

March 28, 2025

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOLTEC DECOMMISSIONING
INTERNATIONAL, LLC, AND HOLTEC
PALISADES, LLC

(Palisades Nuclear Plant)

Docket No. 50-255-LA-3

**NRC STAFF ANSWER TO PETITIONING ORGANIZATIONS' MOTION TO
FILE AMENDED AND NEW CONTENTIONS BASED ON DRAFT
ENVIRONMENTAL ASSESSMENT/FINDING OF NO SIGNIFICANT IMPACT IN
THE PALISADES RESTART AMENDMENT PROCEEDING**

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1) and the Atomic Safety and Licensing Board's (Board's) order dated February 10, 2025, the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) provides its answer opposing the motion (Motion) to file amended and new contentions based on the Staff's Draft Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) (collectively, Draft EA/FONSI) from Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (collectively, Petitioning Organizations) on March 3, 2025.¹ Petitioning Organizations filed four amended contentions and one new contention (Amended and New Contentions).² However, as

¹ Petitioning Organizations' Motion to File Amended and New Contentions (Mar. 3, 2025) (Agencywide Document Access and Management System (ADAMS) Accession No. ML25062A308) (Motion).

² Petitioning Organizations submitted amended and new contentions as an attachment to their Motion. See Petitioning Organizations' Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant (Mar. 3, 2025) (ML25062A309) (Amended and New Contentions).

explained below, the Petitioning Organizations' amended contentions are inadmissible because they raise arguments that are untimely and are not based on new or materially different information. Moreover, the amended and new contentions do not provide material, adequately supported challenges that raise a genuine dispute with the license amendment requests associated with the potential restart of Palisades Nuclear Plant (Palisades) or the Staff's review of the potential environmental impacts of these requests. Additionally, some of the Petitioning Organizations' arguments are outside the scope of the proceeding and challenge NRC regulations and processes. Accordingly, the Petitioning Organizations' Motion and Amended and New Contentions should be denied.

BACKGROUND

On August 7, 2024, the NRC published a *Federal Register* notice of opportunity to request a hearing regarding the four license amendment requests related to the potential restart of Palisades (Amendments Notice).³ In response to the Amendments Notice, Petitioning Organizations filed a hearing request (Hearing Request), in which they submitted seven contentions and argued that they had standing.⁴ In its answer, the Staff concluded that two of the five organizations had standing, that Proposed Contentions 1 to 6 were inadmissible, and that Proposed Contention 7 was admissible, in part.⁵ The Applicants filed an answer disputing

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

⁴ *Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service*, at 3-4, 21-25 (Oct. 10, 2024) (ML24284A364) (Hearing Request). As previously explained, the Hearing Request was originally filed by the October 7, 2024, deadline but on the wrong hearing docket; see Staff Answer to Hearing Request at 1, n.1.

⁵ See generally *NRC Staff Answer to Intervention Petition from Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service in Palisades Restart Amendments Proceeding* (Nov. 4, 2024) (ML24309A277) (Staff Answer to Hearing Request). For additional details regarding the licensing history of Palisades as well as the underlying

the Petitioning Organizations' standing and arguing that none of the proposed contentions were admissible.⁶ The Petitioning Organizations filed a combined reply to the Staff's and Applicants' answers.⁷

On January 31, 2025, the Staff published a notice in the *Federal Register* requesting comment on the Draft EA/FONSI⁸ and notified the Board and participants of this fact.⁹ The Board requested the participants provide their position on the effect of the Draft EA/FONSI on the admissibility of Petitioning Organizations' proposed environmental contentions (2, 5, 6, and 7), and provided the participants with the opportunity to file responsive briefs.¹⁰ On February 12, 2025, the Board held a prehearing conference on the Petitioning Organizations' original seven contentions during which the Staff asserted that Proposed Contentions 2, 5, and 6 remain inadmissible and that Proposed Contention 7 has been mooted by the Draft EA/FONSI.¹¹

On February 19, 2025, the NRC staff filed its initial brief on the effect of the Draft EA/FONSI on the admissibility of Petitioning Organizations' proposed environmental contentions

licensing and regulatory requests related to the potential restart of Palisades, refer to Staff Answer to Hearing Request, at 2-7. The Staff Answer to Hearing Request also provides additional context regarding the Staff's licensing process and environmental review. *Id.* at 19-27.

⁶ See *generally Applicants' Answer Opposing Beyond Nuclear et al.'s Petition for Hearing*, (Nov. 4, 2024) (ML24309A302) (Applicant Answer).

⁷ *Petitioning Organizations' Combined Reply to Answers Filed by NRC Staff and Holtec to the Petition to Intervene*, at 21-23, 30-31 (Nov. 12, 2024) (ML24317A201) (Reply).

⁸ "Draft Environmental Assessment and Draft Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project" (Draft for Comment) (Jan. 2025) (ML24353A157) (Draft EA/FONSI); Holtec Decommissioning International, LLC and Holtec Palisades, LLC; Palisades Nuclear Plant; Draft Environmental Assessment and Draft Finding of No Significant Impact, 90 Fed. Reg. 8721 (Jan. 31, 2025).

⁹ See *Notification of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact* (Jan. 31, 2025) (ML25031A007) (Board Notification).

¹⁰ *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), LBP Memorandum and Order (Scheduling Briefing Concerning the Draft Environmental Assessment and Draft Finding of No Significant Impact), at 1 (Feb. 3, 2025) (unpublished) (ML25034A217).

¹¹ See Tr. at 55-57 (Feb. 12, 2025).

which asserted that Proposed Contention 7 was moot as a challenge to the Draft EA/FONSI, and that Proposed Contentions 2, 5, and 6 remained inadmissible as a challenge to the Draft EA/FONSI.¹² The Applicants, in their initial brief, stated that Proposed Contentions 5, 6, and 7 were moot as a challenge to the Draft EA/FONSI.¹³ Petitioning Organizations, in their initial brief, stated that the Draft EA/FONSI assuages their concerns of omission and potentially mooted their contentions.¹⁴ However, Petitioning Organizations included a request in their initial brief that the Board “administratively notice the February 10, 2025 Order” and “forbear from taking any further action respecting such alleged mootness of any of their Contentions pending Petitioning Organizations filing further pleadings pursuant to said Order.”¹⁵

On February 26, 2025, the NRC Staff filed its response brief, in which it argued that Proposed Contentions 5, 6, and 7 should not be admitted because they are moot, and that the Petitioning Organizations’ request to effectively treat Proposed Contentions 5, 6, and 7 as placeholder contentions until Petitioning Organizations file new or amended contentions should be denied.¹⁶ On March 3, 2025, the Petitioning Organizations filed the instant Motion along with their Amended and New Contentions.

¹² *NRC Staff Position on the Effect of the Staff’s Draft Environmental Assessment and Draft Finding of No Significant Impact on the Admissibility of Petitioning Organizations’ Proposed Environmental Contentions*, at 7-13 (Feb. 19, 2025) (ML25050A569).

¹³ *Applicants’ Brief in Response to Board’s Order Requesting Briefing on Impact of Draft Environmental Assessment and Draft Finding of No Significant Impact*, at 5-7 (Feb. 19, 2025) (ML25050A567).

¹⁴ *Petitioning Organizations’ Brief on Effects of Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant*, at 3, 7 (Feb. 19, 2025) (ML25050A618).

¹⁵ *Id.* at 8.

¹⁶ *See generally NRC Staff Response to Petitioning Organizations’ Brief on the Effect of the Staff’s Draft Environmental Assessment and Draft Finding of No Significant Impact on the Admissibility of the Proposed Environmental Contentions*, at (Feb. 26, 2025) (ML25057A395).

DISCUSSION

Petitioning Organizations proffer four amended contentions (Amended Contentions 2, 4, 5, and 6) and one new contention (Proposed Contention 8).¹⁷ All of Petitioning Organizations' amended and new contentions must meet both the heightened pleading standards of 10 C.F.R. § 2.309(c), which require, in part, demonstration that the information upon which the filing is based is new and materially different from information previously available, as well as the contention admissibility standards in 10 C.F.R. § 2.309(f)(1).¹⁸ However, the Petitioning Organizations' amended contentions are inadmissible because they raise arguments that are not based on new or materially different information and are untimely. Moreover, the amended and new contentions proffer immaterial, out of scope,¹⁹ and inadequately supported challenges that do not raise a genuine dispute with the Staff's environmental review. Also, some of the Petitioning Organizations' arguments challenge NRC regulations and processes, which is prohibited in this adjudicatory proceeding absent a sufficient petition for waiver or exception under 10 C.F.R. § 2.335, which the Petitioning Organizations have not submitted. Therefore, the Motion and Amended and New Contentions should be denied.

I. Contention Admissibility Requirements for New or Amended Contentions Filed after the Deadline

In accordance with 10 C.F.R. § 2.309(f)(2), participants may file new or amended environmental contentions after the deadline in § 2.309(b) (e.g., based on a draft or final NRC

¹⁷ See *generally* Amended and New Contentions. Although Petitioning Organizations appear to reference Contention 7 in their Motion, Motion at 1, 4, these references appear to have been made in error as the Petitioning Organizations have not amended their original Contention 7. See *generally id.*; Motion.

¹⁸ See 10 C.F.R. § 2.309(c)(1), (c)(4), (f)(2). See 10 C.F.R. § 2.309(c)(1), (c)(4), (f)(2). Petitioning Organizations characterize contentions 2, 5, and 6 as "Amended and Substituted" contentions, contention 4 as an "Amended" contention, and contention 8 as a "New" contention. NRC regulations do not differentiate between or provide separate standards for "Amended and Substituted," "Amended," and "New" contentions filed after the deadline. Thus, the standards in § 2.309(c)(1), (c)(4), apply to all of Petitioning Organizations amended and new contentions.

¹⁹ Amendments Notice, 89 Fed. Reg. at 64,488 ("The scope of this notice is limited to comments, requests for a hearing, and petitions for leave to intervene related to the four proposed license amendment requests listed in tabular form in Section III of this document.").

environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in § 2.309(c).²⁰ In accordance with 10 C.F.R. § 2.309(c), new and amended contentions, “will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause” A participant may demonstrate good cause by showing that:

- (i) The information upon 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;^[21] and
- (iii) The filing has been submitted in a timely fashion based on the availability of subsequent information.²²

As defined by the three factors in 10 C.F.R. § 2.309(c), good cause is “the sole factor to be considered when evaluating whether to review the admissibility of a new or amended contention.”²³ Thus, the regulation “requires that the contention’s proponent establish ‘good cause’ for why the contention was not raised at the outset of the proceeding” and when determining whether a new or amended contention is timely, the Commission “look[s] to

²⁰ The Staff notes that Petitioning Organizations’ Original Contention 4, as originally pled, was a safety contention that was not based on NEPA or Holtec’s Environmental Report. Likewise, Amended Contention 4 is not an environmental contention that is based on the Draft EA/FONSI. As Petitioning Organizations state, Amended Contention 4 “insert[s] new supporting evidence from the [Draft EA/FONSI]”. Amended and New Contentions, at 8. While the amendment of a safety contention is not specifically contemplated by § 2.309(f)(2), consistent with this Board’s initial prehearing order, Amended Contention 4 is subject to the standards governing new and amended contentions filed after the deadline in § 2.309(c). See Memorandum and Order (Initial Prehearing Order) (Sep. 19, 2024) (ML24263A018), at 4 n.12 (specifying that motions to admit new and amended contentions should be filed within thirty days of the date upon which the information that is the basis of the motion becomes available).

²¹ Cf. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-8, 90 NRC 139, 149 n.13 (“The term ‘materially’ . . . ‘describes the type or degree of difference between the new information and previously available information . . . , and it is synonymous with, for example, significantly, considerably, or importantly.’”) (quoting *Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-17-6, 86 NRC 37, 48 (2017), *aff’d on other grounds*, CLI-17-12, 86 NRC 215 (2017)).

²² 10 C.F.R. § 2.309(c)(1).

²³ Amendments to Adjudicatory Process Rules and Related Requirements; Proposed Rule, 76 Fed. Reg. 10,781, 10,783 (Feb. 28, 2011). See also Amendments to Adjudicatory Process Rules and Related Requirements; Final Rule, 77 Fed. Reg. 46,562, 46,572 (Aug. 3, 2012).

whether the contention could have been raised earlier....”²⁴ There is no good cause if the challenge that is the subject of the new contention or the amendment to a previous contention could have been timely raised at the outset of the proceeding.²⁵ This includes a challenge arguing that there is an omission in a draft environmental impact statement when that same omission was present in the environmental report on which the hearing opportunity was offered.²⁶ Relatedly, there is no good cause if the information being challenged is not actually new.²⁷ A new or amended contention is not timely even if it is based on a new report if the information in that report was either previously available or not materially different from the information that was previously available; old information repackaged in a new report is not new information.²⁸ A failure to satisfy the requirements for proffering a contention out of time, without more, necessarily requires the rejection of the new or amended contention, regardless of whether the new or amended contention meets the contention admissibility requirements.²⁹

New and amended contentions must also meet the general contention admissibility requirements set forth in 10 C.F.R. § 2.309(f) of the Commission’s Rules of Practice.³⁰ To be admissible, a contention must:

²⁴ *Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-21-7, 93 NRC 215, 221 (2021).

²⁵ *Interim Storage Partners LLC* (WCS Consolidated Interim Storage Facility), CLI-21-9, 93 NRC 244, 247–49 (2021) (affirming the Board ruling that because the petitioner “could have raised these challenges in its [timely] hearing request,” the petitioner’s new contention was untimely).

²⁶ *Id.* at 248.

²⁷ *Id.* (discussing that both the environmental report, on which a hearing opportunity was offered, and the subsequent draft environmental impact statement discussed the same impacts and, therefore, there was no good cause to challenge the draft environmental impact statement regarding these impacts when that same challenge could have been raised in a timely manner against the environmental report).

²⁸ *Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-21-4, 93 NRC 119, 127–28 (2021). *See also* 77 Fed. Reg. at 46,566 (discussing how the “good-cause” test applies to documents that use previously available information).

²⁹ *See, e.g., Holtec International* (HI-STORE Consolidated Interim Storage Facility), LBP-20-10, 92 NRC 235, 249 (2020).

³⁰ 10 C.F.R. § 2.309(c)(4).

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) ... provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief[.]³¹

Failure to satisfy any of the six pleading requirements renders a contention inadmissible.³²

Further, “[c]ontentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner.”³³

The § 2.309(f)(1) requirements are intended to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”³⁴ The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue

³¹ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

³² *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2) CLI-16-5, 83 NRC 131, 136 (2016).

³³ 10 C.F.R. § 2.309(f)(2).

³⁴ Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

that is appropriate for, and susceptible to, resolution in an NRC hearing.”³⁵ The NRC’s contention admissibility requirements are “strict by design and intended to ensure that adjudicatory proceedings are triggered only by substantive safety or environmental issues, rooted in a reasonably specific factual or legal basis” and “to screen out ill-defined, speculative, or otherwise unsupported claims.”³⁶ Further, “a proposed contention must be rejected if it raises issues beyond the scope of the proceeding as established by the Commission’s hearing notice.”³⁷ Moreover, 10 C.F.R. § 2.335 forbids challenges to NRC regulations in adjudicatory proceedings, absent a petition for waiver or exception (accompanied by affidavit) that demonstrates *prima facie* that “special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted.”³⁸

Presiding officers are expected “to examine cited materials to verify that they do, in fact, support a contention.”³⁹ Also, a document cited by a petitioner “as the basis for a contention is subject to scrutiny both for what it does and does not show.”⁴⁰ A presiding officer may view a petitioner’s supporting information in a light favorable to the petitioner,⁴¹ but the presiding officer

³⁵ *Id.*

³⁶ *Exelon Generation Co.* (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 471-72 (2019) (internal quotation marks omitted).

³⁷ *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), 92 NRC 23, 46 (2020) (citing *Public Service Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)).

³⁸ 10 C.F.R. § 2.335(a)-(c). Whether special circumstances are present is assessed under the *Millstone* factors. *Exelon Generation Co.* (Limerick Generating Station, Units 1 & 2), CLI-13-7, 78 NRC 199, 205 (2013) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560 (2005)).

³⁹ *USEC Inc.*, (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006).

⁴⁰ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 107 & n.131 (2018).

⁴¹ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

is not to “search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves.”⁴²

In accordance with its responsibilities under the National Environmental Policy Act (NEPA), the Staff is required to take a “hard look” at the environmental impacts of a proposed major federal action that could significantly affect the environment, as well as reasonable alternatives to that action.⁴³ This “hard look” is tempered “by a ‘rule of reason’—consideration of environmental impacts need not address ‘all theoretical possibilities,’ but rather only those that have ‘some possibility’ of occurring.”⁴⁴ An agency thus need only address impacts that are reasonably foreseeable; the “agency need not perform analyses concerning events that would be considered ‘worst case’ scenarios ... or those considered ‘remote and highly speculative.’”⁴⁵ Further, NEPA “does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts.”⁴⁶ And NEPA gives agencies “broad discretion ‘to keep their inquiries within appropriate and manageable boundaries.’”⁴⁷

An agency’s purpose and need statement determines the range of alternatives that must be considered.⁴⁸ An agency may not define the objectives of its action in terms so

⁴² *American Centrifuge*, CLI-06-10, 63 NRC at 457.

⁴³ See *Louisiana Energy Services, L.P. (Claiborne Enrichment Center)*, CLI-98-3, 47 NRC 77, 87–88 (1998); *Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-19-2, 89 NRC 18, 40 (2019).

⁴⁴ *Marsland*, LBP-19-2, 89 NRC at 40 (quoting *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-156, 6 AEC 831, 836 (1973)).

⁴⁵ *Holtec International* (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, 89 NRC 353, 357 (2019) (quoting *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 754–55 (3d Cir. 1989)).

⁴⁶ *Marsland*, LBP-19-2, 89 NRC at 40 (quoting *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005)).

⁴⁷ *Marsland*, LBP-19-2, 89 NRC at 40 (quoting *Claiborne*, CLI-98-3, 47 NRC at 103).

⁴⁸ *Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 449 (2002) (citing *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1995); *Citizens Against Burlington v. Busey*, 938 F.2d at 195 (D.C. Cir. 1991); *City of New York v. U.S. Dep’t of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983)).

unreasonably narrow that only one alternative would accomplish the goals of the agency's action.⁴⁹ Nevertheless, agencies "need only discuss those alternatives that ... 'will bring about the ends' of the proposed action...."⁵⁰ Moreover, where a federal agency is not the sponsor of the project, the "consideration of alternatives may accord substantial weight to the preferences of the applicant and/or sponsor" ⁵¹ Additionally, NEPA, as recently amended through the enactment of the Fiscal Responsibility Act of 2023,⁵² places a limitation on an agency's alternatives analysis to include only those alternatives "that are technically and economically feasible, and *meet the purpose and need* of the proposal."⁵³

Although agencies must give "full and meaningful consideration to all reasonable alternatives" in an environmental assessment, "the obligation to consider alternatives is a lesser one under an EA than under an EIS [(environmental impact statement)]."⁵⁴ Thus, when preparing an environmental assessment, an agency must only "include a brief discussion of reasonable alternatives."⁵⁵ Moreover, the alternatives that should be considered in an

⁴⁹ See *Diablo Canyon*, LBP-02-23, 56 NRC at 449 (citing *Citizens Against Burlington v. Busey*, 938 F.2d at 196 (D.C. Cir. 1991) ("[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality.")).

⁵⁰ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 338 (2012).

⁵¹ See *Energy Law and Policy Center (ELPC) v. NRC*, 470 F.3d 676, 683-84 (7th Cir. 2006) (citing *City of Grapevine v. U.S. Dep't of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994)); Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,906, 55,909 (Sep. 29, 2003) (citing *Hydro Resources, Inc.* CLI-01-4, 53 NRC 31, 55 (2001) citing *Citizens Against Burlington v. Busey*, 938 F.2d 190, 197 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 994 (1991)) (2003 PRM Denial) ("The Commission will ordinarily give substantial weight to a properly-supported statement of purpose and need by an applicant and/or sponsor of a proposed project in determining the scope of alternatives to be considered by the NRC.").

⁵² Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10.

⁵³ 42 U.S.C. § 4332(2)(C)(iii) (requiring "a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal.") (emphasis added).

⁵⁴ *Pa'ina Hawaii, LLC* (Material License Application), CLI-10-18, 72 NRC 56, 75 (2010).

⁵⁵ *Id.*; see also 10 C.F.R. § 51.30(a)(1)(ii) (requiring a brief discussion of alternatives in an environmental assessment).

environmental assessment or environmental impact statement “will be the same—it is only in the depth of the consideration and in the level of detail provided in the corresponding environmental documents that an environmental assessment and an environmental impact statement will differ.”⁵⁶

II. The Amended and New Contentions Are Inadmissible Because They Do Not Meet the Requirements in 10 C.F.R. § 2.309(c) and (f)

A. Petitioning Organizations’ Timeliness Arguments Related to the Holtec’s Environmental Report and Environmental RAI Responses Do Not Demonstrate Good Cause Under 10 C.F.R. § 2.309(c) and Should Be Dismissed

In their Motion, the Petitioning Organizations state that they seek to amend original Contentions 2, 4, 5, and 6, which were based on the document Holtec submitted as its Environmental Report,⁵⁷ to address new and different information presented in the Draft EA/FONSI.⁵⁸ However, as described below, many of the Petitioning Organizations’ arguments are based on information that was previously available and not materially different from the information in Holtec’s Environmental Report and responses to requests for additional information (Environmental RAI response),⁵⁹ among other previously available sources.⁶⁰ Therefore, the Petitioning Organizations have failed to demonstrate good cause under 10 C.F.R. § 2.309(c) and these arguments should be dismissed.

⁵⁶ *Pa’ina*, CLI-10-18, 72 NRC at 75.

⁵⁷ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82,” Enclosure 2 (Sept. 28, 2023) (ML23271A140) (Environmental Report).

⁵⁸ Motion at 2.

⁵⁹ See Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “Response to Requests for Additional Information Regarding the Proposed Reauthorization of Power Operations of Palisades Nuclear Plant under Renewed Facility Operating License Number DPR-20,” (Oct. 4, 2024) (ML24278A027) (This RAI response became publicly available in ADAMS on October 14, 2024) (Environmental RAI Response).

⁶⁰ See *infra* Discussion Sections II.B.1, II.C.1 (providing Staff’s conclusion that information relied on by Petitioning Organizations was previously available from various third-party sources).

Petitioning Organizations assert that the Draft EA/FONSI constitutes new information that was not available at the time the contentions were initially filed and that the information in the Draft EA/FONSI is materially different than any information previously available.⁶¹ In doing so, Petitioning Organizations raise the same argument they raised in their Hearing Request — that the environmental document submitted by Holtec was not an “environmental report” required by 10 C.F.R. § 51.45.⁶² Thus, according to the Petitioning Organizations, their arguments are timely because there was no Environmental Report submitted by Holtec, and therefore, their “new and amended contentions are *ipso facto* based on information materially different from information previously available in an [environmental report].”⁶³

These arguments are unavailing. As the Staff has previously stated in its response to the Petitioning Organizations’ original Hearing Request, Holtec’s new and significant environmental review found in Enclosure 2 of the Exemption Request (Holtec’s Environmental Report) was submitted to aid the NRC in its environmental review, and therefore, meets the definition of “Environmental Report” in 10 C.F.R. § 51.14.⁶⁴ Therefore, contrary to their assertions, the Petitioning Organizations do not demonstrate that their amended contentions are based on information materially different from information previously available in Holtec’s Environmental Report. Thus, to the extent that the Petitioning Organizations’ challenge information in the Draft EA/FONSI that was previously available in Holtec’s Environmental Report, their arguments do not meet the good cause standard under § 2.309(c) because the same challenge could have

⁶¹ Motion at 8.

⁶² Motion at 9. *See also* Hearing Request at 43.

⁶³ Motion at 10.

⁶⁴ *See* Staff Answer to Hearing Request at 52 (citing 10 C.F.R. § 51.14 (defining “Environmental Report” as “*a document* submitted to the Commission by an applicant for a permit, license, or other form of permission, or an amendment to or renewal of a permit, license or other form of permission, or by a petitioner for rulemaking, *in order to aid the Commission in complying with section 102(2) of NEPA*”)) (emphasis added).

been raised in a timely manner against the Environmental Report as part of Petitioning Organizations' original contentions in their Hearing Request.⁶⁵

The Petitioning Organizations also raise several untimely arguments in Amended Contentions 2, 5, and 6, based on information that was provided in Holtec's October 2024 Environmental RAI responses.⁶⁶ Petitioning Organizations argue, however, that even if Holtec's Environmental Report was deemed to be proper, their new and amended contentions are based on new information not previously available because the only way to provide new information that was omitted in an Environmental Report is in a "revised ER," not in a response to an RAI."⁶⁷ However, under NEPA, the NRC, not the applicant, bears the burden of demonstrating compliance with the statute.⁶⁸ The NRC's regulations do not require applicants to submit updated or revised environmental reports associated with their applications.⁶⁹ Moreover, as the Staff has previously noted, Holtec's Environmental Report was voluntarily submitted because NRC regulations do not require the submission of an Environmental Report, let alone a revised Environmental Report, for reactor license amendment requests in this context.⁷⁰

⁶⁵ See *WCS*, CLI-21-9, 93 NRC at 248.

⁶⁶ See *infra* Discussion Sections II.B, II.D, II.E (providing the Staff's responses to Amended Contentions 2, 5, and 6).

⁶⁷ Motion at 10-11.

⁶⁸ NEPA § 102(2), 42 U.S.C. § 4332(2). The NRC implements NEPA through 10 CFR Part 51, which gives the Commission the authority to require applicants to provide the information the agency needs under § 102(2) of NEPA to assist the NRC in meeting its statutory obligations.

⁶⁹ See 10 C.F.R. § 51.45(a) (stating that "[a]n applicant or petitioner for rulemaking *may* submit a supplement to an environmental report at any time.") (emphasis added). See *also* 10 C.F.R. § 51.41 ("The Commission *may* require an applicant . . . to submit such information to the Commission as may be useful in adding the Commission in complying with section 102(2) of NEPA.") (emphasis added). Cf. *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 686 (noting that "the 'trigger point' for the timely submission of new or amended contentions is when that information becomes available, and our process places on the intervenor the obligation to raise new contentions based on such information.").

⁷⁰ See Staff Answer to Hearing Request at 27 n.108 (noting that the environmental report content requirements of 10 C.F.R. § 51.45 and other Part 51 regulations do not apply to reactor license amendments in this context).

Additionally, the licensing board decision that Petitioning Organizations rely on in support of their argument did not state that an applicant can *only* provide new information in a revised Environmental Report.⁷¹ And binding Commission case law cited in that licensing board's decision is clear that information later supplied by an applicant may cure an omission in an Environmental Report and may be in the form of an applicant's RAI response.⁷² Further, consistent with longstanding NRC practice and guidance, a licensee's RAI response serves as a supplement to its application,⁷³ and § 2.309(f)(2) allows new information to be submitted based on supplements to an environmental report.⁷⁴

Thus, to the extent that Amended Contentions 2, 5, and 6 challenge information that was previously available and not materially different from information in Holtec's Environmental RAI response, as discussed in further detail in the sections below, these challenges should have been timely filed against Holtec's Environmental RAI response.⁷⁵ Pursuant to this Board's initial scheduling order, the time to file new or amended contentions on the Environmental RAI

⁷¹ See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-19-6, 90 NRC 17, 21 (2019) (citing *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002); *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 444 (2006)).

⁷² See *McGuire/Catawba*, CLI-02-28, 56 NRC at 383; *American Centrifuge*, CLI-06-9, 63 NRC at 444 ("It is well recognized that where a contention based on an applicant's environmental report is 'superseded by the subsequent issuance of licensing-related documents' — whether an environmental impact statement or an applicant's response to a request for additional information — the contention must be 'disposed of or modified.'").

⁷³ Office of Nuclear Reactor Regulation, License Amendment Review Procedures, Volume 100, Rev. 6 (LIC-101), Appendix C, at 5 (Aug. 3, 2020) (ML19248C539) (considering RAI responses as supplements to an application).

⁷⁴ 10 C.F.R. § 2.309(f)(2) ("Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (e.g., based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in paragraph (c) of this section").

⁷⁵ See *infra* Discussion Sections II.B, II.D, II.E (providing the Staff's responses to Amended Contentions 2, 5, and 6).

response and the information therein was 30 days after the information became available.⁷⁶ This deadline passed on November 13, 2024. Accordingly, the Petitioning Organizations fail to demonstrate good cause under 10 C.F.R. § 2.309(c) for their untimely amended contentions and their Motion should be dismissed.

B. Amended Contention 2 Is Inadmissible Because Petitioning Organizations Do Not Demonstrate Good Cause to Amend Contention 2 and It Raises Claims that Are Immaterial and Lack Factual Support

Amended Contention 2 is stated as follows:

The decision to prepare an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) is not supported by the facts and is arbitrary, capricious, unreasonable, and an abuse of discretion. An Environmental Impact Statement (EIS) is required. The NRC admits in the EA that the proposal to restart Palisades is a major licensing action. There are significant environmental impacts, such as the impacts of climate change, earthquake hazards, and the production of hundreds of tons of radioactive waste. Significant technical and structural repairs and replacements to the Palisades reactor complex will be necessary before Palisades could restart. Significant new physical facilities will be constructed as part of the restart. The restart is analogous in many respects to a subsequent license renewal, for which an EIS is required. The attempt to return a nuclear reactor to operational status from decommissioning status is an unprecedented action at least as significant, and clearly more so, than a license renewal.⁷⁷

In proposed Amended Contention 2, Petitioning Organizations argue that Holtec is seeking the equivalent of the issuance or renewal of a reactor operating license and that, consequently, the Staff must prepare an EIS in accordance with 10 C.F.R. § 51.20(b).⁷⁸ Petitioning Organizations assert that Holtec's only recourse is to submit an application for a new operating license and to provide an EIS to comply with NEPA.⁷⁹ Petitioning Organizations also assert that the potential restart of reactor operations is a major federal action that would

⁷⁶ See Initial Prehearing Order at 4 n.12 (specifying that motions to admit new and amended contentions should be filed within thirty days of the date upon which the information that is the basis of the motion becomes available).

⁷⁷ Amended and New Contentions at 1.

⁷⁸ Amended and New Contentions at 2.

⁷⁹ Amended and New Contentions at 3.

implicate negative environmental effects and therefore an EIS is required.⁸⁰ Finally, Petitioning Organizations assert that there are significant environmental impacts that require the preparation of an EIS.⁸¹

Staff Response: Amended Contention 2 is not admissible because 1) Petitioning Organizations have not demonstrated good cause pursuant to the criteria in 10 C.F.R. §2.309(c) to amend Contention 2, and 2) Amended Contention 2 does not satisfy the contention admissibility requirements of 10 C.F.R. § 2.309(f).

1. *Amended Contention 2 is Not Admissible Because It is Based on Previously Available Information And is Untimely*

Amended Contention 2, much like the original Contention 2, challenges the NRC Staff's decision to prepare an EA instead of an EIS.⁸² Petitioning Organizations assert that the "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."⁸³ Petitioning Organizations argue that the New and Significant Report submitted by Holtec is not an environmental report, and therefore any challenge to the Draft EA/FONSI is "*ipso facto* based on information materially different from information previously available in an ER."⁸⁴

Petitioning Organizations do not advance a substantive challenge to the Staff's analysis of the environmental impacts of the restart-related license amendments or Staff's draft

⁸⁰ Amended and New Contentions at 3-4.

⁸¹ Amended and New Contentions at 4.

⁸² Amended and New Contentions at 1-8; *see also* Hearing Request at 40-45.

⁸³ Motion at 9-10.

⁸⁴ *See supra* Discussion Section II.A (addressing Petitioning Organization's argument that the New and Significant Report is not an Environmental Report).

determination that a FONSI is appropriate.⁸⁵ Petitioning Organizations do not limit their challenge to any of Staff's resource area conclusions in the Draft EA that there are no significant environmental impacts from the restart-related amendment requests. Instead, Petitioning Organizations continue their challenge to Staff's decision to prepare an EA in the first instance by asserting that there are significant environmental impacts that must be analyzed in an EIS.⁸⁶ Therefore, the basis for Amended Contention 2 is a general challenge that there are significant environmental impacts which could have been, and was brought as original Contention 2, as opposed to a specific challenge to the new information of Staff's independent *analysis* of the environmental impacts of the restart-related amendment requests in the Draft EA and determination that a FONSI is warranted.⁸⁷ As previously explained, if Staff had determined in the Draft EA that the restart-related amendment requests would significantly affect the quality of the human environment, the Staff would then prepare an EIS.⁸⁸

For Petitioning Organizations to demonstrate that they have good cause to bring the challenge now, they must show that the information they seek to challenge through Amended Contention 2 meets the criteria of 10 C.F.R. § 2.309(c)(1) and cannot merely rely on the statement that because they are challenging the EA, they are challenging information that is materially different from information previously available.⁸⁹ This Board should not entertain consideration of Amended Contention 2 because, as explained below, Petitioning Organizations do not demonstrate good cause to justify this out of time amendment to their contention.⁹⁰

⁸⁵ Amended and New Contentions at 1-8; see *also* Hearing Request at 40-44.

⁸⁶ Amended and New Contentions at 2, 4, 6, 8; Motion at 4, 9-10.

⁸⁷ Amended and New Contentions at 8 ("the decision by the NRC to prepare an EA and forego the preparation of an EIS violates NEPA and is arbitrary, capricious, unreasonable, and an abuse of discretion.").

⁸⁸ Staff Answer to Hearing Request at 53.

⁸⁹ Motion at 9-10.

⁹⁰ See 10 C.F.R. § 2.309(c)(1)(i)-(iii).

a. *The Information Regarding the Independent Spent Fuel Storage Installation (ISFSI) Safety Concerns are Based on Previously Available Information and Petitioning Organizations' Challenge Is Barred by the Doctrine of Collateral Estoppel*

Petitioning Organizations assert that an EIS is required because the environmental impacts of the storage of spent nuclear fuel are significant.⁹¹ Specifically, Petitioning Organizations state that the Draft EA/FONSI should discuss seismic issues related to the ISFSI storage pads.⁹² However, Petitioning Organization's challenge is based on information previously available and is barred by the doctrine of collateral estoppel.

Collateral estoppel can be applied to NRC adjudicatory proceedings.⁹³ As explained by a licensing board hearing a claim that implicated the doctrine of collateral estoppel:

[T]o apply the doctrine of collateral estoppel: (1) the judgment in the case must be final and entered by a court of competent jurisdiction; (2) the issue must have been the same as that actually litigated and necessary to the outcome of the first action; and (3) the party to which the estoppel is to be applied must have been a party, or in privity with a party, that litigated the issue in the prior proceeding. If so, the issue cannot be relitigated in a subsequent action with a different claim.⁹⁴

Specifically, Petitioning Organizations have raised their seismic concern about the ISFSI storage pads in a prior hearing request.⁹⁵ The licensing board there determined that this challenge was outside the limited scope of a license renewal proceeding.⁹⁶ The licensing board, at the time, advised the petitioners that they could file a 10 C.F.R. § 2.206 petition,⁹⁷ which they

⁹¹ Amended and New Contentions at 4-6.

⁹² *Id.* at 5-6.

⁹³ *Private Fuel Storage* (Independent Spent Fuel Storage Installation) LBP-02-20, 56 NRC 169, 181-84 (2002), affirmed *Private Fuel Storage* (Independent Spent Fuel Storage Installation) CLI-05-1, 61 NRC 160, 165-66 (2005).

⁹⁴ *Id.* (internal citations omitted).

⁹⁵ *Request for Hearing and Petition to Intervene Submitted by Nuclear Information and Resource Service, West Michigan Environmental Action Council, Don't Waste Michigan, the Green Party of Van Buren County, the Michigan Land Trustees, and Member-Intervenors* at Contention 3 (Aug. 8, 2005) (ML052940221) (2005 Hearing Request) (submitted for the Petitioners by Terry J. Lodge).

⁹⁶ *Nuclear Management Company, LLC* (Palisades Nuclear Plant) LBP-06-10, 63 NRC 314, 359, affirmed *Nuclear Management Company, LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 733-34 (2006).

⁹⁷ *Palisades*, LBP-06-10, 63 NRC at 360.

did on April 4, 2006.⁹⁸ By letter dated June 27, 2006, the NRC accepted the petition, in part, for review.⁹⁹ After consideration of the petition, the Director of the Office of Nuclear Material Safety and Safeguards denied the § 2.206 petition concluding in the Director's Decision that petitioners' concerns were adequately addressed by the licensee's revised evaluation, and no further license action is needed.¹⁰⁰ Per the Commission's regulations, the Director's Decision became the final action of the Commission 25 days after the date of the decision, as the Commission did not review the decision.¹⁰¹

Applying the collateral estoppel to the ISFSI concerns raised here, Petitioning Organizations are barred from relitigating these issues. First, the Director's Decision constitutes the final action of the Commission as the Commission did not institute review of DD-07-2. This action represents final judgement entered by the Commission, the court of competent jurisdiction at issue here. Second, to the extent that Petitioning Organizations' Amended Contention 2 challenges the ISFSI storage pad's compliance with NRC safety regulations due to seismic concerns, this issue is the same as the issues litigated and resolved by the Director's Decision.¹⁰² Petitioning Organizations specifically provide the ADAMS accession number of their Expert's declaration relied on in their 2005 Hearing Request and 2.206 petition wherein they

⁹⁸ *Petition Pursuant to 10 CFR 2.206 for Enforcement Action to Terminate Use of Dry Cask Storage Pads at Palisades Nuclear Power Plant Submitted by Nuclear Information and Resource Service, West Michigan Environmental Action Council, **Don't Waste Michigan**, the Green Party of Van Buren County, the Michigan Land Trustees, and Member-Intervenors* (Apr. 4, 2006) (ML061220640) (2.206 Petition) (submitted for the Petitioners by Terry J. Lodge).

⁹⁹ Letter from William H. Ruland to Terry J. Lodge "Review Consideration of 10 CFR 2.206 Petition Regarding Palisades Nuclear Plant" (June 27, 2006) (ML061790450) (noting that the seismic concerns were not accepted for review because this issue was already subject to NRC staff review and was resolved on May 11, 2006, after Petitioning Organizations submitted their 2.206 petition on April 4, 2006).

¹⁰⁰ *See Nuclear Management Company, LLC* (Palisades Nuclear Plant) DD-07-2, 65 NRC 365, 368-69 (2007).

¹⁰¹ *Palisades*, 65 NRC at 369-70 (citing 10 C.F.R. § 2.206(c)).

¹⁰² *Compare* Amended and New Contentions at 4-6 *with Palisades*, DD-07-2, 65 NRC at 367-69.

challenged the concrete pad's compliance with NRC safety regulations.¹⁰³ Finally, the parties that collateral estoppel will be applied to is the same party and are in privity with the remaining Petitioning Organizations. Specifically, Don't Waste Michigan was a party to the accepted 10 C.F.R. § 2.206 petition and is a participant in this instant proceeding.¹⁰⁴ Don't Waste Michigan is represented by the same counsel to both proceedings, Mr. Terry Lodge.¹⁰⁵ As Mr. Terry Lodge represents all Petitioning Organizations, the remainder of the Petitioning Organizations are in privity with Don't Waste Michigan, and collateral estoppel applies to all participants represented by Mr. Terry Lodge. Therefore, collateral estoppel prevents Petitioning Organizations from relitigating their ISFSI safety concerns.

Furthermore, 10 C.F.R. § 2.309(c) provides an independent basis for this Board to deny consideration of the ISFSI portions of the Amended Contention 2. As Petitioning Organizations point out, this information was available in 2006,¹⁰⁶ well before Petitioning Organizations submitted their hearing request in 2024. As Petitioning Organizations believe that their concerns were unaddressed in the 2006 SEIS for license renewal (2006 SEIS),¹⁰⁷ which formed the foundation for Holtec's New and Significant evaluation in its Environmental Report, their opportunity to bring this information to the Board's attention in a timely manner was in their

¹⁰³ Amended and New Contentions at n.6. See 2005 Hearing Request ("According to **Petitioners' anticipated expert, Dr. Ross Landsman**, former U.S. Nuclear Regulatory Commission Region III dry cask storage inspector, the older pad violates the liquefaction portion of this regulation, and the new pad violates the amplification portion of the regulation. Petitioners contend that neither the older nor new dry cask storage pads at the Palisades plant were designed in consideration of the factors contained in the cited regulation.") (**emphasis added**); See also "Email from Terry J. Lodge - Comments on Proposed Director's Decision Under 10 CFR 2.206 Regarding Palisades Dry Cask Storage." (ML070390210) (package).

¹⁰⁴ See 2.206 Petition at 5; see Hearing Request at 1.

¹⁰⁵ See 2.206 Petition at 8; see Hearing Request at 75.

¹⁰⁶ Amended and New Contentions at 4 n.1.

¹⁰⁷ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding License Renewal for Palisades Nuclear Power Plant, Final Report," NUREG-1437, Supplement 27 (Oct. 2006) (ML062710300) (2006 SEIS).

October 10, 2024, Hearing Request.¹⁰⁸ This information was previously available and has not been submitted in a timely fashion and therefore Petitioning Organizations have not demonstrated good cause to amend their contention to consider the safety concerns about the ISFSI storage pad pursuant to 10 C.F.R. § 2.309(c)(1)(i)-(iii).

b. The Information Regarding the Planned Construction Activities in Support of the Planned Restart of Palisades Was Previously Available and is Untimely and Therefore Petitioning Organizations Do Not Demonstrate Good Cause to Amended Contention 2

Petitioning Organizations assert that there is “significant construction planned at the Palisades complex that is barely mentioned and poorly detailed in the EA.”¹⁰⁹ Without addressing the merits of this claim, Petitioning Organizations point to three different categories of buildings: A Digital Staging Testing Building, a radioactive material storage building, and two new Diverse and Flexible Coping (FLEX) Strategies buildings.¹¹⁰ As Petitioning Organizations cite to in their Amended and New Contention brief, the information regarding the Digital Staging Testing Building and the radioactive materials storage building was previously available in Holtec’s Environmental RAI response.¹¹¹ Petitioning Organizations mention the FLEX buildings are noted in the Draft EA/FONSI at Page 2-5 and assert that there is missing information.¹¹² The Draft EA/FONSI discusses these buildings and provides a reference to Holtec’s Environmental Report.¹¹³

Petitioning Organizations assert that the construction of these buildings is significant and therefore the NRC must prepare an EIS. However, the information about the FLEX buildings

¹⁰⁸ While these ISFSI storage pad concerns would have been *timely* if was raised as a part of their original Hearing Request, this does not mean that these concerns would have been *admissible* pursuant to the requirements in 10 C.F.R. § 2.309(f)(1).

¹⁰⁹ Amended and New Contentions at 6.

¹¹⁰ *Id.*

¹¹¹ Amended and New Contentions at n.9 (citing Environmental RAI Response).

¹¹² Amended and New Contentions at 6.

¹¹³ Draft EA/FONSI at 3-7 (citing Environmental Report, Section 3.1) (Section 3.1 of the Environmental Report points to Section 2.1.1 for further information about the FLEX buildings).

was previously available, through Holtec's ER, dated 2023. Therefore, Petitioning Organizations' request to amend Contention 2 to incorporate information about the FLEX buildings is based on information previously available and is untimely, and Petitioning Organizations do not demonstrate good cause to amend Contention 2 to include this information as this information does not meet the criteria of 10 C.F.R. § 2.309(c)(1)(i)-(iii). In addition, Pursuant to this Board's initial scheduling order the time to file new or amended contentions on the Environmental RAI response and the information therein about the Digital Staging Testing Building and the radioactive material storage building was 30 days after the information became available.¹¹⁴ As this deadline passed on November 13, 2024,¹¹⁵ Petitioning Organizations do not demonstrate good cause to amend their contention now to include the information about the Digital Staging Testing Building and the radioactive material storage building because their challenge is late and does not satisfy 10 C.F.R. § 2.309(c)(1)(iii).

c. The Information Regarding Climate Change Was Previously Available and is Untimely and Therefore Petitioning Organizations Do Not Demonstrate Good Cause to Amend Contention 2

As Petitioning Organizations note, the Staff's discussion of climate change in the EA is based on information from the U.S. Global Change Research Program's (USGCRP) latest National Climate Assessment Report (NCA5), which was published in 2023.¹¹⁶ Therefore, contrary to Petitioning Organizations' assertions, the Draft EA/FONSI does not contain information that is materially different from previously available information. Furthermore, Petitioning Organizations' Amended Contention 2 now includes a discussion of Holtec's

¹¹⁴ *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), LBP Memorandum and Order (Initial Prehearing Order) at 4 n.12 (Sept. 19, 2024) (unpublished) (ML24263A018).

¹¹⁵ The Environmental RAI Response became publicly available on October 14, 2024.

¹¹⁶ Amended and New Contentions at 7 (citing U.S. Global Change Research Program "*The Fifth National Climate Assessment*." A.R. Crimmins, C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. Washington, D.C. (2023) Available at <https://nca2023.globalchange.gov/> (USGCRP NCA5)).

potential replacement of the Component Cooling Water heat exchangers,¹¹⁷ but this information was available to Petitioning Organizations when they filed their Hearing Request as evinced by the fact that it was one of the facts Petitioning Organizations relied on in their Hearing Request, filed October 10, 2024, in Proposed Contention 4 and 7.¹¹⁸

Petitioning Organizations cite to the following statement in F.1 of the Draft EA/FONSI, “The [NRC] Staff has determined climate change may alter the affected environment during the period of preparation for the resumption or power operations or resumption of power operations at [Palisades] ...climate change may create a new environment that could result in changed impacts from the ongoing operations or impose operational restrictions on the site’s safety and performance.”¹¹⁹ Petitioning Organizations assert that this statement implicates Atomic Energy Act (AEA) considerations and supports their position.¹²⁰ Consistent with Commission direction in CLI-09-21, the potential for climate change to alter the affected environment and result in changed impacts from ongoing operations was considered for Palisades using the publicly available assessment methodology described in NUREG-2226.¹²¹ Staff guidance implementing CLI-09-21 has been publicly available and could have been used to raise contentions as early as 2010.¹²² Therefore, the fact that climate change may alter the affected environment around a

¹¹⁷ *Id.* at 6-7.

¹¹⁸ Hearing Request at 58-61, 70-73.

¹¹⁹ Amended and New Contentions at 7 (citing Draft EA/FONSI at F-1).

¹²⁰ *Id.*

¹²¹ Draft EA/FONSI at F-3 (citing “Environmental Impact Statement for an Early Site Permit (ESP) at the Clinch River Nuclear Site: Final Report”, NUREG-2226, Vol. 2., Appendix L (Apr. 2019) (ML19087A266) (package)); *see Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 930-31 (2009).

¹²² *See e.g.* Memorandum from Barry Zalzman to H. Brent Clayton, “Supplemental Staff Guidance to NUREG 1555,” “Environmental Standard Review Plan,” (ESRP) for Consideration of the Effects of Greenhouse Gases and of Climate Change (Apr. 8, 2010) (ML100990185); *see also* Staff Answer to Hearing Request at 78 n.314 (citing Regulatory Guide 4.2, Revision 3 “Preparation of Environmental Reports for Nuclear Power Stations” Section 7.1, at 141 (Sept. 2018) (ML18071A400) *and* Interim staff guidance; issuance; “Environmental Issues Associated with New Reactors,” 79 Fed. Reg. 52,373 (Sept. 3, 2014)).

nuclear power plant is not information different from previously available information, as required for an amended contention pursuant to 10 C.F.R. § 2.309(c)(1)(ii). Regarding the statement that climate change *may* impose operational restrictions on the site's safety and performance, this statement is consistent with statements made previously by the NRC and is therefore not materially different from information previously available, as required for an amended contention pursuant to 10 C.F.R. § 2.309(c)(1)(ii). For one example, the Draft EA/FONSI cites to the 2024 LR GEIS, published August 2024, that acknowledges climate change may have safety implications for nuclear power plants, but adaptation of nuclear power plants to climate change is addressed through existing NRC safety regulations.¹²³ In sum, the Petitioning Organizations do not demonstrate good cause to amend Contention 2 to include the discussions of climate change in the Draft EA/FONSI as they do not demonstrate this information is materially different from information previously available pursuant to 10 C.F.R. § 2.309(c)(1)(ii).

Therefore, Petitioning Organizations do not demonstrate good cause for this Board to entertain any portion of Amended Contention 2. As such, this Board should dismiss Amended Contention 2 as untimely.

2. Proposed Amended Contention 2 Is Inadmissible Because It Raises Claims that are Immaterial and Lack Factual Support as required by 10 C.F.R. § 2.309(f)

As an initial matter, Staff notes that the facts upon which Petitioning Organizations intend to rely in support of this contention reinvigorate previous parts of original Contention 2.¹²⁴ This reinvigorated portion of Amended Contention 2 asserts that because there is not a defined regulatory pathway to restart a reactor after it has entered decommissioning, the NRC is

¹²³ Draft EA/FONSI at F-6 (citing "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," NUREG-1437, Rev. 2, Vol. 2, Appendix A, at A-222 (Aug. 2024) (ML24086A527) (2024 LR GEIS)).

¹²⁴ Amended and New Contentions at 2-4; see Hearing Request at 43-45.

required to prepare an EIS to comply with NEPA.¹²⁵ The Staff has already responded to these arguments and clearly explained why these arguments are inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi).¹²⁶ The Staff incorporates by reference the sections of its answer that address the process and procedural claims raised in original Contention 2 to now address the same process and procedural claims in Amended Contention 2.¹²⁷

The first new claim Petitioning Organizations raise in Amended Contention 2 is that “the EA claims that the environmental impacts from the restart of Palisades will be the same as the impacts discussed in the 2006 [SEIS] for the Palisades license renewal.”¹²⁸ Therefore, Petitioning Organizations argue, an EIS is required to analyze the potential environmental impacts of restart.¹²⁹ This claim does not demonstrate a genuine, material dispute with the Draft EA/FONSI as it misrepresents the Staff’s review and findings in the Draft EA/FONSI, and does not account for the fact that the impacts of license renewal for Palisades were determined to be SMALL for all resource areas in the 2006 SEIS.¹³⁰ The Staff independently reviewed and concluded that the environmental impacts of the preparation for and the resumption of power operations, and from the return to decommissioning at a future time at Palisades would be NOT SIGNIFICANT for each potentially affected environmental resource areas, with no significant cumulative effects identified.¹³¹ While the Staff’s determination in the 2006 SEIS that license renewal would have a SMALL environmental impact for all resource areas helped support the NRC Staff’s significance determinations in the Draft EA/FONSI for the restart-related amendment requests, the Staff’s independent review also considered any new and relevant

¹²⁵ *Id.*

¹²⁶ Staff Answer to Hearing Request at 49-51, 52-53.

¹²⁷ *Id.*

¹²⁸ Amended and New Contentions at 4.

¹²⁹ *Id.*

¹³⁰ 2006 SEIS at 9-8.

¹³¹ Draft EA/FONSI at 4-1.

information that could affect the analysis for each resource area, including resource areas not discussed in the 2006 SEIS.¹³² It is true that an EIS is required for license renewal pursuant to 10 C.F.R. § 51.20(b), but this provision applies to applications for new or renewed operating licenses and is irrelevant to this proceeding on the restart-related amendment requests.¹³³ Therefore, Petitioning Organization's argument that because an EIS was prepared for license renewal, the NRC must now prepare an EIS for the restart-related amendment requests, if approved, is inadmissible under 10 C.F.R. § 2.309 (f)(1)(iv), (v), and (vi) because, much like Petitioning Organizations' previous process and procedure arguments, this argument Petitioning Organizations raise now is immaterial to the NRC findings necessary to grant the license amendment requests, lacks adequate factual support, and fails to show that a genuine dispute exists on a material issue of law or fact.

Petitioning Organizations infer that because an EIS was required for license renewal of Palisades, there must have been significant environmental impacts from continued operations then, and there will be significant environmental impacts now.¹³⁴ However, Petitioning Organizations do not demonstrate a genuine dispute with the Draft EA/FONSI by pointing to *any* significant *environmental* impacts caused by the activities related to the restart-related license amendments, but instead seek to relitigate their safety concerns about an ISFSI storage pad at Palisades, flyspeck limited construction activities necessary for restart, and attempt to reinvigorate Contention 7 regarding the effects of climate change on Palisades as an environmental contention.¹³⁵

¹³² Draft EA/FONSI at 3-1 to 3-5; *see also* 2006 SEIS at 9-8.

¹³³ *See* Staff Answer to Hearing Request at 51 n.214 (citing 10 C.F.R. § 51.20(b)(2)).

¹³⁴ Amended and New Contentions at 4; *but see* 2006 SEIS at 9-8 (Finding that the environmental impacts of license renewal of Palisades are SMALL for all resource areas).

¹³⁵ *Id.* at 4-8.

Petitioning Organizations do not demonstrate that there are any significant environmental effects from the ISFSI storage pad at Palisades or the additional spent nuclear fuel generated if Palisades is restarted. Notably, Petitioning Organizations do not challenge the uranium fuel cycle discussion in the Draft EA/FONSI, which discusses the environmental impacts of spent nuclear fuel at-reactor and away-from-reactor storage.¹³⁶ Instead Petitioning Organizations challenge the Waste Management section of the Draft EA/FONSI.¹³⁷ In addition, Petitioning Organizations state that the EA is deficient because it uses the 2006 SEIS as the baseline,¹³⁸ but contrary to Petitioning Organizations' assertions the baseline environment for the EA is decommissioning and return to operations.¹³⁹ Consistent with this approach, Staff determined that the uranium fuel cycle would still be bounded by Table S-3 and therefore the uranium fuel cycle from the resumption of reactor power operations would be NOT SIGNIFICANT.¹⁴⁰ The "additional" amount of spent nuclear fuel for another 6 years under the current operating license, if restart is permitted, would be consistent with those described in the 2006 SEIS,¹⁴¹ and the potential that Palisades may generate another 20 years of spent nuclear fuel during the period of subsequent license renewal was considered in the cumulative effects section of this Draft EA/FONSI.¹⁴²

Furthermore, Petitioning Organizations were informed by the Commission that their safety concerns about the ISFSI are separate licensing matters and were outside the scope of

¹³⁶ Draft EA/FONSI at § 3.13.

¹³⁷ Amended and New Contentions at 5 (citing Draft EA/FONSI at 3-59 to 3-61).

¹³⁸ Amended and New Contentions at 5.

¹³⁹ Draft EA/FONSI at § 1.3.4.

¹⁴⁰ Draft EA/FONSI at § 3.13.3.

¹⁴¹ Draft EA/FONSI at § 3.13.3; see *also* 2006 SEIS at 1-8 to 1-9, & 6-8 (explaining that the 2006 SEIS covers the period of the renewal for Palisade's operating license for an additional 20 years (i.e., until March 24, 2031) and considered onsite spent fuel as a Category 1 issue).

¹⁴² Draft EA/FONSI at § 3.13.4.

the environmental review for license renewal.¹⁴³ Petitioning Organizations do not explain why the Board should now entertain the ISFSI safety concern they previously raised to challenge the Palisades license renewal application as an environmental challenge to the Staff's findings that the environmental impacts of the Uranium Fuel Cycle would be NOT SIGNIFICANT in the Draft EA/FONSI.¹⁴⁴ The Draft EA/FONSI incorporates by reference the Staff's previous evaluation in the 2006 SEIS that supported its determination that the environmental impacts of onsite spent fuel during the license renewal period would be SMALL.¹⁴⁵ Finally, Petitioning Organization's previous challenge that the ISFSI fails to meet NRC seismic standards was resolved when their 2.206 petition was denied.¹⁴⁶ While Petitioning Organizations reference NRC safety regulations, they do not demonstrate how this relates to the Staff's environmental review.¹⁴⁷ Therefore, Petitioning Organizations do not demonstrate that a genuine dispute exists with a material issue

¹⁴³ *Palisades*, CLI-06-17, 63 NRC at 733-34 & n.29.

¹⁴⁴ See *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), CLI-15-6, 81 NRC 340, 376-78 (2015) (holding that the environmental review may not serve as a "back door" to litigating safety issues that are addressed as a part of ongoing plant oversight).

¹⁴⁵ Draft EA/FONSI at § 3.13 (The Staff's specific environmental consideration of the environmental effects of postulated accidents at an ISFSI during the operating license term is analyzed through the cask certification process. In 1990, the NRC issued an amendment to 10 C.F.R. Part 72 to provide for the storage of spent fuel under a general license, such as the one Palisades has, in cask designs approved by the NRC. As part of the rulemaking process, an EA was prepared: "Environmental Assessment for 10 CFR Part 72 'Licensing Requirements for the Independent Spent Fuel and High-Level Radioactive Waste.'" NUREG-1092, (Aug. 1984) (ML091050510). This EA assessed the environmental impacts of the rulemaking which included impacts related to postulated accidents. The NRC staff reviews cask designs, amendments, or revisions through a process called a Certificate of Compliance (CoC), which is performed through rulemaking. As a part of each CoC rulemaking, an EA is prepared which contains a bounding impacts assessment that tiers from NUREG-1092, which includes accident analyses. For a general ISFSI licensee, such as Palisades, licensees prepare an evaluation per 10 C.F.R. § 72.212 to demonstrate that a particular CoC can be utilized at their site from safety and environmental conditions. This evaluation must show also that the site is bounded by the CoC's accident analyses. The licensee's evaluation is inspectable by NRC regional inspectors).

¹⁴⁶ *Palisades*, 65 NRC at 368-70.

¹⁴⁷ Amended and New Contentions at 6 (Petitioning Organizations appear to expand their ISFSI seismic concerns to Palisades itself. Challenges to Palisades' compliance with NRC regulations to withstand an earthquake is a safety issue. Furthermore, the environmental impacts of postulated accidents are considered in the Draft EA at § 3.14).

of law or fact with the Draft EA/FONSI or that the Draft EA/FONSI fails to contain information on a relevant matter as required by law regarding the ISFSI storage pads.

Petitioning Organizations assert that there is “significant construction planned at the Palisades Complex that is barely mentioned and poorly detailed in the EA” and therefore an EIS must be prepared.¹⁴⁸ However, while Petitioning Organizations speculate that information is missing, they do not explain how this information could lead to the Staff finding that the construction of these buildings would lead to a significant *environmental* impact.¹⁴⁹ As Petitioning Organizations note, the Draft EA/FONSI contains a description of the land use impacts either through new construction or construction since the publication of the 2006 SEIS.¹⁵⁰ To the contrary of Petitioning Organization’s assertions, the Draft EA/FONSI and Holtec’s Environmental Report (including responses to additional information) contain detailed descriptions of these buildings. The Digital Staging Testing Building is associated with the Digital Electrohydraulic Control Software and computer hardware control system replacement located between the steam generator mausoleum and spare transformer pad.¹⁵¹ The radioactive material storage building will be within the security protected area boundary and is permitted under Palisades’ Part 50 license.¹⁵² Finally, FLEX storage buildings were built “in response to NRC ORDER EA-12-049 for Beyond-DESIGN-Basis External events, which addressed natural disasters such as that seen at Fukushima.”¹⁵³ Petitioning Organizations do not demonstrate that

¹⁴⁸ *Id.*

¹⁴⁹ Staff notes that while Petitioning Organizations do not identify a specific conclusion that they dispute, the relevant resource area for the environmental impact of these buildings would be “3.2 Land Use and Visual Resources”.

¹⁵⁰ Amended and New Contentions at 6 n.7 & n.8., 10.

¹⁵¹ Environmental RAI Response, Enclosure 1, Attachment 1, GEN-1 Figure 1a; *see also* Draft EA/FONSI at 3-2.

¹⁵² Environmental RAI Response, Enclosure 1, Attachment 1, Note A (“New structure is to be rated for storage of Category 2 waste (consolidating radwaste storage from the East Radwaste Storage Building to within the Protected Area is a security and safeguard measure intended to provide added assurance of compliance with 10 CFR Part 37)”; *see also* Draft EA/FONSI at 3-2.

¹⁵³ Environmental Report at Sections 2.1.1 and 3.1; *see also* Draft EA/FONSI at 2-5.

there is any omitted discussion regarding the impacts of these buildings, and do not demonstrate that a genuine dispute exists with Staff's determination that there are no significant environmental impact from these buildings.¹⁵⁴ Therefore, Petitioning Organizations do not demonstrate that a genuine dispute exists with a material issue of law or fact on the Draft EA/FONSI or that the Draft EA/FONSI fails to contain information on a relevant matter as required by law regarding construction activities related to the proposed restart of Palisades.

As a final matter, Petitioning Organizations appear to reinvigorate their climate change safety and operational concerns from original Contention 7 to argue that the NRC must prepare an EIS.¹⁵⁵ In response, the Staff incorporates its previous response to original Contention 7 to the extent that the environmental review may not serve as a "back door" to litigate safety issues.¹⁵⁶ Petitioning Organizations do not explain how the NRC's acknowledgment that nuclear power plants may need to adapt to climate change, and that safety concerns will be addressed through the NRC's existing safety regulations, would lead to a significant environmental impact.¹⁵⁷ Therefore Petitioning Organization's climate change safety concerns do not demonstrate a genuine dispute with the Draft EA/FONSI. Furthermore, the Draft EA/FONSI contains an analysis of the potential effects of climate change for *all* resource areas,¹⁵⁸ yet

¹⁵⁴ Draft EA at § 3.2.2 & 3.2.3. *See Holtec International* (Hi-STORE Consolidated Interim Storage Facility), CLI-20-4, 91 NRC 167, 190 (2020) ("A dispute at issue is material if its resolution would make a difference in the outcome of the licensing proceeding.") (internal quotation marks omitted). There may, of course, be mistakes in an environmental document, but in an NRC adjudication, it is the burden of petitioners to show their significance and materiality because "boards do not sit to 'flyspeak' environmental documents or to add details or nuances" and "[i]f the [document] on its face 'comes to grips with all important considerations' nothing more need be done." *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 811 (2005) (quoting *Systems Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005)).

¹⁵⁵ Amended and New Contentions at 6-8. *See* Hearing Request at 68-73.

¹⁵⁶ Staff Answer to Hearing Request at 84-87.

¹⁵⁷ Amended and New Contentions at 6-8 (citing Draft EA/FONSI at F-1). *But see* Draft EA/FONSI at F-6.

¹⁵⁸ Draft EA/FONSI at § F.3.

Petitioning Organizations do not dispute *any* of the Staff's specific findings that climate change would not alter the conclusions made in the EA for each resource area.¹⁵⁹

In support of their climate change arguments, Petitioning Organizations recite their concerns about the potential Component Cooling Water (CCW) replacement from Contentions 4 and 7.¹⁶⁰ The Staff provided clarification of the potential replacement of this component in its answer to Contention 7.¹⁶¹ Despite the Petitioning Organizations' assertion that some form of licensing action is required, before Holtec replaces the CCW heat exchangers, Holtec would first evaluate the change to determine if a license amendment is required.¹⁶² If the replacement meets any of the criteria in paragraph (c)(2) of 10 C.F.R. § 50.59 *and* Holtec wishes to proceed with the replacement of the CCW heat exchangers, Holtec would then need to submit a license amendment request pursuant to 10 C.F.R. § 50.90. While the Draft EA/FONSI does address climate change in relation to the potential CCW heat exchanger replacement,¹⁶³ Petitioning Organizations do not demonstrate how the potential CCW heat exchanger replacement relates to the Staff's decision to prepare an EA and to propose to find that the restart-related amendment requests have no significant environmental impact. To the extent that Petitioning Organizations assert that the potential replacement of the CCW heat exchangers would not qualify under 10 C.F.R. § 50.59,¹⁶⁴ that is a safety concern that is not appropriately heard as a challenge to the Staff's environmental review.¹⁶⁵ Therefore, these climate change concerns are

¹⁵⁹ See Amended and New Contentions at 6-8.

¹⁶⁰ *Id.*

¹⁶¹ Staff Answer to Hearing Request at 82-83.

¹⁶² 10 C.F.R. § 50.59.

¹⁶³ Draft EA/FONSI at F-4 ("Climate change would have a minor impact on the volume of intake water because the warming experienced at the depth of the intake structure, 35 feet below, would be negligible especially when compared to the heat load removed by plant systems.").

¹⁶⁴ Amended and New Contentions at 7.

¹⁶⁵ *Indian Point*, CLI-15-6, 81 NRC at 376-78.

not admissible as they fail to meet the admissibility criteria of 10 C.F.R. § 2.309 (iv), and (vi) as they do not demonstrate that climate change safety concerns are material to the findings the NRC must make to support the Staff's Draft EA/FONSI and do not show that a genuine dispute exists with the Draft EA/FONSI on a material issue or that the Draft EA/FONSI fails to contain information on a relevant matter as required by law.

For all the reasons stated above, Amended Contention 2 is inadmissible as it does not meet the admissibility requirements of 10 C.F.R. § 2.309(f). Further, Petitioning Organizations have not demonstrated good cause pursuant to 10 C.F.R. § 2.309(c) for the Board to entertain consideration of Amended Contention 2. Therefore, the Board should dismiss Amended Contention 2.

C. Amended Contention 4 Is Inadmissible Because Petitioning Organizations do not Demonstrate Good Cause to Amend Contention 4, and Because It Raises Immaterial, Unsupported, and Out of Scope Arguments that Impermissibly Challenge NRC Regulations

Amended Contention 4 is stated as follows:

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.¹⁶⁶

In Proposed Amended Contention 4, the Petitioning Organizations "reproduced the entirety of their original Contention 4 [therein], taken from pp.48-62 of their original [Hearing Request], but have also inserted new supporting evidence from the NRC Staff's Environmental Assessment."¹⁶⁷ The new evidence is found in the section that Staff referred to as "Basis B."¹⁶⁸

¹⁶⁶ Amended and New Contentions, at 8.

¹⁶⁷ Amended and New Contentions at 8 n.17.

¹⁶⁸ Staff Answer to Hearing Request at 64-69.

Petitioning Organizations assert that the new information in the Draft EA/FONSI “provides further confirmation of the statements and opinions of Petitioning Organizations’ 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.”¹⁶⁹

Staff Response: Staff previously asserted in its Answer to the Hearing Request that original Contention 4 was “inadmissible because it rests on immaterial, unsupported, and out-of-scope arguments that do not demonstrate a genuine material dispute with HDI. In addition, the fundamental argument of the proposed contention, that the NRC lacks authority to approve the amendments, impermissibly challenges the NRC regulations. Moreover, three of the four Bases are not related to the proposed contention; regardless, the assertions therein are immaterial, unsupported, and out of scope. For this reason, [original] Contention 4 does not satisfy § 2.309(f)(1)(ii), (iii), (iv), (v), (vi), and raises challenges barred by § 2.335.”¹⁷⁰

As discussed below, this “new evidence” from the Draft EA/FONSI is not materially different from previously available information and therefore does not demonstrate good cause to amend original Contention 4. Furthermore, this “new evidence” does not cause Amended Contention 4 to satisfy any of the admissibility criteria that original Contention 4 did not, and therefore Amended Contention 4 does not satisfy § 2.309(f)(1)(ii), (iii), (iv), (v), (vi), and raises challenges barred by § 2.335.¹⁷¹

1. *Amended Contention 4 is Not Admissible Because the Information Upon Which Petitioning Organizations Base it on is Not Materially Different from Information Previously Available.*

¹⁶⁹ Motion at 3.

¹⁷⁰ Staff Answer to Hearing Request at 58-59.

¹⁷¹ The Staff incorporates by reference its answer to original Contention 4, with minor revisions, as its answer to Amended Contention 4. See *infra* Discussion Section II.C.2.

On January 31, 2025, the NRC issued its Draft EA/FONSI.¹⁷² Petitioning Organizations assert that the Draft EA/FONSI constitutes “good cause” under 10 C.F.R. § 2.309(c)(1)(i)-(iii) to amend Contention 4.¹⁷³ But Petitioning Organizations have reiterated Contention 4 in full, with a minor amendment that Petitioning Organizations claim provides evidence favorable to the admissibility of Contention 4.¹⁷⁴ Specifically, Petitioning Organizations state that the discussion of climate change in Appendix F of the Draft EA/FONSI is materially different because it constitutes an admission by the agency that was not available previously.¹⁷⁵ However, Petitioning Organizations do not identify how any information they cite to in the Draft EA/FONSI is materially different from information previously available; therefore, Petitioning Organizations do not demonstrate good cause pursuant to 10 C.F.R. § 2.309(c)(1)(ii). Furthermore, Petitioning Organizations also cite to Government Accountability Office (GAO) Report 24-106326 (GAO Report)¹⁷⁶ and an article in an online magazine published by Yale School of the Environment,¹⁷⁷ but this information was previously available, and untimely. Lastly, to the extent that Petitioning Organizations attempt to amend their contention to correct errors in Contention 4, these corrections are not based on new information, and are untimely.¹⁷⁸ Therefore, Petitioning

¹⁷² See *Notification of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact* (Jan. 31, 2025) (ML25031A007).

¹⁷³ Motion at 4-5, 10, 11.

¹⁷⁴ See Amended and New Contentions at 8, n.17 (stating “The Petitioning Organizations have reproduced the entirety of their original Contention 4 herein, taken from PP. 48-62 of their original Petition to Intervene, but have also inserted new supporting evidence from the NRC Staff’s Environmental Assessment.”). The new portion of Amended Contention 4 appears at 21-23, with only minor changes to the body of the original contention that staff views as immaterial modifications. See Motion at 3-5, 11.

¹⁷⁵ Motion at 11.

¹⁷⁶ Amended and New Contentions at 23 n.39 (citing Government Accountability Office, GAO-24-106326, “Nuclear Power Plants: NRC Should Take Actions to Fully Consider the Potential Effects of Climate Change” (Apr. 2, 2024), available at <https://www.gao.gov/products/gao-24-106326> (GAO Report)).

¹⁷⁷ Amended and New Contentions at 23 n.40 (citing James Dinneen, “Can Aging U.S. Nuclear Power Plants Withstand More Extreme Weather?” (Apr. 23, 2024), available at <https://e360.yale.edu/digest/u.s.-nuclear-power-climate-change> (Yale Magazine Article)).

¹⁷⁸ Compare Amended and New Contentions at 20 (“Holtec’s acknowledgment of a need for climate resilience at the plant via swapping out heat exchangers, which are a safety feature, implies many things for an up-to-date, useful Safety Analysis Report in support of a Palisades restart.”) with Hearing Request

Organizations do not demonstrate good cause to amend their contention to include this information pursuant to 10 C.F.R. § 2.309(c)(1)(i)-(iii). As Petitioning Organizations have not demonstrated good cause because they do not show that information upon which the filing is based on satisfies the criteria in 10 C.F.R. § 2.309(c)(1), the Board should not entertain consideration of Amended Contention 4.

- a. *The Information Cited by Petitioning Organizations from the Draft EA/FONSI is not Materially Different from Information Previously Available and Therefore Petitioning Organizations Do Not Demonstrate Good Cause to Amend their Contention Pursuant to 10 C.F.R. § 2.309(c)(1)(ii).*

Petitioning Organizations cite to two different sections of the Draft EA/FONSI,¹⁷⁹ but the information that Petitioning Organizations cite to in these sections of the Draft EA/FONSI is not materially different from information previously available.¹⁸⁰ First, Petitioning Organizations cite to Staff's discussion of a warming trend in surface water temperatures in Lake Michigan.¹⁸¹ This discussion expressly indicates that the warming trend was discussed in a paper authored by NOAA in 2021 and therefore the Staff's discussion of this warming trend in the Draft EA is not materially different from previously available information.¹⁸² Similarly, Petitioning Organizations cite to Staff discussion about expected climatological changes in Appendix § F.1 and § F.2 in the Draft EA/FONSI.¹⁸³ However, as Petitioning Organizations note,¹⁸⁴ the Staff's description of expected climatological changes for southwest Michigan is directly sourced from the 2023 USGCRP NCA5.¹⁸⁵ To dispel Petitioning Organizations' assertion that "the NRC Staff

at 60 ("While the heat exchanger is not a safety system or component that must be addressed within a Safety Analysis Report, Holtec's acknowledgment of the need for climate resilience at the plant implies many things for an up-to-date, useful Safety Analysis report in support of a Palisades restart.").

¹⁷⁹ Amended and New Contentions at 22–23 (citing Draft EA/FONSI at §§ F.1, F.2).

¹⁸⁰ *HI-STORE Consolidated Interim Storage Facility*, CLI-21-4, 93 NRC at 127–28.

¹⁸¹ Amended and New Contentions at 21-22 (citing Draft EA/FONSI at 3-35).

¹⁸² Draft EA/FONSI at 3-35 ("A 2021 study by NOAA ... (Anderson et al. 2021-TN10715)").

¹⁸³ Amended and New Contentions at 22-23 (citing Draft EA/FONSI at F-1 to -2).

¹⁸⁴ Amended and New Contentions at 22.

¹⁸⁵ Draft EA/FONSI at § F.2 (citing USGCRP NCA5).

extrapolated the USGCRP NCA5 data for southwest Michigan” and demonstrate that this information is not materially different from information previously available, the NRC staff reproduces Appendix § F.2 herein with footnoted references reflecting the page number and/or figure where this information appears in the USGCRP NCA5.

In southwest Michigan, where Palisades is located near Lake Michigan in Van Buren County, climate data indicate a warming trend. Observed changes in annual, winter, and summer average temperatures between 1901–1960 and 2002–2021 show increases of 1.5 to 2°F (0.8 to 1.1°C), more than 2°F (1.1°C), and 1 to 1.5°F (0.6 to 0.8°C), respectively.¹⁸⁶ Over the more recent period from 1972 to 2021, annual average near-surface temperatures have risen by approximately 0.5 to 0.6°F (0.27 to 0.33°C) per decade.¹⁸⁷ These temperature changes have implications for energy demand and infrastructure: under a very high emissions scenario, the annual electricity demand is projected to increase by 40–50 percent from 2020 to 2050,¹⁸⁸ while rising air temperatures are expected to reduce summer transmission line capacity by 6 percent in the region.¹⁸⁹

As global temperatures continue to increase, each degree of warming brings greater temperature rise in many parts of the United States. As of the 2020s, global average temperatures have increased around 2°F (1.1°C) above pre-industrial (from 1851 to 1900) levels.¹⁹⁰ Relative to the 1851-1900 baseline, under a very high emission scenario, a projected global temperature increase of 2.7°F (1.5°C), 3.6°F (2°C), 5.4°F (3°C), and 7.2°F (4°C) may increase the southwest Michigan local temperature by 3–4°F (1.7–2.2°C), 5–6°F (2.8–3.3°C), 7–8°F (3.9–4.4°C) and 9–11°F (5.0–6.1°C).¹⁹¹ With these rising temperatures, hot days ($\geq 95^\circ\text{F}$) are expected to increase by 5–10 days annually, cold days ($\leq 32^\circ\text{F}$) to decrease by 15–25 days, and warm nights ($\geq 70^\circ\text{F}$) to increase by 5–15 days in southwest Michigan as global temperatures reach 2°C above pre-industrial levels.¹⁹²

Beyond atmospheric warming, Lake Michigan's summer surface water temperatures have also been rising. From 1980 to 2021, the July to September average surface temperature of Lake Michigan increased by about 0.1°F (0.05°C) per year (USGCRP 2023-TN9762), and further increases are anticipated.¹⁹³ Other observed changes in the Great Lakes region include increased variability

¹⁸⁶ USGCRP NCA5 at 2-12, Figure 2.4 (for USGCRP NCA5 citations, the first number represents the chapter number. Available at <https://nca2023.globalchange.gov/downloads/>).

¹⁸⁷ *Id.* at 3-29, Figure 3.11.

¹⁸⁸ *Id.* at 5-8, Figure 5.2.

¹⁸⁹ *Id.* at 24-23.

¹⁹⁰ *Id.* at 2-10, Figure 2.3.

¹⁹¹ *Id.* at 2-22, Figure 2.9.

¹⁹² USGCRP NCA5 at 2-24, Figure 2.11.

¹⁹³ *Id.* at 24-30 to 24-31, Figure 24.13.

in lake levels, higher evaporation and water temperatures, more intense precipitation events (including lake-effect snow), and shorter durations of snow and ice cover.¹⁹⁴

Precipitation patterns in southwest Michigan are evolving as well, with annual precipitation projected to increase by up to 20 percent by midcentury compared to the past five decades under the highest warming scenarios.¹⁹⁵ Extreme precipitation events are also expected to intensify, with the heaviest 1 percent of precipitation days, 5-year maximum daily precipitation, and annual maximum precipitation projected to rise by 10–30 percent, 10–20 percent, and 5–15 percent, respectively.¹⁹⁶ This projected increase in precipitation, by 1 to 2 in. (2.5 to 5.1 cm) annually by midcentury (2036–2065) relative to 1991–2020, could lead to significant seasonal shifts in water availability.¹⁹⁷ Winter runoff could increase by 15–20 percent, spring runoff by 5–10 percent, while summer runoff may decrease by around 5 percent, with fall runoff remaining steady or slightly increased.¹⁹⁸ Annual actual evapotranspiration and runoff are also expected to rise, as outlined in Table F-1 below.

Table F-1 Projected Precipitation Change by Midcentury (2036–2065 relative to 1991–2020) Under an Intermediate Emissions Scenario (RCP4.5) in Southwest Michigan. Source: USGCRP 2023-TN9762.

Climate Variable	Project Change (in.) by Midcentury
Annual Precipitation	1 to 2 ¹⁹⁹
Annual Actual Evapotranspiration	1 to 2 ²⁰⁰
Maximum Annual Snow Water Equivalent	-0.2 to -1.0 ²⁰¹
Annual Summer (June–August) Soil Moisture	-0.05 to -0.1 ²⁰²
Annual Runoff	0.1 to 0.5 ²⁰³
Annual Climatic Water Deficit	0.5 to 1 ²⁰⁴

¹⁹⁴ *Id.* at 24-26.

¹⁹⁵ *Id.* at 24-6.

¹⁹⁶ *Id.* at 2-19, Figure 2.8.

¹⁹⁷ *Id.* at 4-7, Figure 4.3.

¹⁹⁸ *USGCRP NCA5* at 24-27, Figure 24.11.

¹⁹⁹ *Id.* at 4-7, Figure 4.3.

²⁰⁰ *Id.* at 4-8, Figure 4.4.

²⁰¹ *Id.* at 4-9, Figure 4.5.

²⁰² *Id.* at 4-10, Figure 4.6.

²⁰³ *Id.* at 4-11, Figure 4.7.

²⁰⁴ *USGCRP NCA5* at 4-13, Figure 4.9.

In addition to these precipitation changes, the region is expected to experience a reduction in maximum annual snow water equivalent and a decline in summer soil moisture (June–August).²⁰⁵ Lower summer moisture levels, combined with higher temperatures, could increase the risk of flash droughts during the summer, while elevated winter and spring runoff could heighten flooding risks.²⁰⁶ Current precipitation patterns show sub-annual variability, with rapid shifts between extreme wet and dry periods, which may further exacerbate these risks.²⁰⁷

Finally, the projected annual climatic water deficit, which measures the gap between available water and vegetation demand, is expected to rise by 0.5 to 1 in. (1.3 to 2.4 cm) by midcentury relative to 1991–2020.²⁰⁸ This suggests that, although winter and spring flooding may pose significant challenges, drier summer conditions are likely to persist, potentially affecting water availability in the region.

In sum, the information contained in § F.2 of the Draft EA/FONSI is directly attributable to the USGCRP NCA5 and therefore the information in the Draft EA/FONSI not materially different from previously available information.

Petitioning Organizations cite to the following statement in § F.1 of the Draft EA/FONSI, “However, climate change may create a new environment that could result in changed impacts from the ongoing operations or impose operational restrictions on the site’s safety and performance[.]” and assert that this statement implicates AEA considerations and supports their position.²⁰⁹ As noted *supra*, the statement that climate change *may* impose operational restrictions on the site’s safety and performance, is consistent with statements made previously by the NRC and is therefore not materially different from information previously available, as required for an amended contention pursuant to 10 C.F.R. §2.309(c)(1)(ii).²¹⁰

While the Draft EA/FONSI is new, the underlying information upon which it is based was available to Petitioning Organizations when they filed their Original Contention 4 on October 10,

²⁰⁵ See Table F-1, *supra*.

²⁰⁶ USGCRP NCA5 at 24-27, Figure 24.11.

²⁰⁷ *Id.* at 24-6, see Figure 24.1.

²⁰⁸ See Table F-1, *supra*.

²⁰⁹ Amended and New Contentions at 22 (citing Draft EA/FONSI at F-1), 24.

²¹⁰ See *supra* Discussion II.B.1.c.

2024, and therefore does not satisfy 10 C.F.R. § 2.309(c)(1)(ii).²¹¹ As Petitioning Organizations have not demonstrated good cause to amend Contention 4 pursuant to 10 C.F.R.

§ 2.309(c)(1)(ii) to include this information from the Draft EA/FONSI, the Board should not entertain the new portions of Amended Contention 4 that rely on information contained in the Draft EA/FONSI.

b. Petitioning Organizations' References to the GAO Report and The Yale Magazine Article Were Previously Available and Therefore Do Not Justify This Untimely Amendment of Contention 4.

Petitioning Organizations attempt to amend Contention 4 by incorporating two references to materials from 2024, but make no attempt to explain why the Board should entertain this amendment to Contention 4 to consider this untimely information.²¹² To amend their contention, Petitioning Organizations rely on information contained in the GAO report published on April 2, 2024, and the Yale Magazine Article published on April 23, 2024, both of which were available to Petitioning Organizations when they filed their Original Contention 4 on October 10, 2024.²¹³ By relying on information that was previously available, Petitioning Organizations do not meet the requirements for amending their contention in 10 C.F.R. § 2.309(c)(1)(i)-(iii) and they have not demonstrated good cause to amend Contention 4 now to include the references to either the GAO report or the online magazine. The Board should, therefore, not entertain the new portions of Amended Contention 4 that rely on these resources.

In sum, Petitioning Organizations do not demonstrate that the information upon which Amended Contention 4 is based satisfies the criteria in 10 C.F.R. § 2.309(c)(1), and therefore the Board should not admit Amended Contention 4.

²¹¹ *HI-STORE*, CLI-21-4, 93 NRC at 127–28.

²¹² Amended and New Contentions at 23 (citing GAO Report and Yale Magazine Article).

²¹³ *See supra* notes 176 & 177, at 35.

2. *Proposed Amended Contention 4 Is Inadmissible Because It Raises Immaterial, Unsupported and Out of Scope Arguments that Impermissibly Challenge NRC Regulations*

Petitioning Organizations acknowledge that to amend contention 4, they have reproduced the entirety of their original Contention 4 from their Hearing Request and inserted “new supporting evidence from the NRC Staff’s Environmental Assessment.”²¹⁴ Petitioning Organizations inserted the new text where “Basis B” in support of their original contention ended, and they attempted to rectify a factual error regarding the CCW.²¹⁵

In its Answer to the Hearing Request, the NRC Staff demonstrated that original Contention 4 was inadmissible.²¹⁶ Staff incorporates by reference its previous Answer to Proposed Original Contention 4 as its formal response to Proposed Amended Contention 4,²¹⁷ with the following revision to pages 68-69 of Staff’s Answer to original Contention 4 to address the new substantive text in Amended Contention 4:²¹⁸

“Rather, the Petitioners state that “the heat exchanger is not a safety system or component that must be addressed within a Safety Analysis Report”—the Staff notes that the CCW heat exchangers are in fact discussed in UFSAR Revision 35, but the Petitioners’ statement shows they are not attempting to challenge the application content regarding the CCW heat exchangers. Further, the Petitioners’ claims regarding potential changes to the rest of the plant are vague and conclusory in nature and founded in speculation—neither they nor their expert provide a factually supported prediction of how climate change will specifically affect the area around Palisades and how such changes would affect how specific components meet the specific design basis parameters and

²¹⁴ Amended and New Contentions at 8 n.17.

²¹⁵ *Compare* Amended and New Contentions at 20-24 *with* Hearing Request at 60-61.

²¹⁶ Staff Answer to Hearing Request at 58-59 (“Proposed Contention 4, which claims that the NRC has no authority to approve the license amendments requested by Holtec, is inadmissible because it rests on immaterial, unsupported, and out-of-scope arguments that do not demonstrate a genuine, material dispute with HDI. In addition, the fundamental argument of the proposed contention, that the NRC lacks authority to approve the amendments, impermissibly challenges NRC regulations. Moreover, three of the four Bases are not related to the proposed contention; regardless, the assertions therein are immaterial, unsupported, and out of scope. For this reason, proposed Contention 4 does not satisfy § 2.309(f)(1)(ii), (iii), (iv), (v), (vi), and raises challenges barred by § 2.335”) (internal quotation marks omitted).

²¹⁷ *Id.* at 57-74.

²¹⁸ Amended and New Contentions at 20-24.

characteristics in the referenced UFSAR Revision 35 such that a change under 50.59 would need to be considered.”

The Staff revises these sentences to address Amended Contention 4, as follows:

“Rather, the Petitioning Organizations state that “Holtec’s acknowledgment of the need for climate resilience at the plant via swapping out heat exchangers, which are a safety feature, implies many things for an up-to-date, useful Safety Analysis Report in support of a Palisades restart” – the Staff notes that while Petitioning Organizations refer to a component that is discussed in UFSAR Revision 35, Petitioning Organizations’ statement shows that they have not identified any deficiencies with the UFSAR, but merely speculate that it *implies* that the UFSAR should be updated. Further, the Petitioners’ claims regarding potential changes to the rest of the plant are vague and conclusory in nature and founded in speculation—neither they nor their expert provide any factual support to show that the predicted climate change effects to the area around Palisades would affect how specific components meet the specific design basis parameters and characteristics in the referenced UFSAR Revision 35 such that a change under 50.59 would need to be considered.”

This modification to the Staff’s previous response is necessary because Amended Contention 4, by citing the Draft EA/FONSI, now provides a description of how climate change is expected to affect the area around Palisades.²¹⁹ Further, Petitioning Organizations have corrected their previous mischaracterization of the CCW as not a safety system or component.²²⁰ While Amended Contention 4 now provides a factually supported prediction of how Petitioning Organizations believe climate change will specifically affect the area around Palisades, this addition, alone, does not cure the deficiencies in original Contention 4.

In addition, Petitioning Organizations now reference the GAO report and a Yale Magazine Article to assert that climate change will not be adequately addressed,²²¹ but adaptation of nuclear power plants to climate change is already addressed through the NRC’s

²¹⁹ Amended and New Contentions at 21-24.

²²⁰ Amended and New Contentions at 20.

²²¹ Amended and New Contentions at 23-24 (citing GAO Report and the Yale Magazine Article).

existing regulations.²²² Commissioner Hanson responded to the specific concerns raised by the GAO report as the former Chair of the NRC.²²³ The Staff utilizes both the Reactor Oversight Program²²⁴ and the Process for the Ongoing Assessment of Natural Hazards Information (POANHI)²²⁵ to address the effects of climate change on plant safety. Therefore, Petitioning Organizations' speculation and conclusory assertions that the effects of climate change on the SSCs at Palisades are not, or will not be, adequately accounted for in the safety analyses do not demonstrate a dispute with the licensee on a material issue of law or fact as required by § 2.309(f)(1)(vi).²²⁶

While Petitioning Organizations have made other minor, editorial revisions in Amended Contention 4, none of these editorial revisions demonstrate that Petitioning Organizations meet the contention admissibility requirements for amended contentions.²²⁷ Even though Amended Contention 4 now remedies a previous flaw in original Contention 4 as there is now a discussion

²²² Draft EA/FONSI at F-6.

²²³ Letter from Chair Hanson, NRC, to Frank Russo, GAO at 1 (Sept. 27, 2024) (ML24274A001) (“[C]onsidering the conservatisms, safety margins, and defense-in-depth policies described in the [GAO] report, the NRC does not agree with the conclusion that the agency does not address the impacts of climate change. In effect, the layers of conservatism, safety margins, and defense in depth incorporated into the NRC's regulations and processes provide reasonable assurance of adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. This consideration includes any plausible combination of natural hazards at a site for the licensed operational lifetime of the reactor, including changes in those hazards that could result from climate change.... [i]f there are changes to the conditions to which the reactors are licensed, the NRC has the authority to require safety related changes at each plant. The NRC continues to engage in continuous oversight of all nuclear reactors in the United States.”).

²²⁴ Draft EA/FONSI at F-6.

²²⁵ “Process for the Ongoing Assessment of Natural Hazard Information,” NRR Office Instruction (OI) LIC-208 (Nov. 2024) (ML19210C288).

²²⁶ See, e.g., Staff Answer to Hearing Request at 68-69 (explaining that Petitioning Organizations' speculation about climate change did not demonstrate a dispute with the licensee on a material issue of law or fact.).

²²⁷ Compare Amended and New Contentions at 8 (“Holtec and the NRC admit that they have conjured up a “pathway” that is basically a house of cards, unjustifiably cobbling together several requests, including the exemption request discussed in the Petitioning Organizations' Contention 1 and the license amendments requested by Holtec in this proceeding.”) with Hearing Request at 48 (“Therefore, Holtec and the NRC have conjured up a “pathway” that is basically a house of cards, unjustifiably cobbling together several requests, including the exemption request discussed in Contention 1 and the license amendments requested in this proceeding.”).

of how climate change will affect the area around Palisades, Amended Contention 4 is inadmissible for the remainder of all the same reasons the original Contention 4 was inadmissible. Therefore, this Board should not admit Amended Contention 4 for all the same reasons as it should not admit original Contention 4, because it does not satisfy the contention admissibility requirements of § 2.309(f)(1)(ii)-(vi). Additionally, Petitioning Organizations do not demonstrate good cause for this Board to entertain consideration of Amended Contention 4 as the information upon which the filing is based on is not materially different from previously available information as required by § 2.309(c)(1)(ii).

D. Amended Contention 5 Is Inadmissible Because It Raises Arguments That are Untimely, Out of Scope, Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Staff's Environmental Review

Amended Contention 5 is stated as follows:

The purpose and need statement in the EA does not comply with the intent of NEPA. It is a self-serving statement accepting Holtec's unverified assertions of demand for baseload "clean" power within an undefined grid. As such, it unjustifiably limits the range of reasonable alternatives to the proposed restart of Palisades. The purpose and need statement also creates insufficient justifications for the restart of Palisades.²²⁸

Amended Contention 5 challenges the NRC's and the Department of Energy's (DOE's) purpose and need statements in the Draft EA/FONSI.²²⁹ The Petitioning Organizations assert that Amended Contention 5 is timely because there was no Environmental Report, and even if Holtec's document was deemed to be an Environmental Report, Holtec's document did not contain a purpose and need statement and an RAI response is not an appropriate means of providing new information.²³⁰ The Petitioning Organizations also argue that the NRC's purpose and need statement in the Draft EA/FONSI is insufficient because it is "virtually identical" to Holtec's purpose and need statement, is narrowly defined such that "only one alternative –

²²⁸ Amended and New Contentions at 27.

²²⁹ Amended and New Contentions at 27-28; Motion at 5-6.

²³⁰ Motion at 9, 10-11.

restarting Palisades – will satisfy it,” and relies on Michigan’s 2023 clean energy standards.²³¹

The Petitioning Organizations also argue that the Draft EA/FONSI is deficient because the Staff produced “no evidence of [the] ‘need’ to plug Palisades back into the regional grid.”²³² To support their argument, the Petitioning Organizations note that there are no projections of regional demand load growth, forecasts of new sources of power generation coming into the grid, and no data-based projections of future electricity need.”²³³ Additionally, they assert that the Draft EA/FONSI excludes consideration of incremental construction of alternative energy sources, energy conservation, and the timing need for implementation.²³⁴

Staff Response: Amended Contention 5 should be dismissed because it does not satisfy the good cause standards in 10 C.F.R. § 2.309(c) governing contentions filed after the deadline. Moreover, Amended Contention 5 is inadmissible because it raises arguments that are outside the scope of this proceeding, immaterial, unsupported and fail to raise a genuine dispute with the Staff’s environmental review under 10 C.F.R. § 2.309(f)(1).

1. Amended Contention 5 Does Not Demonstrate Good Cause Under § 2.309(c) Because It is Untimely and the Information Upon Which It Is Based Is Not New or Materially Different from Information Previously Available

In original Contention 5, the Petitioning Organizations challenged Holtec’s Environmental Report for omitting a purpose and need statement.²³⁵ Petitioning Organizations assert that they are amending Contention 5 to challenge the substance of the purpose and need statement because the NRC’s filing of the Draft EA/FONSI “completely changes the nature of the contention.”²³⁶ They argue that the purpose and need statement in the Draft EA/FONSI is

²³¹ Amended and New Contentions at 28-30; Motion at 5-6.

²³² Amended and New Contentions at 29-30. See also Motion at 5.

²³³ *Id.*

²³⁴ Amended and New Contentions at 29.

²³⁵ Hearing Request at 63-65.

²³⁶ Motion at 3.

deficient because it is narrowly drawn in that it leaves only one alternative to satisfy the purpose and need; it relies on Michigan's 2023 clean energy standards; the Staff did not consider the need or demand for electricity from Palisades; and the Staff excludes consideration of incremental construction of alternative energy sources, energy conservation, and the timing need for implementation.²³⁷ However, as explained below, the Petitioning Organizations' challenges to the purpose and need statement in the Draft EA/FONSI fail to meet the good cause standard in 10 C.F.R. § 2.309(c) because these arguments could have been timely raised based on the purpose and need statement in Holtec's Environmental RAI response.

Petitioning Organizations argue that even if Holtec's Environmental Report was deemed to be proper, Amended Contention 5 is based on new information not previously available because Holtec's Environmental Report did not contain a purpose and need statement.²³⁸ However, as the Staff stated in its answer to original Contention 5, Petitioning Organizations' contention was moot because in October 2024, Holtec supplied a purpose and need statement in an RAI response as a supplement to its application.²³⁹ Additionally, while Petitioning Organizations argue that the only way an applicant can provide new information is in a "revised ER," and not in an RAI response, they provide no legal support for this argument.²⁴⁰ The NRC's regulations do not require applicants to submit updated or revised environmental reports associated with their applications, and an RAI response is an appropriate method for an applicant to provide new information in an Environmental Report.²⁴¹ And as discussed above, the deadline to file new or amended contentions based on Holtec's Environmental RAI response

²³⁷ Amended and New Contentions at 29-30. *See also* Motion at 5-6.

²³⁸ Motion at 10-11.

²³⁹ Staff Answer to Hearing Request at 75. *See also* Environmental RAI Response, Enclosure 2, at 1.

²⁴⁰ Motion at 10-11.

²⁴¹ *See supra* Discussion Section II.A.

passed on November 13, 2024. Moreover, as the Petitioning Organizations themselves point out, the Staff's purpose and need statement in the Draft EA/FONSI is "virtually identical" to Holtec's purpose and need statement in its Environmental RAI response.²⁴² Therefore, the Petitioning Organizations have not demonstrated that the purpose and need statement in the Draft EA/FONSI contains information that is new and materially different from information previously available in Holtec's Environmental RAI response. Accordingly, the Petitioning Organizations' arguments challenging the purpose and need statement should be dismissed because Petitioning Organizations do not demonstrate good cause under 10 C.F.R. § 2.309(c).

2. Amended Contention 5 Is Inadmissible Because It Raises Arguments That are Out of Scope, Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Staff's Environmental Review

Amended Contention 5 is also inadmissible because it raises arguments that fall outside the scope of this proceeding, are immaterial, unsupported, and fail to raise a genuine dispute with the Staff's environmental review under 10 C.F.R. § 2.309(f)(1). Petitioning Organizations assert that the NRC's purpose and need statement in the Draft EA/FONSI is deficient because it is virtually identical to Holtec's purpose and need statement in Holtec's RAI response and the NRC may not blindly adopt the applicant's goals.²⁴³ However, the Petitioning Organizations' arguments lack sufficient factual basis. The Petitioning Organizations do not explain how the similarity between the purpose and need statement stated in the Draft EA/FONSI and Holtec's purpose and need statement demonstrates that the Staff blindly adopted Holtec's goals. In the Draft EA/FONSI, the Staff specifically evaluated the general goals of the project and included a "Need for the Project" section in its Draft EA/FONSI that considered the recently enacted 2023 Michigan law which established a clean energy standard for electric providers to provide at least

²⁴² Amended and New Contentions at 27-28.

²⁴³ Amended and New Contentions at 28-29 (citing *ELPC v. NRC*, 470 F.3d 676, 683 (7th Cir. 2006), quoting *Simmons v. Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997)).

80 percent clean energy by 2035 and 100 percent by 2040.²⁴⁴ The Staff also considered a power purchase agreement, which was the economic impetus for Holtec's request to restart Palisades.²⁴⁵ Moreover, the NRC Staff's purpose and need statement in the Draft EA/FONSI is consistent with longstanding Commission case law and policy as well as Federal case law, which specify that where a federal agency, such as the NRC, is not the sponsor of the project, it may accord *substantial weight* to an applicant's purpose and need statement.²⁴⁶ The Petitioning Organizations note the similarity between the Applicant's purpose and need statement and the Staff's, but fail to demonstrate an inadequacy in the Draft EA/FONSI. Accordingly, the Petitioning Organizations arguments are inadmissible because they fail to raise a genuine dispute with the Staff's environmental review on a material issue of fact or law.

The Petitioning Organizations also argue that the purpose and need statement in the Draft EA/FONSI is narrowly drawn in that it "leaves only one alternative" to satisfy the purpose and need with "no possibility of reasonably examining any other alternative."²⁴⁷ But as the Petitioners themselves acknowledge in a different contention (Amended Contention 6), the Draft EA/FONSI does not examine just one alternative — it considers several alternatives to the proposed action, including: 1) the no-action alternative; 2) replacing the Palisades reactor with a new reactor; 3) replacing the Palisades reactor with other power generation technologies; and 4) installing system design alternatives at the current Palisades Reactor.²⁴⁸ Therefore, these

²⁴⁴ Draft EA/FONSI at § 1.2.3 (noting that Michigan's law defines clean energy as including a system that "Generates electricity or steam without emitting greenhouse gas, including nuclear generation").

²⁴⁵ *Id.*

²⁴⁶ See 2003 PRM Denial, 68 Fed. Reg. at 55,909 (citing *Hydro Resources, Inc.* CLI-01-4, 53 NRC 31, 55 (2001) citing *Citizens Against Burlington v. Busey*, 938 F.2d 190, 197 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991)) (2003 PRM Denial) ("The Commission will ordinarily give substantial weight to a properly-supported statement of purpose and need by an applicant and/or sponsor of a proposed project in determining the scope of alternatives to be considered by the NRC.").

²⁴⁷ Amended and New Contentions at 29. See *also* Motion at 6.

²⁴⁸ Draft EA/FONSI at 2-5 – 2-7. See *also* Amended and New Contentions at 30-31; Motion at 6-7.

assertions regarding the purpose and need statement being narrowly drawn are unsupported and fail to raise a genuine dispute with the Staff's environmental review.

The Petitioning Organizations also argue that the NRC's purpose and need statement is deficient because the Draft EA/FONSI did not contain an evaluation of the need or demand for electricity from Palisades and its re-entry into the regional grid and that it excludes consideration of incremental construction of alternative energy sources, energy conservation, and the timing need for implementation.²⁴⁹ However, the Petitioning Organizations do not point to any specific legal requirement for the Staff's Draft EA/FONSI to contain an evaluation of the need or demand for electricity from Palisades and its re-entry into the regional grid or otherwise explain why the Draft EA/FONSI is deficient for not considering this information. While the Commission has stated that "need for power must be addressed in connection with *new power plant construction* so that the NRC may weigh the likely benefits (e.g., electrical power) against the environmental impacts of constructing and operating a nuclear power reactor,"²⁵⁰ there is no such requirement for plants with an operating license because any significant environmental impacts associated with the siting and construction of a nuclear power plant would have already occurred.²⁵¹ Moreover, even in instances where a need for power assessment is required, the Commission has stated that it is not looking for the type of information regarding market conditions and

²⁴⁹ Amended and New Contentions at 29-30. See also Motion at 5.

²⁵⁰ 2003 PRM Denial, 68 Fed. Reg. at 55,910 (emphasis added).

²⁵¹ See 2003 PRM Denial, 68 Fed. Reg. at 55,910 (explaining that the significant environmental impacts associated with the siting and construction of a nuclear power plant have already occurred by the time a licensee is seeking a renewed license; therefore, the Commission has determined that it is not necessary to consider the need for power during post-construction licensing (issuing and renewing operating licenses)). Although the 2003 PRM Denial did not specifically consider restart of an operating plant in decommissioning, the same reasoning for not requiring a need for power assessment would apply here as Palisades already has an operating license, and the significant impacts of siting and construction have already occurred. See also 10 C.F.R. §§ 51.53(b); 51.53(c)(2); 51.95(b); 51.95(c)(2) (noting that a discussion of need for power is not required in the applicant's ER or Staff's environmental impact statement at the operating license or operating license renewal stage).

energy demand that Petitioning Organizations assert are needed in the Draft EA/FONSI.²⁵² Similarly, Petitioning Organizations provide no support for their arguments that the Draft EA/FONSI should have included a discussion of incremental construction of alternative energy sources and energy conservation or otherwise explain why the Draft EA/FONSI is deficient for not considering this information. And contrary to their assertions, the Draft EA/FONSI did consider the timing need for implementation.²⁵³ Accordingly, the Petitioning Organizations arguments are unsupported and fail to raise a genuine dispute with the Staff's environmental review on a material issue of fact or law.

Additionally, while the Petitioning Organizations acknowledge that the Draft EA/FONSI references the Michigan law as a primary driver for the project, they argue that Michigan's clean energy standard is a political decision, that nuclear power is not the only means of providing baseload energy, and that nuclear power is not clean.²⁵⁴ However, the Petitioning Organizations arguments challenging the State of Michigan's decision-making with respect to its energy and economic policies related to nuclear power fall outside the NRC's regulatory authority.²⁵⁵ Accordingly, these arguments are immaterial to the findings the Staff must make in the Draft EA/FONSI to support issuance of the restart-related amendment requests.

²⁵² 2003 PRM Denial, 68 Fed. Reg. at 55,910 (citing *Louisiana Energy Services, L.P. (LES)*, CLI-98-3, 47 NRC 77, 88, 94 (1998) ("The Commission emphasizes, however, that while a discussion of need for power is required, the Commission is not looking for burdensome attempts by the applicant to precisely identify future market conditions and energy demand, or to develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power.")).

²⁵³ See Draft EA/FONSI at § 1.2.3 (noting timing need as established by the 2023 Michigan law).

²⁵⁴ Motion at 5.

²⁵⁵ See Environmental Review for Renewal of Nuclear Power Plant Operating Licensees, 61 Fed. Reg. 28,467, 28,468 (June 5, 1996) ("The NRC acknowledges the primacy of State regulators and utility officials in defining energy requirements and determining the energy mix within their jurisdictions.").

Finally, to the extent the Petitioning Organizations seek to challenge DOE's purpose and need statement in the Draft EA/FONSI,²⁵⁶ these arguments are outside of the scope of this proceeding and immaterial to the findings the Staff must make in the Draft EA/FONSI to issue the restart-related amendments that are the subject of this proceeding. DOE's Loan Program Office (LPO) was a cooperating agency in the Draft EA; therefore, the Draft EA/FONSI reflects the DOE's purpose and need.²⁵⁷ However, as stated in the notice of hearing opportunity, this proceeding is limited to the NRC's action on the four restart-related license amendment requests submitted by the Applicants.²⁵⁸ And the Petitioning Organizations do not explain why the DOE's purpose and need is somehow material to the Staff's findings. Accordingly, the Petitioning Organizations arguments are inadmissible because they are out of scope and immaterial to the findings the Staff must make in the Draft EA/FONSI to support the proposed action.

For the reasons discussed above, Amended Contention 5 is not admissible because it does not meet the good cause standard of 10 C.F.R. § 2.309(c) and does not meet the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

E. Amended Contention 6 Is Inadmissible Because It Raises Arguments That are Untimely, Out of Scope, Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Staff's Environmental Review

Proposed Contention 6 is stated as follows:

The discussion of alternatives in the EA is inadequate and unsupported by any facts or credible analysis. It therefore violates NEPA.²⁵⁹

²⁵⁶ Amended and New Contentions at 27-28; Motion at 5-6.

²⁵⁷ See Draft EA/FONSI at 1-2, 1-3, 1-4 (noting that at the end of the NRC's environmental review, DOE would publish a separate Record of Decision or FONSI, as appropriate).

²⁵⁸ Amendments Notice, 89 Fed. Reg. at 64,488 ("The scope of this notice is limited to comments, requests for a hearing, and petitions for leave to intervene related to the four proposed license amendment requests listed in tabular form in Section III of this document.").

²⁵⁹ Amended and New Contentions at 30.

The Petitioning Organizations argue that Amended Contention 6 is timely because Holtec's Environmental Report did not contain a discussion or analysis of alternatives to the proposed action.²⁶⁰ The Petitioning Organizations also argue that the alternatives analysis in the Draft EA/FONSI is deficient for a number of reasons including that the alternatives analysis is based on an unreasonably narrow purpose and need statement, the Draft EA/FONSI does not adequately justify rejecting the no-action alternative, and its discussion of other alternatives is based on mischaracterizations of nuclear power and unsupported assumptions.²⁶¹

Staff Response: Amended Contention 6 is inadmissible because it raises: 1) untimely arguments that do not satisfy the good cause standards in 10 C.F.R. § 2.309(c); and 2) arguments that are immaterial, unsupported and fail to raise a genuine dispute with the Staff's environmental review under 10 C.F.R. § 2.309(f)(1).

1. *Amended Contention 6 Does Not Demonstrate Good Cause Under § 2.309(c) Because It is Untimely and the Information Upon Which It Is Based Is Not New or Materially Different from Information Previously Available*

In original Contention 6, the Petitioning Organizations asserted an omission in Holtec's Environmental Report because it did not include a presentation of alternatives or discussion of the no-action alternative.²⁶² Petitioning Organizations assert that they are amending Contention 6 to challenge the substance of the alternatives analysis because the NRC's filing of the Draft EA/FONSI "completely changes the nature of the contention."²⁶³ Petitioning Organizations assert that Amended Contention 6 is timely because the document Holtec submitted as its Environmental Report did not contain a discussion or analysis of alternatives to the proposed

²⁶⁰ Motion at 3-4.

²⁶¹ Amended and New Contentions at 30-34; Motion at 6-7.

²⁶² Hearing Request at 66-68.

²⁶³ Motion at 4.

action.²⁶⁴ However, as Staff stated in its answer to original Contention 6, Holtec's Environmental Report contains a presentation of alternatives through its discussion of the no-action alternative.²⁶⁵ Moreover, Holtec's October 2024 Environmental RAI response discusses energy and system alternatives.²⁶⁶ Therefore, as discussed above in Discussion Section II.A, the Petitioning Organizations do not demonstrate that their arguments are based on information not previously available in accordance with 10 C.F.R. § 2.309(c)(1)(i).

In Amended Contention 6, the Petitioning Organizations raise several arguments challenging the discussion of the no-action alternative in the Draft EA/FONSI.²⁶⁷ The no-action alternative described in the Draft EA/FONSI and Holtec's Environmental Report are substantively similar.²⁶⁸ Therefore, the Petitioning Organizations do not demonstrate that their challenges to the no-action alternative are based on information materially different from information previously available in Holtec's Environmental Report under § 2.309(c)(1)(ii). Moreover, as explained above in Discussion Section II.A, challenges to Holtec's Environmental Report do not meet § 2.309(c)(1)(iii) because they could have been timely raised against the Environmental Report as part of the Petitioning Organizations' original Hearing Request. Accordingly, the Petitioning Organizations' arguments challenging the discussion of the no-action alternative in the Draft EA/FONSI do not demonstrate good cause under § 2.309(c) and should be dismissed.

²⁶⁴ Motion at 3-4.

²⁶⁵ The Environmental Report discusses the no-action alternative in Section 2.2 of the report and references a separate HDI document for the environmental effects associated with this alternative. Exemption Request, Enclosure 2 at 22 (Environmental Report). See also Staff Answer to Hearing Request, at 76.

²⁶⁶ Environmental RAI Response, Enclosure 5, at 1-2. See also Staff Answer to Hearing Request at 75.

²⁶⁷ Amended and New Contentions at 31-32; Motion at 6.

²⁶⁸ Under the no-action alternative, Palisades would not be reauthorized for refueling the reactor or resuming power operations and would continue to function as a plant in decommissioning as outlined in the Post-Shutdown Decommissioning Activities Report (PSDAR). Compare Draft EA/FONSI § 2.2.1.1 with Exemption Request, Enclosure 2, at 22 (Environmental Report).

Additionally, Petitioning Organizations' argue that the alternatives analysis in the Draft EA/FONSI is deficient because the following items are left unconsidered: comparisons of the impacts and hazards of restarting Palisades versus new-build alternatives; consideration of the environmental effects and economic costs of new build alternatives; and consideration of small modular reactors.²⁶⁹ However, Petitioning Organizations do not explain why their arguments regarding these purported omissions could not have been raised in a timely manner against the alternatives discussion in Holtec's Environmental RAI response.²⁷⁰ Accordingly, the Petitioning Organizations do not demonstrate that these arguments meet the good cause standard under § 2.309(c). Finally, to the extent that Petitioning Organizations challenge the purpose and need statement in the Draft EA/FONSI and argue that the Draft EA/FONSI did not consider the need or demand for electricity from Palisades,²⁷¹ these arguments should also be dismissed as untimely because they do not meet the good cause standard under § 2.309(c), for the same reasons discussed above in the response to Amended Contention 5.²⁷²

For the reasons described above, the Petitioning Organizations arguments above are untimely and do not meet the good cause standards under § 2.309(c).

2. Amended Contention 6 Is Inadmissible Because It Raises Arguments That are Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Staff's Environmental Review

In Amended Contention 6, Petitioning Organizations attempt to proffer several inadmissible arguments that mischaracterize the Staff's alternatives evaluation in the Draft EA/FONSI, lack any factual or expert support, and do not otherwise demonstrate that there is a

²⁶⁹ Motion at 6-7.

²⁷⁰ See WCS, CLI-21-9, 93 NRC at 247-49 (upholding the board's untimeliness determination on a challenge that there is an omission in a draft environmental impact statement when that same omission was present in the environmental report on which the hearing opportunity was offered).

²⁷¹ Amended and New Contentions at 31-33; Motion at 6.

²⁷² See *supra* Discussion Section II.D.

genuine dispute with the Staff's environmental review. Petitioning Organizations challenge the Draft EA/FONSI because it purportedly "dismisses the no-action alternative out of hand because it would not serve the alleged purpose and need."²⁷³ This argument lacks any factual basis. While the Draft EA/FONSI explains that the no-action alternative would not meet the purpose and need of the proposed action, the Staff carried the no-action alternative forward for further analysis and comparison to the proposed action.²⁷⁴ In doing so, the Draft EA/FONSI specifically considered the environmental effects of the proposed action against those of the no-action alternative and ultimately determined there are no environmentally preferable alternatives to the proposed action.²⁷⁵

Petitioning Organizations assert that the discussion of the no-action alternative in the Draft EA/FONSI does not explain why Michigan could not satisfy its energy needs if Palisades is not restarted.²⁷⁶ But Petitioning Organizations mischaracterize this discussion in the Draft EA/FONSI and provide a quote from the Draft EA/FONSI where the Staff acknowledges that *Holtec* did not indicate "how the energy demand underlying the purpose and need would be met for the power that would have otherwise been generated by resuming operations at Palisades."²⁷⁷ In the discussion immediately following the quoted language, the Draft EA/FONSI specifically explains how Michigan could satisfy its energy needs with other nuclear or non-nuclear power generation facilities and notes that building these facilities would result in

²⁷³ Motion at 6. See *also* Amended and New Contentions at 31.

²⁷⁴ See Draft EA/FONSI at § 2.2.1.1.

²⁷⁵ See Draft EA/FONSI at § 4.2.

²⁷⁶ Amended and New Contentions at 31.

²⁷⁷ Amended and New Contentions at 31-32.

additional environmental impacts.²⁷⁸ Accordingly, Petitioning Organizations do not demonstrate that there is a genuine dispute with the Staff's environmental review.

Additionally, the Petitioning Organizations assert that the discussion of the no-action alternative in the Draft EA/FONSI is deficient because it did not evaluate the need or demand for electricity from Palisades and its re-entry into the regional grid.²⁷⁹ However, these are the same arguments Petitioning Organizations raised in Amended Contention 5, and are inadmissible for the reasons stated above in Discussion Section II.D.²⁸⁰ Moreover, in the Draft EA/FONSI, the NRC Staff specifically evaluated the "Need for the Project," which considered Michigan's recently enacted clean energy standard as well as a power purchase agreement, which was the economic impetus for Holtec's request to restart Palisades.²⁸¹ For the reasons described above, the Petitioning Organizations arguments challenging the no-action alternative are inadmissible because they are unsupported and do not demonstrate that there is a genuine material dispute with the Staff's environmental review.

Petitioning Organizations assert that the Draft EA/FONSI "dismisses alternate energy sources because there would be insufficient room on the Palisades site for additional structures."²⁸² However, in the Draft EA/FONSI, the Staff specifically considers replacing the Palisades reactor with a new onsite reactor and other non-nuclear or nuclear energy generation

²⁷⁸ Draft EA/FONSI at § 2.2.1.1 ("If it becomes necessary for utilities or other power suppliers to build other nuclear or non-nuclear power generation facilities to meet the demand, building those facilities would result in additional environmental impacts related to land disturbance and operation of construction equipment that would not be necessary if the already built Palisades is restarted.").

²⁷⁹ Amended and New Contentions at 31-32; Motion at 7.

²⁸⁰ *See supra* Discussion Section II.D (explaining, among other things, that there is no requirement for a "need for power" assessment for plants with an operating license because any significant environmental impacts associated with the siting and construction of a nuclear power plant would have already occurred).

²⁸¹ Draft EA/FONSI at § 1.2.3.

²⁸² Amended and New Contentions at 32.

sources, including small modular reactors (SMRs), on the Palisades site.²⁸³ Moreover, contrary to the Petitioning Organizations' assertions, the Draft EA/FONSI does not dismiss any of these alternatives on the basis that there was insufficient room on the site.²⁸⁴ And while the Draft EA/FONSI states that it is "unclear whether enough land is available on the Palisades site to accommodate land-extensive power generation methods such as wind or solar," the Staff acknowledges in the Draft EA/FONSI that the new power generation facilities could be built on other sites.²⁸⁵ Accordingly, the Petitioning Organizations do not demonstrate that there exists a genuine dispute with the Staff's environmental review.

In addition, Petitioning Organizations assert that the Draft EA/FONSI is deficient because the Staff does not support its assumptions "that constructing alternative energy sources on sites other than the Palisades site might not have sufficient transmission infrastructure or might cause environmental impacts."²⁸⁶ However, the Petitioning Organizations do not provide any factual or expert support to the contrary or otherwise explain why the Staff's evaluation was somehow unreasonable. Thus, the Petitioning Organizations arguments are unsupported and fail demonstrate a genuine dispute with the Staff's environmental review.

The Petitioning Organizations also challenge the alternatives evaluation in the Draft EA/FONSI for dismissing wind and solar "without submitting any comparison of the impacts and hazards of restarting a deteriorated reactor versus new-build alternatives."²⁸⁷ They also appear to fault the Draft EA/FONSI for not considering the environmental effects and economic costs of building new build alternatives.²⁸⁸ But the Draft EA/FONSI specifically compares new build

²⁸³ Draft EA/FONSI at §§ 2.2.2.1; 2.2.2.2.

²⁸⁴ *Id.* at § 2.2.2.2.

²⁸⁵ *Id.*

²⁸⁶ Amended and New Contentions at 33.

²⁸⁷ Motion at 6.

²⁸⁸ Motion at 7.

alternatives, including wind and solar, to the proposed action and considers the environmental effects and economic costs of building such alternatives.²⁸⁹ And in doing so, the Staff declines to carry them forward for further detailed review due to “the additional time and cost to build [these] facilities and greater environmental impacts relative to resuming operation of the existing reactor.”²⁹⁰ The Petitioning Organizations assert the Staff should have considered the effects of new build alternatives on a limited or incremental basis,²⁹¹ but they provide no factual or expert support explaining why any further evaluation was necessary in the Draft EA/FONSI.

Additionally, the Petitioning Organizations also assert that the Draft EA/FONSI is deficient because SMRs are not recognized in the cumulative impacts section and consideration of alternatives.²⁹² However, these arguments lack factual support. The Draft EA/FONSI specifically considered SMRs as part of its cumulative impacts discussions of various resource areas and in its consideration of alternatives.²⁹³ Moreover, to the extent that the Petitioning Organizations assert that the Draft EA/FONSI should have addressed the environmental effects of SMRs because “the Palisades restart plus the two SMRs are being proposed as a package,”²⁹⁴ these assertions similarly have no basis in fact as the Applicant has noted that the new construction of SMRs on the Palisades site is planned as a future project.²⁹⁵ Accordingly, these arguments are inadmissible because they are unsupported and do not provide a genuine dispute with the Staff’s environmental review.

²⁸⁹ Draft EA/FONSI at § 2.2.2.2.

²⁹⁰ *Id.*

²⁹¹ Motion at 7.

²⁹² Motion at 7.

²⁹³ *See, e.g.*, § 3.2.4 (describing the cumulative effects on land use and visual resources); § 2.2.2.2 (considering alternative power generation technologies, including SMRs).

²⁹⁴ Motion at 7.

²⁹⁵ *See* Draft EA/FONSI, Appendix G, at G-1 (noting the planned new construction of SMRs as a future onsite project).

Petitioning Organizations also challenge the purpose and need of the project to promote clean energy and argue that the political decision made by Michigan legislators is neither clean nor renewable.²⁹⁶ However, as stated above in the response to Amended Contention 5, the State of Michigan's decision-making with respect to its energy and economic policies related to nuclear power fall outside the NRC's regulatory authority.²⁹⁷ Accordingly, the Petitioning Organizations' arguments are immaterial to the findings the Staff must make in the Draft EA/FONSI to support the proposed action. Finally, to the extent that the Petitioning Organizations' challenge the purpose and need statement in the Draft EA/FONSI as deficient for being narrowly defined such that only one alternative would accomplish the purpose and need,²⁹⁸ and for not considering the need or demand for power,²⁹⁹ these arguments are inadmissible for the reasons stated above in the response to Amended Contention 5.³⁰⁰

For the reasons described above, Amended Contention 6 is inadmissible because it does not meet the good cause standard of 10 C.F.R. § 2.309(c) and does not meet the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1)(iv)-(vi).

F. New Proposed Contention 8 Is Inadmissible Because It Raises Immaterial Arguments and Fails to Demonstrate a Genuine, Material Dispute with the Staff's Environmental Review

Proposed Contention 8 is stated as follows:

The EA specifically incorporates previous Palisades-related documents and more general environmental documents by reference in the EA. The EA specifically states that the incorporation of other documents is based on CEQ regulations

²⁹⁶ Amended and New Contentions at 33. The Petitioning Organizations point to the Exhibit C of the Declaration of Mark Z. Jacobson attached to their Hearing Request, but Exhibit C only contains a portion of the quoted language. *Compare id.* at 33 with Hearing Request, Exhibit C (Declaration of Mark Z. Jacobson).

²⁹⁷ See *supra* Discussion Section II.D; see also 61 Fed. Reg. at 28,468 ("The NRC acknowledges the primacy of State regulators and utility officials in defining energy requirements and determining the energy mix within their jurisdictions.").

²⁹⁸ Amended and New Contentions at 34; Motion at 6.

²⁹⁹ Motion at 7.

³⁰⁰ See *supra* Discussion Section II.D.

authorizing such incorporation. Recent court decisions have held that the CEQ regulations were propounded without legal authority and are therefore invalid. So, the incorporation of other documents into the Palisades EA is invalid and invalidates the EA. Therefore, the EA must be completely redone.³⁰¹

In proposed Contention 8, the Petitioning Organizations argue the Draft EA/FONSI relies upon Council on Environmental Quality (CEQ) regulations to the extent that the Draft EA/FONSI is based upon the incorporation of other prior environmental documents.³⁰² Petitioning Organizations further state that recent court decisions have held that CEQ regulations were adopted without legal authority and are thus invalid.³⁰³ Petitioning Organizations then assert that because the Draft EA/FONSI relies on those regulations for incorporation by reference, that incorporation is also lacking legal authority.³⁰⁴ Petitioning Organizations thus conclude that because incorporation by reference occurs throughout the Draft EA/FONSI, the entire document must be redone.³⁰⁵ Additionally, Petitioning Organizations argue that proposed Contention 8 is timely and based upon new and materially different information because it is based upon the Draft EA/FONSI's reliance on CEQ regulations for incorporation by reference that was not present in Holtec's October 2024 Environmental RAI response.³⁰⁶

Staff Response: The Staff does not contest that Proposed Contention 8 meets the good cause factors in 10 C.F.R. 2.309(c)(1). However, Proposed Contention 8 does not meet the contention admissibility criteria in § 2.309(f)(1)(iv) or (vi) because it raises immaterial claims which fail to show a genuine legal dispute with the Staff's environmental review. In Proposed Contention 8, the Petitioning Organizations specifically challenge Section 1.3.5 of the Draft

³⁰¹ Amended and New Contentions at 34.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.* at 35.

³⁰⁵ *Id.* at 36.

³⁰⁶ Motion at 2, 10-11.

EA/FONSI and contend that the incorporation by reference (IBR) approach discussed in that section relies on invalid Council on Environmental Quality (CEQ) regulations.³⁰⁷

As a preliminary matter, the Petitioning Organizations do not demonstrate the materiality of their arguments to the NRC Staff's environmental review given that CEQ regulations are not binding on the NRC. It has long been the position of the Commission that, as an independent regulatory agency, is "not bound by CEQ regulations or guidance that would 'have a substantive impact on the way in which the Commission performs its regulatory functions.'"³⁰⁸ However, the Commission has indicated that CEQ issuances can be treated as "guidance in carrying out [the NRC's] NEPA responsibilities."³⁰⁹

As such, the Staff treats the CEQ's regulations as guidance in Section 1.3.5 of the Palisades Draft EA/FONSI. Specifically, Section 1.3.5 reads, "To ensure that the EA stands alone and provides sufficient analysis to allow the decision-maker to arrive at a conclusion, the Staff adhered to three principles, identified in CEQ regulations in 40 C.F.R. § 1501.12 ... and NRC guidance ... when using the incorporation by reference process (...)." ³¹⁰ Here, CEQ regulations are simply listed as guidance, alongside NRC specific guidance on how the IBR process ought to be carried out as a part of the Environmental Review process, not relied upon as necessary authority.³¹¹ Moreover, the Staff's practice of incorporation by reference is

³⁰⁷ Petitioning Organizations state the Draft EA/FONSI incorrectly cites the relevant CEQ Regulation as 40 C.F.R. § 1501.12, stating that the correct CEQ regulation would be 40 C.F.R. § 1502.21. Section 1502.21 was the relevant section in an older version of the CFR. As of September 14, 2020, however, 40 C.F.R. § 1501.12 is the relevant section of the CEQ regulations and is titled "'Incorporation by reference into environmental documents.'" Amended and New Contentions at 34.

³⁰⁸ *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-25-1, 101 NRC ___, ___, (Jan. 17, 2025) (slip op. at 54). (quoting *Pac. Gas and Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011)).

³⁰⁹ *Powertech (USA) Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-20-9, 92 NRC 295, 299 (2020), *petition for review denied*, 45 F.4th 291 (D.C. Cir. 2022).

³¹⁰ Draft EA/FONSI at 1-7.

³¹¹ *Id.*

governed by NRC regulations in 10 C.F.R. Part 51, Subpart A, Appendix A and Staff guidance for environmental reviews.³¹² Thus, the broader invalidity of CEQ regulations has no binding effect on the use of IBR in the Draft EA/FONSI. The Petitioning Organization's argument is thus inadmissible because it is immaterial to the findings the Staff must make in the Draft EA/FONSI to support the proposed action and fails to raise a genuine dispute on a material issue of law.

The Petitioning Organizations argue that "Obviously, the EA's reliance on incorporating other documents depends on the validity of the CEQ regulation,"³¹³ but this claim is unsupported. As explained above, because CEQ regulations are not binding on the NRC, and are treated as guidance in environmental reviews, it does not naturally follow that the ability of the NRC staff to incorporate by reference relies on the validity of CEQ regulations, generally. The burden lays with the Petitioning Organizations to show some support for this proposition which is central to their broader claim that the invalidity of the CEQ regulations is fatal to the Draft EA/FONSI because of the extent of IBR.³¹⁴ Petitioning Organization do not, however, offer any support for the argument either that the NRC is bound by CEQ regulations or that the NRC would be not be able to use IBR in environmental reviews absent those CEQ regulations. Instead, Petitioning Organizations only offer support for the propositions that there is significant incorporation by reference in the Draft EA/FONSI,³¹⁵ and that recent caselaw has held CEQ regulations to be without legally binding authority.³¹⁶ Accordingly, the Petitioning Organization's

³¹² *E.g.* "Standard Review Plans for Environmental Reviews for Nuclear Power Plants: Environmental Standard Review Plan" NUREG-1555, p.A.1 (October 1999) (NUREG-1555) (ML003702134) (IBR, "may be used as appropriate to aid in the presentation of issues, eliminate repetition, or reduce the size of an EIS; in doing so, the EIS will summarize the discussion in the referenced document and provide specific section references to ensure that the public has easy access to relevant information."); *see also*, "Environmental Considerations Associated with Micro-reactors," Interim Staff Guidance, Appendix A (Nov. 27, 2020) (ML20252A076) (COL-ISG-029).

³¹³ Amended and New Contentions at 35.

³¹⁴ *Id.* at 36.

³¹⁵ *Id.* at 35-36.

³¹⁶ *Id.* at 35.

arguments are inadmissible because they lack a legal basis and fail to raise a genuine dispute with the Staff's environmental review on a material issue of law.

The Petitioning Organizations cite to recent caselaw holding CEQ regulations to be invalid to the extent that they purport to bind agency actions under NEPA, in particular *Marin Audubon Society v. Federal Aviation Administration*.³¹⁷ However, the Petitioning Organizations do not explain how this case would apply to the NRC given that the NRC is not bound by CEQ regulations. Indeed, the only analysis the Petitioning Organizations present is to highlight the D.C. Circuit's notation that the NRC is independent and thus, "Presidential executive orders do not apply."³¹⁸ However, this cuts against the Petitioning Organization's conclusion; if the NRC is not bound by the Executive Order making CEQ regulations binding on agencies,³¹⁹ then the invalidity of those regulations can have no effect on NRC environmental analyses. The Petitioning Organizations further point to recent district court litigation in *Iowa v. CEQ*,³²⁰ however they offer no additional analysis to explain how the case applies to the NRC, and indeed the case does no more than *Marin Audubon* to support Proposed Contention 8. While this argument amply shows that CEQ regulations have been held to be invalid to the extent they bind Agency action, it does not invalidate the NRC's use of the IBR approach. Accordingly, the Petitioning Organizations have failed to raise a genuine dispute with the Staff's environmental review on a material issue of law.

Petitioning Organizations also fail to demonstrate any genuine material dispute with the actual content of Draft EA/FONSI as a result of the NRC staff's incorporation by reference of

³¹⁷ 121 F.4th 902, 912 (D.C. Cir. 2024) ("The provisions of NEPA provide no support for CEQ's authority to issue binding regulations. No statutory language states or suggests that Congress empowered CEQ to issue rules binding on other agencies.").

³¹⁸ Amended and New Contentions at 35.

³¹⁹ Executive Order 11991, 42 Fed. Reg. 26,967 (May 25, 1977) (Requiring all federal agencies to "comply with the regulations issued by [CEQ].").

³²⁰ Docket No. 1:24-CV-00089 (D.N.D. Feb. 3, 2025).

other environmental documents in the Draft EA/FONSI. Proposed Contention 8 exclusively focuses on the Draft EA/FONSI's purported reliance on § 1501.12 and rests its invalidity arguments on that reliance. Petitioning Organizations do not raise any arguments in opposition to the substance of how the IBR process was used in the Draft EA/FONSI.³²¹ Petitioning Organizations do point out each instance of IBR in the Draft EA/FONSI, listing the section number and relevant incorporated document, but do not claim any deficiency with those incorporations, focusing instead on the ability of the NRC to IBR in general.³²² Nevertheless, the Staff's use of incorporation by reference in the Draft EA/FONSI, is consistent with NRC regulations and NRC guidance encouraging the use of IBR to integrate material from other environmental documents to cut down on bulk without impeding agency and public review of the action.³²³ In this particular instance, the Staff referred to the guidance on IBR specifically in Appendix A of the Interim Staff Guidance on Micro-Reactor Applications, which generically discusses how the IBR approach should be conducted.³²⁴ Thus, Petitioning Organizations do not demonstrate a genuine dispute on a material issue of fact or law with the Staff's environmental review.

For the reasons discussed above, Proposed Contention 8 raises immaterial issues, lacks adequate support, and does not demonstrate a genuine, material dispute with the Draft EA/FONSI. Therefore, Proposed Contention 8 does not satisfy § 2.309(f)(1)(iv) or (vi) and is inadmissible.

³²¹ See, e.g., *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-16-8, 83 NRC 417 (2016) (finding an NRC Staff environmental document deficient because it contained no specific references to the incorporated material, did not consider environmental changes that occurred after the incorporated material, and failed to consider the environmental effects of the specific license action at issue.).

³²² Amended and New Contentions at 35-36.

³²³ 10 C.F.R. Part 51, Subpart A, Appendix A.

³²⁴ "Environmental Considerations Associated with Micro-reactors," Interim Staff Guidance, Appendix A (Nov. 27, 2020) (ML20252A076) (COL-ISG-029).

CONCLUSION

As explained above, the Motion and Amended and New Contentions should not be granted. The amended contentions are inadmissible because they raise arguments that are untimely and are not based on new or materially different information. Additionally, the amended and new contentions are inadmissible because they raise immaterial, out of scope, and inadequately supported arguments that do not establish a genuine dispute with the restart-related license amendment requests or the Staff's environmental review and in some cases challenge NRC regulations and processes. Therefore, the Petitioning Organizations' Motion and Amended and New Contentions should be denied.

Respectfully submitted,

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Dated March 28, 2025

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOLTEC DECOMMISSIONING
INTERNATIONAL, LLC, AND HOLTEC
PALISADES, LLC

(Palisades Nuclear Plant)

Docket No. 50-255-LA-3

Certificate of Service

Pursuant to 10 C.F.R. § 2.305, I hereby certify that the “NRC Staff Answer to Petitioning Organizations’ Motion to File Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact in the Palisades Restart Amendments Proceeding,” has been filed through the NRC’s E-Filing System this 28th day of March 2025.

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