Conforming Amendments, 86 Fed. Reg. 8225 (Feb. 4, 2021).

⁸ 10 CFR § 2.302(a), (g)(1).

⁹ Notice, 86 Fed. Reg. at 8227.

¹⁰ *Id.* at 8227–28.

¹¹ *Id.*

Instead of following the process for submitting a petition to intervene and hearing request, Mr. Muhich complied with the separate instructions for filing public comments via the federal rulemaking portal at [regulations.gov](https://www.regulations.gov).¹² He did not provide service of his Comments and, it would seem, did not contact the NRC help desk prior to submitting his Comments to ensure that he properly filed and served a petition to intervene. Applicants did not receive service until the Secretary Order was issued on March 29, 2021—over a month after the filing deadline—notifying Applicants that the NRC had received Mr. Muhich’s submittal, “titled a petition to intervene and for a hearing but [] submitted on www.regulations.gov instead of on the adjudicatory docket.”¹³ Apart from the title and embedded request that NRC hold public hearings (a request repeated in several other comments filed in response to the Notice,¹⁴ as well as other comments filed on [regulations.gov](https://www.regulations.gov) by Mr. Muhich in other proceedings¹⁵), it appears that Mr. Muhich considered his Comments to be just that, and if his actions are any indication, expected the Commission to treat them as public comments—which is how they should be considered.

In addition to his failure to properly file and serve a petition to intervene and hearing request within the petition filing deadline, Mr. Muhich did not comply with other basic criteria, explained in the Notice, applicable to a petition to intervene. For example, the Comments do not propose any particular contentions to be litigated, do not acknowledge or make any attempt to

¹² See *id.* at 8226; Comments of Mark Muhich, Fed. Reg. Docket No. 2021-02357, Comment ID NRC-2021-0036-0002 (Feb. 16, 2021) (available at <https://www.regulations.gov/comment/NRC-2021-0036-0002>).

¹³ Secretary Order.

¹⁴ See, e.g., Comments of Kat Russell, Comment ID NRC-2021-0036-0009 (Mar. 15, 2021) (available at <https://www.regulations.gov/comment/NRC-2021-0036-0009>); Comments of Cathy Sayre, Comment ID NRC-2021-0036-0005 (Feb. 16, 2021) (available at <https://www.regulations.gov/comment/NRC-2021-0036-0005>); Comments of Richard Barron, Comment ID NRC-2021-0036-0004 (Feb. 16, 2021) (available at <https://www.regulations.gov/comment/NRC-2021-0036-0004>).

¹⁵ See Comments of Mark Muhich, Fed. Reg. Docket No. 2021-02001, Comment ID NRC-2020-0277-0120 (Mar. 1, 2021) (available at <https://www.regulations.gov/comment/NRC-2020-0277-0120>).

satisfy the admissibility criteria of 10 CFR § 2.309(f)(1), do not reference or dispute any specific portions of Applicants' submittals, and do not provide any supporting materials apart from a general Q&A document on parent company guarantees prepared by NRC staff¹⁶ and a report related to subsequent license renewal (which is not being proposed for Palisades and has no relationship to the proposed license transfer).¹⁷ And as addressed below, while Mr. Muhich does state that he has standing "as a Michigander,"¹⁸ he did not plead the particular elements of standing required by § 2.309(d) and repeated in the Notice.¹⁹

In other words, despite requesting public hearings, the Comments do not satisfy the basic requirements for a petition to intervene and hearing request, and, thus, the Comments must be rejected insofar as they are considered under the standards applicable to such petitions. The Comments are merely a compilation of general issues that Mr. Muhich wants the NRC to consider as it reviews the Application—which is precisely how they were submitted and should be treated by the Commission.²⁰

¹⁶ See Comments at 5 (citing SECY-11-0133, Encl. 5, Questions and Answers on Decommissioning Financial Assurance (Sept. 28, 2021) (ADAMS Accession No. ML111950031)).

¹⁷ See Comments at 8 (citing Pacific Northwest Laboratory, Criteria and Planning Guidance for Ex-Plant Harvesting to Support Subsequent License Renewal (December 2017) (available at http://static1.1.sqspcdn.com/static/f/356082/28026831/1542303608657/autopsy_PNNL-27120_harvesting_Dec2017.pdf). Since being granted access to the electronic hearing docket, Mr. Muhich has filed many internet articles without any accompanying explanation for how those articles relate to his Comments or why the Commission should allow their submission after the filing deadline. *See, e.g.*, NJBIZ Article – Holtec CEO May Have Been Involved in Federal Bribery Case (ADAMS Accession No. ML21089A361), Cape Cod Time Article – Pilgrim NP Moves Spent Nuclear Fuel to Higher Elevation (ADAMS Accession No. ML21090A341), Figure of Historic Patterns of Wave Power on the Great Lakes (ADAMS Accession No. ML21090A092). None of these submissions satisfy the late-filing requirements of § 2.309(c).

¹⁸ Comments at 2.

¹⁹ Notice, 86 Fed. Reg. at 8227.

²⁰ See 10 CFR § 2.1305(a).

IV. The Comments Do Not Provide Any Basis for an Admissible Contention

The Comments’ failure to satisfy minimal process and form warrants their rejection under § 2.309. While the Comments do not include any particular contentions, if the generalized concerns articulated in the Comments are nevertheless examined under the strictures of § 2.309(f)(1), it is clear that none provide a basis for an admissible contention.

A. General Concerns Regarding SNF Handling Do Not Satisfy § 2.309(f)(1)

The Comments express concern that “release of radionuclides from a spent nuclear fuel [(“SNF”)] assembly due to a loss of coolant event, or a mechanical failure as has occurred at HOLTEC’s decommissioning of San Onofre Nuclear Plant[,] CA, could poison much of Lake Michigan....”²¹ This concern does not present an issue of law or fact to be litigated (§ 2.309(f)(1)(i)), does not explain how the concern is within the scope of or material to matters that may be considered in or resolved by a hearing on the Application ((f)(1)(iii)-(iv)), does not provide any documentary or expert support ((f)(1)(v)), and does not address any specific portion of Applicants’ submittals or contest HDI’s technical qualifications to conduct licensed activities at Palisades ((f)(1)(vi)).

Presumably Mr. Muhich is referring to a cask misalignment incident in 2018 at San Onofre Nuclear Generating Station that led to inspection findings issued to Southern California Edison (the facility owner and licensee).²² That incident did not result in any “release of radionuclides” or other impact to public health, and the NRC’s follow-up inspections found that Southern California Edison and Holtec took appropriate actions in response to the misalignment incident, including

²¹ Comments at 2–3.

²² See Errata: Notice of Violation, NRC Special Inspection Report Nos. 05000206/2018005, 05000361/2018005, 05000362/2018005, 07200041/2018001, EA-18-155 (Dec. 19, 2018) (ADAMS Accession No. ML18341A172).

updates to internal processes and training materials and implementation of lessons learned.²³ The Comments do not allege, and provide no basis for concluding, that, as a result of this incident, HDI (who was not involved in the SONGS incident) is unqualified to conduct licensed activities at Palisades and BRP. Moreover, it bears noting that Holtec is the current dry storage vendor at Palisades and may continue in that capacity irrespective of NRC's action on the Application.²⁴

B. General Claims that NEPA and the AEA Require Public Hearings and Additional Environmental Review Do Not Satisfy § 2.309(f)(1)

The Comments state that the license transfer “constitutes a major material and significant change in the federal regulation of Palisades NP and therefore requires public hearings,” and NRC “must require a Supplemental Environmental Impact Statement” to address various issues related to Palisades’ site conditions, historical operations, decommissioning, and Lake Michigan water levels.²⁵ As explained in Applicants’ answer to Beyond Nuclear et al.’s petition,²⁶ NRC has determined that license transfers are categorically excluded from National Environmental Policy Act (“NEPA”) review because the transfer itself does not change facility operations.²⁷ Like the NEPA contention submitted by those petitioners, the Comments’ request that the NRC conduct additional NEPA review of the Application or decommissioning in general constitutes an impermissible challenge to NRC’s categorical exclusion, raises issues beyond the scope of this

²³ See Supplemental Inspection Report Nos. 05000206/2018006, 05000361/2018006, 05000362/2018006, 07200041/2018002, EA-18-155, at 2 (July 9, 2019) (ADAMS Accession No. ML19190A217).

²⁴ See ENOI Letter No. PNP 2015-015, Notification of Spent Fuel Loading at Palisades Nuclear Plant (Feb. 12, 2015) (ADAMS Accession No. ML15049A041).

²⁵ Comments at 3–4, 6 (¶¶1–2, 8).

²⁶ Applicants’ Answer Opposing Beyond Nuclear et al.’s Petition to Intervene and Hearing Request, § III.A (Mar. 22, 2021) (ADAMS Accession No. ML21081A313) (“Answer to Beyond Nuclear Petition”).

²⁷ See 10 CFR § 51.22(c)(21); Streamlined Hearing Process for NRC Approval of License Transfers, Final Rule, 63 Fed. Reg. 66,721, 66,728 (Dec. 3, 1998).

proceeding, and thus does not provide any basis for an admissible contention under § 2.309(f)(1).²⁸

The general and vague assertion that public hearings are required raises no specific issue or genuine material dispute with the license transfer application.

C. Concerns that Costs May be Significant and Requests for Additional Financial Commitments Do Not Satisfy § 2.309(f)(1)

The Comments express concerns with the potential extent of decommissioning and SNF management costs and request that NRC require HDI and Holtec Palisades to provide additional financial assurance, beyond the Palisades nuclear decommissioning trust (“NDT”), in the form of a \$500 million surety bond, parent guarantee, requirement to deposit DOE recoveries into the NDT, a \$50 million contingency fund, and additional contingency in the cost estimate.²⁹ While Mr. Muhich notes his general concern (without providing any of the support required by § 2.309(f)(1)) that SNF management costs may “amount[] to hundreds of millions of dollars”³⁰ and “[t]he ‘average’ cost of decommissioning a nuclear plant is \$500 million,”³¹ the Comments do not provide any specifics and do not address or dispute any portion of HDI’s estimated radiological decommissioning cost of \$443 million and SNF management costs of \$166 million.³² As explained in Applicants’ Answer to the Michigan AG’s Petition,³³ the NRC requires Applicants’ financial

²⁸ See *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 91 NRC __ (2020) (slip op. at 41) (“[A] license transfer review does not itself involve any consideration of the potential environmental impacts of decommissioning activities.”); *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-01, 92 NRC __ (2021) (slip op. at 64).

²⁹ Comments at 4–5, 7–8 (¶¶3–5, 10).

³⁰ *Id.* at 4.

³¹ *Id.* at 7.

³² See HDI, Post Shutdown Decommissioning Activities Report including Site-Specific Decommissioning Cost Estimate, Enclosure 2, Palisades Nuclear Plant Site Specific Decommissioning Cost Estimate, at 46, Table 5-1 (Dec. 23, 2020) (ADAMS Accession No. ML20358A232) (“DCE”).

³³ See Answer to AG Petition, §§ III.C, IV.A.

showing to be based on “plausible assumptions and forecasts”³⁴ that may rely on a single funding source such as an NDT.³⁵ The Comments’ general concerns that costs may be large do not call into question the plausibility of HDI’s cost estimate and do not raise a material dispute with the Application. Nor do general and unsupported assertions regarding cost escalation, historical costs at other sites, or the possibility of undiscovered contamination.³⁶ None of these general concerns address HDI’s cost estimate or provide any arguments specific to Palisades. To the extent Mr. Muhich is skeptical of decommissioning cost estimates in general or HDI’s in particular, the Commission has explained that the “mere casting of doubt on some aspects of proposed funding plans is not by itself sufficient.”³⁷ And the requests that NRC require additional financial mechanisms beyond the NDT, require a full site characterization at the license transfer stage, or apply the 25% independent spent fuel storage installation (“ISFSI”) contingency factor to HDI’s entire estimate are impermissible challenges to NRC rules, which authorize Applicants to demonstrate financial qualifications based on prepaid funds in the NDT,³⁸ do not require full site characterization at this stage,³⁹ and do not prescribe a specific contingency value for facility decommissioning estimates.⁴⁰

³⁴ *Indian Point*, CLI-21-01, 92 NRC at __ (slip op. at 9) (citation omitted).

³⁵ *Id.* (slip op. at 49).

³⁶ See Comments at 7 (¶10).

³⁷ *Pilgrim*, CLI-20-12, 91 NRC at __ (slip op. at 20) (citation omitted).

³⁸ 10 CFR § 50.75(e)(1)(i).

³⁹ See 10 CFR § 50.82(a)(9)(ii)(A), (F); *Pilgrim*, CLI-20-12, 91 NRC __ (slip op. at 33–34).

⁴⁰ See *Indian Point*, CLI-21-01, 92 NRC at __ (slip op. at 25–28); see generally NUREG-1757, Vol. 3, Rev. 1, Consolidated Decommissioning Guidance, Financial Assurance, Recordkeeping, and Timeliness,” (Feb. 2012) (ADAMS Accession No. ML12048A683) (providing guidance on the contingency factor for ISFSI decommissioning).

D. Speculation Regarding the Outcome of Holtec’s CISF Application Does Not Satisfy § 2.309(f)(1)

The Comments note that Holtec’s application for a Consolidated Interim Storage Facility (“CISF”) in New Mexico is currently being challenged in federal court and expresses the opinion that Palisades SNF should remain onsite until it can be permanently disposed of in a geological repository.⁴¹ Thus, the Comments assert HDI should be prepared to store SNF at the Palisades ISFSI for as long as 100 years.⁴² The Comments do not claim that HDI’s assumption that DOE will begin accepting Palisades fuel by 2030 is implausible though. Indeed, as explained in Applicants’ Answer to the Michigan AG’s Petition,⁴³ the Commission has already found this schedule to be plausible,⁴⁴ and even if HDI were to incur spent fuel management costs beyond 2040, it is expected that those costs would be recoverable from DOE.⁴⁵ HDI’s cost estimate is not solely dependent on the successful licensing and construction of Holtec’s New Mexico CISF—one of two such applications currently pending⁴⁶—and the existence of legal challenges to Holtec’s CISF application do not make it implausible to assume that DOE may begin accepting Palisades fuel by 2030. The Comments’ identification of legal challenges to Holtec’s CISF application and opinion that fuel should remain on-site until it can be permanently disposed of in a geological

⁴¹ Comments at 6 (¶¶6–7).

⁴² *Id.*

⁴³ See Answer to AG Petition, § IV.A.2.

⁴⁴ See *Indian Point*, CLI-21-01, 92 NRC at __ (slip op. at 36).

⁴⁵ See *Pilgrim*, CLI-20-12, 91 NRC at __ (slip op. at 29).

⁴⁶ See Letter from John McKirgan, NRC, to Jeffrey D. Isakson, Interim Storage Partners LLC, “Interim Storage Partners LLC’s Application for a Specific Independent Spent Fuel Storage Installation License for the Waste Control Specialists Consolidated Interim Storage Facility for Spent Nuclear Fuel – Revised Review Schedule” (July 1, 2019) (ADAMS Accession No. ML19182A107).

repository do not raised a genuine material dispute with the plausible spent fuel transfer assumptions in Applicants' submittals.

E. Unsupported Claims of Corporate Misdeeds by Holtec International and SNC-Lavalin Do Not Satisfy § 2.309(f)(1)

The Comments repeat, without substantiation, a list of claims related to Holtec and SNC-Lavalin corporate practices.⁴⁷ The Commission has consistently rejected similar attempts to turn license transfer proceedings into omnibus corporate trials.⁴⁸ For the same reasons that Beyond Nuclear's character contention is inadmissible,⁴⁹ Mr. Muhich's statements provide no basis for an admissible contention.

F. Concerns about "Portfolio Risks" Do Not Satisfy § 2.309(f)(1)

The Comments express concerns that risks from other nuclear facilities could affect Palisades.⁵⁰ The Comments do not raise any specific concerns with Holtec Palisades' and HDI's financial qualifications to be the owner and operator of Palisades or explain how risks or costs at other Holtec facilities could impact Palisades decommissioning. Nor do the Comments dispute the portions of the Application that explain HDI's fleet approach to decommissioning (which is similar to the fleet approach employed by Entergy and many other nuclear facility owners) and ability to conduct licensed activities at multiple sites.⁵¹ General concerns about "portfolio risks" do not raise a material dispute with the Application.⁵²

⁴⁷ Comments at 6–7 (¶9).

⁴⁸ See *Exelon Generation Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-19-06, 89 NRC 465, 478 (2019); *Pilgrim*, CLI-20-12, 91 NRC at __ (slip op. at 56–59); *Indian Point*, CLI-21-01, 92 NRC at __ (slip op. at 66–68).

⁴⁹ See Answer to Beyond Nuclear Petition, § III.B.

⁵⁰ Comments at 8 (¶11).

⁵¹ Application at 15–17.

⁵² See *Pilgrim*, CLI-20-12, 91 NRC at __ (slip op. at 53–54).

G. Requests Regarding Aging Management and Dry Storage Compliance Activities Do Not Satisfy § 2.309(f)(1)

The Comments include a couple of paragraphs requesting additional aging management analyses and dry storage compliance activities.⁵³ Neither is implicated by the proposed license transfer and, thus, the Comments provide no basis for an admissible contention.

V. Mr. Muhich Has Not Established Standing

Because Mr. Muhich has not posed at least one admissible contention, the Commission need not address the question of his standing to intervene in this proceeding.⁵⁴ Nonetheless, as explained below, Mr. Muhich also has not established standing to intervene in this proceeding as a matter of right under 10 CFR § 2.309(d).⁵⁵

A. Applicable Legal Standard

A thorough discussion of the Commission's standing requirements is set forth in Applicants' answer to the Environmental Law & Policy Center ("ELPC") hearing request.⁵⁶ For brevity, that discussion is incorporated herein by reference.

⁵³ Comments at 8 (¶¶13–14).

⁵⁴ See *PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 NRC 500, n.19 (2015) ("Because [the petitioner's] contentions all fall far short of our contention admissibility standards, we need not address his standing to intervene."). And establishing standing does not constitute proffering a valid contention justifying intervention. *Conn. Coal. Against Millstone v. NRC*, 114 F. App'x 36, 39 (2d Cir. 2004) ("What the Coalition has failed to acknowledge, and failed to remedy in subsequent arguments before the Commission and this Court, is that satisfaction of standing requirements, alone, falls short of meriting intervention.") (citing *In re Fla. Power & Light Co.*, 54 NRC 3, 26 (2001)).

⁵⁵ Mr. Muhich apparently seeks only intervention as of right. Mr. Muhich makes no effort to address the six factors required for discretionary intervention under 10 CFR § 2.309(e).

⁵⁶ Applicants' Answer Opposing the Environmental Law & Policy Center Petition to Intervene and Hearing Request, § IV.A (Mar. 22, 2021) (ADAMS Accession No. ML21081A309) ("Answer to ELPC Petition").

B. Mr. Muhich Has Not Established Standing to Intervene as a Matter of Right Under Section 2.309(d)

Mr. Muhich's claim of standing appears to derive entirely from the fact that he lives in Michigan and has participated in recreational activities on Lake Michigan. In particular, Mr. Muhich states that he "resides in Michigan, was raised in Michigan, . . . as a boy drank great mouthfuls of cold sweet water from Lake Michigan[, and] . . . has sailed on Lake Michigan and camped on its shores."⁵⁷ This is insufficient to satisfy Mr. Muhich's burden to "provide enough detail to allow the Board to distinguish a casual interest from a substantial one."⁵⁸

Even if the proximity presumption were to apply to this proceeding,⁵⁹ it requires more than recreational activities at some time in the past. "The proximity presumption applies when petitioners live within 50 miles of the proposed facility or when they have 'frequent contacts' with the area affected by the proposed facility."⁶⁰ Although Mr. Muhich does not state how far from Palisades he lives, Google Maps shows that the shortest route from his address listed in the Comments is 118 miles.⁶¹ Thus, to travel under proximity standing, Mr. Muhich must rely upon "frequent contacts" by showing that he "*frequently engages in substantial business and related*

⁵⁷ Comments at 1.

⁵⁸ *Southern Nuclear Operating Co.* (Vogle Elec. Gen. Plant, Units 3 & 4), LBP-10-1, 71 NRC 165, 177 (2010) (quoting *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010)).

⁵⁹ As discussed in Applicants' Answer to the ELPC Petition, the proximity presumption should not apply here. *See* Answer to ELPC Petition, § IV.B.

⁶⁰ *Southern Nuclear*, LBP-10-1, 71 NRC at 176 (citing *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plan, Unit 3), CLI-09-20, 70 NRC 911, 915–916 (2009); *Bell Bend*, CLI-10-7, 71 NRC at 138).

⁶¹ The Commission has verified distances "based on a check on Google Maps" in prior cases. *See, e.g., Southern Nuclear*, LBP-10-1, 71 NRC at 177–178. Similarly, federal courts have recognized that they may take judicial notice of Google Maps. *See, e.g., United States v. Orozco-Rivas*, 810 F. App'x 660, 668, n.7 (10th Cir. 2020) ("Because the parties did not provide a map, we take judicial notice of the distance as calculated using Google Maps."); *United States v. Hunt*, 843 F.3d 1022, 1031 (D.C. Cir. 2016) ("Using a Google map to measure the metes and bounds the district court plotted, we take judicial notice that the restricted area covers about 50 acres."); *United States v. Burroughs*, 810 F.3d 833, 835, n.1 (D.C. Cir. 2016) ("We grant the government's motion to take judicial notice of a Google map. It is a 'source[] whose accuracy cannot reasonably be questioned,' at least for the purpose of identifying the area where [the defendant] was arrested and the general layout of the block.") (citing Fed. R. Evid. 201(b)).

activities in the vicinity of the facility,’ engages in ‘normal, *everyday* activities’ in the vicinity, has ‘*regular*’ and ‘*frequent* contacts’ in an area near a licensed facility, or otherwise has visits of a ‘length’ and ‘nature’ showing ‘an ongoing connection and presence.’”⁶² He has not carried that burden.

Rather, Mr. Muhich points out only that he has enjoyed Lake Michigan in the past. Some of the activities—being raised in Michigan and drinking water from the lake—plainly occurred in the *distant* past, when Mr. Muhich was “a boy.” And Mr. Muhich offers no details about his sailing or camping activities at Lake Michigan, such as how many times, how frequently, for what duration, or even *where* on the lake those activities took place and whether it was in proximity to Palisades. At best, then, Mr. Muhich has documented “mere occasional trips” that are insufficient to confer standing under the Commission’s decisions.⁶³ The Commission cannot find proximity-based standing where a petition fails to supply “more specific information regarding the frequency, nature, and length of his contacts” within the proximity zone.⁶⁴ In fact, the Commission has concluded that far more robust and detailed contacts are insufficient even in *new* reactor licensing proceedings. In *Southern Nuclear*, several individuals claimed that they “regularly” fished in locations 21 and 54 miles from the facility.⁶⁵ The Commission concluded that they lacked standing because “regularly” does not equate to “frequently.”⁶⁶ Here, Mr. Muhich does not even state that

⁶² *Southern Nuclear*, LBP-10-1, 71 NRC at 176 (citations omitted) (emphases in original).

⁶³ *Id.* (quoting *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 NRC 519, 523–24 (2007)).

⁶⁴ *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 402 (2009); *see also Bell Bend*, CLI-10-7, 71 NRC at 139 (“[A] petitioner’s lack of specificity concerning the nature, extent and duration of his contacts with the area surrounding the proposed site is a sufficient basis to reject a claim of standing.”).

⁶⁵ *Southern Nuclear*, LBP-10-1, 71 NRC at 177–178.

⁶⁶ *Id.* at 178 (“Thus, an individual who fishes once a year, every year, might be considered to do so ‘regularly,’ but not necessarily ‘frequently.’”).

he “regularly” recreates on Lake Michigan, only that he has done so some undisclosed number of times in the past.⁶⁷

Moreover, Mr. Muhich has not specified any intent to continue recreating at particular locations near Palisades in the future on a “frequent” basis. Rather, Mr. Muhich only references past activities, which do nothing to support his standing in this proceeding. “Even if a party seeking standing has some intent to return to an area, when such intentions are not supported by ‘concrete plans’ or a ‘specification of *when*’ future visits would take place, they do not support a finding of injury in the standing context.”⁶⁸

Mr. Muhich likewise has failed to show under traditional judicial standing principles how the proposed license transfer would adversely affect his recreational interests. Those principles require Mr. Muhich to show:

- “[T]he asserted injury must be distinct and palpable and particular [and] concrete, as opposed to being conjectural. . . .[,] hypothetical, . . . or abstract. The injury need not already have occurred but when future harm is asserted, it must be threatened, certainly impending, . . . and real and immediate.”⁶⁹
- The injury must be “fairly traceable to the challenged action.”⁷⁰
- The “actual or threatened injuries can be cured by some action of the tribunal” on the license transfer.⁷¹

⁶⁷ See *Bell Bend*, LBP-09-08, 70 NRC at 402 (“The distances from where Mr. Epstein lives to the proposed facility and the location of the towns and landmarks cited in his pleadings are not sufficiently explained for this Board to understand Mr. Epstein’s relationship to the proposed facility at Bell Bend. We are also unable to gauge the extent, frequency, and duration which Mr. Epstein’s business and community service work take him to the Bell Bend site or the vicinity of the proposed plant. It is the burden of the petitioner to clearly state these facts in a petition to intervene.”).

⁶⁸ *Southern Nuclear*, LBP-10-1, 71 NRC at 179 (citing *Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1151 (2009)).

⁶⁹ *Cabot Performance Materials* (Reading, Pennsylvania), LBP-00-13, 51 NRC 284, 289 (2000) (citations and internal quotation marks omitted).

⁷⁰ *Ne. Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-98-22, 48 NRC 149, 154 (1998).

⁷¹ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001).

The only injury arguably identified by Mr. Muhich is that “a loss of coolant event, or a mechanical failure. . . could poison much of Lake Michigan.”⁷² But his own acknowledgement that the “likelihood of a serious accident at Palisade’s [sic] spent fuel pool is low”⁷³ necessarily means that such an injury is not “certainly impending” harm. Nor can it be traced to the challenged action (i.e., the license transfer) or cured by the Commission because the *possibility* of such events exists by virtue of the very existence of the facility, regardless of who completes decommissioning. In any event, “[a]llegations of *possible* future injury’ are not sufficient.”⁷⁴

In short, Mr. Muhich appears to base his standing solely on the fact that he is “a Michigander” who has been to Lake Michigan in the past. That satisfies none of the particular elements required by § 2.309(d).

VI. Conclusion

Because Mr. Muhich’s Comments do not comply with basic procedural requirements applicable to petitions to intervene, do not provide any basis for an admissible contention, and do not demonstrate his standing to participate in this proceeding, the Comments should be rejected as a petition to intervene and hearing request under § 2.309. Applicants have no objection to their consideration as written comments under 10 CFR § 2.1305.

⁷² Comments at 1–2.

⁷³ *Id.* at 1.

⁷⁴ *Clapper v. Amnesty Int’l*, 568 U.S. 398, 409 (2013) (citations omitted) (emphasis in original).

Respectfully submitted,

/signed electronically by Alan Lovett /

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April 20, 2021

April 20, 2021

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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|---|---|-----------------------|
| In the Matter of |) | |
| |) | |
| Entergy Nuclear Operations, Inc., |) | |
| Entergy Nuclear Palisades, LLC, |) | Docket Nos. 50-255-LT |
| Holtec International, and |) | 50-155-LT |
| Holtec Decommissioning International, LLC |) | 72-007-LT |
| |) | 72-043-LT |
| (Palisades Nuclear Plant and |) | |
| Big Rock Point Site) |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing Mark Muhich's Request for Public Hearings has been served through the E-Filing system on the participants in the above-captioned proceeding this 20th day of April 2021.

/signed electronically by Alan Lovett/

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