

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Atomic Safety and Licensing Board**

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| In the Matter of |) | |
| |) | |
| HOLTEC DECOMMISSIONING |) | Docket No. 50-255-ER |
| INTERNATIONAL, LLC, AND HOLTEC |) | |
| PALISADES, LLC |) | March 3, 2025 |
| |) | |
| (Palisades Nuclear Plant October 7, 2024 |) | |
| Request for Exemption and License |) | |
| Amendments) |) | |

**PETITIONING ORGANIZATIONS' MOTION TO FILE
AMENDED AND NEW CONTENTIONS**

Now come Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (hereinafter "Petitioning Organizations"), by and through counsel, and move the Atomic Safety and Licensing Board ("Licensing Board" or "ASLB") for leave to amend several of their existing contentions and to file new ones, as set forth below.

INTRODUCTION

This Motion is presented pursuant to 10 C.F.R. § 2.309(c)(1). The Petitioning Organizations have filed a Petition to Intervene in this proceeding in which they have propounded Contentions 2, 5, 6, and 7, which state:

Contention 2

An Environmental Impact Statement (EIS), not an Environmental Assessment (EA), must be compiled for the proposed restart of the Palisades reactor. An EIS is required because of the major regulatory decisions sought by Holtec.

Contention 4

Holtec and the NRC admit that there is no provision in law or regulation for the NRC to

authorize the restart of Palisades as a closed reactor. They are cobbling together a “pathway” to restart, using a “creative” procedure based on existing regulations that they believe allows Holtec to bypass the requirement of compiling a new Updated Final Safety Analysis Report (UFSAR) in favor of returning the UFSAR Revision 35, which was in place when the Palisades reactor was closed. Since there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by Holtec.

Contention 5

There is no purpose and need statement appearing in the document the NRC considers to suffice for Holtec’s Environmental Report. Pursuant to 10 C.F.R. § 51.45, an Environmental Report must contain a statement of the purpose and need for the project.

Contention 6

There is no presentation of alternatives, nor discussion of the no-action alternative, found in the document the NRC and Holtec claim to suffice as an Environmental Report.

Petitioning Organizations now seek to amend those contentions to address new and different information presented in the draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), both of which were filed on January 31, 2025. The contentions presented in Petitioning Organizations’ Petition to Intervene were based on the document Holtec submitted as its Environmental Report (ER). The EA published by the NRC requires Petitioning Organizations to address the issues in Contentions 2, 4, 5 and 6 in a different way and thus, to amend the contentions.

Also based on the EA, Petitioning Organizations seek to file a new contention based on new and material information in the EA.

RATIONALES FOR AMENDMENT

Rationale for Amending Contention 2

Contention 2 asserts that an Environmental Impact Statement (EIS) must be prepared, rather than an EA. The unprecedented action of restarting a closed reactor in decommissioning status presages more actual and potential environmental effects than a simple renewal of an operating license for a reactor presumably in continuous operations – and a simple renewal

requires an EIS. Holtec's Palisades restart scheme also involves vast amounts of public funding – \$3.12 billion of federal and state taxpayer bailouts, grants, and subsidies awarded so far, with more than \$5 billion more requested by the company, and counting. Furthermore, the Palisades restart case will set a precedent for the attempted restart of other closed reactors. These facts make the Palisades attempt to restart a major federal action with significant impacts on the environment.

Rationale for Amending Contention 4

The EA in Appendix F discusses climate change. The new information in Appendix F provides further confirmation of the statements and opinions of Petitioners' expert, Arnold Gundersen, that the effects of climate change on the environment will affect the components and operational procedures of Palisades if it is allowed to restart.

Rationale for Amending Contention 5

Contention 5 asserts that the document Holtec submitted as its ER did not contain a purpose and need statement. Pursuant to 10 C.F.R. § 51.45, an Environmental Report must contain a statement of the purpose and need for the project. Therefore, Holtec's document was clearly deficient, and Contention 5 would have necessitated a hearing.

Just 12 days before the February 12, 2025 prehearing oral argument on intervention, the NRC filed an EA which contains a purpose and need statement. This fact completely changes the nature of the contention such that it must now be amended to challenge the substance of the still woefully inadequate purpose and need statement in the EA.

Rationale for Amending Contention 6

Contention 6 asserts that the document Holtec submitted as its ER did not contain a discussion or analysis of alternatives to the proposed action. Pursuant to 10 C.F.R. § 51.45, an

Environmental Report must contain a discussion or analysis of alternatives to the proposed action.

But as previously noted, 12 days before the prehearing oral argument, the NRC filed an EA that contains a discussion of alternatives to the proposed action. This fact completely changes the nature of Contention 6 such that it must now be amended to challenge the substance of the still woefully inadequate and insufficient analysis of alternatives to the proposed action in the EA.

BASIS FOR NEW AND AMENDED CONTENTIONS

The newly-published EA significantly changes the direction and content of Petitioning Organizations' Contentions 2, 5, 6, and 7. In addition, Petitioning Organizations will be filing new contentions based on the EA and its material, new information.

Contention 2 (EIS Required)

The NRC has prepared an EA and a proposed FONSI. In Contention 2, the Petitioning Organizations originally asserted that an EIS, not an EA, must be prepared. The now-published EA does not substantiate that it is sufficient under NEPA to avoid preparing an EIS, nor is the proposed FONSI justified under the circumstances. Since the EA and proposed FONSI have now been submitted, the Petitioning Organizations must amend their Contention 2 in order to address the material, new facts presented by the EA and proposed FONSI.

Contention 4 (No Authority to Restart Palisades)

The new information regarding climate change contained in Appendix F of the EA is new information that confirms the existing contention. This new information is important because it is comprises evidence favorable to admissibility of part of the Petitioning Organizations'

Contention 4. It was not available at the time Petitioning Organizations brought their Petition to Intervene.

Contention 5 (Lack of Purpose and Need Statement)

With respect to Contention 5, even though the EA now contains a purpose and need statement, the purpose and need statement violates NEPA. The purpose and need for NRC purposes is that Palisades is necessary to allow baseload “clean” energy in order to meet generating needs under a recently passed law in the State of Michigan. But there is zero evidentiary justification of the demand for electricity from Palisades sufficient to justify its re-entry into the regional grid. Palisades was carefully replaced by other power generation plans when it departed the grid. The NRC’s unsubstantiated assertion is an artifice to shift the burden of showing a lack of demand for Palisades power onto the public. The EA cites Michigan’s clean energy requirement for all future entries into the grid as support for the purpose and need for restarting Palisades. But the clean energy standard is a political, not a science-based, decision. Nuclear power is not the only means of providing baseload energy, and nuclear power is not clean, despite the political erasure of its desultory environmental effects. The mining and processing of uranium for use in a nuclear reactor are toxic and polluting. The radioactive waste from the production of nuclear power has no good storage solution and contaminates the physical environment for millions of years.

The Department of Energy (DOE) purpose and need statement is similarly unavailing and deficient. The DOE purpose and need is to implement the Inflation Reduction Act by restarting Palisades, but the IRA does not exclusively specify nuclear power as an objective, and it also makes it permissive, not mandatory, for DOE to issue loan guarantees. There is thus objectively speaking no need for the DOE loan guarantee. Indeed, the new administration has issued

directives to repeal and revoke the Inflation Reduction Act,¹ and to claw back awards that have already been conditionally announced, even finalized.

Finally, the purpose and need statement is contrived to be so narrow that only one alternative – restarting Palisades – will satisfy it. The restart of Palisades, along with the required no-action alternative, are the only alternatives carried forward for review.

Contention 6 (Lack of Consideration of Alternatives)

With respect to Contention 6, as noted above, the EA only recognizes one viable alternative, restarting the Palisades reactor. The EA dismisses the no-action alternative out of hand because it would not serve the alleged purpose and need – except that for going on three years, the regional grid in Michigan has functioned satisfactorily without any contributions of power from Palisades, which gives no-action the nod.

As mentioned above, the purpose and need statement is drafted in such a way that it limits the range of alternatives that can be considered. In restricting the alternatives to restart and no-action, the NRC is stating that other energy sources would create new environmental impacts beyond what the restart of Palisades would cause. The NRC offers no evidence to support that argument, nor is there any comparison in the EA of alleged impacts from other energy sources with the impacts of restarting Palisades.

While rejecting all other alternatives to the Palisades restart, the EA admits of the possibility of satisfying the need for power with solar and wind.² These alternatives are dispatched with an assertion that both wind and solar would involve building new infrastructure, without submitting any comparisons of the impacts and hazards of restarting a deteriorated reactor versus new-built alternatives. Rejection of viable alternatives requires more analysis than

¹ <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/>

² EA Sect. 2.2.2.2, p. 2-7.

that. Agencies preparing EAs “must give full and meaningful consideration *to all reasonable alternatives.*” *Te-Moak Tribe of W. Shoshone of Nev. v. Dep’t of Interior*, 608 F.3d 592, 601–02 (9th Cir. 2010) (emphasis added).

The EA rejects all new-build alternatives for requiring construction. The rejection is based on the assumption that the alternative(s) must be capable of replacing Palisades’ 800 MW capacity. The flawed purpose and need statement is grounded on zero forecasts of near, middle and long-term demand. Wind, solar and energy conservation measures all have the advantages of being quickly deployable as well as being incrementally available. Thus, for example, if there were a near-term need to increase electricity production by 40 MW (equivalent to 5% of the capacity of Palisades), the only option seen by the NRC staff is to spend billions to reopen Palisades, expose the public to its operational risks, and constantly to subsidize its operations with corporate welfare, instead of spending far less money on incremental new wind or solar generating capacity, or installing industrial-grade conservation measures, to meet the 5% increase in demand. The environmental effects and economic costs of building alternatives on a limited basis, as opposed to replacing Palisades with 800 MW equivalent capacity, is left completely unconsidered in the EA.

Additionally, the EA includes passing mention of Holtec’s proposal to build two so-called “Small Modular Reactors” (SMR-300s) on the Palisades site. Each would produce 300 MW electric and this project would nearly double the power volume produced at the Palisades site, from 800 to 1,400. Holtec proposes to build and fire up the SMRs by 2030. Because the Palisades restart plus the two SMRs are being proposed as a package, the environmental impacts of the SMRs should be recognized as cumulative impacts and dealt with in the identification of environmental effects as well as the consideration of alternatives.

New Contention 8

Section 1.3.5 of the EA states that the basis for much of the discussion and analysis in the EA comes from previous documents that are incorporated by reference. The justification for incorporating previous, and possibly outdated, documents is the policy set out in regulations issued by the Council on Environmental Quality (CEQ), that authorize incorporation.

However, recent court decisions have held that the CEQ has no legal authority to issue regulations. Therefore, the EA is seriously flawed in relying on CEQ authority for simply incorporating previous documents instead of actually doing an up-to-date analysis.

REQUEST FOR LEAVE TO FILE NEW OR AMENDED CONTENTIONS

A. Applicable Standards

NRC Regulation 10 C.F.R. § 2.309(c) allows a petitioner to file new or amended contentions if the presiding officer finds that the petitioner “has demonstrated good cause” by satisfying the following factors: (i) the information on which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information. An amended contention generally is considered timely if it is filed within 30 days of the date upon which the new information became available. *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), 67 NRC 460, 493 (2008) (“Many times, boards have selected 30 days as [the] specific presumptive time period” for timeliness of contentions filed after the initial deadline).

Petitioning Organizations respectfully submit that the EA filed by the NRC constitutes new information that was not available at the time the contentions were initially filed and that the information in the EA is materially different than any information previously available. The

environmental document submitted by Holtec was not an “environmental report” as required by 10 C.F.R. § 51.45. As such, Petitioning Organizations were not able to base any environmental contentions on that document, but critiqued it as though it were a proper Environmental Report because the NRC Staff publicly stated that it was the functional equivalent.

B. Request for Leave to Amend Contention

Petitioning Organizations’ proposed Amended and Substituted Contentions and new contentions are attached to this Motion.

DEMONSTRATION OF GOOD CAUSE FOR LATE FILING

Petitioning Organizations satisfy the three-prong test for good cause to file new and amended contentions based on materially different, new information as follows:

A. The information upon which the filing is based was not previously available

Generally, this requirement means that the information was not presented in an ER submitted by the applicant. In this case, there was no ER. Holtec submitted a document with its request for an exemption that discussed some environmental issues, but it was not an ER. An ER must contain a statement of purpose and need and a discussion of alternatives. Holtec’s environmental document does not present information on either of those points. The EA prepared by the NRC does contain a purpose and need statement and a discussion of alternatives, which thus comprises information that was not previously available. Additionally, Petitioning Organizations’ amended Contentions 5 and 6 take issue with the sufficiency of the purpose and need statement and discussion of alternatives in the EA and so directly challenge the new information in the EA.

Contention 2 asserts that an EIS, not an EA, must be prepared. That general assertion is not changed by the submission of the EA, but the rationale in the EA for not preparing an EIS

and proposing to issue a FONSI does not justify the FONSI. Therefore, the EA provides new additional information that must be challenged to justify why an EIS must be prepared.

Contention 4 discusses the reasons that the NRC has no authority to authorize Palisades to restart. The original Contention 4 presented the statements and opinions of Petitioners' expert, Arnold Gundersen, as to the impacts of climate change on the operation of the Palisades plant if it is allowed to restart. The EA in Appendix F discusses climate change and it confirms by the NRC's own admission Mr. Gundersen's statements and opinions.

Contention 8 is based on the EA's incorporation of previous environmental documents regarding Palisades, based on a procedure allowed by CEQ regulations that have now been invalidated. There was no indication prior to the submittal of the EA that the EA would use the incorporation of those documents. Nor was there any mention of the CEQ regulations in Holtec's environmental document. Therefore, this is new information that was not previously available.

B. The new information upon which the filing is based is materially different from information previously available

As explained in paragraph A above, there was no ER submitted by Holtec. So there was no previously available information for the Petitioning Organizations to rely on. The new and amended contentions are *ipso facto* based on information materially different from information previously available in an ER.

But even if Holtec's environmental document were properly deemed to be an ER, the new and amended contentions are based on new information not previously available. With respect to the purpose and need statement upon which Contention 5 is based, Holtec's document clearly did not contain a purpose and need statement. Now, in its Answer to Petitioning Organizations' Petition, the NRC Staff claims that Holtec's response to an RAI satisfies the requirement for a

purpose and need statement.³ But the decision the Staff cites in support of this argument, *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), 90 NRC 17, 21 (2019), states clearly that the only way to provide new information that was omitted from an ER is in a revised ER, not a response to an RAI. And it must be emphasized again that Holtec's environmental document was not an ER, so there is no ER to revise.

Holtec's environmental document did not contain a discussion of all reasonable alternatives to the project. NEPA, 42 U.S.C. § 4332, requires a discussion of alternatives. NRC regulations, 10 C.F.R. § 51.45(b)(3), requires that the ER contain a complete discussion of alternatives. Holtec's environmental document only contained a reference to the no-action alternative, contrary to the requirement of the NRC regulation for a complete discussion of alternatives. The EA, on the other hand, does discuss various alternatives, although Petitioning Organizations' proposed amended contention challenges the adequacy and sufficiency of that discussion in the EA.

With respect to Contention 4, the discussion of climate change in Appendix F of the EA is materially different because it constitutes an admission by the agency that was not available previously.

Contention 8 is a new contention. It is based on the incorporation of CEQ regulations in the EA. There was no incorporation of CEQ regulations in the Holtec environmental document. So this is clearly new information that is materially different than information previously available.

C. The new and amended contentions are timely filed

In this case the parties have agreed to, and the ASLB has accepted, a schedule for filing

³ NRC Staff Answer to Beyond Nuclear, *et al.*, p. 75.

amended and new contentions by the Petitioning Organizations. Consequently, this requirement is satisfied.

CONCLUSION

The Petitioning Organizations have contemporaneously to this Motion filed “Petitioning Organizations’ Amended and New Contentions Based on Draft Environmental Assessment/ Finding of No Significant Impact for Palisades Nuclear Power Plant.” For all of the reasons stated herein, this Motion should be granted and the Petitioning Organizations’ amended and new contentions be admitted to the record, following which they be scheduled for adjudication.

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/s/ Wallace L. Taylor
Wallace L. Taylor, Esq.
4403 1 Ave. S.E., Suite 402
Cedar Rapids, Iowa 52402
319-366-2428;(Fax)319-366-3886
wtaylorlaw@aol.com

/s/ Terry J. Lodge
Terry J. Lodge, Esq.
316 N. Michigan St., Ste. 520
Toledo, OH 43604-5627
(419) 205-7084
tjlodge50@yahoo.com
Co-Counsel for Beyond Nuclear, Michigan
Safe Energy Future, Don’t Waste Michigan,
Three Mile Island Alert and Nuclear Energy
Information Service

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305, I hereby certify that a copy of the foregoing “PETITIONING ORGANIZATIONS’ MOTION TO FILE AMENDED AND NEW CONTENTIONS” was served upon the Electronic Information Exchange (NRC Filing System) in the captioned proceeding this 3rd day of March, 2025 and that according to the protocols of the EIE they were served upon all parties registered with the system.

Respectfully submitted,
/s/ Terry J. Lodge
Terry J. Lodge, Esq.
Co-Counsel for Petitioning Organizations