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ASLBP Number: 24-986-01-LA-BD01

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of:	:	Docket No.
HOLTEC DECOMMISSIONING	:	50-255-LA-3
INTERNATIONAL, LLC, AND	:	
HOLTEC PALISADES, LLC.	:	ASLBP No.
	:	24-986-01-LA-BD01
(Palisades Nuclear Plant)	:	

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Wednesday, February 12, 2025

Video Teleconference

BEFORE:

EMILY I. KRAUSE, Chair

DR. GARY S. ARNOLD, Administrative Judge

DR. ARIELLE J. MILLER, Administrative Judge

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P-R-O-C-E-E-D-I-N-G-S

11:13 a.m.

CHAIR KRAUSE: Good morning, thank you all for your patience as we made sure everyone could get connected this morning.

Today we're hearing oral argument in a license amendment proceeding for Palisades Nuclear Plant, Docket Number 50-255-LA-3.

My name is Emily Krause. I'm a legal judge and the Chair of this Board. With me on the bench are Judge Gary Arnold, who has a PhD in nuclear engineering, and Judge Arielle Miller, who has a PhD in mechanical engineering and is also a licensed professional engineer in nuclear engineering.

I have a few administrative announcements before we begin. We've made a telephone line available for members of the public to access this proceeding. We also have a court reporter online with us today. This proceeding is being transcribed, and a transcript should be available in the NRC's electronic hearing docket next week.

Because we are conducting the conference using the Microsoft Teams platform, please be sure to identify yourself when speaking and minimize any background noise.

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1           Lastly I'll briefly describe the timing  
2           system we're using for today's argument. During their  
3           five minute opening and closing statements,  
4           participants will see a screen at the bottom of the  
5           Board's video image with a title slide. The slide  
6           will then either read opening or closing when the  
7           statements begin.

8           At the three minute mark, participants  
9           will see a slide that says two minutes remaining. And  
10          at the four minute mark, participants will see a slide  
11          that says one minute remaining. After that time, the  
12          slide will display time expired. We will then turn to  
13          Board questions.

14          With our administrative matters out of the  
15          way, I'll move on to a brief summary of the  
16          proceeding.

17          This licensing board was established to  
18          rule on two hearing requests, one filed by a group of  
19          nine individuals, collectively Joint Petitioners, and  
20          the other filed by five organizations, collectively  
21          Petitioning Organizations.

22          Joint Petitioners filed five contentions,  
23          one of which they've withdrawn, and Petitioning  
24          Organizations filed seven contentions. The  
25          contentions challenge four license amendment requests

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1 and a related exemption request filed by Holtec  
2 Decommissioning International, LLC, and Holtec  
3 Palisades, LLC.

4 One of the issues the Board will need to  
5 address is whether the exemption request is within the  
6 scope of the proceeding.

7 The participants also should be prepared  
8 to address whether the staff's issuance of its draft  
9 environmental document, the draft environmental  
10 assessment, and drat finding of no significant impact,  
11 affects any of pending contentions.

12 The purpose of today's pre-hearing  
13 conference is to see if the Board understands the  
14 arguments in the participants' written filings.

15 The Board will hear arguments first from  
16 Petitioning Organizations, followed by Joint  
17 Petitioners, Applicants, and the NRC staff. We've  
18 allotted approximately 20 minutes to each participant  
19 with five minutes for an opening statement and the  
20 rest reserved for Board questions.

21 After we hear from each participant, we  
22 will take a 15 minute recess, after which we will ask  
23 any follow-up questions and begin the time for closing  
24 statements.

25 We'll now turn to introductions.

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1 Petitioning Organizations, would you please introduce  
2 yourselves?

3 MR. TAYLOR: This is Wally Taylor.

4 MR. LODGE: And this Terry Lodge.

5 CHAIR KRAUSE: Good morning, thank you.

6 Joint Petitioners?

7 MR. BLIND: Yes, this is Alan Blind, a  
8 representative for the petitioners. And I have with  
9 me fellow petitioners who will be listening, Bruce  
10 Davis, Jody Flynn, and Tom Flynn. Thank you.

11 CHAIR KRAUSE: Welcome, Thank you.

12 Applicants?

13 MR. BLANTON: Had to unmute, good morning,  
14 I'm Stan Blanton, appearing for Holtec Decommissioning  
15 International. Here in the room with me are Jason  
16 Tompkins and Alan Lovett.

17 CHAIR KRAUSE: Good morning, thank you.

18 And NRC staff?

19 MR. SPENCER: I'm Michael Spencer for the  
20 NRC staff.

21 MS. NABER: I'm Anita Ghosh Naber for the  
22 NRC staff.

23 MR. BERNSTEIN: Kevin Bernstein for the  
24 NRC staff.

25 MR. LOM: Peter Lom for the NRC staff.



1 CHAIR KRAUSE: Great, thank you very much.

2 We're now going to turn to the opening  
3 statements. And we'll begin with, well, we'll begin  
4 with Petitioning Organizations for your opening  
5 statement and for our Board questioning. As a  
6 reminder, you have five minutes. Please begin.

7 MR. TAYLOR: Thank you. This is Wally  
8 Taylor. This case is about approving the  
9 unprecedented proposal to attempt to restart a nuclear  
10 reactor that has been shut down and is in  
11 decommissioning status.

12 Holtec and the NRC admit that NRC  
13 regulations do not prescribe a specific regulatory  
14 path for reinstating operational authority for a  
15 reactor in decommissioning status. So Holtec, with  
16 the complicity of the NRC, has cobbled together a plan  
17 to use existing regulations to try to accomplish a  
18 restart.

19 The linchpin of this plan is an exemption  
20 from the regulatory impact of the 10 CFR 50.82  
21 certifications for a permanent decommissioning. For  
22 all of the reasons set forth in our pleadings, Holtec  
23 is not entitled to that exemption.

24 But the first issue this Board must  
25 address is the fact that the exemption is not a

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1 licensing action and should not be considered in this  
2 proceeding. In fact, Holtec agrees with us on that  
3 point.

4 Through a previous intervention petition,  
5 and a petition for a declaratory order, the  
6 Petitioning Organizations have tried to clarify  
7 whether the exemption request must be raised as a  
8 contention in an intervention petition or if it can  
9 raised in another forum.

10 The NRC has not provided a clear answer  
11 except to say that the exemption request is not a  
12 basis for requesting a hearing but may be raised as a  
13 contention if it is inextricably intertwined with the  
14 licensing action.

15 The Indian Point case that we cited in our  
16 reply is the clearest statement that the Commission  
17 has made on this issue. It is clear from that  
18 decision that inextricably intertwined means that the  
19 exemption request cannot be granted unless the license  
20 amendment is granted.

21 But in our case, the exemption could be  
22 granted, but the license amendment could still be  
23 denied. And vice versa, it could go the other way.  
24 Although the exemption is the first prerequisite for  
25 the restart plan as a whole, it is not necessary for

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1 determining if the license amendment should be  
2 granted.

3 As we explained, the only reason we  
4 included the exemption request as a contention in this  
5 case is because we have received unclear statements  
6 from the NRC, and we did not want to waive the issue.  
7 Ultimately we ask this Board to determine that the  
8 exemption is not properly in this proceeding.

9 But even if the Board does consider the  
10 exemption in this licensing proceeding, the exemption  
11 must be denied as we explained in our pleadings.

12 The other contentions should also be  
13 deemed admissible. Restarting a closed reactor in  
14 decommissioning mode involves, or should involve, more  
15 than just some paper shuffling as Holtec and the NRC  
16 suggest. We have presented significant environmental  
17 and safety issues that are not being adequately  
18 addressed.

19 The NRC has prepared an environmental  
20 assessment rather than and environmental impact  
21 statement. Our Contention 2 asserts that this project  
22 requires an EIS. An EIS is required for a license  
23 renewal; surely, this project requires an EIS as well.

24 Contention 3 explains why Holtec's  
25 proposal to restart Palisades requires a new operating

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1 license, not a simple license amendment. Pursuant to  
2 Rule 50.82 certifications, Palisades is in the process  
3 of permanent cessation of operation and the removal of  
4 fuel from the reactor. There is no provision in 50.82  
5 for reversing that process. So therefore, a new  
6 operating license is required.

7 Contention 4 asserts there is no  
8 regulatory pathway to reviving the path of the  
9 Palisades operating license. Holtec is relying on  
10 Rule 50.59 which allows changes in certain  
11 circumstances during decommissioning.

12 But resurrecting a non-operational license  
13 requires more than a simple change, nor can the NRC  
14 claim that it's July 2024 guidance document provides  
15 that regulatory pathway. That document was prepared  
16 after Holtec's request to restart Palisades, so it is  
17 a post hoc attempt to justify giving Holtec what it  
18 wants.

19 Contention 5 points out that Holtec's  
20 environmental document did not contain a purpose of  
21 need statement, and Contention 6 asserts that the  
22 environmental document did not contain a discussion of  
23 alternatives.

24 The NRC has now submitted an environmental  
25 assessment that does contain those two issues. But we

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1 expect to file amendments to those contentions to  
2 address the EA that's now been filed just 12 days ago.

3 CHAIR KRAUSE: Mr. Taylor, I realize,  
4 since you're connecting on the phone, you may not be  
5 able to see our slides, but your five minute time has  
6 expired.

7 MR. TAYLOR: Okay.

8 CHAIR KRAUSE: Can you just wrap up your  
9 statement here, and then we'll begin with questions,  
10 please. Thanks.

11 MR. TAYLOR: Okay, thank you. The other  
12 contentions, for the reasons that we've asserted, are  
13 admissible. And we will also be amending Contention  
14 7. So with that, we look forward to answering the  
15 Board's questions. Thank you.

16 CHAIR KRAUSE: Thank you very much. So to  
17 begin our questioning, I'm going to turn to Judge  
18 Arnold.

19 JUDGE ARNOLD: Thank you. You answered my  
20 first question in your opening statement, but let me  
21 ask you this. Where in the petition do you make the  
22 argument that the exemption request is inextricably  
23 intertwined with the amendment requests? I could not  
24 find the argument.

25 MR. TAYLOR: No, because we don't think it

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1 is. As I indicated, we've submitted the Contention 1  
2 simply because we could not get a clear answer from  
3 the NRC as to whether we needed to address it in this  
4 proceeding or, as we contend, and as Holtec contends,  
5 it is not properly in this proceeding.

6 We think that the Indian Point case that  
7 we cited in our reply brief is pretty clear that,  
8 unless the license amendment requires the exemption,  
9 that it is not inextricably intertwined.

10 And we could have the, the license could  
11 be amended without the exemption. The exemption is  
12 necessary for the entire restart process, but it's not  
13 necessary for the license amendments which are the  
14 subject of this proceeding.

15 JUDGE ARNOLD: Thank you. Each of the  
16 four amendment requests state that a categorical  
17 exclusion applies for the requested amendment. An  
18 application for which a categorical exclusion applies  
19 has no legal obligation to perform an NEPA evaluation.

20 The NRC has not decided that the  
21 categorical exclusions do not apply but rather has  
22 stated that, despite the categorical exclusions, it  
23 will develop an environmental assessment for the  
24 overall restart effort.

25 Thus, the categorical exclusion still

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1 stands, and there appears to be no regulatory  
2 requirement for any NEPA analysis. In your petition,  
3 do you explicitly challenge the categorical  
4 exclusions?

5 MR. TAYLOR: I don't believe so. Perhaps  
6 Mr. Lodge could answer that question.

7 MR. LODGE: Good morning. As you see, I'm  
8 finally making an appearance. We did not argue the  
9 categorical exclusions point, Your Honor. We did  
10 however raise as a contention that there needs to be  
11 an environmental impact statement. And we essentially  
12 oppose the notion of a merely voluntary EA that has  
13 been produced by the staff.

14 JUDGE ARNOLD: Thank you. Here's the  
15 quandary I have. Now, on Pages 3 and 43 of your  
16 petition, you stated that Holtec has submitted no  
17 environmental report. And my question is, in  
18 circumstances under which no environmental report is  
19 required, and no environmental report is submitted,  
20 how is it possible to challenge the environmental  
21 report?

22 MR. LODGE: Well, Your Honor, the staff  
23 indicated that it was treating much of the exemption  
24 application, the LARs and the exemption application,  
25 as if it were an environmental report. And we

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1 considered it thus our obligation to respond to it.

2 And despite the fact that we believe that  
3 it is not a complete and full environmental report as  
4 contemplated by the regulations, we did accept that  
5 treatment of it in raising our petition arguments.

6 JUDGE ARNOLD: Thank you. That's all my  
7 questions for you.

8 CHAIR KRAUSE: Great, so I have a couple  
9 questions. So I guess I'm going back to Petitioning  
10 Organizations' statement that you submitted this  
11 challenge to the exemption request, but you don't  
12 agree that it's intertwined.

13 You know, there's arguing in the  
14 alternative, of course. We're all familiar with that  
15 in legal proceedings. But I'm wondering does that  
16 undermine your contention here whether it's within the  
17 scope and your ability to demonstrate that it's  
18 inextricably intertwined with the license amendment  
19 requests?

20 MR. TAYLOR: Well, this is Wally Taylor.  
21 That's a good question. And you have very well  
22 described our quandary. And as I said, we think, and  
23 Holtec thinks, that the exemption should not be a part  
24 of this proceeding.

25 But because we got unclear answers from

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1 the NRC regarding that, we just felt that we needed to  
2 at least assert it in this proceeding so that we  
3 weren't waiving it if the Board ultimately decides  
4 that it should be dealt with in this proceeding.

5 So we were kind of on the horns of a  
6 dilemma, but we think either way that we're in the  
7 right here. That, first of all, it should not be in  
8 this proceeding, but if it is then it should be  
9 admitted as a contention.

10 I don't know if that answers your question  
11 or not, but --

12 CHAIR KRAUSE: Yes, and then just also to  
13 be clear, if it's not in this proceeding, how are you  
14 envisioning challenging this, if at all, the exemption  
15 request?

16 MR. TAYLOR: In court through an APA  
17 action.

18 CHAIR KRAUSE: Okay, thank you. And then  
19 another question I have, I guess it really goes to,  
20 you know, an overarching argument that Petitioning  
21 Organizations are raising about the process that's  
22 being used here, the license amendment process,  
23 specifically exemptions, license transfers.

24 And I guess, at least in Contention 3,  
25 Petitioning Organizations appear to agree that there

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1 is an operating license in place that is conditioned.  
2 So it is in place, it's been conditioned. And, well,  
3 the agency operates by way of amendments, transfers,  
4 exemptions, and various other tools, regulatory tools,  
5 when dealing with a license in place.

6 So I guess I'm wondering if you could  
7 describe for me what is special about this proceeding  
8 that would make it so that the NRC cannot use those  
9 processes in this type of request, this type of  
10 project.

11 MR. TAYLOR: Well, this is Wally Taylor  
12 again. Well, let's understand first what 50.82 says.  
13 It's the licensee, which was Entergy at the time for  
14 Palisades, filed the certifications for permanent  
15 cessation of operation, that that starts the process  
16 set forth in 50.82 which is totally in terms of  
17 proceeding with decommissioning and then ultimately a  
18 termination of the license.

19 And apparently, you know, Holtec is  
20 proposing to use changes pursuant to Rule 50.59. But  
21 if you read that rule, that is regarding the  
22 decommissioning process again. And so there's no  
23 format or no basis for using a license amendment to  
24 restart a closed and decommissioning reactor. And  
25 that's our argument.

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1 CHAIR KRAUSE: And just going back, I  
2 think you said 50.59 was just for decommissioning, I  
3 guess, as I understood it.

4 THE WITNESS: Well, at least it is in this  
5 context. I mean, there are other ways you -- other  
6 scenarios where you could have the changes pursuant to  
7 Rule 50.59. But in this context, it concerns  
8 decommissioning.

9 CHAIR KRAUSE: Okay, so just to make sure  
10 I understand your position, 50.59, just as a general  
11 matter, applies to changes to licenses, you know,  
12 changes that can be done outside of the license  
13 amendment, changes that could be done by license  
14 amendment. But in this particular context, because of  
15 the status of the Palisades Plant, it's only for  
16 decommissioning changes.

17 CHAIR KRAUSE: Is that correct?

18 MR. TAYLOR: Right. And I believe that's  
19 what 50.59 says, that it's -- when the plants are  
20 decommissioning, you can make changes. But it  
21 specifies what kind of changes you can make with or  
22 without a license amendment.

23 CHAIR KRAUSE: Okay. One additional  
24 question I have involves, specifically, Contention  
25 Two. But, you know, you mentioned it in your opening

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1 statement, just how the draft environmental assessment  
2 and draft finding of no significant impact affects  
3 your pending environmental contentions. And you  
4 indicated that you would be filing amendments to those  
5 -- some of the contentions.

6 I guess, I just want to focus on  
7 Contention Two, which is more -- to me it seems more  
8 like a process contention in terms of, you know, an  
9 EIS is required here, but now we know that the staff  
10 has prepared an EA, an environmental assessment. And  
11 then an EIS would only follow, in that case, if the  
12 staff had found significant impacts. And it has now  
13 proposed that there are no -- a finding of no  
14 significant impacts.

15 So, I guess, could you describe for me how  
16 Contention Two might have been impacted by the staff's  
17 draft documents?

18 MR. TAYLOR: Sure. This is Wally Taylor  
19 again. We probably will amend that because, in  
20 reviewing the EA and the FONSI, we will challenge the  
21 finding of no significant impact. And, probably,  
22 certain aspects of the EA that indicate that the staff  
23 made the wrong decision, in our view, of making a  
24 FONSI, and that they should have found that they  
25 needed to do a full EIS.

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1 CHAIR KRAUSE: Great, thank you. Those  
2 are all of my questions. I'll turn now to Judge  
3 Miller.

4 JUDGE MILLER: I don't have any questions.

5 CHAIR KRAUSE: Okay, great. So, that's  
6 all of our questions for you, counsel.

7 And we will now turn to the representative  
8 for Joint Petitioners. We'll hear from Petitioning  
9 Organizations again at closing.

10 So Mr. Blind, you may begin --

11 (Simultaneous speaking.)

12 MR. BLIND: Okay, I was just trying to get  
13 the -- so, I'll actually begin with my opening.

14 Okay, my name is Alan Blind, representing  
15 pro se, a group of local homeowners concerned about  
16 the Holtec proposals.

17 We challenge Holtec's amendment request to  
18 revise the Permanently Defueled Technical  
19 Specifications for resuming power operations, arguing  
20 it fails to meet the 10 CFR 50.34, 50.90 and 50.36  
21 regulations. Each require an updated Final Safety  
22 Analysis Report.

23 Because no NRC regulation specifically  
24 addresses returning a decommissioned plant to  
25 operations, Holtec relies on a single sentence from

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1 the Berka denial, the proposed rulemaking denial.  
2 However, the full denial outlines reasoned  
3 prerequisites that must also be applied, we contend.

4 All this imposes an unusual burden on the  
5 NRC LAR reviewers, because in order to evaluate  
6 Holtec's submittals they must first consult the  
7 Commission's guidance from the full PRM denial,  
8 instead of using formal NRC guidance or an existing  
9 rule. That burden is further compounded by Holtec not  
10 providing an updated FSAR for the reviewers'  
11 reference. These disputes are all contained in our  
12 Contentions One, Two, and Three.

13 Because no NRC regulation specifically  
14 addresses returning a decommissioned plant to  
15 operation -- like I say, they are relying on the Berka  
16 for its restart, but reduces it to a single sentence  
17 to define major Commission policy. That would be an  
18 interpretation.

19 Yet the full binding Berka denial, which  
20 is not an interpretation, we contend sets forth the  
21 reasoned prerequisites that must be met for that  
22 denial to be used for this restart.

23 If the entire PRM denial is applied, we  
24 agree, it is binding and is, should be, acceptable for  
25 the Commission to use to approve the criteria for a

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1 restart. However, using one sentence, as Holtec has  
2 proposed, to justify their startup, and in particular  
3 how they propose to not submit an updated FSAR, we  
4 contend is wrong.

5 We submit that this Board must evaluate  
6 the proper implementation of Commission regulations by  
7 examining the full Commission-approved and binding  
8 Berka PRM denial. We challenge the staff and Holtec's  
9 reliance on that single sentence.

10 Let me just give you one item out of the  
11 PRM that's being -- has not been mentioned. It says,  
12 any such request -- they're referring to a request to  
13 restart a plant -- would be reviewed consistent with  
14 applicable regulatory requirements, including safety  
15 standards, to protect health and safety of the public.  
16 Holtec has not addressed this.

17 While the Berka PRM denial outlines a  
18 structure for potential restart, it must be applied  
19 holistically, not narrowed down to one sentence as  
20 Holtec has done. Because Holtec has cited the Federal  
21 Register notice in its submittals and answers to Joint  
22 Petitioners, the entire notice is now before the  
23 Board, not just Holtec's single-line excerpt. And we  
24 respectfully request the Board to consult the denial  
25 in its entirety, not just one sentence.

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1           Also, NRC answers said that most NRC staff  
2 agrees with its Berka allowing a decommissioning  
3 reactor to seek amendments and exemptions to resume  
4 operations. But most of the staff is not all of the  
5 staff, and suggests that there is internal staff  
6 disagreements on this. Perhaps they are concerned  
7 about the lack of clear guidance.

8           We ask this Board to determine whether  
9 Holtec's license amendment request meet all the  
10 applicable Part 50 production facility regulations and  
11 the Commission -- the full Commission-approved Berka  
12 prerequisites. If Holtec cannot demonstrate this,  
13 particularly by providing an updated FSAR with its  
14 submittals, then the Board may deny or condition the  
15 requested admissions.

16           Under 50.3, Office of General Counsel  
17 interpretations must improve any interpretation, to be  
18 binding. We all know they have not done that in this  
19 case. So, if Holtec continues on to use this single  
20 sentence, that's an interpretation -- that's not  
21 binding on the Commission, nor on this panel.

22           I lost my train of thought. So, I'll just  
23 close. Should the Board -- we respectfully request  
24 that the Board deny or condition Holtec's license  
25 amendments if it fails to meet the applicable

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1 regulations, and it does not address all of the  
2 prerequisite statements in the full Berka denial.  
3 Thank you.

4 CHAIR KRAUSE: Thank you. Now we'll turn  
5 to Board questions.

6 Judge Arnold?

7 JUDGE ARNOLD: Thank you. Your Contention  
8 One that is -- it is summarized on page 24 of your  
9 initial petition -- appears to take issue with the  
10 review of license amendments and other licensee  
11 restart actions. This indicates that you consider  
12 other licensee restart actions to be within scope.

13 Where in your petition do you address  
14 this? And do you state why the license amendment  
15 requests are inextricably intertwined with other  
16 restart actions?

17 MR. BLIND: Thank you for that question,  
18 Your Honor. In fact, that question has been addressed  
19 in our withdrawal of Contention Four.

20 From reading of the answers from Holtec  
21 and staff attorneys, we now realize that the restart  
22 activities and the license amendment review activities  
23 are going forward based on the Berka interpretation.  
24 And we agree with that, in terms of the work on site  
25 is ongoing at-risk.

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1           They made clear that Holtec is free to  
2           make whatever submittals they like.     And in  
3           particular, they said they can make amendment requests  
4           and they can make requests for exemptions.  As I said  
5           before, most of the staff agrees with that.  And that  
6           those submittals are under review by the staff, and no  
7           determination has been made.  We accept that.  We  
8           didn't understand that until we read those replies.

9           And likewise, Holtec replied, saying they  
10          understand that all of the work that they're doing on  
11          site is at-risk.  Meaning, that at some point in the  
12          future it will have to be reconciled with whatever the  
13          approved license is.

14          JUDGE ARNOLD:  Thank you.  My only other  
15          question for you is, reading your submittals to me  
16          indicates that none of your contentions focus on NEPA  
17          issues.  Is that correct?

18          MR. BLIND:  That means the environmental  
19          assessment?

20          JUDGE ARNOLD:  Environmental, yes.

21          MR. BLIND:  That is correct.  We are not  
22          referencing that whatsoever, or contending any of its  
23          contents.

24          JUDGE ARNOLD:  Thank you, I'm done.

25          CHAIR KRAUSE:  Okay, great.  I have a few

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1 questions for Joint Petitioners. In your petition and  
2 reply, the Joint Petitioners argue that these license  
3 amendments are premature. And as you also mentioned  
4 in your opening statement, there's this concern about  
5 the definition of existing regulatory framework, and  
6 what that might mean.

7 But, if we look to the section that's  
8 relevant for license amendments, Section 50.92 which  
9 says that, you know, the requirements for initial  
10 licenses are -- you know, apply here, apply to license  
11 amendments.

12 What, in Joint Petitioner's view, would  
13 the framework look like, other than what's provided  
14 there where it says that it's the requirements for  
15 initial licenses, I guess is my question.

16 Is there a practical difference, from  
17 Joint Petitioner's position, between what would be  
18 applied to the initial license and what's being sought  
19 in these license amendment requests?

20 MR. BLIND: Thank you, Your Honor. Again,  
21 I think principally that question is also moot, based  
22 on our withdrawal of Contention Four. You know, the  
23 ripeness doctrine.

24 You know, we from this table, you know, we  
25 attended public meetings. And so, we formulated our

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1 initial understanding of how this process works from  
2 those public meetings. And rightfully or wrongfully,  
3 our view was, what they were telling us is that the  
4 regulations had been decided upon -- you know, of how  
5 this process was going to go forward.

6 And so, we argued that we don't think that  
7 they've been decided yet. And therefore, you can't  
8 process work on site and you can't process amendment  
9 reviews until you know what the regulations are ahead  
10 of time.

11 Like I said before, we now have a  
12 different understanding. That, again, Holtec is free  
13 to submit whatever regulations they like. The point  
14 of our raising the final safety analysis is to point  
15 out that we're focusing in on a dispute to a specific  
16 regulation so that we can reach an agreement on what  
17 is the point of the dispute.

18 We bring Berka into the equation because  
19 we see -- you know, when we look at, what is your  
20 authority as a Board -- you don't have an authority to  
21 change the denial. That's Commission policy, so we  
22 don't dispute that. But you do have the requirement  
23 that you have to interpret that the regulations are  
24 being applied correctly.

25 So Holtec has submitted their regulations

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1 to the Commission, or the staff, that they feel are  
2 appropriate. And we're simply pointing out that, when  
3 you read the entire text of Berka, it has a lot of  
4 prerequisites. You know, they say that this could all  
5 go on under the existing framework, but they had a lot  
6 of discussion of, these are the things that have to be  
7 considered and the things that have to be done to  
8 enable the existing framework to become applicable.

9 And we think it -- that is then forming,  
10 well, what are the -- for your evaluation, the Board's  
11 evaluation, in your authority in looking at, have the  
12 applicable regulations been applied correctly? You  
13 first have to look at Berka, because that's the  
14 Commission's policy on what are the applicable  
15 regulations, when you look at those prerequisites.

16 So, you have to use a -- you have to look  
17 at that and say, okay, did what Holtec submit meet all  
18 of those prerequisites in Berka, not just that final  
19 sentence?

20 So, that's what we're disputing. And  
21 we've narrowed it down, because it had to be from one  
22 of our contentions, that they did not include a  
23 updated operating Final Safety Analysis Report with  
24 their technical specification amendment request.

25 And it seems, when you read the responses

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1 from -- and maybe they can reply to this -- but it  
2 seems like they're replying on that, their ambiguity  
3 that they're applying to Berka that says, well --  
4 Holtec said, we're going to follow these regulations.  
5 Well, we think they should be following these  
6 regulations over here. But we have to argue the ones  
7 that Holtec presented, rather than the ones we think  
8 they should follow.

9 But in the end, it will be the staff that  
10 decides which ones are being followed. So, all we're  
11 asking for you to do is to apply the full text of  
12 Berka in analyzing our dispute on the FSAR not being  
13 included with their submittals.

14 You know, they like to say they referred  
15 to an earlier version of an FSAR, but when you read  
16 the plain language of the regulations -- and again,  
17 from the entire body, you know, you've got regulations  
18 for plants in construction, for FSAR submittals, safer  
19 FSAR, you got operating plants which is primarily the  
20 50.59 process. And even the Appendix A general design  
21 criteria includes a statement on updating the Safety  
22 Evaluation Report.

23 And so, they have to consider all of those  
24 in there submittal, not just the one that they like.  
25 The one they like happens to be the one that they can

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1 do, without having to get NRC approval -- you know,  
2 ergo the 50.59 process. Okay. Thank you.

3 CHAIR KRAUSE: Okay. And I guess, you  
4 know, so those -- when you say that your argument  
5 about these amendments being premature has now been  
6 withdrawn, that it's moot --

7 MR. BLIND: That's correct.

8 CHAIR KRAUSE: It seems as though in  
9 Contentions One, Two and Three that argument is there,  
10 as well. So, we should view those contentions, as  
11 well, with that lens. That you're not arguing --  
12 you're not making that argument for those contentions.  
13 Is that correct?

14 MR. BLIND: Well, let me -- I think you're  
15 asking me, is the ripeness argument moot? Yes, that's  
16 correct.

17 But, as far as everything that I laid out  
18 in the opening statement, and I just included in the  
19 answer all that other stuff, yeah we're pulling -- you  
20 know, admittedly I'm new at this, and I've never done  
21 it before. So, looking back I can see how Contentions  
22 One, Two and Three were not clear. But I can also  
23 look back and see now how it's all there. And I think  
24 that's what you're asking me, and I think you're  
25 acknowledging -- yes, it's all in there, but not

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1 particularly clear.

2 So, what I would ask, if you allow, if you  
3 ordered me to file a brief, I could provide that  
4 clarity in a new brief. If you were to so order.

5 CHAIR KRAUSE: I think we're okay with the  
6 written filings as-is, but thank you.

7 MR. BLIND: Okay. You're welcome.

8 CHAIR KRAUSE: There's an -- I have one  
9 more question, just in terms of clarification. In  
10 your reply you raise a, sort of a competing argument  
11 with the staff's interpretation of 50.51(b). Which  
12 is, you know, that the operating license continues in  
13 effect until the Commission, you know, provides in  
14 writing that it's been terminated.

15 Could you explain a little bit more your  
16 argument there, with Joint Petitioner's position on  
17 the meaning of Section 50.51?

18 MR. BLIND: Yes. The staff argued that  
19 this really goes to what is the applicable design  
20 basis, and that would become germane for the NRC's  
21 review if Holtec does submit an updated Final Safety  
22 Analysis Report. You know, the NRC staff would have  
23 to review that updated Final Safety Analysis Report.

24 So, one of the questions the staff will  
25 have to answer is, do we accept the old design basis

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1 from 1969? Or do we do something else? Or is there  
2 a hybrid -- you know, do we want to look at new issues  
3 that may have -- new learnings that we may have had  
4 over the last 50 years.

5 So, if you look at that argument about  
6 using 50.51(b), the staff would, if they accept that,  
7 they would be compelled to use the old licensing  
8 basis. We just want the staff to know that they can  
9 make that decision, independently.

10 You know, we presented the argument in the  
11 in the written response. And it really goes along the  
12 lines of, it's just illogical because, you know, they  
13 argue that the -- they can go back and use the  
14 original design basis up until the point that the  
15 license termination letter has been issued. And  
16 there's a lot of legal stuff, you know, in there.

17 But from practical terms then, is, you  
18 know, Big Rock Point, you know, still has spent fuel  
19 on site, and therefore it hasn't been issued its  
20 termination letter. So, by that argument, just common  
21 sense tells you that, you know, they can't just get  
22 the blueprints from Big Rock Point, rebuild it to  
23 those blueprints and say we're going to apply for a  
24 license using the 1965 design basis for Big Rock  
25 Point. It just doesn't pass the common sense test.

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1 I just don't want the NRC staff to feel  
2 that they're compelled to use that original design  
3 basis that -- you know, we've had 50 years of  
4 operating experience and it needs to be -- the  
5 judgments need to be made on, we need to update  
6 applicable proportions of that.

7 You know, in the submittal I made on the  
8 brief for standing I talked about the loss of the DC  
9 Distribution Panel. But let me tell -- there's  
10 another story. I feel bad about this. I was the  
11 Engineering Director at Palisades. I was the author  
12 of a document where a design basis inspection team had  
13 correctly questioned, our atmospheric dump valves were  
14 not safety related.

15 And we relied upon those in the steam  
16 generator tube rupture accident and analysis, and they  
17 say that's not right. And I was the primary author of  
18 the response to that finding, that said you go back to  
19 the original '69 design basis. And it says, that was  
20 accepted by the SEP, NUREG-0820. And then they also  
21 went on to say, yes, but they're going to fail under  
22 certain scenarios.

23 And we pointed to our emergency operating  
24 procedure. It said, under that scenario we're going  
25 to initiate once through cooling on this pressurized

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1 water reactor, which is -- which means we're going to  
2 open up -- operator actions open up the power operated  
3 relief valves, blow the rupture disk on the  
4 pressurized relief tank, initiating a large break LOCA  
5 to ensure that the core remains covered.

6 Well, the inspection team said come on,  
7 that just doesn't make sense. How can you possibly do  
8 that? We've never seen anything like that before.  
9 And they were upset. Well, they submitted that -- I  
10 can't -- there's a -- it's documented in ADAMS. They  
11 submitted that question to the NRR, and NRR wrote back  
12 a very long analysis of that and said, we can't do  
13 anything about that because it's ingrained in that old  
14 accident -- or in that '69 design basis.

15 I felt terrible about that. And I still  
16 feel terrible about it today, that I was a participant  
17 in it. And I know those same NRC inspectors from  
18 Region Three would tell you, they're just as upset  
19 about it today as they were back in 2008.

20 So, I want the NRC staff to have the  
21 opportunity, now that they can, to go back and perhaps  
22 say hey, you need to make those atmospheric dump  
23 valves safety related.

24 CHAIR KRAUSE: Okay, thank you.

25 CHAIR KRAUSE: Judge Miller, do you have

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1 any questions?

2 JUDGE MILLER: Yes, thank you. Hi, my  
3 first question is, where in your submittals can you  
4 point to where you make the connection between, I  
5 think, how you refer to it as the Berka document and  
6 its connection to the license amendment requests and  
7 how those two are connected?

8 MR. BLIND: Well, the connection was  
9 established in the Holtec submittals. It wasn't my  
10 connection. It was the connection that they made. So  
11 I just simply researched the basis for how they were  
12 making that connection.

13 JUDGE MILLER: I --

14 MR. BLIND: As I think about it, I'm not  
15 necessarily disagreeing with that connection. What  
16 I'm disagreeing with is they're not using the full PRM  
17 denial. They're only using one sentence out of the  
18 PRM denial. If they were using, as I say, the full  
19 denial which includes all of the conditions that are  
20 necessary to be able to use the phrase within the  
21 existing regulatory framework, if it was being used in  
22 that context, I would not have this dispute. And I  
23 submit that you have the authority because they're  
24 using an interpretation rather than the full document  
25 that are binding on you and you can take a look at it.

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1 JUDGE MILLER: Thank you. I think what I  
2 was trying to ask, though, was where you -- if you  
3 could point to where in your submittals you reference  
4 the Holtec license amendment request in connection to  
5 the argument that you make in one or more of your  
6 contentions as it relates to the Berka denial or  
7 document.

8 MR. BLIND: Yeah, I'm not sure that I --  
9 I think you just repeated the question. So I'm not  
10 sure I understand it. Could you rephrase it, please?  
11 Because I would just give you the same answer in that  
12 case.

13 JUDGE MILLER: No problem. No problem.  
14 In your contentions or at least I believe in  
15 Contention 1, it might be in another one, you critique  
16 the reliance on that one phrase from the document as  
17 Holtec uses it. And your argument is it needs to be  
18 the larger document.

19 MR. BLIND: One phrase meaning that you  
20 could use existing regulatory framework --

21 (Simultaneous speaking.)

22 MR. BLIND: -- on a case-by-case basis.

23 JUDGE MILLER: Yeah.

24 MR. BLIND: Well, Holtec pulled that  
25 statement directly from the Federal Register notice.

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1 And they footnoted that in their submittal. So I just  
2 simply was providing that statement in my petition so  
3 that it could be referenced.

4 My point being is Holtec in their  
5 submittals, that's all they ever tell you both in  
6 their submittals to the staff. But more importantly  
7 in their answers, they only give you, the board, that  
8 one sentence. They don't go back and defend all of  
9 the other prerequisites that must be in place for that  
10 statement to be useable.

11 JUDGE MILLER: Okay. I'm going to jump  
12 ahead to you had mentioned in your statement today  
13 that you agree that it is up to the staff to decide at  
14 the end of the day if Holtec's interpretation of the  
15 Berka document is the correct interpretation or not.  
16 That is what I understood you to have said when you  
17 were speaking just before.

18 MR. BLIND: No, I'm asking the board to  
19 weigh in on the need to use the entire Berka document.  
20 In terms of the staff, in terms of the answers and my  
21 understanding of those answers, and in my withdrawal  
22 of Contention 4 I agree with is Holtec is free to  
23 submit -- we're going to use Regulation A, B, and C.  
24 And the staff will decide whether they agree with A,  
25 B, and C.

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1           Now a good example of that is there was an  
2           RAI sent from a staff member back to Holtec where they  
3           said our reading is we're using not only A, B, and C  
4           but we're using D, E, and F. And we want you guys to  
5           respond to that. So I'm not sure the staff feels they  
6           can interpret Berka.

7           I think if you -- I'm not certain. But if  
8           I learned that the staff was using Berka in its  
9           entirety so that no interpretation was required, then  
10          we would not have an issue. But I think it's going to  
11          take the licensing board to tell somebody they need to  
12          do that.

13          JUDGE MILLER: Thank you very much. I  
14          have no other questions.

15          CHAIR KRAUSE: All right. Thank you, Mr.  
16          Blind. We'll hear from you again in your closing  
17          statements.

18          MR. BLIND: Thank you, Your Honor.

19          CHAIR KRAUSE: We'll turn now to the  
20          Applicants. You may begin your opening statement.

21          MR. BLANTON: Thank you, Judge Krause.  
22          Stan Blanton for Holtec. The standards for granting  
23          a hearing are well established. The petitioners must  
24          have standing and assert at least one admissible  
25          contention.

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1           In order to be admissible, a contention  
2 must show that there are genuine issues, questions of  
3 fact or law that are dispute that are within the scope  
4 of this proceeding and are material to the findings  
5 NRC must make to approve the license amendments in  
6 question. Petitioners must support their factual  
7 arguments with evidence, not speculative or conclusory  
8 assertions without factual basis. Petitioners'  
9 proposed contentions fail to satisfy these strict  
10 requirements.

11           In my opinion, I will focus on  
12 petitioners' proposed contentions and Mr. Tompkins  
13 will address any standing issues during the  
14 question-and-answer period that the board might have.  
15 At the outset, as has been noted, there are some basic  
16 premises for this proceeding that have been  
17 mischaracterized by the petitions. First, Palisades  
18 does have an operating license.

19           That license was renewed in 2007 and  
20 remains in effect today. They have an FSAR attached  
21 to that operating license. Second, NRC has not only  
22 stated that it has legal authority to restore  
23 operations after a license has made a certification  
24 under 10 CFR 50.82.

25           The Commission has clearly stated that the

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1 existing regulatory framework including license  
2 amendments such as the four under consideration today  
3 is a sufficient process for restarting operating  
4 authority. These premises undermine almost all of the  
5 petitioners' contentions. There are four LARs within  
6 the scope of this proceeding, nothing more.

7 This proceeding does not concern any  
8 future license amendment or FSAR change that Holtec  
9 may seek in the future. Only the changes encompassed  
10 by these four LARs are at issue. The contentions are  
11 remarkable in their failure to even discuss any  
12 specific aspect of these LARs.

13 In addition, petitioners have not  
14 demonstrated their right to a hearing on Holtec's  
15 exemption request. The LARs seek a distinct licensing  
16 action and require a different factual and legal  
17 analyses than Holtec's request for an exemption. A  
18 decision on one does not control the decision on the  
19 other.

20 The exemption request is distinguishable  
21 from those at issue in cases that created exceptions  
22 to the general rule that there is no right to request  
23 a hearing on exemption requests. And even if a  
24 hearing was available, the petitioners have failed to  
25 assert a genuine issue of fact or law that is material

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1 to the exemption request. As noted earlier,  
2 organizational petitioners appear to agree that the  
3 exemption request is outside the scope of this  
4 proceeding and that no hearing is warranted in this  
5 proceeding on the exemption request.

6 Petitioners' contentions fall into three  
7 basic categories. First of all, petitioners challenge  
8 NRC's authority to authorize a restart and/or NRC's  
9 process for re-authorizing full power operation. The  
10 petitioners also challenge Holtec's anticipated  
11 application of 10 CFR 50.59 in connection with the  
12 future reinstatement of operating FSAR provisions.

13 It is well established the contentions  
14 that challenge NRC regulations or policies are  
15 inadmissible under 10 CFR 2.335. Furthermore, the  
16 future application of 10 CFR 50.59 to reinstate FSAR  
17 provisions is not within the scope of these LARs. And  
18 the proper remedy if petitioner's believe Holtec has  
19 misapplied 50.59 would be a petition under 10 CFR  
20 2.206.

21 Finally, petitioners permit several  
22 contentions on their general opposition of nuclear  
23 power and their disagreement with state or federal  
24 policy initiatives supporting the restart of  
25 Palisades. Petitioners' view on the economic

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1 viability of the Palisades restart are immaterial to  
2 LARs and to the exemption request. Second, there are  
3 a collection of proposed contentions that are based  
4 generally on the age or condition of the Palisades  
5 facility, including the allegation that Palisades is  
6 not designed and licensed to the general design  
7 criteria in 10 CFR Part 50, Appendix A.

8 But petitioners don't relate these  
9 allegations to a single provision of the LARs or the  
10 general design criteria. There's not even a  
11 conclusory allegation that these license changes  
12 requested do not comply with applicable NRC regulatory  
13 requirements. The staff notes in its answer NRC  
14 guidance provides that licenses issued prior to the  
15 GDC being adopted do not require amendment because  
16 older plants were determined to be safe and the GDC  
17 only articulates preexisting design requirement.

18 As such, the contentions are no more than  
19 immaterial and conclusory speculation that do not  
20 create a genuine issue of fact for a hearing.  
21 Finally, there's a collection of environmental  
22 contentions, some of which are that the NRC  
23 environmental assessment is inadequate based on the  
24 false premise that an EIS is required because  
25 Palisades must apply for a new operating license.

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1 Others are various contentions of omission, each of  
2 which is either factually unsupported or moot.

3 This includes Contention 7 of the  
4 organizational petitioners which has been mooted by  
5 the draft environmental assessment. Accordingly, each  
6 of these petitions should be dismissed. Thank you.

7 CHAIR KRAUSE: Thank you. We'll now begin  
8 the board's questions. Judge Arnold?

9 JUDGE ARNOLD: Thank you. Do you believe  
10 that the exemption request is inextricably intertwined  
11 with the amendment requests? And why or why not?

12 MR. BLANTON: No, sir. Not at all. They  
13 are two different questions. The decision making and  
14 analysis that NRC must pursue to consider the  
15 exemption request is entirely different from the  
16 issues presented by these four LARs.

17 I think the Petitioning Organizations  
18 agree. NRC could grant these license amendment  
19 requests without granting the exemption request. Or  
20 they could grant the exemption request without  
21 granting the LARs.

22 In the cases that the staff cites, the  
23 regulation that as to which an exemption is sought is  
24 either embedded in the license provision that's being  
25 changed or it is the license provision says that the

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1 licensee will comply with a particular regulation for  
2 which an exemption is being sought. That's not the  
3 case in either of these cases. And we just don't fit  
4 within the exceptions to the general rule that the  
5 hearing is not available on the exemption request.

6 JUDGE ARNOLD: Thank you. The primary  
7 license amendment contains among others license  
8 conditions 2(b)(1), 2(b)(2), 2(c)(1) which are  
9 impertinent part that 2(b)(1) authorizes Holtec  
10 Palisades to possess and use the facility as a  
11 utilization facility. 2(b)(2) authorizes Palisades  
12 Energy to receive, possess, use, source special  
13 nuclear materials as reactor fuel. And 2(c)(1)  
14 authorizes Palisades Energy to operate at power levels  
15 not in excess of 100 percent rated power.

16 Now given these, that seems to me to  
17 recondition the license for operation. If the NRC  
18 were to grant that license amendment, why would an  
19 exemption to 50.82 be required? And let me give you  
20 the analogy that keeps coming to mind for me in this  
21 condition.

22 And that is if you're driving down the  
23 road and you're coming to an intersection and the  
24 light turns red, you come to a stop. But then you see  
25 a police officer who's beckoning you to pass through

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1 the intersection. The light is still red, but you  
2 have direction to go and you go. Now what is wrong  
3 with that analogy? And why isn't the 50.82  
4 certification like that red light that gets overridden  
5 by a later directive?

6 MR. BLANTON: I think that's a great  
7 analogy, Judge, and a great question. I think to  
8 answer in the terms of the analogy, I think the  
9 exemption is the police officer waving you through.  
10 And we've still got this provision of 50.82 that says  
11 after you're certified, after you issue your -- or  
12 provide your certification, you are permanently  
13 defueled. And the exemption -- and especially  
14 considering the inspection manual chapter that staff  
15 has now provided to govern their review of restarts,  
16 I think the exemption request is just more of an  
17 administrative action now to line up the license with  
18 the license amendment request that will restore the  
19 operation and ability to load fuel with those license  
20 conditions.

21 JUDGE ARNOLD: Okay. Thank you. The four  
22 amendment requests each states that a categorical  
23 exclusion applies to the requested amendment. What is  
24 your understanding of a categorical exclusion?

25 MR. BLANTON: It's a provision of the

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1 environmental regulations that says NRC is not  
2 required to perform a NEPA analysis in order to  
3 support the licensing action. And I wish I could tell  
4 you by memory what all the conditions are. But it  
5 basically says that this is not a major federal action  
6 affecting -- significantly affecting the environment  
7 that requires a NEPA analysis.

8 JUDGE ARNOLD: Did you have a  
9 responsibility to provide an environmental report with  
10 the amendment requests?

11 MR. BLANTON: We took the position that  
12 the amendments did fit within the categorical  
13 exclusions. And therefore, you would not have to file  
14 an environment report. We did supply environmental  
15 information that the NRC used to prepare its  
16 environmental assessment. But --

17 (Simultaneous speaking.)

18 JUDGE ARNOLD: Was that provided with the  
19 amendments?

20 MR. BLANTON: It was not provided with the  
21 amendments. It was provided in response -- some was  
22 provided with the exemption request and some was  
23 provided in response to an RA request.

24 JUDGE ARNOLD: Okay. But you didn't  
25 submit something titled environmental report for the

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1 amendments?

2 MR. BLANTON: We did not.

3 JUDGE ARNOLD: To your knowledge, has the  
4 NRC decided that the categorical exclusions are not  
5 applicable?

6 MR. BLANTON: I do not think that they had  
7 made a -- that staff has made a final decision on  
8 that. I guess the environmental assessment might moot  
9 that to some extent. But certainly if the staff  
10 decided that the categorical exclusion did apply, then  
11 the environmental assessment would be moot. So I  
12 think either way we're covered.

13 JUDGE ARNOLD: To your knowledge, do NRC  
14 rules permit petitioners to challenge the contents of  
15 a document that is not required and which has not been  
16 submitted?

17 MR. BLANTON: It would be immaterial and  
18 out of scope.

19 JUDGE ARNOLD: Do you think that applies  
20 in this case?

21 MR. BLANTON: Yes, I do.

22 JUDGE ARNOLD: Okay. That's the end of my  
23 questions.

24 MR. BLANTON: Thank you, Judge.

25 CHAIR KRAUSE: Great. So I'll ask a

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1 couple of questions. I'd like to focus a little bit  
2 again on the exemption request and the notion of  
3 whether it's inextricably intertwined with the license  
4 amendments. And in your opening, you explained that  
5 the staff has cited examples of cases where the  
6 exemptions and the license amendments are sort of  
7 expressly required.

8 But in the staff's answer, they say that  
9 the exemption request is actually required for the  
10 license amendments because otherwise they won't be  
11 able to certify that the license amendments are in  
12 compliance with the NRC's regulations. So I guess I'm  
13 asking the Applicants to respond specifically to that  
14 point and how it might impact the Applicants'  
15 characterization of what inextricably intertwined  
16 means by saying that it's a licensing action that  
17 can't be met without receiving the exemption. And as  
18 the staff describes it, that seems to have been  
19 satisfied here.

20 MR. BLANTON: I have noted that staff  
21 argument, Your Honor. And I just have to say I  
22 disagree with it. These amendments are necessary  
23 because of other amendments that were issued at the  
24 time of the 50.82 certification that eliminated some  
25 of these requirements that basically adopted these

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1 defuel tech specs in place of the full power tech  
2 specs.

3 So the 50.82 certification did not  
4 automatically change our tech specs. It did not  
5 automatically change our FSAR to a defueled FSAR. We  
6 had to pursue license amendments in order to do that.

7 We had to pursue other exemptions to NRC  
8 regulations to get the plant in a state of  
9 decommissioning and relax the requirements that were  
10 in place for an operating reactor. Well, we're simply  
11 seeking to reverse those changes now. And I think  
12 that just as the certification under 50.82 did not  
13 automatically eliminate all of those operating FSAR  
14 provisions and operating tech spec provisions, the  
15 restoration of those provisions doesn't require the  
16 exemption from 50.82.

17 The Palisades could operate under those  
18 operating tech spec provisions in decommissioning.  
19 And it would be more expensive and it would make much  
20 sense. But there's no requirement that Palisades  
21 adopted these defuel tech specs just because they had  
22 filed a 50.82 certification.

23 CHAIR KRAUSE: Although because Palisades  
24 is now seeking potential restart, 50.82 will not allow  
25 you to load fuel. And so that is very specific to

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1 that regulation. And so I guess to me it's different.

2 Maybe there was a disconnect between 50.82  
3 and the various license amendments you were seeking  
4 for decommissioning. But now that you're seeking  
5 restart, it seems like there is sort of a very plain  
6 connection between the now because it involves loading  
7 fuel and operating the plant.

8 (Simultaneous speaking.)

9 MR. BLANTON: We're not -- I'm sorry. I  
10 didn't mean to cut you off, Judge.

11 CHAIR KRAUSE: No, please go ahead.

12 MR. BLANTON: We're not arguing that  
13 they're not related and that they're all part of the  
14 same process or that the 50.82 exemption is not  
15 required to load fuel. What we are arguing is that  
16 the 50.82 certification is not required to issue these  
17 four amendment which are limited to reediting the  
18 emergency plan restoring the full power tech specs,  
19 the main steam line -- restoring the main steam line  
20 break analysis, and then just some administrative  
21 controls in the tech specs. We don't think the  
22 exemption is required for the NRC to issue any of  
23 those amendments.

24 CHAIR KRAUSE: Okay. Thank you.

25 MR. BLANTON: They would be required for

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1 us to load fuel in the reactor.

2 CHAIR KRAUSE: All right. Thanks. Going  
3 also to the exemption request, if we were to find that  
4 there's been argument made that the exemption request  
5 is within the scope, that it is inextricably  
6 intertwined and we start to look at the arguments  
7 about challenges to whether the exemption request  
8 meets the exemption request rule which is 50.12. And  
9 one of the requirements in that rule is the special  
10 circumstances criteria.

11 And for those, there is this notion of  
12 what the purpose of the rule was when it was adopted.  
13 Now when we're evaluating arguments that go to the  
14 purpose of the rule, my question for you is, how do we  
15 make sure we're not getting to the merits of the case?  
16 That's almost a legal question, isn't it? I guess in  
17 what way should be viewing the arguments that are  
18 raised in relation to the special circumstances  
19 criteria?

20 MR. BLANTON: Well, it would be a legal  
21 question what the purpose of the rule is. But that is  
22 governed by the regulatory basis documents and the  
23 Federal Register notice that issued the rule. And  
24 they speak for themselves.

25 I mean, there's -- I haven't heard a

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1 supported argument from the petitioners that the  
2 purpose of the rule is not to draw a line of  
3 demarcation between operating and decommissioning  
4 plants. And you can imagine why that rule is  
5 necessary because access to the decommissioning fund.  
6 And the other amendments that we've made to the tech  
7 specs require the plant a certification or a  
8 commitment of the licensee to say that the plant is  
9 permanent shut down.

10 We've defueled, and we're starting  
11 decommissioning. If there were a contention of law  
12 about what the purpose of the rule is, then this board  
13 could decide it either at the contention admissibility  
14 stage, I think, or in summary disposition stage. But  
15 the petitioners haven't made a reasoned legal argument  
16 that the rule means anything other than what it means  
17 which is a line of demarcation. The plain language of  
18 the rule speaks for itself.

19 CHAIR KRAUSE: Okay. Thank you. Judge  
20 Miller --

21 MR. BLANTON: Thank you.

22 CHAIR KRAUSE: -- do you have any  
23 questions?

24 JUDGE MILLER: Yes, one. Good afternoon.  
25 I have one question, and it is, is there anything in

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1 the list of restart activities that Holtec has listed  
2 out in its response to petitioners outside of the  
3 license amendment request that you believe might need  
4 to be reviewed in tandem or looked at in conjunction  
5 with the license amendment requests when they're being  
6 reviewed by the staff?

7 MR. BLANTON: I'm not sure I understand  
8 the question, Judge Miller.

9 JUDGE MILLER: I'm getting that a lot  
10 today. No --

11 MR. BLANTON: I'm not aware of anything  
12 that needs to be reviewed with these license amendment  
13 requests other than these license amendment requests.  
14 Any changes -- any future changes to the FSAR under 10  
15 CFR 50.59, for instance, or any future license  
16 amendments that might be pursued in order to -- for  
17 instance, we just had a steam generator license  
18 amendment request issued or filed last night. Those  
19 are outside the scope of this proceeding.

20 JUDGE MILLER: I think you answered it  
21 very well. Thank you.

22 MR. BLANTON: Thank you.

23 CHAIR KRAUSE: Thank you, and we'll hear  
24 from you again at closing. Now we'll turn to the NRC  
25 staff. You may begin your opening statement.

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1 MR. SPENCER: May it please the board.  
2 I'm Michael Spencer, and with me are Anita Ghosh  
3 Naber, Kevin Bernstein, and Peter Lom representing the  
4 NRC staff. The staff concludes that none of the  
5 contentions are admissible because they either  
6 challenge the existing regulatory framework or raise  
7 matters outside the scope of the proceeding or  
8 otherwise fail to demonstrate a genuine material  
9 dispute with the application.

10 With our opening statement, we'll focus on  
11 the fundamental facts of this proceeding. First, this  
12 proceeding concerns a series of license amendment  
13 requests under existing regulations for a plant that  
14 is already built and was safely operated under NRC  
15 oversight. Second, Entergy's decision to shut down  
16 the plant was voluntary and did not extinguish the  
17 renewed operating license.

18 Third, Holtec is largely attempting to  
19 restore the previous operating license basis,  
20 including the renewed license term to 2031 that's been  
21 covered by previous safety and environmental reviews.  
22 Fourth, the notice preceding concerns particular  
23 Holtec requests and is not a forum for broader policy  
24 debates about restart or how NRC regulations might be  
25 changed. And fifth, an admissible contention must

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1 provide sufficient factual support to show the  
2 specific portions of the application fail to meet  
3 specific NRC requirements that are applicable to  
4 Holtec's requests.

5 Therefore, many arguments made by both  
6 petitioners are outside the scope of the proceeding  
7 and are immaterial, including those that challenge  
8 existing regulatory processes for license amendments  
9 and exemptions or that request new processes not in  
10 the regulations or that seek to impose inapplicable  
11 requirements such as those for license transfers or  
12 for constructing and operating new reactors.  
13 Similarly, current licensee activities in  
14 decommissioning and challenges to the staff's  
15 inspection and review processes and the potential  
16 future changes under 10 CFR 50.59 are similarly  
17 inadmissible because they are immaterial and out of  
18 scope. Further, the contentions generally do not  
19 challenge specific portions of the application much  
20 less offer the focused, well supported material  
21 challenge that is necessary for contention  
22 admissibility.

23 These consideration are sufficient to  
24 resolve the safety contentions before the board. The  
25 environmental contentions are also inadmissible.



1 Petitioning Organizations' argument that an  
2 environmental impact statement is required for these  
3 license amendments is just not supported by the  
4 regulations or by NEPA.

5 The staff's draft environmental assessment  
6 is fully consistent with NEPA and the NRC's  
7 regulations. The Petitioning Organizations' remaining  
8 environmental contentions which are contentions of  
9 omission are similarly inadmissible. As explained in  
10 the staff's answer, the application as originally  
11 filed or as supplemented by Holtec discussed the  
12 project purpose and need and alternatives to the  
13 proposed action.

14 The staff's draft environmental assessment  
15 also discusses these topics. Thus, there is no  
16 omission on these topics and the associated  
17 contentions are moot. The staff did previously  
18 conclude that the climate change contention was  
19 admissible in part as a contention of omission because  
20 the Holtec's environmental report did not discuss,  
21 one, greenhouse gas emissions from the proposed  
22 actions, two, how climate change affected the baseline  
23 environment for the review, or three, how the proposed  
24 action's impacts are affected because of this change  
25 to the baseline environment.

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1                   However, the draft environmental  
2 assessment discusses all of these matters. And  
3 therefore, the climate change contention is now moot.  
4 Finally, I will address a basic principle of the  
5 hearing process, namely, that the board will decide  
6 whether the hearing request itself meets NRC  
7 requirements. While petitioners may file new or  
8 amended contentions, no one has yet done so in this  
9 proceeding. Thus, consistent with Commission  
10 regulations and precedent, all the new arguments and  
11 support that have been filed in replies or even later  
12 filings are not actually part of the hearing request  
13 and may not be considered as supplying deficiencies in  
14 the hearing request as originally submitted.

15                   These include new arguments in the  
16 Petitioning Organizations' reply and in their February  
17 1 submission and also in joint petitioner's various  
18 filings after the deadline. Regardless, this new  
19 information does not make any of the existing  
20 contingents admissible. And with that, my colleagues  
21 and I stand ready to answer the board's questions.

22                   CHAIR KRAUSE: Thank you. Judge Arnold,  
23 would you like to begin the questions?

24                   JUDGE ARNOLD: Thank you. Good opening --

25                   CHAIR KRAUSE: Judge Arnold, you appear to

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1 be muted.

2 JUDGE ARNOLD: Pardon me. I must've  
3 clicked twice fast. What exactly are the effects of  
4 the 50.82 certification upon the current licensing  
5 basis of the plant? Does it initiate any automatic  
6 changes to the license other than it can't use fuel  
7 anymore?

8 MR. SPENCER: Your Honor, it does not  
9 change the literal words of the license. It doesn't  
10 change the FSAR as Holtec said. But it does introduce  
11 that prohibition on operating the reactor or even  
12 keeping fuel in the reactor. And this is Michael  
13 Spencer for the staff.

14 JUDGE ARNOLD: Okay. Let me ask you then.  
15 The four licensing amendments that are the subject  
16 here, do they change the licensing of the plant in any  
17 way such that the plant has more operating authority  
18 than it had right after the 50.82 certification?

19 MR. SPENCER: So the license are -- if  
20 granted, would change the license to authorize  
21 operation of the reactor, the utilization facility at  
22 the full power level. And so -- and that is the  
23 intent of the license amendments. And that's how the  
24 staff is reviewing them as an effort to operate the  
25 reactor again.

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1 JUDGE ARNOLD: Okay. So it would be those  
2 license conditions I mentioned earlier, 2(b)(1),  
3 2(b)(2), and 2(c)(1), 2(c)(1) being the authority to  
4 operate up to 100 percent power. Those license  
5 conditions give them more operating authority than  
6 they had right after the 50.82 certification?

7 MR. SPENCER: Yes, if they are granted.

8 JUDGE ARNOLD: Okay. Now you have  
9 indicated that you consider the exemption request to  
10 be inextricably intertwined with the four license  
11 amendment requests. Is that based upon this specific  
12 licensing conditions?

13 MS. NABER: Your Honor, this is Anita  
14 Ghosh Naber for the staff. As we stated in our brief,  
15 the exemption request and the license amendment  
16 requests are inextricably intertwined because the  
17 staff's position is that the exemption request must be  
18 approved in order for the staff to make the necessary  
19 findings to issue those amendments that would  
20 authorize power operations at Palisades since  
21 prohibition would remove -- the prohibition needs to  
22 be removed to allow power operations through the  
23 exemption request.

24 JUDGE ARNOLD: So it is a conflict between  
25 the license conditions and the 50.82 certification?

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1 MS. NABER: Well, as we stated in our  
2 request, to make the findings in 50.92, 10 CRF 50.92  
3 governs issuance of license amendments. And in 50.92,  
4 the Commission stated that the NRC will be guided by  
5 the considerations for initial licenses which is in 10  
6 CFR 50.57. And 50.57 states that the NRC will make a  
7 finding that the facility will operate in conformance  
8 with, among other things, the rules and regulations of  
9 the Commission.

10 So right now, there is a rule, right,  
11 under 50.82(a)(2) that prohibits power operations at  
12 Palisades. So in order to issue those amendments and  
13 to make those findings under 50.92 and 50.57, the  
14 prohibition that exists by rule today must be removed  
15 through the exemption requests. And that's the  
16 staff's position on why the exemption requests and the  
17 license amendments are inextricable intertwined.

18 JUDGE ARNOLD: Well, let me say  
19 hypothetically if license conditions 2(b)(1), 2(b)(2),  
20 and 2(c)(1) were not part of that license amendment so  
21 that this amendment would not restore the ability to  
22 have fuel in the vessel, would there still be that  
23 problem between the license amendments and the  
24 exemption request?

25 MS. NABER: I see what you're saying, Your

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1 Honor. Yeah, it's because the amendments would allow  
2 power operations through those conditions.

3 JUDGE ARNOLD: Okay.

4 MS. NABER: And we need to make those  
5 findings --

6 JUDGE ARNOLD: Okay.

7 MS. NABER: -- in order to -- yeah.

8 JUDGE ARNOLD: Now does the NRC have the  
9 authority to grant one portion of a license amendment  
10 request while withholding to another time another  
11 portion of that license amendment. And I ask this  
12 because I have seen in the past where reactors looking  
13 for the initial license got an operating license that  
14 was restricted to 5 percent power. They couldn't go  
15 up to 100 percent power.

16 So in this case, could the NRC say, yes,  
17 we will give you these license amendments but we will  
18 not give you those license conditions yet? We will  
19 withhold that until we are ready. Does the NRC have  
20 the authority to do that?

21 MR. SPENCER: Your Honor, this is Michael  
22 Spencer for the staff. The NRC does have authority to  
23 grant an amendment application in part just like there  
24 was an application for an operating license and we  
25 granted a low power license is what you're referring

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1 to, Your Honor.

2 JUDGE ARNOLD: Right.

3 MR. SPENCER: But the staff isn't planning  
4 to do that here. The staff is actually planning --  
5 the reviews are proceeding in parallel. But the  
6 current staff plan is that for the actions, the  
7 license transfer, the four license amendments, and  
8 exemption, if the staff were able to find that all of  
9 the requirements for those actions were met, the staff  
10 would issue those actions on the same day. And that  
11 even if the staff somehow changed its plans and issued  
12 maybe part of an action before the others, ultimately  
13 this notice proceeding is on the entirety of the  
14 actions.

15 JUDGE ARNOLD: Okay. Well, my questions  
16 relate to the word, inextricably, in inextricably  
17 entwined. And it sounds to me as though NRC has the  
18 authority to un-intertwine these but it's just not  
19 chosen that path. So I'm just questioning whether it  
20 is inextricably intertwined.

21 Okay. Let me turn to NEPA. Now all four  
22 of the license amendments included a categorical  
23 exclusion and did not include an environmental report.  
24 Do you agree that with that categorical exclusion, no  
25 environmental report was required?

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1 MR. SPENCER: Your Honor, this is Michael  
2 Spencer for the staff. There isn't a regulation  
3 particularly on point that would require an  
4 environmental report for these actions. However,  
5 Holtec did submit environmental information.

6 And we considered an environmental report  
7 because, as explained in our answer, it meets the 10  
8 CFR 51.14 definition of an environmental report. And  
9 then they actually referenced that. And I'll just  
10 call it the environmental report going forward for  
11 simplicity.

12 They referenced that environmental report  
13 in three of their four license amendment applications.  
14 And in an application, our regulations in 10 CFR 50.32  
15 allows an application to reference other documents  
16 submitted to the Commission as long as the reference  
17 is clear and specific. So we consider that  
18 environmental report part of the application.

19 Now with respect to categorical exclusion,  
20 I would like to read from a portion of our notice of  
21 intent to perform an environmental assessment that was  
22 issued in June 27, 2024. And it discusses the  
23 categorical exclusion. And it notes that the  
24 amendments do reference the categorical exclusions.

25 But the NRC says, the staff has determined

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1 to prepare an environmental assessment instead of  
2 invoking the categorical exclusions. This  
3 determination is based largely on concluding that the  
4 submittals, one, are either not covered by the  
5 criteria for CATEX or, in the case of the license  
6 transfer request, do not fall within the factual basis  
7 underlining the corresponding CATEX, two, are  
8 connected, i.e., interdependent, actions that should  
9 be considered together as part of the National  
10 Environmental Policy Act review, and three, are not  
11 specifically covered by the criteria for preparing an  
12 EIS. And I'll leave off the rest of that quote.

13 So we did have reasons for not invoking  
14 the categorical exclusions. And so we consider that  
15 those aren't really continued relevance to the staff's  
16 review and that it's the environmental report that  
17 they submitted that was of continued relevance. And  
18 that under 10 CFR 2.309(f)(2), the petitioners were  
19 obligated to file contentions on that information if  
20 they wanted to challenge it.

21 JUDGE ARNOLD: I believe I followed that.  
22 Let's see. Having to do with a categorical exclusion,  
23 you now have a draft FONSI. And it is the NRC's  
24 determination that there are no significant  
25 environmental impacts. Now in light of the

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1 categorical exclusions which said the same thing, does  
2 the FONSI now qualify as new information upon which  
3 new contentions can be based?

4 MR. SPENCER: Your Honor, this is Michael  
5 Spencer for the staff. The existing Holtec  
6 environmental report referenced the license renewal  
7 EIS which says that all the impacts were small which  
8 is really equivalent to not significant. And then  
9 Holtec said it did a new and significant evaluation to  
10 determine that there weren't any moderate or large  
11 impacts, that they're still small. And so there may  
12 be new information in the draft environmental  
13 assessment that could be challenged in the new or  
14 amended contention. But it has to be materially  
15 different from that previous information that did  
16 conclude that the impacts were small.

17 JUDGE ARNOLD: And that previous  
18 information is not in the report called an  
19 environmental report. It is somewhere in the massive  
20 data accumulated by the NRC for environmental  
21 assessment.

22 MR. SPENCER: Well, Your Honor, it's data  
23 -- it's information in -- that's referenced in the  
24 license amendment itself. So it's referenced in the  
25 application, and that's allowed under the rules. And

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1 in accordance with 10 CFR 2.309(f)(2), contentions  
2 must be based on documents or other information  
3 available at the time the petition is to be filed such  
4 as the application.

5 And other examples are environmental  
6 report or other supporting document filed by an  
7 applicant or licensee or otherwise available to the  
8 petitioner. So we see this as referenced in the  
9 application. It does meet the -- even though it's not  
10 called an environmental report, it does meet that  
11 definition. So we think that it is fairly within the  
12 scope.

13 JUDGE ARNOLD: My question really concerns  
14 new contentions to be filed in the future. And part  
15 of the petitioner's responsibility is for saying, what  
16 is new? What was the old information? How is it  
17 different? And why is it significant enough to be new  
18 information?

19 And I'm just saying they may have a  
20 difficult time identifying the existing information  
21 because it's not in a document titled environmental  
22 report. It's in an environmental review document for  
23 the exemption request. And some of it may be in  
24 answers to RAIs. So I'm just looking for some  
25 clarification because I see problems.

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1 MR. SPENCER: Your Honor, I think that the  
2 petitioners will not have a problem because they  
3 already challenged this document. So they already  
4 know what's in it. They already challenged it.

5 So I don't think they would have problems  
6 determining what's different between that document and  
7 this one. I do want to repeat I know that Holtec said  
8 that the document is in the exemption request and that  
9 Holtec did supply information in RAI responses. But  
10 if you do look at the original license amendment  
11 requests, three of the four do cite this -- what we  
12 call the environmental report. And so -- and we give  
13 those citations at our answer to the hearing request.

14 JUDGE ARNOLD: Okay. Thank you. No more  
15 questions.

16 CHAIR KRAUSE: Okay, great. I have a few  
17 questions. I'm going to start with standing analysis  
18 and the staff's answer to the Petitioning  
19 Organizations on standing and specifically three of  
20 those organizations. The argument that because the  
21 declarations for those organizations appear to only  
22 reference the exemption request that there is no  
23 standing because somehow it's not within the scope of  
24 the proceeding or the standing analysis.

25 And I guess my question is, does that

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1       undermine the staff's later argument that the  
2       exemption request is within the scope of the  
3       proceeding for contentions, that it's inextricably  
4       intertwined? Because I'm seeing a disconnect there  
5       that it can be challenged for contentions but it can't  
6       be challenged for standing. Could the staff explain  
7       its position on that?

8                       MR. LOM: Yes, thank you, Your Honor.  
9       This is Peter Lom for the NRC staff. So the  
10       requirements for standing under 2.309(d) are different  
11       from the requirements for contention admissibility  
12       under 2.309(f).

13                      And the language that the Commission has  
14       used when describing the inextricably intertwined  
15       doctrine mirrors the language in the contention in the  
16       stability regulation. So for example, in CLI 21-1,  
17       the Commission stated that where a request exemption  
18       raises questions that are material to a proposed  
19       licensing action and bear directly on whether the  
20       proposed action should be granted, a petitioner may  
21       propose exemption-related arguments in the licensing  
22       proceeding. So that's a question of the contentions  
23       that they can raise.

24                      But for purposes of demonstrating  
25       standing, they have to articulate the nature and

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1 extent of their, quote, interest in the proceeding,  
2 end quote. And I think we're applying the literal  
3 words of the regulation for standing at 2.309(d). And  
4 that requires an interest in the proceeding. And this  
5 proceeding as noticed in the Federal Register on  
6 August 7th, 2024 is on four license amendment  
7 requests.

8 CHAIR KRAUSE: Although if we say that the  
9 exemption request is within the scope of the  
10 proceeding, isn't it conceivable that an injury could  
11 accrue from that exemption request that the board that  
12 could be caused by the exemption request so that the  
13 board could redress that injury caused by the  
14 exemption request? And therefore, it would meet the  
15 standing criteria. I'm having a hard time  
16 understanding that distinction there, especially when  
17 you consider that the staff has already said that the  
18 exemption request -- that action on the exemption  
19 request is necessary for the license amendment request  
20 to go forward. So the actions are basically at issue  
21 in this proceeding from the staff's point of view. So  
22 I guess could you address that perhaps in your  
23 standing argument.

24 MR. LOM: Sure. So the actual injuries  
25 that could accrue for the exemption request itself,

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1 there really aren't any because it simply removes a  
2 legal prohibition without actually authorizing restart  
3 whereas the before licensed amendments together would  
4 allow for radioactivity in the reactor core at full  
5 power where currently there is none. So the staff is  
6 looking at the license amendment requests as being  
7 that affirmative legal go ahead to proceed with  
8 operations. And that is where the injuries could  
9 conceivably flow from whereas when you look at the  
10 exemption request itself, it merely removes that  
11 prohibition without authorizing restart itself.

12 CHAIR KRAUSE: Okay. I have just one more  
13 follow-up on that, though. If the exemption request  
14 is not granted, the staff position is that they cannot  
15 then get their license amendments that would allow  
16 them to load fuel and operate the plant. So I guess  
17 what would be your response to that? You still think  
18 that the exemption is just a removal of a prohibition?

19 MR. LOM: Yes, that's correct. So the  
20 license amendment request themselves are what legally  
21 authorize radioactivity in the core. But I, again,  
22 would point you to the little words of 2.309(d) and  
23 what is required in the hearing request that the  
24 petitioner must demonstrate to have standing. And  
25 that is an interest in the proceeding. And this

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1 proceeding is governed by the Federal Register notice  
2 that was published last year and that stated that you  
3 could request a hearing on the four proposed license  
4 amendment requests.

5 CHAIR KRAUSE: Okay. Thank you. I have  
6 another question similar to the question that I asked  
7 the Applicants. And that relates again to the  
8 exemption request, assuming we see that it's  
9 inextricably intertwined and therefore within the  
10 scope of the proceeding. And then, again, drilling  
11 down further, we're looking at the regulation that  
12 allows exemption requests so that you use to apply for  
13 an exemption request, 50.12.

14 And then one of the requirements in there  
15 is a demonstration of special circumstances. And the  
16 various criteria being relied upon here involve an  
17 analysis of the purpose of the regulation that we're  
18 seeking the exemption from, that the Applicants are  
19 seeking an exemption from, the purpose of that  
20 regulation when it was adopted. And in the staff's  
21 answer, the purpose is framed in the way that the  
22 applicant has raised it. And so I wanted to ask, does  
23 the staff have a position on the purpose of the  
24 regulation? And if so, what is it?

25 MS. NABER: Your Honor, this is Anita

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1 Ghosh Naber for the staff. I believe in our petition,  
2 we did reference the applicant's position in the  
3 exemption request about the purpose being to provide  
4 key information to the NRC and to the public and also  
5 to provide, like, a point in time when the licensee  
6 would formally enter decommissioning. And this  
7 position was that based on the plain reading of this  
8 regulation itself, it does appear to be a fair  
9 assessment of the purpose.

10 CHAIR KRAUSE: Okay. Thank you. And then  
11 a follow-up question to that that I also asked the  
12 Applicants is, how do we make sure -- it seems like  
13 that's really a legal question, getting into the  
14 purpose. How are we, the board, to evaluate these  
15 contentions on that issue and make sure that we're not  
16 getting to the merits of the contention?

17 MS. NABER: Well, as I had said, I think  
18 to some extent, you can look at the plain language of  
19 the regulation itself and take the plain meaning of  
20 the regulation on its face. But also, some of the  
21 arguments that we raised in our brief in terms of more  
22 specific to contention and disability and why the  
23 petitioners have not met the criteria in 2.309(f)(1)  
24 that they haven't provided support for their position  
25 or they don't provide a genuine dispute with the

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1 arguments that Holtec has raised in its exemption  
2 request. So I think we would rely on our brief for  
3 those matters.

4 MR. SPENCER: Your Honor, may I add? This  
5 is Michael Spencer for the staff.

6 CHAIR KRAUSE: Yes, please.

7 MR. SPENCER: We think that the board is  
8 able to make legal determinations in their decisions  
9 on the hearing request. And that would really be  
10 getting into the merits. I guess historically how  
11 I've seen the merits are more the merits of the  
12 factual dispute because ultimately the purpose of  
13 deciding to grant a hearing request is to determine  
14 whether we're going to an evidentiary hearing or have  
15 factual evidence to make decisions. But while legal  
16 contentions have been admitted in the past, it's only  
17 been done very occasionally. And so I would think  
18 ordinarily the board could render a legal decision at  
19 the contention admissibility stage.

20 CHAIR KRAUSE: Thank you. Judge Miller,  
21 do you have any questions?

22 JUDGE MILLER: Yes, thank you. I have one  
23 question and it's similar to the question that I asked  
24 the applicant which is, is there anything within the  
25 list of restart activities on actions being done by

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1 the applicant that the staff would rely on in their  
2 review of the license amendment requests?

3 MR. SPENCER: Your Honor, the -- this is  
4 Michael Spencer for the staff. Ultimately, the staff  
5 is going to make its decisions on the amendment  
6 application based on the content of the application.  
7 So if we needed additional information to make a  
8 safety determination, then we would need to ask an RAI  
9 potentially.

10 Or somehow the application would have to  
11 be supplemented. But ultimately, the exemption is  
12 going to be addressed under the exemption criteria.  
13 And the transfer is going to be judged under the  
14 transfer criteria.

15 I will say one thing is that because we  
16 think the exemption is ultimately needed to make the  
17 findings for an amendment, then the fact that we've  
18 come to a positive safety determination on the  
19 exemption is relevant. But the actual special  
20 circumstances criteria and the other specific  
21 exemption criteria are specific to the exemptions and  
22 not for the amendments. Did I answer the question?  
23 Did I answer the question?

24 JUDGE MILLER: Yes, yes, you did. No  
25 other questions.

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1 CHAIR KRAUSE: Okay, great. Thank you  
2 all. The board will now take a 15-minute recess. So  
3 that will put us at 1:15. Participants, please stay  
4 connected, but remember to mute your microphone and  
5 turn off your camera. And again, we'll return at  
6 1:15. Thank you.

7 (Whereupon, the above-entitled matter went  
8 off the record at 12:59 p.m. and resumed at 1:15 p.m.)

9 CHAIR KRAUSE: Do my colleagues have any  
10 additional questions? Judge Arnold? Judge Arnold,  
11 you're muted.

12 JUDGE ARNOLD: I have no questions.

13 CHAIR KRAUSE: Thank you. Judge Miller?

14 JUDGE MILLER: I have no questions.

15 CHAIR KRAUSE: I also have no further  
16 questions. So we'll now turn to closing statements.  
17 Counsel for Petitioning Organizations, you may begin  
18 your closing statement. As a reminder, you have five  
19 minutes, and then we'll hear from you again with two  
20 minutes for rebuttal. You may begin.

21 MR. LODGE: All right. Thank you. May it  
22 please the panel and the parties. Petitioning  
23 Organizations believe that -- we stand by our position  
24 that the exemption remains a separate and distinct  
25 determination to be made by the Commission. And we're

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1 going to confine our closing remarks to the license  
2 amendment request argument which were essentially from  
3 the opposing parties where that everything here is  
4 really about the license amendment requests.

5 The LARs, we think, do require and are  
6 impossible to achieve, retain without the  
7 determination of an exemption. But we also take the  
8 position that there are two separate determinations to  
9 be made. We believe also that our contentions are all  
10 admissible as stated.

11 The argument that has been going on today  
12 is sort of at the level of where it appears that the  
13 board may be considering arguments of fact and law.  
14 And if, indeed, that is the determination that the  
15 board is considering dismissing contentions or  
16 forbidding them from being advanced in the proceeding,  
17 based upon accommodations of law and fact, that's a  
18 summary disposition type of ruling. And we believe  
19 that due process requires that the rules be followed,  
20 that effectively the summary disposition process be  
21 followed.

22 I understand and have reviewed the case  
23 law cited to me by Mr. Spencer and the NRC staff that  
24 says that determination of whether contentions of  
25 omission are moot or not can actually be made on the

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1 order of bench rulings by the ASLB. But the cases  
2 that he cited also said -- and I believe one of them  
3 kind of went in the direction of saying that the  
4 preference is for a summary disposition type of  
5 determination to be made. And that, indeed, Your  
6 Honors, is why we entered into the stipulation that  
7 the ASLB has approved which has granted us until March  
8 3rd to move to amend or to admit new contentions.

9 There is a little bit of different  
10 procedural rigor as to the requirements for allowing  
11 an amendment versus allowing a late filed contention.  
12 We believe and request that the board not make any  
13 dispositive determinations about the contentions of  
14 omission and withhold any kind of determination and  
15 allow us to exercise what I believe is the Petitioning  
16 Organizations' discretion to decide which procedural  
17 vehicle to pursue as to that. I'd also point out that  
18 the EA FONSI was issued 12 days before this hearing.

19 And I applaud the fact that staff has  
20 accelerated its publication. But it's simply a  
21 confusing factor at this point which we believe  
22 doesn't have to be confusing at all. Simply follow  
23 the longstanding procedural accepted regulatory  
24 practices that the Commission follows.

25 Allow us a period of time we've all

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1 stipulated to, to determine what to do next. Also, we  
2 just learned today that there was a license amendment  
3 request apparently submitted yesterday which would be  
4 February 11th on the steam generators that are subject  
5 to considerable dispute in this proceeding. That's  
6 not a NEPA contention.

7 It is certainly something that we will be  
8 taking a hard look at and very likely moving to file  
9 another petition for purposes of intervention. The  
10 circumstances here warrant -- pardon me. Let me back  
11 up.

12 The company wants speedy approval of all  
13 of its pending requests. It has actually specified by  
14 approximately August 2025 which is about by my count  
15 maybe six months away. And the company has created  
16 its own needs for speedy determination.

17 The company has heavy investments. It's  
18 apparently proceeding at risk. But they're risking an  
19 awful lot of public money in their decision to try to  
20 restart Palisades.

21 That is not the NRC's problem to solve.  
22 The company is going to have to abide by the due  
23 processes that are -- extend under the AEA and NEPA.  
24 We believe that that is the only prudent path for this  
25 licensing board to follow. Thank you very much.

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1 CHAIR KRAUSE: Thank you. We'll turn now  
2 to Joint Petitioners. Mr. Blind, you have five  
3 minutes, and then we'll hear again from you after that  
4 with two minutes for rebuttal. You may begin.

5 MR. BLIND: Thank you, Your Honor. I'd  
6 just like to make a couple comments that, again, we're  
7 not a party to the environmental assessment  
8 discussion. So anything I saw doesn't apply to that.

9 On the specific exemption, we don't  
10 contest that in accordance with the full Berka  
11 interpretation or full Berka denial that it would be  
12 possible to use the specific exemption request to  
13 return Palisades to service. Our Contention 5 was  
14 pointing out flaws in the application, in the  
15 submittal. And we had researched the reference  
16 materials.

17 And in our Contention 5, we identified  
18 where those references didn't say what Holtec said.  
19 So it could be fixed. All they got to do is make a  
20 new application.

21 Okay. Let's talk about the staff's  
22 request. Everybody wants our petitions to be  
23 categorically dismissed. We're here at the invitation  
24 of the Palisades NRC restart panel.

25 At local meetings, they encouraged us to

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1 follow this process in order for our concerns to be  
2 heard. And that's what we're doing. So we're alarmed  
3 to hear that somebody is thinking -- it's particularly  
4 the Office of General Counsel who belongs to the same  
5 NRC that they would even entertain the idea that our  
6 petitions and our concerns would summarily dismissed.  
7 That's concerning.

8 We're in a lose-lose proposition. They  
9 say we haven't referenced a regulation for our  
10 disputes. Well, that's a lose-lose because there are  
11 no regulations.

12 So under that argument, there's no way  
13 that we can have a petition that would not be  
14 summarily dismissed. And that's why we would divert  
15 our attention to the updated FSAR which is a known  
16 identifiable issue. But we also point to Berka.  
17 Berka is what identifies if you follow the full  
18 document how you -- what do you know what the  
19 applicable regulations are.

20 Let me just read to you two statements  
21 that haven't been addressed in any of Holtec's  
22 documents but yet they refer to it. Under resources,  
23 based on the complexity of the issue raised by the  
24 petitioner, rulemaking on this issue would entail  
25 significant expenditures of NRC resources. Any such

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1 undertaking would likely address a wide variety of  
2 technical and regulatory topics, including but not  
3 limited to decommissioning status, aging management,  
4 quality assurance, equipment maintenance, personnel  
5 license, expiration, hearing process, that's what  
6 we're here today, and this is most important, the  
7 appropriate licensing basis.

8 That's right in Berka. And as we know,  
9 they've pointed out we should be dismissed because,  
10 yes, we've made errors in 50.2, requirements for this  
11 hearing. Yes, we have.

12 But it's right in Berka that that needs to  
13 be considered on how this process goes forward. Now  
14 on the issue of general design criteria, I've got in  
15 my hand SECY 92-223 where Holtec had said, well, by  
16 Commission statements that general design criteria  
17 don't apply to Palisades because of its construction  
18 date. Okay. But let me read to you a statement right  
19 out of that SECY letter.

20 The Office of General Counsel believes  
21 that the intent of the Commission when promulgating  
22 the GDC regulation is not clear. And the Commission  
23 can as a matter of safety policy choose to interpret  
24 the GDC as applying to all plants with operating  
25 licenses after May 1971 or can restrict applicability.

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1 But here's the main sentence.

2 In essence, Office of General Counsel  
3 believes the issue is one of policy, not legal  
4 interpretation. So that opens up the door, as I said  
5 before. If we follow the entire Berka interpretation,  
6 that allows NRC staff to elect not to accept the fact  
7 that Palisades doesn't meet the GDC criteria. They  
8 can look at that as a matter of policy. I want to  
9 give you a reference. I talked to you about the  
10 atmospheric dump valves.

11 CHAIR KRAUSE: Mr. Blind, your time has  
12 expired for your closing.

13 (Simultaneous speaking.)

14 CHAIR KRAUSE: But you can give us that  
15 reference in your rebuttal.

16 MR. BLIND: Okay. I'll continue in my  
17 rebuttal. Thank you.

18 CHAIR KRAUSE: Thank you. We'll turn now  
19 to the Applicants. You have five minutes.

20 MR. BLANTON: Thank you, Judge Krause.  
21 Matters of policy and challenges to NRC policy are  
22 simply not appropriate subjects for a contention to be  
23 admissible in a license amendment proceeding before  
24 this board. The Commission had told us how we -- what  
25 we would do in order to follow process to restart a

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1 reactor who has been certified and is permanently  
2 decommissioned under 50.82.

3 It has stated without -- as clear as it  
4 can that the existing regulatory framework -- that's  
5 the whole existing regulatory framework that includes  
6 license amendment requests. It includes exemption  
7 requests. It includes license transfer requests.

8 It's applicable to a restart proceeding.  
9 I'm not clear on what the petitioners suggest is not  
10 being applied in the petition -- in the denial of the  
11 petition for rulemaking. But this staff -- the NRC  
12 staff has promulgated Inspection Manual Chapter 25.62  
13 which covers all of those issues, including whether  
14 the design basis is appropriate, whether the plant is  
15 prepared to operate within that design basis, QA.

16 All of the issues that Mr. Blind mentioned  
17 are covered in Inspection Manual Chapter 25.62 which  
18 is implementing NRC policy. And the process of  
19 restarting the reactor that NRC has said should be  
20 followed, a challenge to that just does not state an  
21 admissible contention in this proceeding. The license  
22 amendment request at issue simply restore Palisades to  
23 its pre-decommissioning status in terms of the  
24 technical specifications in the emergency plan.

25 Those changes will be evaluated by the

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1 staff under the regulations that govern license  
2 amendments and technical specifications, and emergency  
3 plans. So there's question about what regulations  
4 should be followed. The regulation is the one that  
5 applies to the licensee action that's being requested.

6 I also want to mention on the exemption,  
7 Judge Krause asked a couple of questions about whether  
8 a ruling on what the intent of 50.82 is gets into the  
9 merits. I think that the board can make a decision,  
10 a legal decision on the meaning of a regulation at the  
11 contention admissibility stage. It's hard to think of  
12 a reason to have a hearing on that given that all the  
13 legal argument that you're going to have before you  
14 has already been made.

15 And the petitioners' legal argument does  
16 not cite any legal authority or even discuss the  
17 Federal Register notice on the statement of  
18 considerations of 50.82 in any detail. So I think the  
19 board is in a perfect position to make a ruling on  
20 what the intent of 10 CFR 50.82 is. The disagreement  
21 between Holtec and the staff in regards to the  
22 inextricably linked issue on the exemption request  
23 versus a license amendment request I think is more of  
24 a disagreement on what the case is that create an  
25 exception to the general rule on that exemption

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1 requests do not carry with them hearing rights than it  
2 is a disagreement about the interplay between the  
3 exemption request and the license amendment request.

4 We believe that those cases are fairly --  
5 more fairly read to say unless the license amendment  
6 is seeking essentially the same relief that the  
7 exemption request is, that is the license amendment is  
8 we're seeking relief from the application of the  
9 regulation. Then that makes them inextricably  
10 intertwined, and that's not what we have here. The  
11 license amendment request will not authorize fuel to  
12 be placed in the reactor or operation without the  
13 letter from NRC that the inspection manual chapter  
14 that says we have done all the inspections and all the  
15 testing and all the other things that are required  
16 under IMC 2562 and that the reactor is now authorized  
17 to load fuel. Thank you.

18 CHAIR KRAUSE: Thank you. All right.  
19 We'll turn to the NRC staff. Five minutes for  
20 closing.

21 MR. SPENCER: Thank you, Your Honors.  
22 This is Michael Spencer for the NRC staff. In  
23 closing, I would just like to cover a few topics that  
24 have been raised during this argument but in the  
25 framework of the decision the board will ultimately

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1 make.

2           So I think this is going to come down to  
3 whether the proposed contentions are admissible. And  
4 the four main criteria that we're looking at are  
5 within scope -- are the contentions within scope, are  
6 they material, do they sufficient factual support, and  
7 do they -- are they actually focused on the  
8 application and specific disputes with the  
9 application? And that's where the contentions don't  
10 meet those requirements.

11           And we covered in our opening statement  
12 about the scope of the proceeding, that it's limited  
13 to these license amendment requests. So issues about  
14 what may be happening during decommissioning or some  
15 later point or other processes, those are just out of  
16 scope here. Going to materiality, it has to be  
17 material to the regulations that apply to the specific  
18 request.

19           And as the board noted, there's 50.12 for  
20 exemptions. There's 10 CFR 50.92 for license  
21 amendments. And that license amendment regulation  
22 references as applicable and appropriate the  
23 requirements that apply to initial licenses.

24           And so we already have a statement in the  
25 regulations about what rules apply. And therefore, it

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1 was up to the petitioners to go look at the specific  
2 portions of the application and say, that specific  
3 portion of the application doesn't meet this specific  
4 requirement for that particular Holtec request. And  
5 that's what we're not seeing here.

6 Joint Petitioners cover the general design  
7 criteria and their reply. And they cite a 1992 SECY  
8 paper. Now they did not cite that SECY paper in their  
9 hearing request, so it's not really part of the basis  
10 for their hearing request.

11 But that was a SECY paper to the  
12 Commission. If you did look at the SECY paper, it  
13 would show that there were two alternatives provided  
14 for Commission consideration. And ultimately, the  
15 Commission and the SRM made the decision that the GDC  
16 do not apply to those plants whose construction  
17 permits were issued before that specified date of  
18 1971.

19 And our answer to the hearing request  
20 cited that SRM because that's the operative  
21 controlling Commission decision on that question. And  
22 so that dispute saying that they need to meet the GDC,  
23 that's not a material dispute here. But even if  
24 somehow the GDC applied, then they would still under  
25 the contention requirement have to go to specific

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1 portions of the application and say, how does this not  
2 meet the GDC?

3 The other -- a few other points. One is  
4 the un-mooting of contentions. We're going to address  
5 this more in our briefing that the board has  
6 requested. But ultimately, the board's decision is  
7 whether the contention is admissible, not whether it  
8 used to be admissible.

9 And in prior boards and even the  
10 Commission itself has found contentions to be  
11 inadmissible where the factual basis for the  
12 contention was changed by subsequent events. Because  
13 the standard is not whether the contention used to be  
14 met. It's whether it used to meet the requirements  
15 but whether it does currently meet the requirements.

16 And so we'll go into that more in our  
17 briefing. But suffice it to say that the contentions  
18 are current mooted. The environmental contentions, 5,  
19 6, and 7, are currently mooted and they're no longer  
20 admissible.

21 Finally, I would like to address the  
22 inspection manual chapter cited by Holtec. I do want  
23 to clarify a few things. So there was an initial  
24 issuance of the Inspection Manual Chapter 2562, and  
25 then there was a revision to that a few months later.

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1           The revision is the -- and we cite the  
2           revision in our answer to the hearing request. And so  
3           that's the revision that the board should consider.  
4           And in that revision, it's made clear that it's not  
5           intended to be comprehensive guidance on restart.

6           It's an inspection manual chapter, and it  
7           concerns inspection and oversight and states that the  
8           licensing is discussed only to the extent necessary to  
9           provide that context that's needed for the oversight  
10          piece. And so we don't see that inspection manual  
11          chapter as having the same significance that Holtec  
12          does. And with that, Your Honors, we appreciate the  
13          opportunity to provide our views to the board and  
14          thank you.

15          CHAIR KRAUSE: Thank you. We'll head back  
16          to Petitioning Organizations for your two-minute  
17          rebuttal.

18          MR. LODGE: Thank you. We are talking  
19          about not just an operating license. We are talking  
20          about an operating license with conditions, with  
21          encumbrances if you will.

22          And those encumbrances are statutory --  
23          what are known as statutory regulations. They were  
24          regulations promulgated and implemented by the NRC to  
25          fill in for any voids. I would say perhaps in the --

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1 even before the Chevron era.

2 But to fulfill the need for explicit  
3 guidance that is one and the same time interpretive of  
4 what the Atomic Energy Act requires. So it is not  
5 simply an OL. It's not -- they can't operate.

6 They can't operate because it's a license  
7 that is encumbered with conditions. 50.82 -- pardon  
8 me, 10 CFR 50.82 is one of those conditions. That  
9 establishes a one-way unidirectional decommissioning  
10 procedure which ends in termination of license.

11 There isn't an off ramp to back up,  
12 restart, and start the plant up again anew. As I say,  
13 it is an operating license that's conditioned. And it  
14 is conditioned effectively by statute.

15 I would point out at the end of the  
16 decommissioning phase there is a requirement under  
17 NEPA for the owner or applicant to provide an up to  
18 day environmental statement of the reactor site.  
19 There is no contemplated -- pardon me. Within the  
20 1996 Federal Register notification on the  
21 decommissioning rule, the Commission states that that  
22 is to be treated for purposes of allowing public  
23 intervention as though it were a licensed amendment.

24 There is no other contemplation of  
25 amendment of a decommissioning procedure to turn

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1 things around and start the reactor back up again. We  
2 maintain and have maintained throughout this  
3 proceeding that this is a cobbled together ad hoc  
4 patchwork licensing -- re-licensing procedure. And we  
5 believe that it is not lawful under the Atomic Energy  
6 Act. Thank you.

7 CHAIR KRAUSE: Thank you. We'll turn back  
8 to Joint Petitioners. Mr. Blind, you'll have two  
9 minutes.

10 MR. BLIND: Okay. Thank you. First, on  
11 the 2562, we're in agreement with Mike Spencer, the  
12 staff's position on that, that it does not set policy.  
13 We view it as setting -- allocating NRC inspection  
14 resources.

15 But there seems to still be a lot of  
16 discussion that our case should be dismissed because  
17 complexities -- the artificial complexity of there are  
18 no rules. Again, I want to read from Berka which we  
19 say needs to be referenced for figuring out how do we  
20 do that. That's what the Commission said.

21 And in there, specifically in Berka, they  
22 say that the hearing process has to be evaluated  
23 specific to this special circumstance. So I'm asking  
24 the licensing board to allow us that flexibility. And  
25 I know there's also case law that we've cited for per

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1 se for all the errors that we may have made in our  
2 submittals of that same allowance.

3 Let me read to you in closing. In 1979,  
4 we had the Three Mile Island accident. Jimmy Carter  
5 put together a commission called the Kemeny Commission  
6 and said, figure out what went wrong.

7 And here was one of their key findings.  
8 Regulations while essential cannot be effective if  
9 approached with a compliance only mentality. The  
10 intent behind the regulations must guide actions and  
11 ensure the highest standards of safety.

12 That was followed up by Zack Pate who led  
13 the industry implementing that concept as the  
14 president of the Institute for Nuclear Power. And in  
15 1989, he made the following statement which is on the  
16 wall of all the major buildings and included on all  
17 the diplomas. He said, the nuclear professional is  
18 thoroughly imbued with a great respect and a sense of  
19 responsibility for the reactor core -- for reactor  
20 safety -- and all decisions and actions take this  
21 unique and grave responsibility into account.

22 This is not a legal process. You need to  
23 exercise the flexibility that the case law has given  
24 you and the flexibility that Berka itself has given  
25 you in saying, hey, there needs to be an examination.

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1 We need to step back.

2 Instead of looking at all these legal  
3 theories, look at what are we doing. Does it make  
4 sense? It can make sense if it's done right. But if  
5 we don't give the NRC staff the tools and the guidance  
6 that they need, how do we know it's going to be done  
7 right?

8 And we already know that there are some  
9 staff who don't agree with this. And that's right  
10 within the answers that they gave us to our petition.  
11 They said, some staff agree with this. So please  
12 don't dismiss our case.

13 CHAIR KRAUSE: Thank you. Before I begin  
14 my closing remarks, do my colleagues have anything  
15 else they wish to ask or raise? Judge Arnold?

16 JUDGE ARNOLD: I have nothing else.

17 CHAIR KRAUSE: Judge Miller?

18 JUDGE MILLER: I have nothing else.

19 CHAIR KRAUSE: All right. Thank you all  
20 for your presentations today. Your responses to our  
21 questions will help us in making our decisions on the  
22 hearing requests. I'm also grateful for your  
23 understanding of our change in plans due to the snow.  
24 We did receive snow last night and this morning.

25 I would like to extend a special thanks to

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1 our administrative and IT staff and our law clerks.  
2 Your support has been invaluable, especially as we  
3 navigated this winter weather. And finally, thank you  
4 to our court reporter.

5 We ask the participants to please stay on  
6 Teams for a few minutes after we adjourn to answer any  
7 clarifying questions from the court reporter. Again,  
8 the transcript of today's oral argument should be  
9 available in the electronic hearing docket by next  
10 week. We are adjourned.

11 (Whereupon, the above-entitled matter went  
12 off the record at 1:45 p.m.)

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