

November 4, 2024

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
)	
Holtec Decommissioning)	Docket Nos. 50-255-LA-3
International, LLC and)	
Holtec Palisades, LLC)	ASLBP No. 24-986-01-LA-BD01
)	
(Palisades Nuclear Plant))	
)	

**APPLICANTS’ ANSWER OPPOSING
JOINT PETITIONERS’ PETITION FOR HEARING**

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I. Introduction

Pursuant to 10 CFR § 2.309(i)(1) and the Atomic Safety and Licensing Board Panel's ("Board") Initial Prehearing Order, as amended,¹ Holtec Decommissioning International, LLC ("HDI") and Holtec Palisades, LLC (collectively, "Applicants") submit this answer to the Petition to Intervene and Request for Adjudicatory Hearing ("Petition") filed by eight individuals ("Joint Petitioners") on September 9, 2024 in the above-captioned proceeding.²

¹ Memorandum and Order (Initial Prehearing Order) (Sept. 19, 2024) (ML24263A018). On October 17, 2024, the ASLB amended the Initial Prehearing Order, setting the deadline for Applicants' answer to November 4, 2024. Memorandum and Order (Amending Initial Prehearing Order) (Oct. 17, 2024) (ML24295A354).

² Petition for Hearing regarding the Holtec Decommissioning International, LLC and Holtec Palisades, LLC Application for License Amendments for Palisades Nuclear Plant (Sept. 9, 2024) (ML24253A185). The eight individuals are Jody Flynn, Tom Flynn, Bruce Davis, Karen Davis, Christian Moevs, Mary Hoffman, Chuck Hoffman, and Diane Ebert. Petition, App'x A.

The Petition was filed in response to an opportunity to request a hearing published in the Federal Register on August 7, 2024.³ The deadline to submit a request for a hearing was October 7, 2024. Joint Petitioners filed the Petition on September 9, 2024, and submitted eleven additional “supplements” between September 19, 2024 and October 5, 2024.⁴ Joint Petitioners filed an additional supplement on October 19, 2024.⁵

³ Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant, Applications for Amendments to Renewed Facility Operating License Involving Proposed No Significant Hazards Considerations and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 89 Fed. Reg. 64,486 (Aug. 7, 2024) (“Federal Register Notice”).

⁴ Supplemental Filing to Strengthen Standing of Petitioners in NRC Docket No. 50-255-LA-3 (Sept. 19, 2024) (ML24264A003); Supplemental Submission to the Petition Regarding the Safety Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant (Sept. 20, 2024) (ML24264A004) (“September 20 Supplement”); Part Two, Supplemental Submission to the Petition Regarding the Safety Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant (Sept. 22, 2024) (ML24266A002) (“September 22 Supplement I”); Part Three, Supplemental Submission to the Petition Regarding the Safety Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant: The Need for the NRC to Review the Palisades Design Basis of SSCs to Next Approve Accident Safety Analysis and Evaluate Steam Generator Tube Plugging Limits (Sept. 22, 2024) (ML24266A003) (“September 22 Supplement II”); Supplemental Filing to Strengthen that Holtec’s Proposed Use of § 50.59 is Within the Scope of the FRN for Requesting a Public Hearing (Sept. 22, 2024) (ML24266A004) (“September 22 Supplement III”); Supplemental Filing to Emphasize the Importance of Transparency in NRC and Holtec’s Processes: The Need for a Public Hearing (Sept. 23, 2024) (ML24268A068); Supplemental, Part Two, Filing to Strengthen Standing of Petitioners in NRC Docket No. 50-255-LA-3 (Sept. 25, 2024) (ML24269A002) (the “Standing Supplement”); Part Two: Supplemental Filing to Further Strengthen the Argument that Holtec’s Proposed Use of § 50.59 Is Flawed and Requires NRC Oversight, Based on NEI-96-07 Guidelines for 10 CFR 50.59 Implementation (Sept. 27, 2024) (ML24271A037) (“September 27 Supplement”); Third Supplemental Filing to Highlight the Critical Need to Use a FSAR Based on Current Design General Criteria, Unlike Holtec’s Proposed Use of 50.59 to Build an FSAR: Before Analysis of the Significant Stress Corrosion Cracking (SCC) in Steam Generator Tubing Findings (Oct. 3, 2024) (ML24277A006); Contention Five: Holtec’s Exemption Request Fails to Meet Requirements for Acceptance Review, as per 10 CFR 50.12, “Specific Exemptions” (Oct. 4, 2024) (ML24278A000) (“Contention 5 Supplement”); Supplemental Filing: Further Basis for Contention Five, Holtec’s Proposed Sequence, Without NRC approval, Predicate for Specific Exemption Request NRC Staff Review (Oct. 5, 2024) (ML24297A001) (“Final Supplement”).

⁵ Letter from A. Blind to NRC ASLB, “Request to Add Correspondence to Docket No. 50-255-LA-3” (Oct. 19, 2024).

The Federal Register Notice provided an opportunity to request a hearing on four license amendment requests filed by the Applicants (the “LARs”).⁶ The contents of the LARs are addressed in more detail below, but at the most simplified, they are part of the Applicants’ effort to transition the Palisades Nuclear Plant (“Palisades”) from decommissioning back to power operations. Joint Petitioners’ allege that the process by which Applicants and the NRC are proceeding with the Palisades restart effort “introduces unacceptable levels of subjectivity into the regulatory process” that directly threatens the safe operation of Palisades.⁷ Joint Petitioners also claim that the regulatory process authorized by NRC regulations that Applicants are using to update the Palisades licensing basis, of which the LARs are just a part, is inadequate.⁸ Although stopping short of saying Palisades should never be restarted, Joint Petitioners request that the proposed licensing process be formally approved by the NRC’s General Counsel, ask for more “transparency” into the process, and request suspension of “system restoration activities” by Holtec, *i.e.*, physical work at Palisades, until “appropriate regulations are evaluated, approved, and aligned with NRC-approved design and quality assurance standards.”⁹ Moreover, Joint Petitioners state their preference for the NRC to require Applicants to pause their restart activities until the

⁶ HDI PNP 2023-030, Letter from Holtec Decommissioning International, LLC to NRC, “License Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations” (“Dec. 14, 2023) (ML23348A148) (“Tech Spec LAR”); HDI PNP 2024-001, Letter from Holtec Decommissioning International, LLC to NRC, “License Amendment Request to Revise Selected Permanently Defueled Technical Specifications Administrative Controls to Support Resumption of Power Operations” (Feb. 9, 2024) (ML24040A089) (“Admin Controls LAR”); HDI PNP 2024-005, Letter from Holtec Decommissioning International, LLC to NRC, “License Amendment Request to Revise the Palisades Nuclear Plant Site Emergency Plan to Support Resumption of Power Operations” (May 1, 2024) (ML24122C666) (“Emergency Planning LAR”); HDI PNP 2024-003, Letter from Holtec Decommissioning International, LLC to NRC, “License Amendment Request to Approve the Biasi Critical Heat Flux (CHF) Correlation for Use with the Palisades Main Steam Line Break (MSLB) Analysis” (May 24, 2024) (ML24145A145) (“MSLB LAR”).

⁷ Petition at 5.

⁸ *Id.* at 6-7.

⁹ *Id.* at 8-9.

NRC has conducted a full rulemaking and issued a regulation governing the restoration of power operations at commercial nuclear reactors.

But nowhere do Joint Petitioners challenge the submitted LARs or any findings the NRC must make to issue the requested amendments. Rather, Joint Petitioners advocate for a proposed rulemaking-based licensing path that the NRC has previously rejected.¹⁰ Joint Petitioners also seek to challenge all restart actions being taken by Applicants, in the process collaterally attacking the NRC regulations and the Palisades licensing basis. All of Joint Petitioners' arguments either fall outside the scope of this proceeding or are attempts to relitigate arguments that the NRC has rejected, neither of which are sufficient to raise a genuine dispute with the Applicants.

Moreover, Joint Petitioners have failed to demonstrate standing. Joint Petitioners claim to be represented by an individual, Alan Blind, who, by his own admission, is not an attorney and who does not have standing in his own right. Joint Petitioners also have not alleged that there is any organization that they or Mr. Blind belong to that would allow Mr. Blind to represent the organization. As such, Mr. Blind's request to serve as a representative for the named individuals does not afford him standing. Further, none of the other eight individuals have demonstrated sufficient proximity or causation of an injury from one of the LARs, as separate from operations at Palisades. Only the LARs are at issue in this proceeding, and a legally redressable injury from those LARs is necessary to demonstrate the individual standing. Nor have any of the other eight individuals sought to be admitted to this proceeding as an individual, much less met the requirements to do so.

For each of these reasons, the Petition should be dismissed.

¹⁰ See NRC Denial of Petition for Rulemaking, Criteria to Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362, 24,363 (May 6, 2021) ("PRM Denial").

As an additional matter, the Board requested briefing on whether a request filed by Joint Petitioners on October 19, 2024 should be added to the record. Joint Petitioners have not demonstrated why such information needs to be added to the record or how it is not covered in the Petition. As such, it would be improper to add Joint Petitioners' late filed communication to the record.

II. Legal Standards

A. Contention Admissibility Standard

A petitioner must propose at least one contention that meets the admissibility requirements in 10 C.F.R. § 2.309(f)(1).¹¹ Each contention must:

- (i) provide a specific statement of the legal or factual issue sought to be raised;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised is within the scope of the proceeding;
- (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and
- (vi) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.¹²

Failure to comply with any one of the six admissibility requirements is grounds for rejecting a proposed contention.¹³

¹¹ See 10 CFR 2.309(a).

¹² See 10 CFR 2.309(f)(1)(i)-(vi).

¹³ See, e.g., *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC 393, 395-96 (2012); *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); see also Final Rule, Changes to Adjudicatory Process; 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004).

The Commission’s contention admissibility requirements are “strict by design.”¹⁴ To be admissible, a contention “must raise issues within the scope of the proceeding and material to the findings the Commission must make.”¹⁵ The scope of a proceeding is determined by the requested licensing action and corresponding Federal Register notice providing an opportunity for hearing.¹⁶ If an argument is outside the specified scope of the proceeding, it must be rejected.¹⁷

NRC’s contention admissibility rules also require proposed contentions to have “some reasonably specific factual or legal basis.”¹⁸ “To be admissible, a contention must provide support for its claims.”¹⁹ The proposed 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.”²⁰ Under 10 CFR 2.390(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

¹⁴ *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504 (2015); *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

¹⁵ *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-23-1, 97 NRC 81, 84 (2023).

¹⁶ *Fansteel, Inc.* (Muskogee, Oklahoma Facility), LBP-03-13, 58 NRC 96, 100 (2003); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985).

¹⁷ *Portland Gen. Elec. Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979) (citing *Public Serv. Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)).

¹⁸ *Susquehanna*, CLI-15-8, 81 NRC at 504 (quoting *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-03-14, 58 NRC 207, 213 (2003)).

¹⁹ *Susquehanna*, CLI-23-1, 97 NRC at 86.

²⁰ *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 & 2), CLI-17-4, 85 NRC 59, 74 (2017) (quoting 10 CR 2.309(f)(1)(vi)).

petitioner intends to rely in litigating the contention at the hearing.²¹ “Bare assertions and speculation, even by an expert, are insufficient to trigger a full adjudicatory proceeding.”²²

Any contention that collaterally attacks the NRC regulatory structure or processes likewise is outside the scope of the proceeding.²³ Moreover, petitioners may not “attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies.”²⁴ The petitioner has the burden of proof to meet the standards of contention admissibility.²⁵

B. Standard Governing NRC’s Review of the LARs

The NRC reviews a license amendment request using the same legal standards that governed initial issuance of the license.²⁶ The “applicant must satisfy the requirements of 10 [CFR] 50.90 and demonstrate that the requested amendment meets all applicable regulatory requirements

²¹ 10 CFR 2.390(f)(1)(ii), (v).

²² *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-14, 75 NRC 704, 714 (2021) (quoting *Oyster Creek*, CLI-08-28, 68 NRC at 674).

²³ *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 66 NRC 41, 57-58 (2007) (citing *Phila. Electric Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20 (1974)).

²⁴ *Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-15-9, 81 NRC 512, 527-28 n.98 (2015) (quoting *Duke Energy Co.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)).

²⁵ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015); *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998). Applicants note that the Petition improperly relies on certain contention admissibility precedent that predates the agency’s 1989 rulemaking that revised these rules and intentionally raised the bar for what constitutes an admissible contention under NRC rules. See Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168 (Aug. 11, 1989) (“1989 Final Rule”); *Oconee*, CLI-99-11, 49 NRC at 334 (“In 1989 the Commission toughened its contention rule in a conscious effort to raise the threshold bar for an admissible contention and ensure that only intervenors with genuine and particularized concerns participate in NRC hearings.”).

²⁶ See 10 C.F.R. § 50.92(a) (“In determining whether an amendment to a license...will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses....”). The Atomic Energy Act also grants the NRC the authority to issue and make immediately effective any amendment “upon a determination by the Commission that such amendment involves no significant hazards consideration.” See 42 U.S.C. 2239(a)(2)(A). However, the NRC’s no significant hazards consideration is not subject to challenge in an adjudicatory proceeding. See *Vt. Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 91 (1990) (“The issue of whether the proposed amendment does or does not involve a significant hazards consideration is not litigable in any hearing.”) (citing *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-86-12, 24 NRC 1, 6 n.3 (1986), rev’d and remanded on other grounds *sub nom. San Luis Obispo Mothers for Peace v. NRC*, 799 F.2d 1268 (9th Cir. 1986)).

and acceptance criteria and does not otherwise harm the public health and safety or the common defense and security.”²⁷

III. Background

No nuclear reactor has ever resumed power operations after permanently ceasing operations. However, the licensing pathway for resuming power operations at Palisades, which involves regulatory actions in several different procedural postures, many of which incorporate opportunities for public participation, are relatively straightforward. The regulatory processes being used to return Palisades to power operations use the same regulatory tools available under Part 50 to all reactor licensees, which are the same tools Palisades employed to transition from power operations *into* decommissioning in the first place. Applicants provide a more fulsome background of the relevant history and licensing submissions below.

The point of reciting all of these other activities related to the restart is to (1) provide the Board with context for the broader restart process, which is ongoing, and (2) clarify the thoughtful regulatory process that the NRC staff and Applicants are following for the restart of Palisades, which separate procedures and licensing actions for different submissions. However, as explained more fully below, the only licensing actions within the scope of this proceeding are the LARs—challenges to other licensing actions are not admissible in this proceeding.²⁸

A. Changes to the Palisades Operating License at Shutdown

Palisades shutdown in 2022 before the expiration of its renewed operating license term in March 2031. At the time, the expectation was that the shutdown would be permanent. Accordingly,

²⁷ *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 35 (2002); *accord Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-22, 82 NRC 310, 316 & n.44 (2015); *N. States Power Co.* (Prairie Island Nuclear Generation Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 44 (1978).

²⁸ *See* Section IV.A, *infra*.

Entergy Nuclear Operations, Inc. (“ENOI”) (the licensed operator at shutdown) filed the two certifications contemplated by 10 CFR 50.52(a)(1): the certification of permanent cessation of operations and the certification of permanent defueling (referred to herein as the “50.82(a)(1) certifications” or the “certifications of shutdown and defueling”).²⁹ Following those certifications, ENOI implemented a series of license amendments, exemptions, and changes to modify the licensing basis to reflect the shutdown status.³⁰ The plant’s operating license—Renewed Facility Operating License DPR-20 (the “RFOL”)—remains in place; it has simply been modified, along with many other portions of the licensing basis, to reflect the lower risk of a defueled reactor.³¹

It bears noting that NRC regulations do not prescribe any of the steps ENOI took to modify the RFOL at shutdown. Rather, like all plants in decommissioning, ENOI and NRC relied on the standard suite of regulatory processes: exemptions (pursuant to 10 CFR 50.12), license amendments (pursuant to 10 CFR 50.90), and change processes under 10 CFR 50.54 and 50.59 to

²⁹ ENOI, Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel (June 13, 2022) (ML22164A067).

³⁰ *E.g.*, ENOI, Request for Exemption from Physical Security (Severe Weather) Provisions in 10 CFR 73.55 (June 29, 2017) (ML17180A004) (issued Oct. 11, 2017 at ML17216A802); ENOI, Certified Fuel Handler Training and Retraining Program Approval Request (Mar. 28, 2017) (ML17087A016) (approved Aug. 21, 2017 at ML17151A350); ENOI, Technical Specifications Administrative Controls License Amendment Request (July 27, 2017) (ML17208A428) (approved June 4, 2018 at ML18114A410); ENOI, License Amendment Request to Reduce Emergency Response Organization Staffing Levels (Aug. 31, 2017) (ML17243A157) (approved Sept. 24, 2018 at ML18170A219); ENOI, License Amendment Request to Implement Permanently Defueled Technical Specifications and Revised License Conditions (June 1, 2021) (ML21152A108) (approved May 13, 2022 at ML22039A198); ENOI, Deferral of Post-Fukushima Beyond Design Basis Seismic Requirements (Mar. 20, 2019) (ML19079A022) (approved May 8, 2019 at ML19115A413); ENOI, Recordkeeping Exemption Request (June 15, 2021) (ML21167A108) (issued Nov. 23, 2021 at ML21195A367); ENOI, Partial Rescission of 9/11 Interim Compensatory Measures (July 21, 2021) (ML21202A211) (approved June 28, 2022 at ML22159A194).

³¹ 10 CFR 50.51(b); 10 CFR 50.82(a)(11); *see* Amendment No. 272 to Renewed Facility Operating License No. DPR-20 (May 13, 2022) (ML22039A198) (amendment effective following docketing of 50.82(a)(1) certifications and reflecting permanently defueled technical specifications); Amendment No. 273 to Renewed Facility Operating License No. DPR-20 (June 28, 2022) (ML22173A176) (reflecting transfer of the RFOL from Entergy to Holtec); *see also* NRC, Regulatory Guide 1.184, Decommissioning of Nuclear Power Reactors, Rev. 1, at 7 (Oct. 2013) (ML13144A840) (“Following submission of the certification for permanent cessation of operations, the facility license continues in effect beyond the expiration date until the NRC notifies the licensee in writing that the license has been terminated (10 CFR 50.51(b)).”) (“Reg. Guide 1.184”).

step down the Part 50 requirements (that still apply because the plant still holds a Part 50 operating license) to reflect the lower risk associated with a defueled reactor.³² Most of the processes Applicants are using to resume power operations (which are briefly described below) are simply employing these same tools in reverse.

B. The Four LARs at Issue in This Proceeding

Among the changes ENOI implemented at shutdown, three are relevant to the LARs in this proceeding:

- (1) Amendment No. 266 to the RFOI, which amended the Administrative Controls section of the Technical Specifications to reflect post-shutdown staffing, training, and programmatic requirements (“Admin Controls Amendment”).³³
- (2) Amendment No. 267 to the RFOI, which modified the Emergency Plan to reflect a permanently defueled condition (“Emergency Planning Amendment”).³⁴

³² In fact, the NRC has undertaken a decade-long rulemaking process to overhaul the decommissioning regulations, in part, to “reduce the need for license amendment requests and exemptions from existing regulations” during the transition into decommissioning. NRC Proposed Rule, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, 87 Fed. Reg. 12,254, 12,254 (Mar. 3, 2022) (“Proposed Decommissioning Rule”). For now, though, NRC has recognized that the process is dependent on the use of license amendments, exemptions, and the 10 CFR 50.59 and 50.54 change processes:

Upon permanent cessation of reactor operations and removal of fuel from the reactor vessel, the licensee is likely to submit a significant number of licensing actions (license amendment and exemption requests) to the NRC for review and approval based primarily on the reduced radiological risk to public health and safety.

...

In addition to requesting license amendments and exemptions, nuclear power reactor licensees can make certain changes without prior NRC approval if the changes are permitted by an NRC regulation. Licensees primarily use an evaluation process with criteria in § 50.59 to make changes in a facility (or procedures) as described in the FSAR (as updated), including changes to the PSDAR, without prior NRC approval. The licensee’s updated FSAR should reflect changes to the decommissioning design-basis analyses, SSCs, and the licensee’s organizations, processes, and procedures. Licensees can also make changes without prior NRC approval as described in § 50.54(p) and § 50.54(q).

Id. at 12,264.

³³ Issuance of Amendment Re: Administrative Controls for Permanently Defueled Condition, Amendment No. 266 to Renewed Facility Operating License No. DPR-20 (June 4, 2018) (ML18114A410).

³⁴ Issuance of Amendment Re: Changes to the Emergency Plan for Permanently Defueled Condition, Amendment No. 267 to Renewed Facility Operating License No. DPR-20 (Sept. 24, 2018) (ML18170A219).

- (3) Amendment No. 272 to the RFOL, which removed license conditions applicable to power operations and implemented Technical Specifications for a permanently defueled condition (“Tech Spec Amendment”).³⁵

Three of the four LARs noticed in the Federal Register are meant to functionally unwind these three amendments to reinstate the relevant portions of the RFOL in effect prior to shutdown:

- (1) The Admin Controls LAR requests NRC approval to reinstate the Administrative Controls sections of the Technical Specifications (Section 5.0) to reflect power operations staffing, training, and programmatic requirements, including to reflect the transition from certified fuel handlers back to licensed reactor operators, plant staff’s responsibilities for operational functions rather than just safe storage and handling of spent nuclear fuel, and on-shift staffing requirements when fuel is in the reactor.³⁶ This LAR would functionally unwind the Admin Controls Amendment implemented at shutdown.
- (2) The Emergency Planning LAR requests NRC approval to reinstate the Emergency Plan and Emergency Action Levels for power operations, which would unwind the Emergency Planning Amendment and other changes to emergency planning requirements implemented post-shutdown,³⁷ including, for example, to reinstate power operations emergency action levels, operational-level on-shift staffing, support functions for offsite emergency response organizations, and all the other changes to emergency planning that were no longer required once the risk of offsite radiological release drastically lowered.³⁸

³⁵ Issuance of Amendment No. 272 Re: Permanently Defueled Technical Specifications, Amendment No. 272 to Renewed Facility Operating License No. DPR-20 (May 13, 2022) (ML22039A198).

³⁶ Admin Controls LAR; Supplement to License Amendment Request to Revise Selected Permanently Defueled Technical Specifications Administrative Controls to Support Resumption of Power Operations (July 31, 2024) (ML24213A082).

³⁷ After shutdown, HDI submitted the standard “zirc-fire” emergency planning exemption and license amendments that allow further reduction to emergency planning requirements (below those implemented at reactor defueling) to reflect the further-reduced risk of offsite radiological consequences once the spent nuclear fuel in the spent fuel pool has cooled sufficiently to reduce the risk of zirconium cladding catching fire in a loss of coolant accident scenario. *See* Request for Exemptions from Certain Emergency Planning Requirements of 10 CFR 50.47(b); 10 CFR 50.47(c)(2); and 10 CFR Part 50, Appendix E (July 11, 2022) (ML22192A134) (issued Dec. 22, 2023 at ML23263A977); License Amendment Request: Proposed Permanently Defueled Emergency Plan and Permanently Defueled Emergency Action Level Scheme (July 12, 2022) (ML22193A090) (approved Dec. 27, 2023 at ML23236A004). These changes would also be reversed or superseded by implementation of the Emergency Planning LAR.

³⁸ Emergency Planning LAR; Response to Request for Additional Information - License Amendment Request to Revise the Palisades Nuclear Plant Site Emergency Plan to Support Resumption of Power Operations (July 24, 2024) (ML24206A187).

- (3) The Tech Spec LAR requests NRC approval to reinstate RFOL license conditions and Technical Specifications applicable to power operations,³⁹ functionally unwinding the Tech Spec Amendment. Among other changes, the Tech Spec LAR would reinstate license conditions governing receipt and use of reactor fuel, operation of the reactor itself, operational programs and exemptions, and all of the technical specifications governing operation of the reactor itself. (Note that this is the only LAR referenced in the Petition.)

In other words, Applicants are using the same licensing tool ENOI and NRC used (amendments under 10 CFR 50.90) to modify the same Part 50 operating license (the Palisades RFOL) to reimplement the licensing provisions that governed Palisades's power operations prior to shutdown.

The fourth LAR, the MSLB LAR, is a "catch up" filing to allow use of a specific analytical method in Palisades's main steam line break analysis. The same methodology has been approved for use at other operating plants that use similar fuel to Palisades.⁴⁰ It was not applied to Palisades because the plant was shut down when Framatome (the fuel vendor) updated their methodology in an NRC-approved topical report.⁴¹

C. Other Regulatory Activity That is Not at Issue in This Proceeding

This section provides background on other approvals and processes being used in connection with the restart, which, although not the subject of the LARs, are nonetheless being undertaken by Applicants prior to resuming power operations at Palisades. Applicants provide this discussion for context only as Joint Petitioners aim their arguments exclusively at those other

³⁹ Tech Spec LAR; HDI, Supplement to License Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations (July 9, 2024) (ML24191A422).

⁴⁰ See NRC, Final Safety Evaluation for Framatome Topical Report EMF-2310, Revision 1, Supplement 2P, Revision 0, "SRP Chapter 15 Non-LOCA Methodology for Pressurized Water Reactors" (Feb. 9, 2023) (ML23023A116); Framatome, Approved EMF-2310, Revision 1, Supplement 2P-A, Revision 0, SRP Chapter 15 Non-LOCA Methodology for Pressurized Water Reactors (April 10, 2023) (ML23109A086).

⁴¹ MSLB LAR, Encl. at 3–4.

processes in lieu of focusing on the LARs. However, as discussed more fully below in Section IV, Joint Petitioners' challenges to these actions are outside the scope of this proceeding and therefore inadmissible as contentions.

Approval of the four LARs is necessary, but not sufficient, to return Palisades to power operations. Not surprisingly, Applicants are working through a series of other regulatory processes and NRC approvals and inspections that will need to be completed before Applicants are authorized to load fuel into the Palisades reactor and resume power operations, most of which are discussed below. Among those approvals is an exemption request Applicants filed in September 2023, requesting a one-time exemption from 10 CFR 50.82(a)(2) to allow Applicants to withdraw ENOI's certifications of permanent shutdown and defueling ("Exemption Request").⁴² Applicants are planning to utilize change processes under 10 CFR 50.54 and 50.59 to evaluate whether changes to reinstate certain other portions of the power operations licensing basis can be implemented without a license amendment. Applicants are also reinstating operational programs, regulatory commitments, and Commission orders applicable to operating reactors that were modified or deferred in connection with the 2022 shutdown. And Applicants filed a license transfer application to transfer operational authority from HDI to a new operating company (which is subject to a separate adjudicatory process).⁴³ From NRC's side, staff has formed a "Restart Panel" to oversee restart activities and developed an inspection plan to evaluate operational

⁴² HDI, Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82 (Sept. 28, 2023) (ML23271A140) ("Exemption Request").

⁴³ Palisades Nuclear Plant and the Palisades Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of Licenses and Conforming Amendment, 89 Fed. Reg. 64,493 (Aug. 7, 2024); HDI, Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments (Dec. 6, 2023) (ML23340A161) ("LTA"). Joint Petitioners did not file a petition to intervene and request a hearing on that action.

readiness, which must be completed before final approvals are issued.⁴⁴ And NRC is in the process of evaluating the environmental effects of the restart, which process is expected to result in staff's publication of an Environmental Assessment ("EA") in June 2025.⁴⁵

None of these other regulatory activities are the subject of the Federal Register Notice or are subject to litigation in this proceeding. The point of explaining these other activities is (1) to provide the Board with context for the broader restart process, which is ongoing, and (2) to untangle Joint Petitioners' mischaracterizations of the various licensing processes and embedded premise that NRC's approval of the four LARs is tantamount to approval of everything else involved in the restart.

1. Applicants' 50.82(a)(2) Exemption Request

Section 50.82(a)(2) provides that "the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel" after the licensee files the certifications of shutdown and defueling (required by 10 CFR 50.82(a)(1)).⁴⁶ In other words, in addition to the various amendments implemented by ENOI immediately after shutdown, NRC's docketing of ENOI's 50.82(a)(1) certifications also modified the RFOL, by operation of law, to reflect the defueled state. This change was not independently written into the RFOL in any of the shutdown license amendments because the Tech Spec Amendment ENOI

⁴⁴ NRR and Region III Memorandum, Palisades Nuclear Plant, Restart Panel Charter (Nov. 27, 2023) (ML23297A053); NRC, Palisades Nuclear Plant Restart Inspection Plan, Light-water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations, Inspection Manual Chapter 2562 (Aug 19, 2024) (ML24228A195) ("Palisades Restart Inspection Plan").

⁴⁵ NRC, Notice of Intent to Conduct Scoping Process and Prepare an Environmental Assessment, 89 Fed. Reg. 53,659 (June 27, 2024).

⁴⁶ 10 CFR 50.82(a)(2).

implemented at the same time achieved the same result by removing the RFOL provisions that allowed use of nuclear fuel in the reactor.⁴⁷

Section 50.82 does not expressly provide a process for “un-docketing” certifications of permanent shutdown and defueling or otherwise reinstating power operations authority after those certifications are filed. However, longstanding NRC guidance for decommissioning plants states:

Following submission of the certification of permanent cessation of operations, or at any time during the decommissioning process, if the licensee desires to operate the facility again, the licensee must notify the NRC of its intentions in writing. The NRC would handle approval to return the facility to operation on a case-by-case basis, and the approval would depend on the facility status at the time of the request to reauthorize operation.⁴⁸

More recently, in 2021, the Commission again explained that 50.82(a)(2) is not a permanent bar to resuming power operations. In denying a petition for rulemaking requesting that the agency amend 50.82 to provide a prescribed path for restarting a plant like Palisades, the Commission said:

While current regulations do not specify a particular mechanism for reauthorizing operation of a nuclear power plant after both [50.82(a)(1)] certifications are submitted, there is no statute or regulation prohibiting such action. Thus, the NRC may address such requests under the existing regulatory framework.⁴⁹

Joint Petitioners’ arguments rest on their mistaken assertion that no restart activities can proceed (including NRC’s review of the LARs) until NRC either reverses the PRM Denial decision and undertakes rulemaking to prescribe an explicit regulatory process for resuming power operations or, in the alternative, NRC’s Office of General Counsel provides a legal memorandum that

⁴⁷ See ENOI, License Amendment Request to Implement Permanently Defueled Technical Specifications and Revised License Conditions, Encl. 1 at 2–3 (June 1, 2021) (ML21152A108) (approved May 13, 2022 at ML22039A198).

⁴⁸ Reg. Guide 1.184 at 7.

⁴⁹ NRC Denial of Petition for Rulemaking, Criteria to Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362, 24,363 (May 6, 2021) (“PRM Denial”).

explains precisely how the “existing regulatory framework” will be used to return a plant to power operations after it has entered decommissioning. As discussed below, there is no provision of law or regulation to support Joint Petitioners’ claims that either of these processes is required in order for Applicants and NRC to apply well-known regulatory processes to the LARs.

While the Reg. Guide 1.184 and the PRM Denial made it clear that a plant such as Palisades can attempt to restart after the 50.82(a)(1) certifications are docketed, neither supply a specific roadmap—because the details will inevitably vary based on a particular licensee’s proposal for a particular plant, accounting for things like how long it has been shut down and what each plant’s unique licensing basis says.⁵⁰ The Commission did specify, however, that the “existing regulatory framework” provides adequate means of addressing such requests. The Commission determined that a case-by-case approach utilizing existing regulatory mechanisms was a more efficient regulatory tool than generic rulemaking, hence the Commission’s decision to deny the rulemaking petition while preserving the ability to assess a plant-specific proposal if one ever emerged.⁵¹ It bears noting that plants transition *into* decommissioning using the same case-by-case application of exemptions, amendments, and change processes—so it is rational for licensees and staff to employ the same processes in order to restore a facility’s authority to operate.

Based on the language of 50.82(a)(2) and direction from Reg. Guide 1.184 and the PRM Denial, Applicants (who are the first licensees to attempt a restart of this kind) submitted the

⁵⁰ PRM Denial, 86 Fed. Reg. at 23,363 (“If the NRC receives a request from the licensee for a decommissioning reactor to resume operations, the NRC would review the request consistent with applicable regulatory requirements.”); Reg. Guide 1.184 at 7 (“NRC would handle approval to return the facility to operation on a case-by-case basis, and the approval would depend on the facility status at the time of the request to reauthorize operation.”).

⁵¹ See 86 Fed. Reg. at 24,364 (“Any such rulemaking effort would likely address a wide variety of technical and regulatory topics including, but not limited to, decommissioning status, aging management, quality assurance, equipment maintenance, personnel, license expiration, hearing process, and appropriate licensing basis.”).

Exemption Request to accomplish a few things. Most directly, Applicants asked the NRC “to allow for a one-time rescission of the [Palisades] docketed 10 CFR 50.82(a)(1) certifications . . . to remove the restrictions that prohibit[] operation of the PNP reactor or emplacement or retention of fuel into the PNP reactor vessel.”⁵² The Exemption Request (filed more than a year ago) was the first approval request Applicants filed in furtherance of the restart. Accordingly, the Exemption Request also previewed the other regulatory filings and license amendment requests anticipated at the time (that have now been filed) and proposed a process that envisioned implementation of the 50.82 exemption and rescission of the shutdown and defueling certifications as the final NRC stage gate for the restart, but only after Applicants obtain all other approvals and satisfy all applicable NRC conditions.⁵³ This process proposed in the Exemption Request has largely been superseded by NRC’s subsequent publication of the new Inspection Manual Chapter (“IMC”), IMC 2562, Light-Water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations, in May 2024.⁵⁴ IMC 2562 addresses the overall inspection and approval framework the agency will use to determine whether there is reasonable assurance of safe operations following the restart of Palisades and similarly situated plants.⁵⁵ The process culminates in a final recommendation from an empaneled group of cross-functional staff (a “Restart Panel”) to the Director of the Office of Nuclear Reactor Regulation (“NRR”) and the applicable Regional

⁵² Exemption Request, Encl. 1 at 3.

⁵³ *Id.*, Encl. 1 at 6–7.

⁵⁴ IMC 2562, Light-Water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations (May 8, 2024) (ML24033A299).

⁵⁵ IMC 2562 provides a framework similar to that contemplated by existing IMCs addressing a return to operations after an extended shutdown period (e.g., IMC-0375), which gives Region staff flexibility to craft an inspection program based on the state of the plant, licensing basis, operational programs, and operational history to provide NRC with reasonable assurance of safe operations following the restart. IMC 2562 at 10–11; *see also* IMC-0375, Implementation of the Reactor Oversight Process at Reactor Facilities in an Extended Shutdown Condition for Reasons not Related to Performance (Aug. 12, 2020) (ML20218A563).

Administrator, who ultimately approve the licensee’s request to return to operational status and transition the facility back into the Reactor Oversight Process (“ROP”).⁵⁶

Now that NRC has published IMC 2562 (which does not rely on the Exemption Request as a final NRC stage gate),⁵⁷ the Exemption Request is principally a mechanism to trigger NRC’s approval to withdraw ENOI’s certifications of shutdown and defueling. In this respect, it is no different from any of the other standalone regulatory actions related to the restart—it is requesting NRC approval to remove one (of many) actions implemented at shutdown that prevent the resumption of power operations. The Exemption Request does not involve any changes to the RFOL, it contains no technical details that are relevant to NRC staff’s review of the LARs, and many of the process discussion in the Exemption Request have now been incorporated into or superseded by IMC 2562.

The Petition challenges the Exemption Request, which was not included in the Federal Register Notice and is not a licensing action giving rise to a hearing opportunity under the Atomic Energy Act,⁵⁸ without explaining why they should be allowed to do so in this proceeding. Applicants will address it again in Section V.E below.

⁵⁶ IMC 2562 at 2–3. When inspection and licensing activities for the restart are complete, the IMC contemplates that the licensee will submit an operational readiness letter to NRC verifying completion of activities and readiness to implement the operational licensing bases. *Id.* at 9–10. The Restart Panel then provides an assessment of the plant’s readiness to return to power operations to the NRR Director and Region Administrator, who ultimately approve the return to operational status. *Id.* at 5.

⁵⁷ Applicants proposed the approval process in the Exemption Request because their expectation at the time was that NRC could use a conditional order approving the Exemption Request as a regulatory vehicle to impose all of the conditions precedent to the restart. *See* Exemption Request, Encl. 1 at 6–8. Of course, NRC staff has the discretion to structure its oversight authority over this first-of-a-kind process as staff deems appropriate. They exercised that discretion in publishing IMC 2562 to define the process for reviewing and issuing final approvals to resume power operations.

⁵⁸ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-00-05, 51 NRC 90, 96 (2000) (“Congress intentionally limited the opportunity for a hearing to certain designated agency actions—agency actions that do *not* include exemptions”); Federal Register Notice, 89 Fed. Reg. at 64,487 (“Consistent with the Atomic Energy Act of 1954, as amended, and NRC regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption request.”).

2. Applicants' Other Regulatory Activities in Support of the Restart

The four LARs are not the only regulatory actions necessary to resume power operations. In February 2023, HDI submitted a regulatory roadmap to NRC, describing at a high level the full scope of activities HDI expected to undertake to restart Palisades.⁵⁹ The purpose of the roadmap was to provide a concrete proposal for discussion with NRC staff and the public, which Applicants have done over the past eighteen months in dozens of meetings. While some of the granular details of HDI's original roadmap have changed, the main categories of regulatory activity have not. In addition to the LARs and Exemption Requests, those activities include:

- (1) HDI filed a license transfer application in December 2023 requesting approval to transfer licensed authority from HDI to Palisades Energy, LLC (a new operating company) contemporaneously with the reinstatement of the power operations licensing basis. That application is currently the subject of a separate adjudicatory proceeding before the Commissioners.⁶⁰
- (2) HDI is reinstating training and qualification programs, most prominently for licensed reactor operators.⁶¹
- (3) HDI plans to evaluate the reinstatement of portions of the power operations licensing basis using the change processes in 10 CFR 50.54 and 50.59. Specifically, HDI plans to reinstate a power operations Physical Security Plan under the 10 CFR 50.54(p)

⁵⁹ HDI, Regulatory Path to Reauthorize Power Operations at the Palisades Nuclear Plant (Feb. 1, 2023) (ML23032A399) (resubmitted Mar. 13, 2023 at ML23072A404) ("Regulatory Path").

⁶⁰ See note 43, *supra*.

⁶¹ Regulatory Path, Encl. 1 at 4–5; see e.g., HDI, Response to RIS 2024-01, Preparation and Scheduling of Operator Licensing Examinations (July 18, 2024) (ML24200A073); NRC, Notification of an NRC Biennial Licensed Operator Requalification Program Inspection and Request for Information (Feb. 28, 2024) (ML24058A485).

process, and HDI plans to reinstate a power operations Final Safety Analysis Report using the change process in 10 CFR 50.59.⁶²

- (4) HDI plans to rescind any remaining exemptions granted for decommissioning that are not applicable for an operating reactor and are not otherwise superseded by other restart regulatory actions.⁶³
- (5) HDI will reinstate plant regulatory programs for power operations.⁶⁴
- (6) HDI will docket plans to complete actions associated with NRC orders and industry initiative that were not completed prior to the 2022 shutdown.⁶⁵
- (7) HDI will evaluate closed regulatory commitments to determine which commitments require reinstatement in connection with the restart.⁶⁶

The roadmap and HDI's execution of everything in it are not subject to adjudication in this proceeding on the four LARs. Most of the activities described above do not give rise to a hearing opportunity under Section 189a of the Atomic Energy Act, they are certainly not within the scope of this proceeding on these four LARs, and indeed many of them are still in process such that there is no definitive action or docketed decision for Joint Petitioners to dispute. It is of course entirely possible that during the course of this years-long process—which, beyond all the regulatory work

⁶² Regulatory Path, Encl. 1 at 3–4. The Regulatory Path also envisioned that HDI would implement power operations quality assurance (“QA”) program documents using similar processes in 10 CFR 50.54(a). *See id.* at 3. HDI has since filed the power operations QA Program Manual (“QAPM”) as a supplement to the LTA. HDI, Supplement to Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments, Proposed Power Operations Quality Assurance Program Manual, Revision 0 (May 23, 2024) (ML24144A106) (“QAPM Filing”). While that filing states that the revised QAPM does not represent a reduction in commitments under 10 CFR 50.54(a)(3), (*id.* at 2) it is Applicants’ understanding that NRC staff intends to review the submitted QAPM in connection with its review of the LTA. In the interim, Applicants have implemented a Transitioning Quality Assurance Plan (“TQAP”) to support the increase in needed commitments at Palisades in connection with restart activities and inspections. HDI, Update Report for Holtec Decommissioning International (HDI) Fleet Decommissioning Quality Assurance Program (DQAP) Revision 3 and Palisades Transitioning Quality Assurance Plan (TQAP) Rev 0 (Aug. 2, 2024) (ML24215A356) (“TQAP Filing”).

⁶³ Regulatory Path, Encl. 1 at 4; *e.g.*, HDI, Palisades Nuclear Plant – Request for USNRC to Rescind Approved Exemption Requests for 140.11(a)(4) and 50.54(w)(1), Reduction of Insurances (Oct. 9, 2024) (ML24283A094).

⁶⁴ Regulatory Path, Encl. 1 at 3.

⁶⁵ *Id.*, Encl. 1 at 3–4.

⁶⁶ *Id.*, Encl. 1 at 4.

also includes a significant capital project at the site involving refurbishment, inspection, and return to service plans for the physical plant systems themselves—could result in changes to any of these activities or could prompt Applicants to file requests for additional NRC approvals that they did not anticipate at the outset.

3. NRC’s Ongoing Environmental Review

Prior to the filing of the 50.82(a)(1) certifications in 2022, the RFOL authorized power operations through March 2031. In connection with the renewal of Palisades’s operating license in 2007, NRC published a supplemental environmental impact statement addressing the environmental effects of plant operations through 2031 (“License Renewal SEIS”).⁶⁷ In the Exemption Request, Applicants took the position that the exemption is subject to the categorical exclusion set forth in 10 CFR 51.22(c)(25) because restarting Palisades would authorize no additional activities beyond those that have been previously considered in the License Renewal SEIS (i.e., operation of the plant through 2031).⁶⁸ Applicants also included with the Exemption Request “an independent environmental review of potentially new and significant information, and

⁶⁷ NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 27, Regarding Palisades Nuclear Plant (Oct. 31, 2006) (ML062710300) (“License Renewal SEIS”); *see also* NUREG-0343, Final Addendum to the Final Environmental Statement Related to Operation of Palisades Nuclear Generating Plant (Feb. 28, 1978) (ML19308B287); Final Environmental Statement Related to the Operation of Palisades Nuclear Generating Plant (June 1972).

⁶⁸ Exemption Request, Encl. 1 at 15–19. Section 51.22(c)(25) defines the categorical exclusion as follows:

Granting of an exemption from the requirements of any regulation of this chapter, provided that—
(i) There is no significant hazards consideration; (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) There is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) There is no significant construction impact; (v) There is no significant increase in the potential for or consequences from radiological accidents; and (vi) The requirements from which an exemption is sought involve: (A) Recordkeeping requirements; (B) Reporting requirements; (C) Inspection or surveillance requirements; (D) Equipment servicing or maintenance scheduling requirements; (E) Education, training, experience, qualification, requalification or other employment suitability requirements; (F) Safeguard plans, and materials control and accounting inventory scheduling requirements; (G) Scheduling requirements; (H) Surety, insurance or indemnity requirements; or (I) Other requirements of an administrative, managerial, or organizational nature.

environmental issues not addressed in the [License Renewal SEIS],” to determine if the License Renewal SEIS’s findings “are bounding for resumed operations.”⁶⁹ That review concluded “that the proposed exemption and supporting licensing actions environmental impacts are consistent with the findings in the [License Renewal SEIS].”⁷⁰ Each of the LARs explained that the proposed amendment meets the criteria for a categorical exclusion for similar reasons.⁷¹

Instead of invoking these categorical exclusions, NRC has determined to prepare an environmental assessment (“EA”) addressing all of its regulatory decisions necessary for reauthorization of power operations. In June 2024, in exercising staff’s discretion to carry out their NEPA obligations, NRC published a Notice of Intent in the Federal Register notifying stakeholders and members of the public that NRC intends to conduct a scoping process to gather information necessary to prepare an environmental assessment (“EA”) for the potential reauthorization of power operations at Palisades.⁷² As part of this ongoing process, the NRC staff has invited interested parties to submit comments, the NRC staff is conducting an environmental regulatory

⁶⁹ *Id.*, Encl. 2 at 9.

⁷⁰ *Id.*, Encl. 1 at 13; *see also id.*, Encl. 2.

⁷¹ Admin Controls LAR at 21-22; Emergency Planning LAR at 29-31; Tech Spec LAR at 94-95; MSLB LAR at 9-10. Each LAR relied on the categorical exclusion in 10 CFR 51.22(c)(9), which covers the following:

Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes a requirement or issuance of an exemption from a requirement, with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter; or the issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes an inspection or a surveillance requirement; provided that: (i) The amendment or exemption involves no significant hazards consideration; (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and (iii) There is no significant increase in individual or cumulative occupational radiation exposure.

⁷² NRC, Notice of Intent to Conduct Scoping Process and Prepare an Environmental Assessment, 89 Fed. Reg. 53,659 (June 27, 2024) (“Notice of Intent”). As explained in the Notice of Intent, “The NRC is publishing this notice and conducting scoping as a matter of discretion; this notice and the associated scoping process are not subject to the requirements of 10 CFR part 51.” *Id.* at 53,662. NRC’s Part 51 regulations only require a notice of intent and scoping process when NRC determines that an environmental impact statement will be prepared in connection with a proposed licensing action. 10 CFR 51.26(a).

audit, including site visits, document review, requests for confirmatory items, and requests for additional information,⁷³ and the NRC staff is consulting with federal and state agencies, Tribes, and local government authorities—all of which will support the NRC staff’s preparation of an EA. In response to NRC requests for information, Applicants have supplemented the environmental information provided alongside the Exemption Request.⁷⁴

NRC staff’s preparation of the EA will lead to either a finding of no significant impact (“FONSI”) or a decision to prepare an environmental impact statement (“EIS”).⁷⁵ NRC staff is targeting issuance of a draft EA for public review and comment in January 2025,⁷⁶ and a final EA is due in June 2025.⁷⁷

4. NRC Inspection Process and Final Restart Approval

As noted above, in May 2024, NRC published IMC 2562 to provide a framework for restart inspections and NRC’s final determination regarding PNP’s readiness to resume power operations. IMC 2562 gives staff flexibility to craft an inspection program based on the state of the plant, licensing bases, operational programs, and history during operations—to provide NRC with

⁷³ E.g., NRC, Draft Environmental Regulatory Audit Plan and Draft Requests for Additional Information (June 27, 2024) (ML24248A056); NRC, Draft Requests for Confirmatory Information (Sept. 4, 2024) (ML24248A261); NRC, Requests for Additional Information Regarding the Proposed Reauthorization of Power Operations of Palisades Nuclear Plant Under Renewed Facility Operating License No. DPR-20 (Sept. 20, 2024) (ML24263A171).

⁷⁴ HDI, Response to Request for Additional Information Regarding the Proposed Reauthorization of Power Operations at Palisades Nuclear Plant under Renewed Facility Operating License No. DPR-20 (Oct. 4, 2024) (ML24278A027); HDI, Response to Draft Requests for Confirmatory Information (Sept. 12, 2024) (ML24260A354).

⁷⁵ 10 CFR § 51.31(a). NRC has discretion to prepare a draft FONSI and make it available for public comment before the final decision regarding whether to prepare an EIS or FONSI for the proposed action. 10 CFR 51.33(a).

⁷⁶ NRC, Initiation of Scoping Process to Prepare an Environmental Assessment at 2 (June 27, 2024) (ML24155A026).

⁷⁷ NRC, Change in Estimated Hours and Review Schedule for Licensing Actions Submitted to Support Resumption of Power Operations, at 1 (Sept. 12, 2024) (ML24219A420).

reasonable assurance of safe operations following the restart.⁷⁸ Staff has since published an inspection plan for the restart based on its evaluation of these plant-specific considerations discussed in IMC 2562.⁷⁹ When inspection and licensing activities for the restart are complete, IMC 2562 contemplates that the licensee will submit an operational readiness letter to NRC verifying completion of all activities and their readiness to implement the operational licensing bases.⁸⁰ In response, the Restart Panel will provide an assessment of the plant’s readiness to return to power operations to the NRR Director and Region Administrator, who ultimately approve the return to operational status.⁸¹

NRC will re-implement the ROP at Palisades and transition oversight responsibility from the Office of Nuclear Material Safety and Safeguards (the office that oversees plants in decommissioning) back to NRR (the office that oversees operating reactors).⁸² Only after completing all of these inspection and verification activities will Applicants be authorized to load fuel and resume operation of the reactor.

D. Opportunity to Request a Hearing

The NRC published its notice of an opportunity to request a hearing in the Federal Register on August 7, 2024.⁸³ The Federal Register Notice acknowledged that Applicants had submitted “several requests for NRC approval to support allowing the resumption of power operations,” but made clear that “[t]he scope of this notice *is limited to* comments, requests for a hearing, and

⁷⁸ IMC 2562 at 10.

⁷⁹ Palisades Restart Inspection Plan.

⁸⁰ IMC 2562 at 9–10.

⁸¹ *Id.* at 5.

⁸² *Id.* at 13.

⁸³ Federal Register Notice, 89 Fed. Reg. 64,486.

petitions for leave to intervene related to the four” LARs, which were listed in a table in the notice.⁸⁴ The Federal Register Notice also includes an order setting forth procedures that potential parties to the proceeding could follow to request access to sensitive unclassified non-safeguards information, which would include proprietary versions of the LARs, if the potential party found access to such information “necessary to respond to this notice.”⁸⁵ Such requests needed to be submitted within 10 days of publication, *i.e.*, by August 17 2024.⁸⁶

E. Summary of the Petition

While the Petition and its supplements are styled as a petition for hearing, and they do articulate five contentions, Joint Petitioners do not ask for an evidentiary hearing on any issues related to the LARs, but instead ask the Board to grant them other types of affirmative relief. Specifically, Joint Petitioners seek: (1) a formal interpretation pursuant to 10 CFR 50.3 by the NRC’s General Counsel of the Palisades restart regulatory pathway; (2) a “call for transparency in the decision-making process, including public access to the regulations and interpretations selected by the NRC staff and approved by the NRC General Counsel;” (3) suspension of all of Holtec’s ongoing activities and license amendment reviews until “appropriate regulations are evaluated, approved, and aligned with NRC-approved design and quality assurance standards,” and (4) a determination that system restoration activities conducted at Palisades “should not be considered valid evidence” and “must be excluded from the record.”⁸⁷ Joint Petitioners also express a “preference” for a new rulemaking as “the superior approach” and assert that that the current status

⁸⁴ *Id.* at 64,487-88 (emphasis added).

⁸⁵ *Id.* at 64,490-91.

⁸⁶ *Id.* at 64,490.

⁸⁷ Petition at 8-9.

of the Restart project is not “fully ripe” for the NRC to complete its reviews under existing regulations or to allow Holtec to undertake power operations restart activities at the site.⁸⁸

The Petition cites only one of the four LARs, the Tech Spec LAR (referred to by its ADAMS accession number), and even there the Petition only quotes the Applicants’ description of how they plan to use the 10 CFR 50.59 process to evaluate the reinstatement of the Palisades FSAR that was in effect prior to the submission of permanent cessation of operations.⁸⁹ The vast majority of the Petition focuses on NRC’s regulatory and oversight framework as it relates to the resumption of power operations at Palisades in general.

IV. The Petition must be rejected because it is entirely out of scope and fails to meet the basic requirements of 2.309(f)(1).

Joint Petitioners do not present any issues for an evidentiary hearing at all, much less one focused on the LARs. They attempt to call into question the utilization of fundamental regulatory and licensing processes that Applicants and the NRC staff are following in connection with Applicants’ project to resume power operations at Palisades, and they ask this Board to intervene in NRC staff’s ongoing inspection process in relation to the same. Nowhere in the Petition is there any reference or challenge to any specific portion of the LARs, much less any argument that some portion of any of the LAR is unsupported or inconsistent with NRC regulations. This failure leaves the Petition wholly inadmissible for failing to raise a genuine dispute with the licensing action that is within the scope of the proceeding. Moreover, the Petition and its various supplements fail to

⁸⁸ *Id.* at 11-12. Toward that end, they have also submitted a Petition for Rulemaking to the NRC. PRM-50-125, Petition for Rulemaking, “Petition for Rule-making to Amend 10 CFR Part 52, ‘Licenses, Certifications, and Approvals For Nuclear Power Plants’” (July 1, 2024) (ML24205A122). The NRC published a notice in the Federal Register on September 19, 2024 requesting comments on the Petition for Rulemaking. Petition for rulemaking; notice of docketing and request for comment, Returning a Decommissioning Plant to Operating Status, 89 Fed. Reg. 76,750 (Sept. 19, 2024).

⁸⁹ Petition at 44.

conform to basic procedural requirements for petitions to intervene and fails to demonstrate a basic understanding of NRC regulations and the Palisades licensing basis. By electing not to engage with the contents of any of the LARs, but rather focusing on alleged shortcomings or suggested improvements to the way that Applicants and the NRC staff should be conducting the restart activities in general, none of Joint Petitioners' arguments are sufficient to support an admissible contention and therefore the Petition must be rejected.⁹⁰

A. The Petition does not satisfy basic requirements for a petition to intervene and hearing request.

While the Petition makes passing references to 10 CFR 2.309(f)(1), the Joint Petitioners have failed to satisfy much of the basic criteria in the NRC's contention admissibility rules. There are five contentions presented throughout the various filings, but many of those contentions do not actually request a hearing or present any issue for resolution by this Board, and much of the contents of Joint Petitioners' various filings are not clearly connected to the contentions. Indeed, a substantial portion of Joint Petitioners' filings consist of bulleted statements and excerpts from documents, which Joint Petitioners do not explain the relevance of, do not form into a cohesive argument, and do not relate back to any matter that might be pertinent to the LARs or an adjudicatory proceeding before this Board. Joint Petitioners have failed to provide a clear statement regarding what, if any, specific issues they actually want to litigate in an evidentiary hearing before the Board, thus failing to satisfy the criteria of 2.309(f)(1)(i) and (ii).⁹¹ The Petition is also unaccompanied by any expert report or other evidentiary bases to be considered in an

⁹⁰ *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-06, 91 NRC 225, 233 (2020) ("Petitioners may not use our hearing process to challenge NRC regulations or express generalized grievances with NRC policies").

⁹¹ *Three Mile Island*, CLI-21-2, 93 NRC at 81 n.64. ("Neither the Board nor the Commission is expected to search through voluminous documents in search of assertions that would support [a petitioner's] claims.").

evidentiary hearing, failing to satisfy the criteria of 2.309(f)(1)(v). As discussed more below, the Petition fails to engage with or dispute any specific portions of the LARs, instead the Joint Petitioners are simply asking for clarification on NRC regulatory process, either from the Commission in rulemaking or from the Office of General Counsel via legal interpretation, and are asking the Board to suspend all restart-related activities until Joint Petitioners have received it. But none of that is within the scope of the Federal Register Notice or matters that give rise to a hearing under Section 189a of the Atomic Energy Act. And finally, although Mr. Alan Blind purports to represent the Joint Petitioners, he has provided no explanation as to why he may do so under the NRC procedural rules (which require licensed attorneys to represent petitioners)⁹² or why he himself has standing to participate in this proceeding.

“[I]t has long been a ‘basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation.’”⁹³ The fact that the Joint Petitioners have selected a non-lawyer who is unfamiliar with the NRC adjudicatory process to represent them in this proceeding does not excuse Joint Petitioners from their obligation to comply with the requirements of 10 CFR 2.309 if they wish to participate in this adjudicatory process, which only involves the right to request an evidentiary hearing on matters related to the LARs.

⁹² See 10 CFR § 2.314(b); see also n.222, *infra*.

⁹³ *Oconee*, CLI-99-11, 49 NRC at 338–39 (1999) (quoting *Texas Utilities Generating Co.* (Comanche Peak Steam Elec. Station, Units 1 and 2), CLI-83-18, 17 NRC 1037, 1048 (1983)).

B. The only matters within the scope of this proceeding are the LARs, which Joint Petitioners have not challenged.

Long-standing NRC precedent makes clear that the scope of a proceeding is set by the federal register notice that provides an opportunity to request a hearing.⁹⁴ Moreover, the Federal Register Notice is clear that this proceeding is limited to the LARs.⁹⁵

Joint Petitioners admit this limited scope,⁹⁶ but they then ignore the limitation. The Petition does not challenge the bases for the findings the NRC must make in issuing the requested amendments, and it contains only extremely limited references to any of the LARs themselves. As explained above, the Petition cites to only the Tech Spec LAR and does not challenge any specific portion of that LAR, instead simply focusing on the other regulatory processes described therein.⁹⁷ Instead of challenging the adequacy of the LARs, Joint Petitioners focus on the overall regulatory scheme for restarting operations at any nuclear power reactor and whether such a scheme requires a specific rulemaking or other process.⁹⁸ They also assert that a decision to not pursue a rulemaking is an interpretation of the NRC's regulations that must be officially opined on by the NRC's General Counsel pursuant to 10 CFR 50.3.⁹⁹ And the Petition focuses on alleged deficiencies in Applicants' plan to evaluate changes to the Palisades licensing basis using NRC regulations such

⁹⁴ *Fansteel*, LBP-03-13, 58 NRC at 100; *Catawba*, ALAB-825, 22 NRC at 790; *Trojan*, ALAB-534, 9 NRC at 289-90 n.6.

⁹⁵ Federal Register Notice, 89 Fed. Reg. at 64,488 (“[t]he scope of this notice *is limited to* comments, requests for a hearing, and petitions for leave to intervene related to the four” LARs (emphasis added)).

⁹⁶ Petition at 20 (“The scope of this notice is limited to comments, requests for a hearing, and petitions for leave to intervene related to the four proposed license amendment requests listed in tabular form in Section III.”).

⁹⁷ *Id.* at 44 (quoting the Applicants' description of how they plan to evaluate reinstatement of the power operations UFSAR under the change process set forth in 10 CFR 50.59).

⁹⁸ *Id.* at 27–28.

⁹⁹ *Id.* at 29–30.

as 10 CFR 50.54 and 10 CFR 50.59.¹⁰⁰ In focusing on all these other regulatory activities, Joint Petitioners fail to demonstrate a genuine dispute with any of the LARs that are actually the subject of this adjudicatory proceeding.¹⁰¹ For this reason, Joint Petitioners fail to meet their burden to proffer an admissible contention under 10 CFR 2.309(f)(1)(iii) and (vi).

C. The Part 50 regulatory framework for implementing license amendments, exemptions, and changes under 10 CFR 50.54 and 50.59 is not within the scope of this proceeding.

Joint Petitioners seek to challenge the adequacy of basic regulatory processes that are available to all licensees, including those who have filed the certifications of permanent cessation of operations and defueling under 10 CFR 50.82(a)(1). Joint Petitioners suggest that a rulemaking is preferable to the restart pathway proposed by Applicants and, in the alternative, request a formal interpretation from the NRC's General Counsel.¹⁰²

The Commission has already rejected similar arguments regarding the need for a rulemaking in the PRM Denial.¹⁰³ Specifically, the PRM Denial made clear that no rulemaking is required because “the existing regulatory framework may be used” in restarting power operations without raising “significant safety or security concerns.”¹⁰⁴ Much of the Petition is devoted to Joint Petitioners' belief that “the existing regulatory framework” is unclear or subjective, but the Joint Petitioners make no attempt to engage with the extensive discussion of the applicable regulatory requirements presented in each of the LARs, which includes an explanation of the standard under 10 CFR 50.90 and the substantive Part 50 regulations governing the technical changes requested

¹⁰⁰ *Id.* at 51-52; *see also* discussion in Section V.B, *infra*.

¹⁰¹ *Susquehanna*, CLI-23-1, 97 NRC at 84; *Trojan*, ALAB-534, 9 NRC at 289-90 n.6.

¹⁰² Petition at 26-27.

¹⁰³ PRM Denial, 86 Fed. Reg. at 24,363.

¹⁰⁴ *Id.*

in each LAR.¹⁰⁵ Moreover, NRC’s inspection documents make clear that NRC is conducting inspections and evaluating Palisades’s operational readiness against the same criteria applicable to an operating facility, including relevant portions of the power operations licensing basis that are in the process of being reinstated.¹⁰⁶ It is unclear what part of the process Joint Petitioners would like NRC to clarify that they have not already stated in public documents. Moreover, the PRM Denial confirms that no official interpretation from the NRC’s General Counsel is required to proceed in the manner Applicants have proposed—the Commission itself has already weighed in.¹⁰⁷

Contentions based on these types of challenges, which in effect go to the adequacy of the NRC staff’s safety review¹⁰⁸ or present the preferences of Joint Petitioners on what they believe should happen beyond what is required by the regulations, notwithstanding the existing NRC regulations and prior Commission direction, are inadmissible.¹⁰⁹ As such, the Petition must be rejected as an attack on existing NRC regulations and policies.¹¹⁰

D. Applicants’ actions in resuming power operations at Palisades are subject to NRC inspections.

There is no dispute that the Palisades restart is a first-of-a-kind undertaking. Throughout the licensing proceeding, Applicants and the NRC have been clear that their activities at Palisades,

¹⁰⁵ Tech Spec LAR at 89–91; Admin Controls LAR at 18; Emergency Planning LAR at 27; MSLB LAR at 6 (describing the applicable regulatory criteria for each LAR).

¹⁰⁶ See IMC 2562 at 10–11; Palisades Restart Inspection Plan.

¹⁰⁷ See PRM Denial, 86 Fed. Reg. at 24,363

¹⁰⁸ *Oyster Creek*, CLI-08-23, 68 NRC at 476.

¹⁰⁹ *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 395 (1987).

¹¹⁰ *Seabrook*, LBP 82-76, 16 NRC at 1035; *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-01-6, 53 NRC 138, 151 (2001) (it is a fundamental principle of NRC adjudication any challenge to a “Commission regulation, whether directly or indirectly, is always outside the scope of the proceeding and inadmissible”).

including their refurbishing, physical improvements, and licensing work, are subject to NRC inspection.¹¹¹ Indeed, NRC inspection is a critical part of Applicants’ restart plan, and the NRC has issued the Palisades Restart Inspection Plan. And Joint Petitioners are aware of the oversight and public involvement, having participated in many public meetings and engagement opportunities.¹¹² Joint Petitioners continue to actively track developments from the NRC inspection process, as demonstrated by the three supplements they filed discussing the initial results of HDI’s steam generator inspections.¹¹³

Notwithstanding the amount of public information that is available, Joint Petitioners claim that the NRC should require Applicants to suspend all restart activities until there is even more information or even more prescribed processes.¹¹⁴ Joint Petitioners also claim that all of Holtec’s activities must be stopped because allowing them to take actions now “does not give NRC inspections staff adequate, objective NRC approved guidance for inspection activities,”¹¹⁵ and “actions requiring quality inspections may not be recoverable, in that the ability to gain access to the inspection conditions cannot be replicated after the fact.”¹¹⁶ But the Petition does not discuss IMC 2562 or the Palisades Restart Inspection Plan. The NRC’s publication of IMC 2562 in May 2024 addresses the overall inspection and approval framework the agency will use to determine whether there is reasonable assurance of safe operations following the restart of Palisades and similarly situated plants, and the Palisades Restart Inspection Plan documents how the NRC will

¹¹¹ See Section III.C.4, *supra* (discussing IMC 2562 and the NRC’s Restart Panel, including the August 2024 NRC inspection plan).

¹¹² See Petition at 17-18.

¹¹³ September 20 Supplement; September 22 Supplements I and II; *see also* Section V.F, *infra*.

¹¹⁴ Petition at 8-9.

¹¹⁵ *Id.* at 26.

¹¹⁶ *Id.* at 9.

implement this IMC at Palisades.¹¹⁷ Challenges to the adequacy of the NRC staff's inspection processes or safety reviews are inadmissible in a licensing proceeding,¹¹⁸ as are contentions that seek to impose requirements that go beyond the current regulatory scheme.¹¹⁹

Applicants appreciate that Joint Petitioners believe a different regulatory process should apply to the restart of Palisades and that they should be able to participate in and holistically question all aspects of that process. But, appropriately, they have filed a petition for rulemaking to assert these policy positions.¹²⁰ The only thing that matters in this proceeding is the LARs. In reviewing these four LARs, NRC will not be revisiting the PRM Denial, opinion on the global framework for restarting a nuclear plant after it has ceased operations, or deciding the sufficiency of any of the other regulatory activities, apart from the LARs, that may ultimately be required to resume power operations. This is a multi-year process that is still underway. To the extent Joint Petitioners wish to challenge or comment on all of those other activities, they may do so by exercising the procedural rights afforded to them by the Atomic Energy Act, NRC regulations, and

¹¹⁷ IMC 2562 provides a framework similar to that contemplated by existing IMCs addressing a return to operations after an extended shutdown period (e.g., IMC 0375), which gives Region staff flexibility to craft an inspection program based on the state of the plant, licensing basis, operational programs, and operational history to provide NRC with reasonable assurance of safe operations following the restart. IMC 2562, Section 06-04.

¹¹⁸ *Oyster Creek*, CLI-08-23, 68 NRC at 476; *Omaha Public Power District* (Fort Calhoun Station Unit 1), CLI-15-5, 81 NRC 329, 334 (2015) (“Staff inspections and CALs, in and of themselves, are oversight activities normally conducted for the purpose of ensuring that licensees comply with existing NRC requirements and license conditions and, therefore, do not typically trigger the opportunity for a hearing under the AEA.” (citations omitted)).

¹¹⁹ *Shoreham*, CLI-87-12, 26 NRC at 395.

¹²⁰ See note 88 *supra*.

other opportunities to comment on the Palisades Restart project.¹²¹ But this proceeding is not an open forum to litigate these policy issues.

* * * *

For all of these reasons, the Petition is inadmissible, because Joint Petitioners fail to demonstrate a genuine dispute with the LARs, much less demonstrate a material issue.

V. None of the Proffered Contentions Satisfy the 2.309 Admissibility Standard

Joint Petitioners purport to raise five contentions in this proceeding. Although there is significant overlap with the general legal issues discussed in Section IV above, when examined individually, all of the proposed contentions fail to meet the contention admissibility criteria in 10 CFR 2.309(f)(1). Therefore, all five contentions must be rejected.

A. Contention 1 is not admissible because the NRC Staff is not replacing adherence to NRC regulations in reviewing the LARs.

Contention 1 is styled as follows:

NRC staff are proceeding with the review of license amendments, and other licensee restart actions, based on a denial of a rulemaking petition without approval from NRC General Counsel of staff's interpretation of SECY-20-0110 for Holtec's proposed license amendments, specifically regarding which NRC rules constitute the "existing regulatory framework."¹²²

Contention 1 avers that "there is no public visibility of the direct connection between the existing NRC rules" for a plant resuming power operations "and a return to a known set of NRC rules for power reactor operations and SOP [sic] oversight."¹²³ Joint Petitioners therefore claim

¹²¹ Indeed, the Petitioners have done precisely that. *See, e.g.*, September 20 Supplement, September 22 Supplements I and II; the correspondence with the NRC discussed in Section VII, *infra.*; Public Comment of Alan S. Blind, Docket No. 50-255, NRC-2024-0130 (Aug. 11, 2024) (ML24227A015); Public Comment of Alan S. Blind at NRC Public Meeting; Docket ID NRC-2024-0076 (July 11, 2024) (ML24219A389); Public Comment of Alan S. Blind, Docket ID NRC-2024-0076 (July 7, 2024) (ML24198A168).

¹²² Petition at 24–25.

¹²³ Petition at 39.

that Applicants and the NRC staff are “using the proposed Holtec NRC rules,” which they assert are outside the current regulatory framework for the “proposed licensing actions.”¹²⁴ Joint Petitioners also assert that the NRC’s General Counsel must issue an interpretation pursuant to 10 CFR 50.3 to “[r]econcile the differing language used by Holtec, staff, and the Federal Register for the correct meaning of the denial language” in SECY-20-0110 (*i.e.*, the PRM Denial) and also “[a]pprove the final NRC staff’s interpretation on what specific rules are to be used for staff review of Holtec submittals and Holtec return to service period updates, *i.e.*, FSAR, QAPD, SEP update.”¹²⁵

As explained in Section IV above, Contention 1 (and the rest of the Petition) does not acknowledge or challenge any of the regulatory criteria that are set out in the LARs or explain why the normal standard applicable to license amendments is unclear or insufficient to guide NRC’s review of the LARs.¹²⁶ Putting aside Joint Petitioners’ failure to raise a challenge to the LARs that are at issue in this proceeding (which is sufficient to reject Contention 1 on its own), their arguments in support of Contention 1 are unavailing for two reasons. First, even if there were any precedent for such an action (which there is not), there is no need for the NRC’s General Counsel to issue an advisory opinion for the Joint Petitioners’ benefit—the PRM Denial, the NRC’s regulations, publication of IMC 2562, the Palisades Restart Inspection Plan, Applicants’ submittals, and the multitude of opportunities for public engagement have provided more than sufficient clarity on the regulatory processes and standards that govern the restart of Palisades in general and that guide NRC staff’s review of individual licensing actions, including the LARs.

¹²⁴ *Id.* By “proposed licensing actions,” Joint Petitioners appear to be referring to the restart of power operations at Palisades in general, not the LARs.

¹²⁵ *Id.* at 41-42.

¹²⁶ *See* note 105 *supra*; 10 CFR 50.92(a).

Even if, despite their active participation in many of these public processes, Joint Petitioners remain unsure of how specific NRC regulations apply to the various restart activities, that is not a basis for holding an evidentiary hearing on the LARs. By seeking to participate in an adjudicatory proceeding before this Board, Joint Petitioners “voluntarily accept[] the obligations attendant upon such participation,” which means they must engage with the information that is available to them in order to formulate contentions that satisfy the 2.309(f)(1) criteria—not simply ask for clarification.¹²⁷

Second, Joint Petitioners’ appeal to the NRC’s General Counsel to provide an interpretation pursuant to 10 CFR 50.3 misunderstands the fundamental structure of the NRC itself and the role of the General Counsel and her staff under the Atomic Energy Act and the Energy Reorganization Act (“ERA”). The ERA vests both the policymaking and oversight roles with the NRC’s Commissioners.¹²⁸ However, the ERA also allows the Commissioners to employ staff, including attorneys, to advise them.¹²⁹ In this role, the General Counsel provides advice to the Commissioners themselves, but the Commission ultimately makes the determination of policy and regulations. And here, the Commission, in the PRM Denial, has clearly stated NRC policy and provided sufficient guidance to the NRC staff on the acceptability of using the existing regulatory framework for overseeing Palisades restart activities without the need for a General Counsel interpretation. That policy and guidance is not subject to challenge in this proceeding on Applicants’ LARs.¹³⁰

¹²⁷ *Oconee*, CLI-99-11, 49 NRC at 338–39.

¹²⁸ Energy Reorganization Act, Section 201(f) (42 U.S.C. § 5841(f)) (transferring the licensing and regulatory functions of the Atomic Energy Commission to the Commission, including those under Section 161 of the Atomic Energy Act (42 U.S.C. § 2201)).

¹²⁹ Atomic Energy Act, Section 161d (42 U.S.C. § 2201(d)).

¹³⁰ *Turkey Point*, LBP-01-6, 53 NRC at 151; *Private Fuel Storage, LLC*, LBP-98-13, 47 NRC at 365.

Relatedly, Joint Petitioners appear to misunderstand the interpretations contemplated by 10 CFR 50.3. Such requests for interpretation are issued “very sparingly and only in instances involving major policy or legal questions.”¹³¹ More importantly, such interpretations apply only to the meaning of the regulations themselves and are not a mechanism to obtain an advisory opinion on how the regulations apply to a specific licensee’s proposal, nor are they a vehicle for resolving important policy issues. Such authority remains with the Commissioners themselves,¹³² and they have already weighed in—in the PRM Denial. Moreover, the NRC has only ever issued a total of five binding interpretations, which were published in 10 CFR Part 8.¹³³ But the NRC determined in 2012 that each of these five interpretations had been superseded by changes to the regulations and therefore the NRC removed Part 8 from its regulations.¹³⁴ And there is nothing in 10 CFR 50.3 that requires the NRC General Counsel to issue a binding interpretation. Thus, there is no expectation that the NRC General Counsel will issue a binding interpretation explaining to the Joint Petitioners how, specifically, NRC regulations apply to all of the various regulatory activities involved in connection with the restart of Palisades, and nothing that requires her to do so.

Given the above, Joint Petitioners have failed to demonstrate any issue that is material to the findings the NRC must make on the LARs and instead raises issues well beyond the scope of this adjudicatory proceeding. Contention 1 should, therefore, be dismissed.

¹³¹ See e.g., Letter from J. Gray, NRC, to D. Lochbaum, Union of Concerned Scientist (Aug. 14, 2000) (ML003717880).

¹³² See Atomic Energy Act, Section 161d.

¹³³ Final Rule, Interpretations; Removal of Part 8, 77 Fed. Reg. 21,625, 21,626 (Apr. 11, 2012).

¹³⁴ *Id.* at 21,626.

B. Contention 2 is not admissible because updates to the Final Safety Analysis Report are authorized under NRC regulations.

Contention 2 is:

Holtec's proposal to update the Final Safety Analysis Report (UFSAR), now titled the Defueled Safety Analysis Report (DSAR), via the 10 CFR 50.59 process (changes, tests, and experiments) is flawed and not consistent with a more applicable regulation within the "existing regulatory framework" as referenced in SECY-20-0110.¹³⁵

Joint Petitioners claim in Contention 2 that Applicants' plan to update Palisades's FSAR "is flawed because the previous FSAR is no longer the licensing basis for the plant."¹³⁶ Joint Petitioners assert that, as of the date that ENOI submitted the certifications of permanent defueling of the reactor vessel and cessation of operations, "the Entergy FSAR and design basis no longer exist."¹³⁷ Because, in Joint Petitioners' view, there is no existing FSAR, Applicants are unable to use the screening processes set forth in 10 CFR 50.59 to determine what changes can be made to the plant.¹³⁸

1. Joint Petitioners' challenges to the use of the 10 CFR 50.59 process are insufficient to support an admissible contention.

In their September 22 Supplement III, Joint Petitioners allege that references in the Tech Spec LAR "detailing the use of § 50.59 to reinstate accident analyses and reclassify systems, structures, and components (SSCs), falls squarely within the scope outlined by the [Federal Register Notice]."¹³⁹ Contrary to this assertion, Commission precedent on this topic is clear that, "[a] member of the public may challenge an action taken under 10 C.F.R. § 50.59 only by means

¹³⁵ Petition at 25.

¹³⁶ *Id.* at 51.

¹³⁷ *Id.* at 53.

¹³⁸ *Id.*

¹³⁹ September 22 Supplement III at 2.

of a petition under 10 C.F.R. § 2.206.”¹⁴⁰ The Tech Spec LAR is a request for a license amendment under 10 CFR 50.90; it does not involve the application of the 50.59(c) process to the technical specifications or the FSAR. Contextual references in the Tech Spec LAR to other parallel activities being taken in connection with the restart do not make all of those activities part of this adjudicatory process.¹⁴¹ Contention 2 essentially claims that Applicants will violate NRC regulations in the future, which is the type of claim that can only be brought in a 2.206 petition. In fact, Joint Petitioners’ representative has done precisely that.¹⁴² Contention 2 is therefore beyond the scope of matters that may be litigated before the Board on the LARs.

Contention 2 also reveals a misunderstanding of NRC’s regulations—which require an operator to maintain and operate its site in conformance with a FSAR and the rest of its licensing basis until the license is terminated.¹⁴³ Joint Petitioners’ claim that “there is no current FSAR” is incorrect.¹⁴⁴ Indeed, Condition 2.b.(2) of the Palisades RFOL imposes the following license condition on Applicants’ ownership and possession of the plant:

¹⁴⁰ *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994).

¹⁴¹ The Tech Spec LAR and its supplement also mention the LTA, the Exemption Request, and the evaluation Applicants expect to make to reinstate a power operations physical security plan under 10 CFR 50.54(p). *See* Tech Spec LAR at 1–2; HDI, Supplement to License Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations, Encl. at 4 (July 9, 2024) (ML24191A422)

¹⁴² Petition at 82–83 (referring to 2.206 petitions filed by Mr. Alan Blind requesting, among other things, “that the NRC require Holtec to submit a new [FSAR]”).

¹⁴³ All licensees must submit a FSAR with their application for an operating license. 10 CFR 50.34(b). The operating license for Palisades, as do all other NRC operating licenses, includes conditions that the facility must be operated in accordance with the descriptions of the FSAR.

¹⁴⁴ *See* Petition at 52.

HDI, pursuant to the Act and 10 CFR Part 40 and 70, to possess source, and special nuclear material that was used as reactor fuel, in accordance with the limitations for storage, as described in the Updated Final Safety Analysis Report.¹⁴⁵

The Palisades FSAR is required by NRC regulations and the RFOL license conditions and continues to exist.¹⁴⁶ Petitioners cannot create an issue of fact based on statements that are clearly refuted by the licensing documents.¹⁴⁷

Joint Petitioners argue in their September 20 Supplement and the September 22 Supplements I and II that Applicants are required to submit a new preliminary safety analysis report and await NRC approval of that filing, prior to being able to restart power operations.¹⁴⁸ As Joint Petitioners argue, “[g]iven Palisades’ extended period outside the NRC Regulatory Oversight Program (ROP) since 2022, this paper assumes, as similarly argued in the full petition, that the FSAR regulations for new plant construction are more applicable.”¹⁴⁹ But a PSAR is only required pursuant to 10 CFR 50.34(a) for applicants for a construction permit, while a FSAR is required pursuant to 10 CFR 50.34(b) for applicants for an operating license. Petitioners have identified no requirement that any existing holder of a Part 50 operating license, like Applicants, must submit a

¹⁴⁵ Holtec Palisades, LLC, Holtec Decommissioning International, LLC, Docket No. 50-255, Palisades Nuclear Plant, Renewed Facility Operating License, Amendment 273 (July 13) (ML22039A198). Prior to the issuance of Amendment 272, license Condition 2 license provided that “ENO, pursuant to the Act and 10 CFR Parts 40 and 70, *to receive, possess, and use* source and special nuclear material that was used as reactor fuel in accordance with the limitations for storage and *amounts required for reactor operation*, as described in the Updated Final Safety Analysis Report, as supplemented and amended.” Letter from S. Wall, NRC, to Vice President, Operations, ENOI, “Palisades Nuclear Plant – Issuance of Amendment No. 273 RE: Permanently Defueled Technical Specifications,” Encl. 2, Safety Evaluation Related to Amendment No. 272 to Renewed License at 14-15 (emphasis added) (ML22173A176).

¹⁴⁶ HDI PNP 2023-002, Letter from Holtec Decommissioning International to NRC Document Control Desk, Final Safety Analysis Report Update Revision 36 (Mar. 31, 2023) (ML23107A604). (“Revision 36 includes changing the FSAR title to Defueled Safety Analysis Report (DSAR) reflecting the transition of PNP to a permanently defueled facility.”).

¹⁴⁷ *Consumers Energy Co., Nuclear Management Co, LLC, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 410 (2007).

¹⁴⁸ September 20 Supplement at 4; September 22 Supplement I at 2.

¹⁴⁹ September 22 Supplement I at 2.

PSAR—because no such requirement exists. To the extent this claim is based on the underlying premise that Palisades’s operating license and FSAR have been terminated, that theory is demonstrably incorrect.¹⁵⁰

In addition, Joint Petitioners’ claim that the NRC cannot allow Applicants to use the 10 CFR 50.59 process to screen potential changes to the current licensing basis. But such a challenge is a collateral attack on the NRC’s regulations, which would require the Board to grant a waiver in this proceeding pursuant to 10 CFR 2.335. Joint Petitioners have not requested such a waiver, much less been granted one. Absent being granted a waiver, NRC regulations are not subject to attack in a licensing proceeding, and, thus, Contention 2 must be dismissed.

Finally, in the September 27 Supplement, Joint Petitioners argue that “Holtec’s proposed changes [under 10 CFR 50.59], which involve the reclassification of SSCs and reinstatement of accident analyses, would fundamentally alter the plant’s licensing basis. This exceeds the threshold for what is permissible under § 50.59 and demands NRC review and approval.”¹⁵¹ Joint Petitioners do not identify which specific changes they are referring to, nor do they identify any specific criteria in 10 CFR 50.59(c) that Applicants would allegedly be unable to satisfy. Conclusory statements that do little more than just repeat the high-level contention are not sufficient to support an admissible contention, even if Applicants’ evaluations under 50.59 were within the scope of this proceeding.¹⁵²

¹⁵⁰ Section IV.B of Applicants’ Answer Opposing Beyond Nuclear et al.’s Petition for Hearing, which is being filed in parallel to this answer, more fully addresses the argument that Palisades must essentially start the licensing process over as if it were a new plant. That argument is central to Beyond Nuclear et al.’s petition; however, to the extent Joint Petitioners’ arguments can be construed to present the same argument, the same response applies.

¹⁵¹ September 27 Supplement at 5.

¹⁵² *Three Mile Island*, CLI-21-2, 93 NRC at 81 n.64. (“Neither the Board nor the Commission is expected to search through voluminous documents in search of assertions that would support [a petitioner’s] claims.”).

2. Joint Petitioner's arguments that issues with the steam generators are Palisades further demonstrate the issues with Applicants' use of the 10 CFR 50.59 process are likewise insufficient to support a contention.

Joint Petitioners allege that issues relating to the steam generators at Palisades demonstrate the issues associated with the use of the 10 CFR 50.59 process in the restart.¹⁵³ As explained in Section IV.D, *supra*, the restart of Palisades is subject to inspection by the NRC. As part of the restart process, Applicants conducted steam generator tube inspections on August 24, 2024, with experienced NRC inspectors on-site and observing.¹⁵⁴ As the NRC then publicly reported, “[d]uring Holtec’s analysis of the inspection data, preliminary results identified a large number of SG tubes with indications that require further analysis and/or repair. Further data analysis is in progress with additional tube inspections, testing, and repairs to be completed over the next few months.”¹⁵⁵

Based on this report, Joint Petitioners argue that “a significant number” of additional steam generator “tubes are showing indications of failure, perhaps necessitating further plugging.”¹⁵⁶ Joint Petitioners allege that “neither [Applicants] nor the NRC has an approved analysis to evaluate whether the tube plugging will remain within the safety limits established in the FSAR. Without an NRC-approved FSAR, it is impossible to determine the maximum allowable percentage of plugged tubes.”¹⁵⁷ Joint Petitioners also argue, without citation, that a FSAR analysis would be inappropriate in any event, because of the age of the plant, it was not required to meet the defense

¹⁵³ September 20 Supplement and September 22 Supplements I and II.

¹⁵⁴ NRC, Region III, Preliminary Notification of Event or Unusual Occurrence – PNO-III-24-002, “Preliminary Results of Steam Generator Inspections at Palisades Nuclear Plant” (Sept. 18, 2024) (ML24262A092) (“SG PNO”).

¹⁵⁵ SG PNO.

¹⁵⁶ September 20 Supplement at 2.

¹⁵⁷ September 20 Supplement at 2-3; *see also generally* September 22 Supplement I (discussing the safety implications for why steam generator plugging is required).

in depth and redundancy captured in the General Design Criteria as set forth in 10 CFR Part 50, Appendix A, and therefore the alleged fact that there is no longer an FSAR for Palisades.¹⁵⁸

As discussed above in this section, there is a FSAR for Palisades, and only the LARs are within the scope of this proceeding. But none of the LARs propose any modifications to the portions of the power operations RFOI or FSAR that address steam generator tube plugging.¹⁵⁹ If Applicants propose to perform any remediation activities that are not authorized by the licensing basis, Applicants will either need to satisfy the requirements for implementing those changes without a license amendment under 10 CFR 50.59(c) or they will submit a license amendment request for NRC approval. The same could be true of any number of other technical issues—none of which are subject to adjudication in the present proceeding.¹⁶⁰ That is, in part, the point of the restart project and corresponding inspection process. Because none of the LARs propose any modifications to the relevant sections of the Palisades licensing basis that govern steam generator

¹⁵⁸ September 22 Supplement II.

¹⁵⁹ Tech Spec LAR, Encl. at 55, 78, 84 (proposing to reinstate in their entirety the power operations technical specifications that govern steam generator tube integrity and related inspections).

¹⁶⁰ NRC has rejected nearly the same argument in connection with a proposed steam generator replacement at Davis Besse. *See FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-13-11, 78 NRC 177, 180 (Aug. 12, 2013).

[T]he contention plainly challenges FirstEnergy's analysis of its proposed steam generator replacement under 10 C.F.R. § 50.59. Such a challenge is not cognizable in this proceeding. As the Commission has stated, "[a] member of the public may challenge an action taken under 10 C.F.R. § 50.59 only by means of a petition under 10 C.F.R. § 2.206." Such a petition must be submitted to the Executive Director for Operations for consideration by the appropriate office director. Therefore, a challenge to FirstEnergy's analysis under 10 C.F.R. § 50.59 of its proposed steam generator replacement is not the proper subject of an adjudicatory hearing, much less a hearing in a proceeding that concerns only a request to amend FirstEnergy's license to modify four technical specifications. . . . It is those proposed changes to the technical specifications—and not the actual physical replacement of steam generators and associated section 50.59 analysis—that are potentially subject to a hearing before this Board.

Id. (citations and footnotes omitted).

tube plugging, all of Joint Petitioners' arguments regarding the Palisades steam generators are beyond the scope of this proceeding and fail to raise a material dispute with the LARs.

* * * *

For all of these reasons, Joint Petitioners have failed to show that Contention 2 is material to the issues that the NRC must make or to demonstrate it raises a genuine dispute with Applicants' requested licensing action, and, thus, Contention 2 should be dismissed.

C. Contention 3 is not admissible because questions about quality assurance are part of the Current Licensing Basis and not subject to attack in this proceeding.

Contention 3 is:

Holtec's proposal to update the HDI decommissioning Quality Assurance Program Description (QAPD) currently in effect, with appropriate quality assurance controls to cover the activities being performed at the plant during the restoration period, without prior NRC approval, is flawed and not consistent with a more applicable regulation within the "existing regulatory framework" as referenced in SECY-20-0110.¹⁶¹

In Contention 3, it appears that Joint Petitioners are trying to challenge the ability of Applicants to modify the Palisades quality assurance program documents using the change processes in 10 CFR 50.54(a). The Petition claims that such a plan "is flawed" because the activities to restore power operations are more similar to activities during the construction of a new plant.¹⁶² More drastically, Joint Petitioners claim that, upon ENOI's submission of the permanent cessation of operations, the "QAPD no longer exists" and Applicants' ownership of Palisades pertains only to decommissioning activities.¹⁶³ None of this is relevant to the LARs, and even if this contention is examined, most of it is incorrect and ignores docketed information.

¹⁶¹ Petition at 25.

¹⁶² *Id.* at 55.

¹⁶³ *Id.* at 56.

Just like changes implemented to an FSAR under 50.59 are not subject to adjudication in proceedings under 2.309, the same is true of attempted challenges to changes to QA program documents under 10 CFR 50.54(a).¹⁶⁴ These are “compliance” arguments that assert that the licensee has failed to comply with the applicable regulatory criteria—in this case, the claim is that Applicants will violate those criteria in the future—which may only be brought in a 2.206 petition.¹⁶⁵

Regardless, Applicants have actually filed their proposed power operations Quality Assurance Program Manual (“QAPM”) with NRC as a supplement to the license transfer application that is currently the topic of adjudicatory proceedings before the Commissioners.¹⁶⁶ Applicants have also filed notice of their implementation of a transitional quality assurance program (“TQAP”) to govern certain Palisades activities before that power operations QAPM is implemented.¹⁶⁷ Joint Petitioners do not reference either filing, but given that Contention 3 appears to be an objection to Applicants’ implementation of a power operations QA program without NRC approval, the fact that Applicants have filed the QAPM ostensibly resolves their concerns. To the extent Joint Petitioners’ concern is aimed at the period prior to the reinstatement of power operations authority, the TQAP also ostensibly addresses those concerns. As described in

¹⁶⁴ 10 CFR 50.54(a)(3) allows that licensees “may make a change to a previously accepted quality assurance program description included or referenced in the Safety Analysis Report without prior NRC approval, provided the change does not reduce the commitments in the program description as accepted by the NRC.”

¹⁶⁵ See *Yankee Nuclear*, CLI-94-3, 39 NRC at 101 n.7; *Davis-Besse*, LBP-13-11, 78 NRC at 180.

¹⁶⁶ HDI PNP 2024-025, Letter from Holtec Decommissioning International, LLC, to NRC Document Control Desk, Supplement to Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments, Proposed Power Operations Quality Assurance Program Manual, Revision 0, (May 23, 2024) (ML24144A106).

¹⁶⁷ HDI PNP 2024-030, Letter from Holtec Decommissioning International, LLC, to NRC Document Control Desk, Update Report for Holtec Decommissioning International (HDI) Fleet Decommissioning Quality Assurance Program (DQAP) Revision 3 and Palisades Transitioning Quality Assurance Plan (TQAP) Rev 0 (Aug. 2, 2024) (ML24215A356)

Applicants' notice, the TQAP is meant to "to increase commitments [relative to the decommissioning quality assurance program] as the site transitions back to an operating status."¹⁶⁸ Regardless, all of this is beyond the scope of this proceeding on the LARs, which do not propose to modify the Palisades QA documents.

Finally, Joint Petitioners' claim that "[i]t is understood that no specific regulation governs the writing of a new Quality Assurance Plan for a plant in decommissioning and return to operations via a period of system restoration," is wrong.¹⁶⁹ Section 50.54(a) and Part 50 Appendix B govern the Palisades quality assurance program, the same as every other nuclear licensee's. To the extent Contention 3 suggests that Applicants' QA program should be subjected to a different standard than those set forth in NRC regulations, such arguments cannot support an admissible contention, and, thus, Contention 3 should be dismissed.¹⁷⁰

For the foregoing reasons, Contention 3 should be dismissed for failure to satisfy 10 CFR 2.309(f)(1)(iii), (v), and (vi).

D. Contention 4 is not admissible because nothing bars Applicants from proceeding with system restoration activities, subject to final NRC approvals and inspections.

Contention 4 is:

The NRC is allowing Holtec to take "other actions" within the "existing regulatory framework," as referenced in SECY-20-0110, to complete the period of system restoration activities. In its "in scope" License Amendment Requests, Holtec proposed rules for the QAPD and FSAR (see contentions one, two, and three) that are now being used, without NRC approval, to support the period of system restoration activities. Doing so, does not give NRC inspections staff adequate, objective, NRC approved guidance for inspection activities. NRC inspection

¹⁶⁸ TQAP Filing at 2; *see also id.* at Encl. 3.

¹⁶⁹ Petition at 55.

¹⁷⁰ *Shoreham*, CLI-87-12, 26 NRC at 395; *Seabrook*, LBP-82-106, 16 NRC at 1656.

manual statements, brings this contention within scope of the “in scope” License Amendment Review submittals.¹⁷¹

Similar to Contention 3, Contention 4 alleges that Applicants’ plan to undertaken changes to the Palisades licensing basis is improper because there is no such licensing basis.¹⁷² Joint Petitioners’ “concern is lack of NRC approved licensing basis and QAPD does not give NRC inspections staff adequate guidance in evaluating design basis (no NRC approved FSAR) and no quality guidance for activities such as special processes, documentation, quality control inspections, etc. (no NRC approved QAPD).”¹⁷³ This appears to either be an attack on the adequacy of the current licensing basis or on the NRC inspection process. Both are beyond the scope of this proceeding.¹⁷⁴

Even engaging with the argument, it appears that Petitioners are challenging the NRC’s inspection process for lack of guidance; however, Joint Petitioners’ fail to identify any specific issues with IMC 2562, and they overlook completely the Palisades Restart Inspection Plan and the public results of those inspections that have been completed to date. As of October 1, 2024, the NRC had conducted four inspections of Palisades restart activities, and prominently displayed them in the “Inspection Report” section of the “Potential Restart” sub-tab on the NRC’s website for information specific to Palisades on its website.¹⁷⁵ Each of these reports lays out the standards and criteria that the NRC is using to inspect against. For example, in the July 15, 2024 Inspection

¹⁷¹ Petition at 25–26.

¹⁷² Petition at 66–67.

¹⁷³ *Id.*

¹⁷⁴ *Oyster Creek*, CLI-08-23, 68 NRC at 476; *Shoreham*, CLI-87-12, 26 NRC at 395; *Seabrook*, LBP-82-106, 16 NRC at 1656.

¹⁷⁵ See NRC, Palisades Nuclear Plant website (last updated Oct.. 2, 2024) available at <https://www.nrc.gov/info-finder/reactors/pali.html> (last visited Nov. 3, 2024). The webpage provides a link to the inspection reports in ADAMS.

Report, which documents inspections on May 1, 2024 and May 10, 2024, “to ensure the adequate protection of workers and the public under the radiation safety cornerstone and to assess requalification training and evaluation of previously licensed operators under the reactor safety cornerstones” lays out the specific inspection procedures that were inspected against (those applying to “Reactor Safety Cornerstones” and “Radiation Safety Cornerstones” in the ROP.¹⁷⁶ Joint Petitioners do not acknowledge these Inspection Reports or explain why the inspection procedures selected by the NRC are inadequate, even if such arguments were within the scope of this proceeding, which they are not.¹⁷⁷

Alternatively, Contention 4 can be read as asserting that Applicants cannot do any remediation or system restoration work, and NRC cannot inspect any of Palisades’s systems, until NRC has issued *all* required approvals. In other words, Applicants cannot perform any work “at risk” pending NRC’s evaluation of the various regulatory actions. Joint Petitioners do not identify any regulation or portion of the licensing basis that prevents Applicants from performing remediation and system restoration work at Palisades, nor do they supply any compelling basis for imposing such a requirement given that NRC will only reauthorize power operations after completing inspections necessary to obtain “reasonable assurance for safe operations following reactivation of an operating license.”¹⁷⁸ These arguments are collateral attacks on NRC’s

¹⁷⁶ Letter from NRC to M. Mlynarek, HDI, Palisades Nuclear Plant – Restart Inspection Report 05000255/2024011 (July 15, 2024) (ML24197A185).

¹⁷⁷ *Susquehanna*, CLI-17-4, 85 NRC at 74.

¹⁷⁸ IMC 2562 at 1; *see generally Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), CLI-78-17, 8 NRC 179, 181 (“Of course, in any case where a permit from an administrative agency is subject to judicial review, the permit holder proceeds at the risk that judicial review may result in invalidation of the permit. The company would be proceeding at its own risk in that sense. . . . That decision remains up to the applicant.”); *Power Reactor Development Corp. v. Electricians Union*, 367 U.S. 396, 415 (1961) (An applicant for a commercial power license “has been on notice long since that it proceeds with construction at its own risk, and that all its funds may go for naught.”).

inspection process in general, which are beyond the scope of matters that may be litigated in a proceeding on a discrete licensing action.¹⁷⁹

For all of the above reasons, Contention 4 is out of scope and fails raise a material dispute with the LARs.

E. Contention 5 is not admissible because the Exemption Request is not subject to challenge in this proceeding.

1. Joint Petitioners have not demonstrated that the Exemption Request is within the scope of this proceeding.

In their Contention 5 Supplement, Joint Petitioners request that the Board provide a public hearing on the Exemption Request. Pointing to an order issued by the NRC Secretary on September 2024,¹⁸⁰ Joint Petitioners argue that the Exemption Request “is integral to the licensing actions aimed at reauthorizing power operations at Palisades” and falls within the scope of the Federal Register Notice.¹⁸¹ Because the “exemption is essential to the success” of restarting Palisades, Joint Petitioners argue that it is “subject to public hearing rights under the Atomic Energy Act.”¹⁸² Accordingly, Joint Petitioners request that the NRC reject the Exemption Request for failing to meet the requirements of 10 CFR 50.12 and failure to “provide sufficient safety assurances, reliance on circular logic, failure to submit a comprehensive restart plan, and misapplication of” the ongoing rulemaking process NRC has undertaken to revise its decommissioning rules (the “Proposed Decommissioning Rule”).¹⁸³ Petitioners also point to statements in the NRC’s

¹⁷⁹ *Fort Calhoun*, CLI-15-5, 81 NRC at 334.

¹⁸⁰ Order of the Secretary (Sept. 26, 2024) (ML24270A263) (“Secretary Order”).

¹⁸¹ Contention 5 Supplement at 4.

¹⁸² *Id.* at 3.

¹⁸³ *Id.* at 5. Joint Petitioners cite to the Regulations.gov docket number for the Decommissioning Rule. *Cf.* NRC Proposed Rule, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, 87 Fed. Reg. 12,254, 12,254 (Mar. 3, 2022) (“Proposed Decommissioning Rule”).

acceptance letters that, they allege, demonstrate that the LARs in combination with the Exemption Request are “necessary to reauthorize power operations.”¹⁸⁴

But Joint Petitioners do not identify any legal precedent that supports their attempt to litigate their challenges to the Exemption Request in this proceeding on the LARs. As the Commission has explained, “Congress intentionally limited the opportunity for a hearing to certain designated agency actions—agency actions that do *not* include exemptions.”¹⁸⁵ Recent precedent relating specifically to the Exemption Request has also provided Joint Petitioners (and other members of the public) with reminders of this limitation. Specifically, in September 2024, a group of petitioners (who have also filed a petition in this proceeding) submitted a request for a declaratory order, asking the Commission to clarify “whether the NRC will allow the exemption request to be considered in a petition to intervene regarding the [LARs].”¹⁸⁶ Those petitioners invoked the same NRC precedent that says an exemption may only be challenged if it is “inextricably intertwined” with a licensing action,¹⁸⁷ but never made any arguments as to how that precedent applies to the Exemption Request at issue here—they were simply asking for an advisory opinion. The NRC Secretary declined to issue such an advisory opinion but clarified that NRC has not prejudged the admissibility of any contentions in the current proceeding on the LARs, including contentions related to the Exemption Request if the applicable criteria for challenging an exemption in a licensing proceeding under 10 CFR 2.309 are met.¹⁸⁸

¹⁸⁴ Contention 5 Supplement at 7.

¹⁸⁵ *Zion*, CLI-00-05, 51 NRC at 96.

¹⁸⁶ Petition for Declaratory Order, Docket No. 50-255, at 12 (Sept. 5, 2024) (ML24250A100) (“Petition for Declaratory Order”).

¹⁸⁷ *Id.* at 12.

¹⁸⁸ *Id.* at 3.

Joint Petitioners merely assert they should be allowed to challenge the Exemption Request because it is “a critical component of a broader licensing strategy that includes multiple LARs and a license transfer request.”¹⁸⁹ In other words, their argument is that all regulatory activities being undertaken in connection with the restart are subject to adjudication in this proceeding on the LARs simply because they are aimed at the same ultimate objective of restarting Palisades. That is not the standard articulated by NRC caselaw, and that logic would mean that the license transfer request and any other regulatory approval relevant to the restart is subject to adjudication before the Board, which they are not. Joint Petitioners have not provided any explanation as to how any of the specifics of the LARs are inextricably intertwined with the Exemption Request, nor have they identified any specific information in the Exemption Request that is relevant to NRC staff’s technical evaluation of the LARs. Joint Petitioners have the obligation to support their claims with arguments based on relevant legal precedent.¹⁹⁰ And nowhere does the Petition attempt to relate the Exemption Request to the LARs in the manner required by longstanding caselaw. Accordingly, Petitioners have failed to demonstrate their entitlement to challenge the Exemption Request in this proceeding, and this Board should not construct Joint Petitioners’ arguments for them.¹⁹¹

Even if Joint Petitioners had attempted to apply the NRC precedent that allows certain exemption requests to be challenged alongside a licensing action—which Joint Petitioners have not done—that precedent does not allow them to challenge this Exemption Request in this proceeding on these four LARs. NRC has allowed hearings on exemption requests that make up

¹⁸⁹ Contention 5 Supplement at 7.

¹⁹⁰ *Susquehanna*, CLI-17-4, 85 NRC at 74.

¹⁹¹ “[I]t is Petitioners’ responsibility, not the Board’s, to formulate contentions and to provide ‘the necessary information to satisfy the basis requirement’ for admission.” *Palisades*, CLI-15-23, 82 NRC at 329 (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC at 22).

the “required elements” of a parallel licensing action,¹⁹² such that the proposed exemption “directly bears on whether the proposed action should be granted.”¹⁹³ Put another way, when NRC’s review of a licensing action necessarily involves consideration of the same subject matter as its review of an exemption request, Section 189a of the Atomic Energy Act does not *remove* the exemption request from scope of matters that may be adjudicated on the licensing action. This situation most often presents itself when an exemption request is bundled with a licensing action, such that the applicant cannot meet the criteria for approval of the licensing action without receiving approval of the related exemption.¹⁹⁴

That is not the case here. The Exemption Request was submitted separately, months before the LARs, and, as explained above, if granted would only allow withdrawal of the 50.82(a)(1) certifications from the docket; it does not bear on whether the amendments requested by the LARs should also be issued or whether those amendments satisfy the applicable regulatory criteria.¹⁹⁵ The Exemption Request was originally filed to help frame the overall restart process and to offer NRC a vehicle to issue final approval(s) of the restart once all of the relevant restart conditions have been satisfied, including approval of the LARs. But that part of the Exemption Request has largely been subsumed in or superseded by IMC 2562, which now provides the decisionmaking framework for NRC’s final approval to restart Palisades. What is left is approval to rescind the

¹⁹² *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001).

¹⁹³ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant & Big Rock Point Site), CLI-22-8, 96 NRC 1, 14 (2022).

¹⁹⁴ *See, e.g., Private Fuel Storage*, CLI-01-12, 53 NRC at 467 (“resolution of the exemption request directly affects the licensability of the proposed ISFSI”); *Palisades*, CLI-22-8, 96 NRC at 14 (“[Applicant] relies on the requested exemption . . . for its demonstration of financial qualifications; therefore the exemption request and license transfer application are intertwined.”).

¹⁹⁵ *Cf.* Tech Spec LAR at 89–91; Admin Controls LAR at 18; Emergency Planning LAR at 27; MSLB LAR at 6 (describing the applicable regulatory criteria for each LAR).

certifications of shutdown and defueling. But the fact that the Exemption Request and the LARs are both aimed at the same ultimate objective—authorizing the restart—does not mean that NRC’s approval of the LARs is dependent on its parallel review of the Exemption Request. Put differently, just because both the exemption and the amendments may ultimately be required to resume power operations does not mean that the two are co-dependent in a manner that scopes the Exemption Request into the Section 189a hearing process. They are separate approvals on parallel tracks, just like the license transfer application that is also not within the scope of this proceeding.¹⁹⁶ Whether NRC grants the exemption from 10 CFR 50.82(a)(2) to allow Applicants to rescind the certifications of shutdown and defueling will not affect the criteria against which the LARs are judged. In the case of the Tech Spec LAR, which is the only one Joint Petitioners refer to, NRC’s review of the LARs is based on the criteria in 10 CFR 50.36 and 50.36b. None of the contents of the Exemption Request has any bearing on whether the LARs satisfy those requirements. NRC could accept *arguendo* all of Joint Petitioners’ arguments on the Exemption Request, but doing so would not change anything about NRC staff’s review of the LARs. Accordingly, even considering the NRC precedent that Joint Petitioners themselves have ignored, the Exemption Request is not within the scope of this proceeding on the LARs.

¹⁹⁶ Federal Register Notice, 89 Fed. Reg. at 64,487:

HDI is seeking to return [Palisades] to power operations and has submitted several requests for NRC approval to support allowing the resumption of power operations through March 24, 2031, the end of the renewed facility operating license term under PNP RFOL No. DPR-20. These requests include four license amendment requests, *which are the subject of this notice*, a license transfer request, and an exemption request. The hearing opportunity for the license transfer request is being addressed by a separate notice published in today’s issue of the Federal Register. Consistent with the Atomic Energy Act of 1954, as amended, and NRC regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption request.

Id. (emphasis added); *see also* Palisades Nuclear Plant and the Palisades Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of Licenses and Conforming Amendment, 89 Fed. Reg. 64,493 (Aug. 7, 2024).

2. Joint Petitioners have not raised a material dispute with the 10 CFR 50.12 “special circumstances” claimed in the Exemption Request.

Even if challenges to the Exemption Request were considered in an adjudicatory proceeding on the LARs, Joint Petitioners’ arguments do not support admission of a contention. They argue that Applicants have failed to demonstrate “special circumstances” for an exemption to meet the requirements of 10 CFR 50.12(a)(2).¹⁹⁷ None of these arguments are supported by any relevant precedent or raise a material dispute with the special circumstances claimed in the Exemption Request.

Joint Petitioners first allege that the timeline of events associated with the licensing actions “shows that governmental support for continued operations was present” prior to the 2022 shutdown and thus “Entergy could have sought a buyer for continued operations without submitting the shutdown certifications.”¹⁹⁸ Joint Petitioners offer no explanation for why this supposedly disqualifies Applicants from satisfying 10 CFR 50.12(a)(2). Even accepting Joint Petitioners’ speculation that Holtec could have renegotiated its agreement with Entergy that obligated Holtec to buy Palisades after shutdown and defueling,¹⁹⁹ Joint Petitioners have pointed to no regulatory requirement or relevant caselaw that suggests an applicant for an exemption is required to demonstrate that the bases for the exemption were unforeseeable by the licensee for some period of time prior to submitting the exemption request. The text of 50.12 itself requires a showing of “undue hardship or other costs that are significantly in excess of those contemplated

¹⁹⁷ Contention 5 Supplement at 8-9.

¹⁹⁸ *Id.* at 8.

¹⁹⁹ ENOI, Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments, Encl. 1, Att. C, “Membership Interest Purchase and Sale Agreement, dated July 30, 2018,” at 5 (Dec. 23, 2020) (ML20358A075) (requiring, as a condition to closing, “[t]he delivery by [Entergy] of written notice to NRC of the permanent cessation of operations of the Palisades NPS” and “[t]he Palisades NPS shall have been permanently shut down and all Nuclear Fuel shall have been removed from the Palisades NPS reactor vessel and placed in the Palisades NPS spent nuclear fuel pool.”).

when the regulation was adopted.”²⁰⁰ And NRC has granted numerous exemptions based on similar reversals of political and economic factors without requiring any demonstration that the applicants in those situations moved as aggressively as possible as soon as the possibility of changing circumstances began to come to fruition.²⁰¹

Second, Joint Petitioners claim that, in order to obtain the exemption, Applicants must submit “a comprehensive and integrated restart plan for review.”²⁰² Joint Petitioners offer no legal authority for why such a submittal is required by 10 CFR 50.12. Nor do they explain what purpose such a filing would serve in light of the inspection process contemplated by IMC 2562.²⁰³ Asking for more than the regulation requires does not form the basis for an admissible contention.

Next, Joint Petitioners’ claim that the requested exemption is not justified because, contrary to Applicants’ claim, preventing Palisades from restarting is, in fact, in furtherance of the purposes of 10 CFR 50.82 because they assert that filing the 50.82(a)(1) certifications was “a permanent step.”²⁰⁴ Joint Petitioners offer support or argument in support of this proposition. They do not

²⁰⁰ 10 CFR 50.12(a)(2)(iii) (emphasis added).

²⁰¹ *E.g.*, NRC Exemption Issuance, Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2 88 Fed. Reg. 32,253, 32,256 (May 19, 2023) (“The impact of changes in economic and legislative conditions on licensees’ decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is also present.”); NRC Exemption Issuance, Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3, 87 Fed. Reg. 16,246, 16,248 (Mar. 22, 2022) (“[The licensee] stated that the decision to continue power operation at Dresden Nuclear Power Station, Units 2 and 3, depended on economic and legislative factors that evolved in a way that did not permit [compliance with the regulation]. The licensee further stated that if the exemption is not granted . . . then the licensee would face the risk of being forced to shut down if the application is not approved before the current licenses expire. The impact of changes in economic and legislative conditions on licensees’ decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) also is present.”).

²⁰² Contention 5 Supplement at 10.

²⁰³ IMC 2562 at 1 (stating the purpose of the IMC 2562 process, “[t]o detail the requirements for the inspection activities and operational plant readiness to provide reasonable assurance for safe operations following reactivation of an operating license.”).

²⁰⁴ *Id.* at 10–12.

reference the 1996 rulemaking that explained that the 50.82(a)(1) certifications are a gating item: “[b]efore undertaking [decommissioning] activities, the licensee must provide certifications to the NRC that operations have permanently ceased and fuel has been permanently removed from the reactor vessel.”²⁰⁵ Nor do they acknowledge the more recent discussion in the Proposed Decommissioning Rule, which explained that “[a] nuclear power reactor licensee formally begins the decommissioning process when it certifies its permanent cessation of operations and permanent removal of fuel from the reactor vessel under §§ 50.82(a)(1).”²⁰⁶ Nowhere does the NRC state that the purpose of 50.82(a)(2) is to ensure that licensees can never leave decommissioning. To the contrary, Reg. Guide 1.184 specifically says the certifications are reversible,²⁰⁷ and in the PRM Denial, the Commission explained that “there is no statute *or regulation* prohibiting such action.”²⁰⁸ Both clearly contradict Joint Petitioners’ unsupported claim that the purpose of 50.82(a)(2) is to ensure that the 50.82(a)(1) certifications are permanent.

Finally, Joint Petitioners filed a supplement to Contention 5 that includes a series of points that have no apparent relationship to the criteria for an exemption in 10 CFR 50.12 and just retread much of the same ground from Joint Petitioners’ earlier filings: (1) Applicants should not rely on staff’s silence (in response to the Regulatory Path HDI filed in February 2023) as tacit approval of Applicants’ plan, (2) Applicants should do nothing until NRC approves everything, (3) the Exemption Request “introduces significant risks to public health and safety by deferring critical safety assurances to future NRC inspections and licensing actions,” and (4) Applicants cannot

²⁰⁵ NRC Final Rule, Decommissioning of Nuclear Power Reactors, 61 Fed. Reg. 39,278, 39,279 (July 29, 1996); 10 CFR 50.82(a)(5) (limiting the performance of any “major decommissioning activities” until after submittal of the 50.82(a)(1) certifications).

²⁰⁶ Proposed Decommissioning Rule, 87 Fed. Reg. at 12,263.

²⁰⁷ Reg. Guide 1.184 at 7.

²⁰⁸ PRM Denial, 86 Fed. Reg. at 24,363 (emphasis added).

restart Palisades without NRC approval.²⁰⁹ Joint Petitioners do not connect these points into a cohesive argument that is relevant to the criteria for granting an exemption, and so Applicants will not do it for them.²¹⁰ The stated upshot of these points is that “NRC must formally approve each step in Holtec’s proposed regulatory framework sequence, only then, followed by acceptance for review of the specific exemption request, before any substantive actions can be taken toward resuming power operations.”²¹¹ This appears to be another iteration of Joint Petitioners’ arguments in support of Contention 4, that Applicants cannot perform any system restoration activities until NRC issues all of the approvals required for the restart. Joint Petitioners offer no authority for this position, and, apart from generic claims that these activities “introduce[] significant risks to public health and safety,”²¹² Joint Petitioners do not explain why system restoration activities at a defueled nuclear facility presents any public danger.

Contention 5’s challenge to the Exemption Request is outside the scope of this proceeding on the LARs, and even if the Board were to consider Joint Petitioners’ arguments, they are unsupported by any legal authority and fail to raise a material dispute with the Exemption Request, much less the LARs. For these reasons, Contention 5 is inadmissible.

VI. The Joint Petitioners Have Not Established Standing

The Petition includes declarations from eight individuals and refers to them all as “petitioners.” Because the Petition has not posed at least one admissible contention, the Board

²⁰⁹ Final Supplement at 1–8.

²¹⁰ *See Palisades*, CLI-15-23, 82 NRC at 329.

²¹¹ Final Supplement at 9.

²¹² Final Supplement at 6.

need not address the question of standing to intervene in this proceeding.²¹³ All the same, the Joint Petitioners have not established standing to intervene in this proceeding as a matter of right under 10 CFR § 2.309(d).²¹⁴

Although the Commission's regulations permit a party to appear on his or her own behalf,²¹⁵ the eight Joint Petitioners listed in the Petition have not done so. Nowhere do they sign the Petition itself or state their capacity as petitioners with the signatures required by the Commission's regulations.²¹⁶ Rather, the Petition is signed only by Mr. Blind as a "Preparer" or "Point of Contact." Mr. Blind does not purport to be an attorney, nor have Joint Petitioners claimed to be members of any organization through which a non-attorney could represent them under the Commission's regulations. As such, the Board need not consider the standing allegations of those eight individuals who have not signed themselves as individuals and who are not properly represented within an organization or by an attorney. Regardless, all of Joint Petitioners' standing-

²¹³ See *Susquehanna*, CLI-15-8, 81 NRC at 503 n.19 ("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 *Fla. Power & Light Co.*, CLI-01-17, 54 NRC 3, 26 (2001)).

²¹⁴ Joint Petitioners apparently seek only intervention as of right, making no effort to address the six factors required for discretionary intervention under 10 CFR § 2.309(e). In any event, those factors counsel against discretionary intervention. See *In re Andrew Siemaszko* (Davis-Besse Nuclear Power Station), CLI-06-16, 63 NRC 708, 708 (Jun. 2, 2006); See *In the Matter of Tennessee Valley Auth.* (Enforcement Action), LBP-21-03, 93 NRC 153, 159 (2021) ("The Commission considers discretionary intervention to be 'an extraordinary procedure' and, insofar as we are aware, it has never upheld a request for discretionary intervention in an enforcement proceeding.").

²¹⁵ 10 CFR § 2.314(b).

²¹⁶ See 10 CFR § 2.304(d) ("The original of each document must be signed by the participant or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing; his or her address, phone number, and e-mail address; and the date of signature. The signature of a person signing a pleading or other similar document submitted by a participant is a representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. The signature of a person signing an affidavit or similar document, which should be submitted in accord with the form outlined in 28 U.S.C. 1746, is a representation that, under penalty of perjury, the document is true and correct to the best of that individual's knowledge and belief. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be struck.").

based arguments assume that the immediate operation of Palisades is on the table—but it isn’t yet—meaning Joint Petitioners’ arguments are directed at hypothetical harms that are not only not imminent, as is required to establish standing, but aren’t even possible results of the NRC’s granting of the LARs presently before the Board.

A. Legal Standard for Demonstrating Standing

In order to demonstrate that standing pursuant to 10 CFR 2.309(d), petitioners must address: (1) the nature of their rights under the Atomic Energy Act to be made parties to the proceeding; (2) the nature and extent of their property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on that interest.²¹⁷ In practice, this requires satisfying either the requirements for presumptive standing based on geographic proximity to the proposed facility, or the traditional elements of standing.²¹⁸ Where the petitioner is an organization, it must either demonstrate standing in its own right or representational standing.²¹⁹ Because Joint Petitioners cannot establish organizational or proximity-based standing, and the alleged hypothetical harms are misdirected toward the restart of Palisades, they have failed to carry their burden to establish standing.

B. Because Alan Blind, a non-lawyer, is an individual, and not an organization, he cannot rely on representational standing of other individuals.

While the Petition lists Alan Blind as its “Preparer”²²⁰ and the other “Petitioners” purportedly “agree that Alan Blind [is] to be the petition point of contact”²²¹ in each of their

²¹⁷ 10 CFR § 2.309(d)(1)(ii)-(iv).

²¹⁸ See *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 579-83 (2005).

²¹⁹ *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

²²⁰ Petition at 72.

²²¹ *Id.* at 75–81.

declarations, Joint Petitioners do not claim to share membership in any organization. Further, even putting aside the potential unauthorized practice of law, designation of Mr. Blind as the “point of contact” for a petition apparently prepared, submitted, and certified by Mr. Blind, a non-lawyer, is beyond the contemplation of NRC regulations.²²² The upshot is that Mr. Blind, who submitted no sworn declaration regarding his own interest in this proceeding, cannot rely on the declarations of the other Joint Petitioners absent shared membership in an organization, and the other Joint Petitioners cannot rely on Mr. Blind to represent them absent a license to practice law. But because both things are absent, only Mr. Blind’s personal standing is at issue in this proceeding, a burden he must meet on the back of his own demonstrated interest herein. Mr. Blind has failed to meet that burden.

To invoke representational standing, an organization must: (1) show that at least one of its members has standing in his or her own right (*i.e.*, by demonstrating geographic proximity in cases where the presumption applies, or by demonstrating injury-in-fact within the zone of protected interests, causation, and redressability), (2) identify that member by name and address, and (3) show—preferably by affidavit—that the organization is authorized by that member to request a hearing on behalf of the member.²²³

²²² See 10 CFR § 2.314(b) (“A person may appear in an adjudication on his or her own behalf *or* by an attorney-at-law. . . . A party may be represented by an attorney-at-law *if the attorney is in good standing and has been admitted to practice* before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, and facsimile number and email address, if any; the name and address of the person or entity on whose behalf he or she appears; *and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative* or, in the case of another representative, the basis of his or her authority to act on behalf of the party.” (emphasis added)).

²²³ See, e.g., *N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 and 2; Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 47 (2000); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000).

Joint Petitioners purport to designate Mr. Blind as “the petition point of contact,”²²⁴ but offer no factual or legal basis for Mr. Blind’s representation of their purported interests. The Petition makes no reference to any kind of organization which might form the basis for representational standing. None of the declarations submitted in support of the Petition indicate that any of the declarants share membership in any organization that would be capable of establishing representational standing, and Mr. Blind does not assert a representational standing argument either in the original Petition, or his Standing Supplement.²²⁵ Accordingly, this is not an instance in which an organization might authorize one of its members to represent it.²²⁶

Relatedly, Mr. Blind is not an attorney. While the NRC’s Rules of Practice permit non-attorneys to appear and represent their *organizations* in agency proceedings,²²⁷ the regulations do not contemplate representation of an individual by a non-lawyer, and any party who does not appear *pro se* must be represented by a lawyer.²²⁸ Mr. Blind, a non-lawyer, cites no authority empowering him to file the Petition on behalf of other individuals in a representational capacity or to serve as “point of contact” for the other Petitioners. The other Petitioners cannot hitch their declarations onto Mr. Blind’s Petition—they must appear *pro se*, or not at all. With the other Petitioners’ interests so severed, Mr. Blind must demonstrate his individual standing to file the Petition—a burden he has failed to carry.

²²⁴ Petition at 75–81.

²²⁵ *See id.*; Standing Supplement.

²²⁶ *See* 10 CFR § 2.314(b) (“A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law.”).

²²⁷ *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1247 (1984), *rev’d in part on other grounds*, CLI-85-2, 21 NRC 282 (1985)

²²⁸ *See* 10 C.F.R. § 2.314(a), (b) (formerly § 2.713(a), (b)); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 2), ALAB-474, 7 NRC 746, 748 (1978); *Duke Power Co.* (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-440, 6 NRC 642, 643 n.3 (1977); *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 & 2), Licensing Board Order of October 8, 1976 (unpublished).

C. Mr. Blind has failed to establish proximity-based standing.

Under NRC case law, a petitioner may, in some instances, be presumed to have fulfilled the judicial standards for standing based on his or her geographic proximity to a facility or source of radioactivity.²²⁹ “Proximity” standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility.²³⁰ The NRC has held that the proximity presumption may be sufficient to confer standing on an individual in proceedings conducted pursuant to Part 50 for reactor construction permits, operating licenses, or significant license amendments.²³¹

Mr. Blind requests that he be admitted as a party to this proceeding because the *other individuals* who submitted declarations in support of the Petition “own homes and reside either full or part time, within the Palisades Emergency Planning Zone (EPZ), specifically within the Plume Exposure Pathway EPZ, making [them] directly vulnerable to any nuclear incidents at the Palisades Nuclear Plant.”²³² But Mr. Blind himself has submitted no such declaration. As a result, Mr. Blind has failed to establish standing based on proximity to the Palisades plant.

Even if Mr. Blind did live close to Palisades, however, that alone is insufficient to establish proximity-based standing. Rather, Mr. Blind would need to also demonstrate that the proposed

²²⁹ See *Peach Bottom*, CLI-05-26, 62 NRC at 580.

²³⁰ *Id.* (citations omitted).

²³¹ *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (citations omitted).

²³² Petition at 16. Mr. Blind provides an address for himself in connection with the Petition, 1000 West Shawnee Road, Baroda, Michigan, *id.* at 19, 72, but makes no statement as to whether he resides at that address. The address provided by Mr. Blind appears to be approximately 30 miles from the Palisades Plant, well outside the Palisades EPZ should the Emergency Planning LAR be granted. This address appears to be less than 7 miles from the D.C. Cook Nuclear Power Plant, which is still operating.

action “quite obvious[ly] entails an increased potential for offsite consequences,”²³³ and then explain “some ‘plausible chain of causation,’ some scenario suggesting how these particular license amendments would result in a distinct new harm or threat to [him].”²³⁴ Mr. Blind doesn’t even try. Instead, he says that “[p]ast nuclear incidents, including Fukushima and Three Mile Island demonstrate the real and significant impacts on property values, economic stability and permanent displacement” which he describes as “the hazards inherent to living near a nuclear facility.”²³⁵ Of course these have nothing to do with the issues currently before the Board, and such conclusory statements regarding *other operating* facilities do not explain *how* the alleged threatened harm to Mr. Blind is caused by the proposed action here, which will not itself lead to a restart of the Palisades facility. As such, Mr. Blind has not demonstrated a plausible chain of causation required to establish proximity-based standing.

D. Mr. Blind’s vague “concerns” that “might” occur at some indeterminate time in the future do not satisfy traditional standing requirements.

In instances where the proximity presumption of standing does not apply, “the Commission applies judicial concepts of standing.”²³⁶ To demonstrate standing, a petitioner must show: (1) an actual or threatened, concrete and particularized injury that is (2) fairly traceable to the challenged

²³³ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-04, 49 NRC 185, 191 (1999) (citing *St. Lucie*, CLI-89-21, 30 NRC at 329–30) (internal quotation marks omitted). *See also Peach Bottom*, CLI-05-26, 62 NRC at 580–81 (explaining how the Commission considers proximity-based standing in license transfer cases, and stating that “[i]f the petitioner fails to show that a particular licensing action raises an ‘obvious potential for offsite consequences,’ then our standing inquiry reverts to a ‘traditional standing’ analysis of whether the petitioner has made a specific showing of injury, causation and redressability”) (footnote omitted).

²³⁴ *Zion*, CLI-99-04, 49 NRC at 192.

²³⁵ Standing Supplement at 5.

²³⁶ *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 5-6 (1998), *aff’d sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999) (citations omitted); *see also Cabot Performance Materials* (Reading, Pennsylvania), LBP-00-13, 51 NRC 284, 289 (2000).

action, and (3) likely to be redressed by a favorable decision.²³⁷ These criteria are commonly referred to as injury-in-fact, causality, and redressability, respectively. The asserted injury must be “distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical.”²³⁸ Also, “when future harm is asserted, it must be ‘threatened,’ ‘certainly impending,’ and ‘real and immediate.’”²³⁹ Although a petitioner is not required to show that the injury flows directly from the challenged action, he must nonetheless show that the “chain of causation is plausible.”²⁴⁰ Finally, a petitioner must show that “its actual or threatened injuries can be cured by some action of the tribunal.”²⁴¹

Regarding the requirement of injury-in-fact, Mr. Blind asserts in the Standing Supplement that in an unspecified, presumably different case, “the Commission determined that the risk of radiological exposure, property damage, and economic loss qualifies as” a concrete and particularized injury “when the harm is linked to the plant’s operations. Petitioners in this case face similar risks tied directly to Palisades’ *potential* restart and petitioners request to the licensing board for action.”²⁴² Mr. Blind’s claim, however, ignores that (despite his wishes to the contrary) this proceeding is not an omnibus hearing on the Palisades restart project—it is an adjudicatory proceeding on four specific LARs that are not in and of themselves sufficient to allow Applicants

²³⁷ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1998)).

²³⁸ *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117–18 (1998) (citing *Steel Co.*, 118 S. Ct. at 1016; *Warth v. Seldin*, 422 U.S. 490, 501, 508, 509 (1975); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994)).

²³⁹ *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 NRC 344, 349 (2001), *aff’d*, CLI-01-21, 54 NRC 247 (2001) (citations omitted).

²⁴⁰ *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. See also *Crow Butte Res., Inc.* (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 345 (2009).

²⁴¹ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001).

²⁴² Standing Supplement at 3 (emphasis added).

to load fuel and operate the reactor. The “risk of radiological exposure, property damage, and economic loss” is zero.

Mr. Blind claims the NRC’s emergency planning procedures for homeowners within the EPZ evidence “the concrete risks faced by Petitioners in the event of a nuclear emergency.”²⁴³ Specifically, Mr. Blind claims that plans for the distribution of potassium iodide tablets “in the event of a nuclear incident” and “the real-world impacts of historical nuclear accidents, including long-term evacuation and property devaluation” means that Joint Petitioners’ injury is “not speculative.”²⁴⁴ These conclusory claims are insufficient to establish a concrete and particularized injury. In order to establish traditional standing, while “the injury need not already have occurred[,] . . . when future harm is asserted, it must be threatened, certainly impending, . . . and real and immediate.”²⁴⁵ That emergency plans are in place “in the event of a nuclear incident,” does not make such an incident, or the actual carrying out of emergency plan procedures, “threatened, certainly impending, [or] . . . immediate.”²⁴⁶

Similarly, Mr. Blind’s claimed injuries regarding the insufficiency of the regulatory framework being applied to the LARs and Exemption Request are entirely speculative: “[t]his flexibility *might* result in Holtec prioritizing less stringent rules,” “rules that, while technically compliant, *may* not fully address the unique risks of their operations,” “these rules *may* result in a

²⁴³ *Id.* at 10.

²⁴⁴ *Id.* at 11. To the extent this allegation alleges economic harm—*i.e.*, diminished property value—it is insufficient, by itself, to support a claim of standing. *See Quivira*, CLI-98-11, 48 NRC at 9 (“The fact that economic interest or motivation is involved will not preclude standing, but the petitioner must also be threatened by environmental harm.”) (citing *City of Los Angeles v. U.S. Dep’t of Agric.*, 950 F.Supp. 1005, 1011–12 (C.D. Cal. 1996).; *see also Int’l Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259, 265 (1998) (“[I]t has long been our practice as an agency to reject standing for petitioners asserting a bare economic injury, unlinked to any radiological harm.”) (citing *Va. Elec. & Power Co.* (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98, 105–06 (1976)).

²⁴⁵ *Cabot Performance Materials*, LBP-00-13, 51 NRC at 289 (citations and internal quotation marks omitted).

²⁴⁶ *See id.*

failure to meet the full spectrum of regulatory requirements,” “the review process may have been insufficient or incomplete.”²⁴⁷ Such a “speculative chain of possibilities” does not establish that the asserted injury is “certainly impending.”²⁴⁸ But “[a]llegations of *possible* future injury’ are not sufficient.”²⁴⁹ In other words, “an injury does not meet the imminence requirement if ‘one cannot describe how the [plaintiffs] will be injured without beginning the explanation with the word ‘if.’”²⁵⁰ Thus, Mr. Blind has failed to establish the first requirement of judicial standing.

Furthermore, even if the Board was inclined to turn to the carbon-copy declarations from the seven individuals submitted in connection with the Petition—who, again, do not comprise an organization and who are not represented by an attorney—they offer only conclusory assertions of hypothetical injury at some indeterminate time in the future based on a series of “what ifs.” These fail to establish a plausible nexus between the alleged harms and the LARs. In particular, each declaration asserts the same speculative risks: “radiological releases, contamination, and evacuation.”²⁵¹ Again, nothing “threatened, certainly impending, [or] . . . immediate,” especially so given that Holtec’s current requests will not authorize a restart of the Palisades plant.²⁵²

The traditional standing requirements of causality and redressability fail for similar reasons. Because the proposed actions relating to the LARs and Exemption Request are not sufficient to refuel or restart the Palisades facility, Mr. Blind’s hypothetical injuries could never

²⁴⁷ Petition at 7, 28, 63, 64 (emphases added).

²⁴⁸ *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 (2013).

²⁴⁹ *Clapper*, 568 U.S. at 409 (emphasis in original).

²⁵⁰ *Williams v. Governor of Penn.*, 552 F. App’x 158, 162 (3d Cir. 2014); *see also In re Navy Chaplaincy*, 516 F. Supp. 2d 119, 126 (D.D.C. 2007), *aff’d*, 534 F.3d 756 (D.C. Cir. 2008) (“Even were they to allege that they might encounter such discrimination in the future, a case that rests on ‘ifs’ stands not on solid ground but on stilts of conjecture.”).

²⁵¹ *See* Petition at 75–81.

²⁵² *See Cabot Performance Materials*, LBP-00-13, 51 NRC at 289 (citations and internal quotation marks omitted).

be traced to them. Nor are Mr. Blind's hypothetical injuries, unmoored as they are from the proposed actions at issue in this proceeding, redressable by the Board. Accordingly, Mr. Blind has failed to establish the required elements of traditional standing, and therefore lacks standing in this proceeding.

VII. It Would Be Improper to Introduce Correspondence between Joint Petitioners and NRC Staff in the Record of this Proceeding

On October 19, 2024, Joint Petitioners submitted a request to add correspondence with the NRC staff to the docket.²⁵³ Specifically, Joint Petitioners requested that the Board include in the record correspondence with the NRC's Office of Public Affairs providing responses from the Palisades Restart Panel to questions raised by Alan Blind after an August 1 public meeting about the restart of Palisades.²⁵⁴ As explained in the October 19 Request, Joint Petitioners' purported representative claims that, although the NRC staff allegedly had a reasonable amount of time to respond to the questions before the deadline to file the Petition, they "did not provide a timely, complete response" for inclusion in the Petition.²⁵⁵ Moreover, Joint Petitioners' claim that the decision to "decline any answers, either due to this hearing or citing a pre-decisional basis," the full response must be included for the Board's consideration and "must be treated as if the NRC staff response had been submitted in reply to my petition."²⁵⁶

In the Amended Initial Prehearing Order, the Board requested briefing on whether the October 19 Request should be granted. In short, Joint Petitioners have no basis for either request.

²⁵³ Letter from A. Blind to NRC ASLB, "Request to Add Correspondence to Docket No. 50-255-LA-3" (Oct. 19, 2024) ("October 19 Request").

²⁵⁴ October 19 Request at 1 (requesting to add Email from V. Mitlyng, NRC, to A. Blind, "RE: Re: Press Release Heads up, and Public Meeting Question Status?" (Sept. 18, 2024) (ML24291A244) ("NRC Email Response").

²⁵⁵ October 19 Request at 2.

²⁵⁶ *Id.*

As shown on the face of the NRC Email Response, the email was sent directly to Joint Petitioners' representative on September 18, 2024.²⁵⁷ Joint Petitioners had two and a half weeks to review this response and determine whether the information needed to be included in the Petition. After all, Joint Petitioners supplemented the Petition eleven times after the date of the email, and ten times before the October 7, 2024 deadline to request a hearing. To the extent that there is any information in the NRC's Email Response that should be considered by the Board, that information could have and should have been presented prior to October 7, 2024.

The October 19 Request is in essence a request for leave to supplement their pleadings after the deadline. However, such a request is unnecessary – there is nothing new in the NRC Email Response that Joint Petitioners have not raised in other parts of their Petition. The questions that Joint Petitioners are requesting a response to relate to the need for the NRC's General Counsel to issue a formal interpretation, the ability of Applicants to use an exemption rather than a formal rulemaking in restarting Palisades, the scope of the current licensing basis at Palisades, including the use of 10 CFR 50.54 and 10 CFR 50.59 as well as the updates to the Palisades Quality Assurance Plan, and the adequacy of the NRC inspection process, including the timeliness and availability for specific inspection points.²⁵⁸ All of these issues are issues that Joint Petitioners could have raised, and in fact did raise, prior to the deadline to request a hearing of October 7, 2024, and which are insufficient to support an admissible contention as discussed above. Thus, there is no need to grant Joint Petitioners' request.

²⁵⁷ NRC Email Response at 1.

²⁵⁸ October 19 Request.

Finally, Joint Petitioners' request that the Board characterize the NRC Email Response "as if the NRC staff response had been submitted in reply to my petition" is entirely improper.²⁵⁹ The statements by NRC public relations officials differ from the arguments that legal counsel makes in an adversarial proceeding such as this. Joint Petitioners' request is an attempt to limit the arguments of NRC counsel and should be rejected.

VIII. Conclusion

For the reasons more fully stated above, the Petition must be dismissed as Joint Petitioners have failed to proffer an admissible contention and have failed to demonstrate standing.

²⁵⁹ *Id.* at 2.

Respectfully submitted,

Signed (Electronically) by Alan D. Lovett

Alan D. Lovett
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203
(205) 226-8769
alovett@balch.com

Executed in Accord with 10 CFR 2.304(d)

M. Stanford Blanton
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203
(205) 226-3417
sblanton@balch.com

Grant W. Eskelsen
Balch & Bingham LLP
601 Pennsylvania Ave., NW
Suite 825 South
Washington, DC 20004
(202) 661-6344
geskelsen@balch.com

*Counsel for Holtec Palisades, LLC,
and Holtec Decommissioning International, LLC*

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
)	
Holtec Decommissioning)	Docket Nos. 50-255-LA-3
International, LLC and)	
Holtec Palisades, LLC)	ASLBP No. 24-986-01-LA-BD01
)	
(Palisades Nuclear Plant))	
)	

CERTIFICATE OF SERVICE

Pursuant to 10 CFR 2.305, I certify that, on this date, a copy of the foregoing “Applicants’ Answer Opposing Joint Petitioners’ Petition for a Hearing” was served through the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned docket.

Signed (Electronically) by Alan D. Lovett

Alan D. Lovett
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203
(205) 226-8769
alovett@balch.com

*Counsel for Holtec Palisades, LLC
and Holtec Decommissioning International, LLC*

[Certificate of Service]