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NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Operations, et al.

Docket Number: 50-255-LT-2, 50-155-LT-2,
72-007-LT, 72-043-LT-2

ASLBP Number: 22-974-01-LT-BD01

Location: teleconference

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: : Docket Nos.
ENTERGY NUCLEAR OPERATIONS, INC., : 50-255-LT-2
ENTERGY NUCLEAR PALISADES, LLC, : 50-155-LT-2
HOLTEC INTERNATIONAL, AND HOLTEC : 72-007-LT
DECOMMISSIONING INTERNATIONAL, : 72-043-LT-2
LLC :
(Palisades Nuclear Plant and : ASLBP No.
Big Rock Point Site) : 22-974-01-LT-BD01

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Wednesday, July 27, 2022

Teleconference

BEFORE:

PAUL S. RYERSON, Presiding Officer

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P R O C E E D I N G S

2:00 p.m.

JUDGE RYERSON: Good afternoon everyone.

This is Judge Ryerson. We are here on a conference call concerning the Michigan Attorney General's challenge to Holtec's acquisition from Entergy of the Palisades Nuclear Plant in the Big Rock Point Site.

On October 15, as you probably all know, the Commission identified four very specific issues for hearing before a single administrative judge as presiding officer. My responsibilities as presiding officer are limited to compiling the hearing record of these four issues, ruling on motions related to developing the factual record, presiding at any oral hearing if we have one, and certifying the completed hearing record to the Commission. Thereafter, the Commission will issue a decision on the certified record.

Before we take appearances, just a couple of administrative matters. Please identify yourself when speaking. It will make life much easier for the reporter. This proceeding is being transcribed and a transcript will be available on the NRC website in a few days. We've also made available listen-only telephone lines for the public so that interested

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1 members can follow along in real time.

2 With that, let's get appearances. Who do
3 we have for the state of Michigan today?

4 MR. MOODY: Thank you, Your Honor. This
5 is Michael Moody from the Michigan Attorney General's
6 Office. I also have with me Joel King from our
7 office.

8 JUDGE RYERSON: Okay. Thank you and
9 welcome.

10 Holtec International and Holtec
11 Decommissioning International, LLC. Do I have that
12 right?

13 MR. LOVETT: Thank you, Your Honor. Yes,
14 you do. This is Alan Lovett of Balch & Bingham for
15 Holtec International and Holtec Decommissioning
16 International. With me on the phone is my colleague
17 Jason Tompkins also of Balch & Bingham. And then
18 general counsel for Holtec Decommissioning
19 International Mr. Jason Day.

20 JUDGE RYERSON: Thank you. Welcome to
21 you.

22 And Entergy Nuclear Operations, Inc. and
23 Entergy Nuclear Palisades, LLC. Who do we have today?

24 MR. LEWIS: Good afternoon, Judge Ryerson.
25 This is David Lewis from Pillsbury Winthrop Shaw

1 Pittman. Also on the line is Anne Leidich. We
2 represent Entergy. In addition, Susan Raimo who is
3 the Associate General Counsel for Entergy is on the
4 line.

5 JUDGE RYERSON: Okay. Thank you and
6 welcome.

7 Now, the NRC staff, of course, has yet to
8 decide whether they will be a party. I think
9 regardless the Commission has directed your
10 participation at a minimum on certain issues and
11 invited your participation on other issues. Who do we
12 have for the NRC staff today?

13 MR. WACHUTKA: Good afternoon, Your Honor.
14 This is Jeremy Wachutka from the NRC Office of General
15 Counsel representing the NRC staff. I am joined by
16 Anita Ghosh Nabor and Lois Room.

17 JUDGE RYERSON: Okay. Thank you and
18 welcome. By the way, do you have an impression as to
19 whether you are going to join as a full party or are
20 you going to defer that until Monday?

21 MR. WACHUTKA: The NRC staff hasn't made
22 that determination yet, Your Honor. We will
23 definitely inform you and the parties before or by
24 Monday, August 1st.

25 JUDGE RYERSON: Sure. Okay. You're

1 entitled.

2 Let's see. Before we take up the issues
3 that we identified in the hearing notice, let me talk
4 first about the joint motion that I think came in last
5 Friday for an extension of time. As you know, the
6 Commission has encouraged the presiding officer to
7 adhere to the Subpart M model milestone to the extent
8 practicable. Strictly speaking, the milestones would
9 seem to call for the beginning of a hearing in mid-
10 October which is about the time the parties proposed
11 to provide initial disclosures.

12 I think the Commission was well aware of
13 the date. The only real fact mentioned in the motion
14 was the closing of the license transfer transaction on
15 June 28th. Again, I think the Commission was well
16 aware of that. I think they mentioned it in Footnote
17 7. Perhaps the parties would like to provide a little
18 more explanation of why the initial delay is
19 necessary.

20 I turn to you first, Mr. Lovett. I think
21 you would probably have the initial lead on the four
22 issues that the Commission has identified. Would you
23 care to comment?

24 MR. LOVETT: Thank you, Your Honor. This
25 is Alan Lovett for the Holtec applicants. I'd be

1 happy to comment. As you know, obviously, this sort
2 of license transfer has already occurred, as indicated
3 in the Commission's order. The Michigan Attorney
4 General has not challenged the Holtec applicant's
5 technical wherewithal to decommission the plan, nor
6 does that relate to any of the issues admitted for
7 hearing.

8 Obviously sort of the meat of the matter
9 is to be potentially put to hearing and is financial
10 in nature. Given the schedule that the Holtec
11 applicant submitted in their initial LTA application,
12 or alongside their initial LTA application, which was
13 filed back in December of 2020, wholesale sort of full
14 decommissioning activity ostensibly at which the
15 financial concerns raised by the Attorney General
16 might occur, would not happen until 2036 based on the
17 PSDAR filed by the parties in December 2020.

18 Given that the transaction is closed and,
19 as we said, obviously the Commission was aware of
20 that, I mean, our view is it was worth our collective
21 time with the consultation with the Attorney General
22 to have some early discussion about ways to
23 potentially limit the scheduled issues for hearing
24 and/or potentially enter into some negotiations.

25 In full candor we are still sort of having

1 these discussions to kind of feel out whether that is
2 a viable option. In the interest of respecting the
3 parties' resources, we didn't want to start producing
4 extensive discovery until we at least had the
5 opportunity for an early discussion.

6 JUDGE RYERSON: All right. Thank you, Mr.
7 Lovett.

8 Entergy. I suppose you're the seller now
9 and you perhaps still have a lot at stake. Any
10 further comments from Entergy?

11 MR. LEWIS: Only that we are very
12 supportive of providing the opportunity to Holtec and
13 the Attorney General's office to have discussions and
14 see if they can resolve matters that follows in the
15 interest of the parties and of the NRC. I think this
16 motion would further that. This is Mr. Lewis.

17 JUDGE RYERSON: Thank you, Mr. Lewis.

18 All right. Mr. Moody, I suppose you have
19 a great an interest as anyone in the prompt
20 adjudication of your claims. I take it you're
21 comfortable with this two-month extension.

22 MR. MOODY: Yes, that's correct, Your
23 Honor. The Attorney General in talking with Holtec's
24 attorneys we believe an effective and efficient use of
25 time might be to talk among the parties and see if we

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1 can resolve potentially some of these things. We're
2 early stages but we thought it might be just a waste
3 of a lot of resources so to push this along quickly
4 and maybe we can come together.

5 JUDGE RYERSON: Okay. Thank you. And,
6 again, the NRC staff, not yet a party, but does not
7 oppose. Am I correct?

8 MR. WACHUTKA: This is Jeremy Wachutka.
9 You are correct, Your Honor.

10 JUDGE RYERSON: Okay. Thank you.

11 Well, let's put off a decision on that.
12 Obviously it's a joint motion. We encourage joint
13 motions and agreements. I did want to get perhaps the
14 context of how we might be going forward if there's a
15 two month extension.

16 Why don't we turn back to the issues that
17 we identified in the hearing notice, the Notice of
18 Call. First, do you parties contemplate asking for a
19 written hearing? All you need to do is have one
20 objection, I believe, under the rule. Let me turn to
21 you, Mr. Lovett.

22 MR. LOVETT: Thank you, Your Honor. We've
23 actually talked with Entergy and the Attorney General.
24 I think our collective preference is to do an oral
25 hearing.

1 JUDGE RYERSON: All right. And if there's
2 a hearing, an oral hearing, I know it may be early but
3 any projection of the length? I must say these
4 Subpart M hearings are not high drama. They're
5 basically questions from the presiding officer to the
6 witnesses there would be. I guess there are four
7 different issues. Any projection of two days, one
8 day, three days? Any thoughts about that at this
9 point?

10 MR. LOVETT: Your Honor, I mean, with the
11 caveat that it's a complete swag at this point, our
12 best guess is two days. We're still obviously
13 developing sort of who would be a witness and how much
14 pre-trial testimony would there be for these issues.
15 Of course, that will drive how long the questioning
16 will take.

17 JUDGE RYERSON: Right. Very
18 understandable. The third question that we ask, where
19 if there is a hearing might it be? Obviously today we
20 can probably, especially with financial issues, do it
21 remotely, virtually, or here in the NRC's hearing
22 room. Let me turn to the Office of the Michigan
23 Attorney General on that point.

24 Would you have a preference for holding it
25 in Michigan if that were possible?

1 MR. MOODY: I didn't think that was a
2 possibility but that would be -- from the Attorney
3 General's point of view obviously that would be
4 preferable. We're somewhat flexible. We do a lot of
5 Public Service Commission hearings virtually so we
6 know how to do that. We're not exactly sure how the
7 NRC process would work virtually.

8 We're used to this kind of uploading
9 process. You know, you have -- I think we do a Teams
10 type situation. We're flexible but live sometimes
11 does work easier with documents and witnesses, people.
12 We in Michigan so that would be great. We're
13 flexible. Let me put it that way.

14 JUDGE RYERSON: Okay. I probably should
15 interject that my preference -- I mean, the rules are
16 flexible in terms of whether a witness who files
17 written testimony absolutely needs to be present. My
18 own preference would be that they should be. I guess
19 that's a factor as well.

20 Mr. Lovett, how do you feel about either
21 coming to the NRC or virtual hearing?

22 MR. LOVETT: I think both Holtec and
23 Entergy would sort of prefer to do it live in
24 Rockville. We're certainly happy to travel to
25 Michigan as well to accommodate travel if it comes to

1 that, but our first preference would be to do it at
2 the NRC.

3 JUDGE RYERSON: Yeah, okay. While
4 sometimes the NRC staff -- well, you're not even a
5 party yet. Sometimes the NRC staff has expressed a
6 neutral feeling. I'm sure that there's no objection
7 from the staff to do it here in Rockville.

8 MR. WACHUTKA: This is Jeremy Wachutka
9 from the NRC staff. We will have a sponsoring witness
10 even if we are a non party. The NRC staff would
11 prefer in-person and is neutral as to where NRC
12 Headquarters are within the vicinity of Palisades.
13 NRC staff would be fine with either of those options.

14 JUDGE RYERSON: I didn't quite hear you.
15 Which option?

16 MR. WACHUTKA: Either NRC headquarters or
17 within the vicinity of Palisades in Michigan.

18 JUDGE RYERSON: I see. Okay. Well, if
19 there's a hearing, I take it the Office of the
20 Attorney General is not opposed to traveling to
21 Rockville. Do you have a budget for that?

22 MR. MOODY: No, Your Honor. We could
23 travel to D.C. -- Rockville. I'm sorry.

24 JUDGE RYERSON: Yeah. All right. I am
25 personally leaning towards here in Rockville because,

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1 again, even the post-COVID age of minimal travel is
2 kind of desirable. Let me think about that.

3 The fourth issue that we identified in the
4 hearing notice would be the scheduling of specific
5 components of the hearing. I must say I am inclined
6 to granting your unopposed motion if, in fact, the
7 parties can comply with, say, a two to three-month
8 hearing schedule that's contemplated by the model
9 milestones.

10 In other words, with the initial
11 disclosures on October 14th basically there are
12 somewhat different schedules actually on the
13 regulations and the model milestones but there's
14 basically a sense that there ought to be two to three
15 months thereafter after the initial disclosures.

16 I guess I'm wondering is that consistent
17 with what the parties envision? If you joint motion
18 is granted, that would put us in a time frame of
19 either two months, roughly mid-December or three
20 months, roughly mid-January. Again, let me ask Mr.
21 Lovett because you have probably the initial laboring
22 ore on these issues. Is that something you
23 contemplate if the motion is granted? In other words,
24 two to three months for the beginning of a year.

25 MR. LOVETT: Thank you, Your Honor. This

1 is Alan Lovett for the Holtec applicants. In full
2 candor we have talked a little bit internally and
3 obviously we are going to need to coordinate with
4 everybody's sort of schedules. You said if you kind
5 of kick out the natural progression if you do grant
6 our motion to have initial disclosure on October 14th.

7 By my math we would have started sort of
8 roughly the first week or second week of January.
9 After a little bit of internal discussion our ideal
10 situation would be to start a hearing in February
11 which I understand would be a little bit outside of
12 sort of the window that you just talked through but
13 mostly to avoid sort of witness crunch over the
14 holidays.

15 Again, I say that with the caveat that
16 while I think we may have indicated that to Mr. Moody
17 in the AG's office, yeah, we certainly haven't talked
18 at length about when sort of an optimal hearing might
19 occur from the AG's perspective.

20 The one thing I'll add in the interest of
21 -- along these lines is that my hope would be, you
22 know, obviously once we kind of know staff's
23 preference that the parties might get together and
24 propose, you know, a little bit more granular schedule
25 for your consideration, as well as probably pretty

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1 standard sort of joint motion on what those initial
2 disclosures are going to look like.

3 JUDGE RYERSON: Yeah.

4 Mr. Moody, is that somewhat consistent
5 with your view that there might be a deferral of an
6 oral hearing until February?

7 MR. MOODY: That's correct, Your Honor.
8 Thank you.

9 JUDGE RYERSON: Okay. Here is what I
10 propose. Why don't the parties, and I don't mean to
11 leave you out, Entergy, but I think probably the two
12 laboring parties will mostly be Holtec and the
13 Attorney General. Why don't you propose, if you can,
14 a schedule that has the principal dates in it.
15 Assuming that there's disclosures -- initial
16 disclosures October 14.

17 I think a combination of the rules and the
18 model milestones involve initial statements of
19 position, direct testimony, and exhibits. That's the
20 first stage. The next stage is written response and
21 rebuttal testimony and exhibits and proposed questions
22 for the presiding officer to ask. The third stage is
23 proposed questions addressed to the rebuttal
24 testimony.

25 The last time we had an emiary at the

1 ASLBP, which was I think six or eight years ago, there
2 was a provision allowing written concluding statements
3 of positions prior to the oral hearing. That's not in
4 the rules but I think the parties agreed to that. It
5 might be optional.

6 Then there's an oral hearing and then
7 clearly under the rules, a written post hearing
8 statement of position within 20 days of the close of
9 hearing and the presiding officers certification to
10 the Commission just five days after that.

11 Do you think that you could outline those
12 broad issues, broad progress, say starting in -- well,
13 targeting an oral hearing in February. Is that
14 something that would be worthwhile for you, Mr.
15 Lovett?

16 MR. LOVETT: Yes, Your Honor. We've
17 already sort of got a starting version of that just
18 working internally and we're happy to circle up with
19 the AG's office and then, I suppose, staff as well if
20 they decide they are going to be a full party to put
21 something on the docket for you.

22 JUDGE RYERSON: Okay. And that would be
23 okay with Mr. Moody?

24 MR. MOODY: Yes, Your Honor. Thank you.

25 JUDGE RYERSON: Okay. I take it there is

1 no objection from the staff at this point?

2 MR. WACHUTKA: No objection from the NRC
3 staff.

4 JUDGE RYERSON: Okay. Again, no objection
5 from Entergy to that proposal?

6 MR. LEWIS: No objection.

7 JUDGE RYERSON: Okay. All right. How
8 long do you think you would take to outline a
9 proposal? Ideally a joint proposal.

10 MR. LOVETT: Your Honor, this is Alan
11 Lovett for the Holtec applicants. I think -- I mean,
12 I think we can have something to you to give staff
13 time to digest it. Maybe by the 5th which would be
14 the end of next week we can certainly align -- try to
15 align earlier than that. I just want to make sure the
16 staff has an opportunity to consider it as well.

17 JUDGE RYERSON: Okay, yeah. Again, it's
18 not a very complicated schedule. Let's target that.
19 I'm really optimistic you can all agree on a schedule.
20 If you can't, certainly after that date submit
21 competing schedules but I'm pretty optimistic you can
22 agree on a schedule.

23 And I really don't think -- on good faith
24 I will issue an order granting the motion. Obviously
25 if the parties can't agree, we'll just issue a

1 scheduling order at some point. I don't think there
2 is really a need for any direction at this point
3 beyond what we've just stated. I will grant the
4 motion, the joint motion.

5 All right. Is there anything else we
6 should be talking about today?

7 Mr. Moody?

8 MR. MOODY: No, Your Honor. I appreciate
9 the hearing and for granting the motion. Thank you.

10 JUDGE RYERSON: And Mr. Lovett?

11 MR. LOVETT: Nothing further from Holtec.
12 Thank you, Your Honor.

13 JUDGE RYERSON: And nothing further from
14 the NRC staff?

15 MR. WACHUTKA: Nothing further.

16 JUDGE RYERSON: Okay. And Mr. Lewis for
17 Entergy?

18 MR. LEWIS: Nothing further, Your Honor.

19 JUDGE RYERSON: Nothing further. All
20 right. Well, again we'll expect ideally a joint
21 proposal targeting a hearing in February at the end of
22 next week. We will grant the motion and we stand
23 adjourned. Thank you.

24 (Whereupon, the above-entitled matter went off
25 the record at 2:26 p.m.)