

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 Nos. 50-255-LA-3

ASLBP No. 24-986-01-LA-BD01

**APPLICANTS' ANSWER OPPOSING
BEYOND NUCLEAR ET AL.'S NEW AND AMENDED CONTENTIONS**

Table of Contents

- I. Introduction.....1
- II. Procedural History2
 - A. Applicants’ Submittals and NRC’s Draft EA and FONSI.....2
 - B. Petitioning Organizations’ Original Contentions.....5
 - C. Petitioning Organizations’ New and Amended Contentions7
- III. Legal Standards.....8
 - A. Good Cause Standard for Late-Filed Contentions9
 - B. Legal Standards Governing NEPA Contentions.....11
 - 1. General Admissibility Standard.....11
 - 2. NEPA Requirements Applicable to the Draft EA.....12
 - 3. Admissibility Standard for NEPA Contentions16
- IV. Each of the Amended and Substituted Contentions is Untimely and Inadmissible.....17
 - A. Amended and Substituted Contention 2 is Untimely and Inadmissible17
 - 1. Proposed Amendment and Substituted Contention 2 is Not Based on New or Materially Different Information18
 - 2. Petitioning Organizations’ New Arguments Do Not Support Admission of Amended and Substituted Contention 229
 - B. Amended and Substituted Contention 4 is Untimely and Inadmissible38
 - 1. The Climate Change Information Summarized in the Draft EA is Not New or Materially Different39
 - 2. Amended and Substituted Contention 4 Remains Inadmissible for the Same Reasons Given in Applicants’ Answer44
 - C. Amended and Substituted Contention 5 is Untimely and Inadmissible48
 - 1. Petitioning Organizations’ Challenge to the Purpose and Need Statement Filed Six Months Ago is Too Late.....48
 - 2. Petitioning Organizations’ Challenge to the Purpose and Need Statement Does Not Raise a Material Dispute with the Draft EA.....52
 - D. Amended and Substituted Contention 6 is Untimely and Inadmissible61
 - 1. Petitioning Organizations’ Challenge to the Alternatives Analysis Filed Six Months Ago is Too Late.....61
 - 2. Petitioning Organizations Have Not Raised a Material Dispute with the Draft EA’s Alternatives Analysis62
 - E. New Contention 8 is Untimely and Inadmissible71
 - 1. New Contention 8 is Untimely72
 - 2. New Contention 8 is Inadmissible Under 10 CFR 2.309(f).....73
- V. Conclusion77

I. Introduction

Pursuant to 10 CFR 2.309(i)(1) and the Atomic Safety and Licensing Board Panel’s (“Board”) February 10, 2025 order,¹ Holtec Decommissioning International, LLC (“HDI”) and Holtec Palisades, LLC (collectively, “Applicants”) submit this answer to the Motion to File New and Amended Contentions (“Motion”) filed by Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (“Petitioning Organizations”) on March 3, 2025 in the above-captioned proceeding.² The Motion was accompanied by a separate filing in which Petitioning Organizations set forth their proposed new and amended contentions.³

The Motion and the New and Amended Contentions should be dismissed because the Petitioning Organizations have failed to show good cause why their proposed new and amended contentions should be considered at this point in the proceeding, and even if they were considered, they do not meet the Commission’s strict admissibility standards. Aside from Contention 8⁴, which is new, Petitioning Organizations’ proposed amended and substituted contentions make materially the same claims as the contentions already proposed and rely on supporting information that was available to the Petitioning Organizations when their Petition was filed almost six months ago. The proposed amended and substituted contentions have the same flaws already addressed in Applicants’ answer to the Petition but now add the flaw of being untimely without a showing of

¹ Memorandum and Order (Adopting Proposed Schedule for New and Amended Contentions) (Feb. 10, 2025) (unpublished) (ML25041A133) (“EA Scheduling Order”).

² Petitioning Organizations’ Motion to File Amended and New Contentions (Mar. 3, 2025) (ML25062A308).

³ 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) (“New and Amended Contentions”).

⁴ Contention 8, as discussed below, fails to create an issue of fact or law because the Nuclear Regulatory Commission (“NRC” or “Commission”) does not rely on Council on Environmental Quality (“CEQ”) regulations as its basis to incorporate documents by reference in its own environmental documents.

good cause for being late. Petitioning Organizations point to no information in the NRC’s draft Environmental Assessment and draft Finding of No Significant Impact (“FONSI”),⁵ which are purportedly the new information upon which the “new or amended” contentions are based, that was not in the record of this proceeding months before the publication of NRC’s environmental documents. The restated contentions do not cure the deficiencies noted in the contentions described in Applicant’s initial Answer. Therefore, Joint Petitioners’ Motion should be rejected.

II. Procedural History

A. Applicants’ Submittals and NRC’s Draft EA and FONSI

Applicants have extensively discussed the historical and licensing context of Applicants’ ongoing effort to restart and operate the Palisades Nuclear Plant in their prior pleadings. For sake of brevity, the four license amendment requests that initiated this proceeding (the “LARs”) are one part that effort to restart and operate the plant through 2031.⁶ This is the same operational period NRC previously reviewed when it issued the Palisades Renewed Facility Operating License (“RFOL”) and prepared an environmental impact statement (the “License Renewal SEIS”) addressing the expected impacts of operating Palisades. The License Renewal SEIS concluded that the environmental impacts are SMALL and that “these impacts would not result in significant

⁵ NRC Draft Environmental Assessment and Draft Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project (Jan. 2025) (ML24353A157) (“Draft EA”).

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

cumulative impacts.”⁷ In this context, “SMALL” means the “environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource.”⁸

The LARs all relied on the categorical exclusion in 10 CFR 51.22(c)(9) for license amendments that, as a category, do “not individually or cumulatively have a significant effect on the human environment.”⁹ To bolster that determination, Applicants compiled a review of new and significant environmental information to consider “potentially new and significant information since the [License Renewal SEIS]” to confirm that the SEIS findings (that the impacts are individually and cumulatively insignificant) remain accurate.¹⁰ The LARs state that “the proposed licensing actions[?] environmental impacts are consistent with the findings in the [License Renewal SEIS],” *i.e.*, the LARs claimed that restarting and operating Palisades through 2031 will “not individually or cumulatively have a significant effect on the human environment,”¹¹ and the LARs cited NRC’s previous National Environmental Policy Act (“NEPA”) review of the same activities and operational period to support that conclusion.

⁷ See NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 27, Regarding Palisades Nuclear Plant, at 9-5, 9-8 (Oct. 31, 2006) (ML062710300) (“License Renewal SEIS”); NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Vols. 1 and 2 (May 1996) (Vol. 1: ML040690705, Vol. 2: ML040690738) (“1996 License Renewal GEIS”); NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Addendum to Main Report, Vol. 1, Addendum 1 (Aug. 1999) (ML040690720).

⁸ License Renewal SEIS at 9-3; see also 10 CFR Part 51, Subpt. A, App’x B, at Table B-1, n.3. See *Nat. Res. Def. Council v. U.S. Nuclear Regul. Comm’n*, 879 F.3d 1202, 1213 (D.C. Cir. 2018) (“In accordance with the NRC’s usual practice . . . the FEIS defines ‘small’ effects as effects that are ‘not detectable . . . or so minor that they will neither destabilize no noticeably alter any important attribute of the resource.’”).

⁹ 10 CFR 51.22(a); see Admin Controls LAR at 21-22; Emergency Planning LAR at 29-31; Tech Spec LAR at 94-95; MSLB LAR at 9-10.

¹⁰ HDI PNP 2023-025, Letter from Holtec to NRC, “Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82” Enclosure 2 (Sept. 28, 2023) (ML23271A140) (“New and Significant Review”); see also Tech Spec LAR at 94-95 (citing the New and Significant Review and explaining that “[t]he review concluded that the proposed licensing actions [sic] environmental impacts are consistent with the findings in the [License Renewal SEIS]”); Admin Controls LAR at 21; Emergency Planning LAR at 29-30.

¹¹ 10 CFR 51.22(a).

NRC staff chose not to rely on the categorical exclusion and instead conducted a scoping process and prepared a draft EA.¹² As part of that process, Applicants responded to several information requests from NRC providing additional information that the agency used to prepare the Draft EA.¹³ Information gathered from the agency during the scoping process also informed the Draft EA.¹⁴

NRC published the Draft EA for comment on January 31, 2025.¹⁵ The Draft EA “describes the environmental review conducted by NRC and [the United States Department of Energy (“DOE”) Loan Program Office] staff for evaluating the environmental effects of granting the licensing and regulatory requests necessary to reauthorize power operations at Palisades through March 24, 2031, which is the end of the current operating license term under the Palisades RFOL.”¹⁶ As a result of that review, “NRC staff concludes that the potential direct, indirect, and

¹² NRC, Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Notice of Intent to Conduct Scoping Process and Prepare an Environmental Assessment, 89 Fed. Reg. 53,659 (June 27, 2024) (“Notice of Intent”).

¹³ Draft Environmental Regulatory Audit Plan and Draft Requests for Additional Information (June 27, 2024) (ML24248A056); NRC, Draft Requests for Confirmatory Information (Sept. 4, 2024) (ML24248A261); HDI, Response to Draft Requests for Confirmatory Information (Sept. 12, 2024) (ML24260A354); Requests for Additional Information Regarding the Proposed Reauthorization of Power Operations of Palisades Nuclear Plant Under Renewed Facility Operating License No. DPR-20 (Sept. 20, 2024) (ML24263A171); HDI, Response to Request for Additional Information Regarding the Proposed Reauthorization of Power Operations at Palisades Nuclear Plant under Renewed Facility Operating License No. DPR-20 (Oct. 4, 2024) (ML24278A027) (“Environmental RAI Response”); Email from J. Britting, HDI, to M. Richmond, NRC, “Re: “2024 Environmental Audit for Palisades RAI (ML24278A027) follow-up email communication.” (Oct. 17, 2024) (ML24319A123) (“RAI Follow-up”); Email from J. Britting, HDI, to M. Richmond, NRC, “Re: Palisades Reauthorization of Power Operations Environmental Review – Request for Confirmatory Information,” (Nov. 12, 2024) (ML24319A053); NRC, Palisades Nuclear Plant Audit Summary Report for the Proposed Reauthorization of Power Operations (Jan 24, 2025) (ML24353A174).

¹⁴ See NRC, Environmental Assessment Scoping Process Summary Report, Palisades Nuclear Plant Potential Reauthorization of Power Operations (Jan. 2025) (ML24353A149).

¹⁵ NRC, 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) (“Request for Comment”). The NRC Staff filed a notification with the Board of the issuance of the Draft EA/FONSI. Notification of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact (Jan. 31, 2025) (ML25031A007).

¹⁶ Draft EA at 4-1.

cumulative environmental impacts from the reauthorization of power operations at Palisades would not be significant and has determined that a draft Finding of No Significant Impact is warranted.”¹⁷ As noted in the draft FONSI, “NRC’s staff’s determination is tentative. Before making a final determination, the NRC staff will consider comments received on the draft EA and draft FONSI over a 30-day public comment period.”¹⁸ After considering the comments, NRC will make a final decision and “publish the final EA and final FONSI or proceed to prepare an environmental impact statement.”¹⁹

Pursuant to the Board’s EA Scheduling Order, new or amended contentions based on new information in the Draft EA were due March 3, 2025.²⁰ Petitioning Organizations filed the New and Amended Contentions on that date.

B. Petitioning Organizations’ Original Contentions

NRC published a Federal Register notice establishing the deadline for filing interventions in the proceeding by October 7, 2024.²¹ The Petitioning Organizations filed a petition to intervene

¹⁷ *Id.* at *iii*.

¹⁸ *Id.* at 5-1. Comments were due by March 3, 2025. *See* 90 Fed. Reg. at 8721.

¹⁹ *Id.*

²⁰ EA Scheduling Order.

²¹ 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) (“Notice of Hearing Opportunity”).

and a request for a hearing (“Petition”) on October 10, 2024.²² The Petition proposed seven contentions, five of which are relevant to the New and Amended Contentions:

- **Contention 2** asserted that NRC is required to prepare an environmental impact statement (“EIS”) because restarting Palisades requires a new operating license, which is one of the licensing actions that automatically requires an EIS under 10 CFR 51.20(b).
- **Contention 4** challenged the regulatory processes NRC is using to authorize the return to operations, including a claim that Applicants cannot use the change process under 10 CFR 50.59 because Petitioning Organizations believe climate change will require modifications to the facility’s design in the future.
- **Contention 5** claimed that Applicants did not submit a purpose and need statement.
- **Contention 6** claimed that Applicants did not discuss alternatives to the proposed federal action.
- **Contention 7** claimed that Applicants did not address the effects of climate change.²³

²² 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 (Oct. 10, 2024) (ML24284A364) (“Petition”). Applicants and the NRC staff filed respective answers to the Petition on November 4, 2024. Applicants’ Answer Opposing Beyond Nuclear et als.’ Petition for Hearing (Nov. 4, 2024) (ML2430A302) (“Applicants’ Answer”); 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) (“NRC Staff Answer”). The Petitioning Organizations timely filed their reply on November 12, 2024. Petitioning Organizations’ Combined Reply to Answers Filed by NRC Staff and Holtec to the Petition to Intervene (Nov. 12, 2024) (ML24317A201) (“Reply”). Applicants filed a motion to strike portions of Petitioning Organizations’ Reply on November 22, 2024. Applicants’ Motion to Strike Portions of Beyond Nuclear et al.’s Combined Reply to Answers Filed by Applicants and NRC Staff (Nov. 22, 2024) (ML24327A269) (“Applicants’ Motion to Strike”). That motion remains pending before the Board. The Board heard oral argument on February 12, 2025 on the Petition and a separate petition to intervene and request for a hearing submitted by a group of nine individuals (collectively referred to as “Joint Petitioners” in this proceeding).

²³ Petition at 68.

Following publication of the Draft EA, the Board requested that the participants file briefs discussing the impact of the Draft EA on these contentions.²⁴ Applicants explained that Contentions 5, 6, and 7 have been mooted by the Draft EA, to the extent they were not already moot or otherwise inadmissible.²⁵ Petitioning Organizations agreed that the Draft EA has supplied the allegedly missing information, but asked the Board to delay disposition of their originally-pled contentions until Petitioning Organizations could file amendments or new contentions based on the Draft EA.²⁶

C. Petitioning Organizations' New and Amended Contentions

Petitioning Organizations have now done so with their Motion. They have proposed three “amended and substituted” environmental contentions (Contentions 2, 5, and 6), one amended and substituted safety contention (Contention 4), and one new environmental contention (Contention 8). Petitioning Organizations have not proposed an amended and substituted Contention 7 or challenged the Draft EA’s discussion of climate change,²⁷ and the new or amended contentions also suffer from the same pleading deficiencies as the original contentions (including the failure to provide a “specific statement of the issue of law or fact to be raised or controverted,” as required by 10 CFR 2.309(f)(1)(i)). But putting aside these failures, Applicants understand the gist of the new or amended contentions as follows:

²⁴ Licensing Board Memorandum and Order (Scheduling Briefing Concerning the Draft Environmental Assessment and Draft Finding of No Significant Impact) (Feb. 3, 2025) (unpublished) (ML25034A217) (“Mootness Order”).

²⁵ Applicant’s Brief in Response to Board’s Order Requesting Briefing on Impact of Draft Environmental Assessment and Draft Finding of No Significant Impact at 2 (Feb. 19, 2025) (ML25050A567) (“Applicants’ Mootness Brief”).

²⁶ Petitioning Organizations’ Brief on Effects of Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Plant at 3 (Feb. 26, 2025) (ML25050A618) (“Petitioning Organization’s Mootness Brief”).

²⁷ Motion at 10-11 (citing Appendix F of the Draft EA and its discussion of climate change). In their response to the Board’s Mootness Order, “Petitioning Organizations maintain that publication of the EA assuages the omissions they alleged in their Contentions 5 and 6, and the omission of discussion of climate change effects claimed in Contention 7.” Petitioning Organizations’ Mootness Brief at 3.

- **Amended and Substituted Contention 2** continues to assert that the NRC is required to prepare an EIS because Petitioning Organizations believe Applicants are applying for a new operating license. The amended and substituted contention also asserts that the Draft EA identified “significant environmental impacts that require the preparation of an EIS.”²⁸
- **Amended and Substituted Contention 4** has not actually been amended. Petitioning Organizations are making the same argument that climate change will require changes to the plant’s design. They have simply pointed to the Draft EA’s discussion of climate change as “new supporting evidence” for admission of this contention as originally pled.²⁹
- **Amended and Substituted Contention 5** challenges the purpose and need statement in the Draft EA.
- **Amended and Substituted Contention 6** challenges the Draft EA’s discussion of alternatives to the proposed federal action.
- **New Contention 8** asserts that the recent invalidation or repeal of CEQ NEPA regulations means NRC environmental documents, including the Draft EA, can no longer incorporate or reference other environmental review documents.

III. Legal Standards

New or amended contentions filed after the hearing deadline must satisfy the “good cause” standard in 10 CFR 2.309(c)(1) as well as the normal admissibility requirements in 2.309(f)(1).³⁰

²⁸ New and Amended Contentions at 4.

²⁹ New and Amended Contentions at 8 n.17.

³⁰ 10 CFR 2.309(f)(2).

A. Good Cause Standard for Late-Filed Contentions

To meet the standards of 10 CFR 2.309(c), a petitioner must 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; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

The petitioner must carry the burden of proving that any new or amended contention meets the standards in 10 CFR 2.309(c)(1).³¹

Petitioning Organizations filed their motion by the deadline specified in the Board's February 10, 2025 order and, therefore, Applicants do not contest that it is "timely" with respect to any new information contained in the Draft EA.

However, Petitioning Organizations still must show that their new and amended contentions are based on information (1) that was not previously available, and (2) that is materially different information from what was previously available. "Previously available information that is newly acquired does not constitute good cause, as 'new and amended contentions must be *based on new facts* not previously available."³² "'Materially different' in this context concerns the 'type of degree or difference between the new information and previously available information.'"³³ And petitioners are required to include all their arguments and

³¹ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260-61 (2009).

³² *Holtec Int'l* (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, 89 NRC 353, 374 (2019) (citing *Kansas Gas & Elec. Co.* (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 886 (1984) and *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 493 n.70) (2012) (emphasis in original)).

³³ *HI-STORE*, LBP-19-4, 89 NRC at 374 n.117 (quoting *Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-17-6, 86 NRC 37, 38 (2017), *aff'd*, CLI-17-12, 86 NRC 215 (2017)).

supporting materials in the initial petition and may not cure or recast unsupported or defective contentions after the initial deadline for a petition has passed.³⁴ In seeking to amend a previously-proffered contention, a petitioner who attempts to introduce new bases supported by information that was available to it during the time frame for initially filing contentions fails to satisfy the requirements of 10 CFR 2.309(c).³⁵

Where a petitioner seeks to challenge the adequacy of the NRC's NEPA analysis, it may seek to amend its contentions pursuant to 10 CFR 2.309(f)(2) if there are data or conclusions in the NRC's environmental analysis, either in a draft environmental assessment (as here) or in a draft environmental impact statement, that are significantly different from the data or conclusions that were previously available.³⁶ And a petitioner still must satisfy 10 CFR 2.309(c) when submitting new or amended contentions based on a draft environmental evaluation.³⁷ But by definition, an amended contention must include additional issues outside the scope of the contention as originally pled.³⁸ And such new information must "differ significantly" from information previously provided by the applicant, and these differences must be material to the outcome of the proceeding.³⁹

³⁴ *Louisiana Energy Servs., L.P.* (Nat'l Enrichment Facility), CLI-04-35, 60 NRC 619, 621 (2004); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428-29 (2003).

³⁵ *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-1, 81 NRC 1, 7-8 (2015); *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006).

³⁶ *Louisiana Energy Servs., L.P.*, (Nat'l Enrichment Facility), CLI-05-20, 62 NRC 523, 533 (2005).

³⁷ 10 CFR 2.309(f)(2) (on NEPA issues, participants may file "new or environmental contentions . . . if the contention complies with the requirements" in 10 CFR 2.309(c) (emphasis added)); *Fermi*, CLI-15-1, 81 NRC at 7 n.29 (explaining that the rules of practice relating to admitting new or amended contentions in 10 CFR 2.309 were "simplified rather than overhauled" in the 2012 amendments to the regulation as part of upholding an ASLB decision that information intervenors were attempting to use to support a "second iteration" of a contention was not timely raised);

³⁸ *LES*, CLI-05-20, 62 NRC at 533.

³⁹ *Exelon Generation Co.* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 163 (2005).

B. Legal Standards Governing NEPA Contentions

1. General Admissibility Standard

Applicants' prior pleadings have explained the NRC's contention admissibility standard, which requires a contention to meet all of the criteria set forth in 10 CFR 2.309(f)(1):

- (i) provide a specific statement of the legal or factual issue sought to be raised;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised is within the scope of the proceeding;
- (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and
- (vi) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.⁴⁰

Contentions must have "reasonably specific factual or legal basis."⁴¹ They must be accompanied by expert or documentary support.⁴² And they must dispute specific portions of an application or an environmental document and provide "supporting reasons for each dispute," including identifying factual or legal deficiencies.⁴³

⁴⁰ See 10 CFR 2.309(f)(1)(i)-(vi). Failure to comply with any one of the six admissibility requirements is grounds for rejecting a proposed contention. *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC 393, 395-96 (2012).

⁴¹ *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2) CLI-15-8, 81 NRC 500, 504 (2015) (quoting *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-03-14, 58 NRC 207, 213 (2003)).

⁴² *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2) CLI-23-1, 97 NRC 81, 86 (2023); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012) ("Bare assertions and speculation, even by an expert, are insufficient to trigger a full adjudicatory proceeding.") (quoting *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 674 (2008)).

⁴³ *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 & 2), CLI-17-4, 85 NRC 59, 74 (2017) (quoting 10 CR 2.309(f)(1)(vi)).

2. NEPA Requirements Applicable to the Draft EA

Because the New and Amended Contentions challenge NRC's compliance with NEPA, it is necessary to examine the substantive NEPA requirements that govern the agency's preparation of the Draft EA, which informs the admissibility of environmental contentions like those before the Board.

NEPA requires federal agencies, including the NRC, to consider the reasonably foreseeable environmental effects of proposed agency actions.⁴⁴ It is a procedural statute that requires agencies to review environmental factors to inform agency decisionmaking and the public.⁴⁵ But NEPA does not dictate a specific outcome or require agencies to select the most "environmentally benign" option.⁴⁶ "If the adverse environmental effects of the proposed action are adequately identified, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs."⁴⁷ Nor does it require agencies to exhaustively examine every conceivable aspect of a project;⁴⁸ they have "broad discretion" in determining how much to analyze any given topic "within appropriate and manageable boundaries."⁴⁹ Environmental reviews are not meant to be open-ended research projects that consider "worst-case" scenarios or other "remote and highly speculative" possibilities.⁵⁰ NEPA does not require "limitless analysis" or require agencies to

⁴⁴ 42 U.S.C. § 4332(C)(i).

⁴⁵ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Hydro Res. Inc.* (P.O. Box 15910, Rio Rancho, NM, 87174), CLI-01-4, 53 NRC 31, 44 (2001).

⁴⁶ *Louisiana Energy Svcs., LP* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998); *Robertson*, 490 U.S. at 350.

⁴⁷ *Id.* (quoting *Robertson*, 490 U.S. at 350).

⁴⁸ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 349 (2002) (citing *Claiborne*, CLI-98-3, 47 NRC at 102-103).

⁴⁹ *Claiborne*, CLI-98-3, 47 NRC at 103 (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983) and *S. Louisiana Env't Council, Inc. v. Sand*, 629 F.2d 1005, 1011 (5th Cir.1980)).

⁵⁰ *Private Fuel Storage*, CLI-02-25, 56 NRC at 352; *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 754-55 (3d Cir. 1989) (Scirica, J., dissenting).

commission new studies to generate information that is not already reasonably available.⁵¹ The NEPA process is necessarily governed by an overarching “rule of reason,”⁵² to prevent the review process (and adjudication of that process) from turning into a never ending cycle.⁵³ Indeed, Congress recently directed NRC specifically to improve the efficiency of its environmental review process in part through “expanded use of categorical exclusions, environmental assessments, and generic environmental impact statements.”⁵⁴

NRC documents the results of its environmental reviews in either an EIS, an EA, or a categorical exclusion. Section 106 of NEPA defines the level of review required for proposed actions based on the reasonably foreseeable effects on the environment—an EIS is required for actions with a “reasonably foreseeable significant effect on the quality of the human environment,” an EA for actions that do “not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown,” and a categorical exclusion specifies types of actions the agency has determined “normally does not significantly

⁵¹ *Private Fuel Storage*, CLI-02-25, 56 NRC at 352 (quoting *Robertson*, 490 U.S. at 356 n.17); *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 391–92 (2012).

⁵² *Private Fuel Storage*, CLI-02-25, 56 NRC at 347–349; *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1182 (D.C. Cir. 2023) (quoting *Minisink Residents for Env’t Pres. & Safety v. FERC*, 762 F.3d 97, 112 (D.C. Cir. 2014)).

⁵³ *See NextEra Energy Seabrook* (Seabrook Station, Units 1 and 2), CLI-12-5, 75 NRC 301, 323 (2012); *Dept. of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004) (“[I]nherent in NEPA and its implementing regulations is a ‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.” (citing *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 373–374 (1989))).

⁵⁴ Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy (ADVANCE) Act of 2024, Pub. L. No. 118-67, § 506, 138 Stat. 1448, 1478 (2024) (“ADVANCE Act”).

affect the quality of the human environment.”⁵⁵ NRC regulations, in turn, list specific licensing actions that automatically require an EIS (10 CFR 51.20(b)) or are subject to a categorical exclusion (10 CFR 51.22(c)). If neither clearly applies, NRC prepares an EA, although the Commission has discretion to prepare an EA for actions otherwise covered by a categorical exclusion or to issue an exemption authorizing an EA for a licensing action that normally requires an EIS.⁵⁶ In the LARs, Applicants identified the categorical exclusion in 10 CFR 51.22(c)(9) as applicable as it covers license amendments that involve no significant hazards consideration, no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative occupational radiation exposure.⁵⁷ The Commission has determined, by rule or regulation, that these are a “category of actions [that] does not individually or cumulatively have a significant effect on the human

⁵⁵ 42 U.S.C. § 4336(b)(2); 4336e(1). Section 106 was enacted by the Fiscal Responsibility Act of 2023, 137 Stat. 39, P.L. 118-5, Div. C, Title III, § 321(b) (June 3, 2023) (“Fiscal Responsibility Act”). In SECY-24-0046, staff discussed these statutory changes and explained, generally, that “[s]everal of the NEPA amendments enacted by the [Fiscal Responsibility Act] codify longstanding principles drawn from the CEQ’s regulations and agency practice and add improvements to the efficiency and effectiveness of the NEPA process.” See SECY-24-0046, Implementation of the Fiscal Responsibility Act of 2023 National Environmental Policy Act Amendments at 2 (May 30, 2024) (full package ML24078A013, without enclosures ML24078A013). Specific to the preparation of EAs, in light of the Fiscal Responsibility Act, NRC staff has proposed that the agency amend 10 CFR 51.20(b) to remove the list of actions that automatically require an EIS and instead adopt the new statutory language. *Id.* at Encl. 2, pp .8–9.

⁵⁶ 10 CFR 51.21; *see also* Notice, Issuance, Kairos Power, LLC; Hermes 2; Environmental Assessment, Finding of No Significant Impact, and Exemptions, 89 Fed. Reg. 72,433, 72,436-37 (Sept. 5, 2024) (“Hermes Exemption”) (detailing NRC’s decision to issue an EA rather than an EIS for the issuance of a construction permit for the recent Hermes Unit 2 construction permit (a licensing action listed in 51.20(b) as requiring an EIS). The NRC explained that an EA rather than EIS was appropriate because Hermes Unit 2 was located within a few hundred feet of the previously approved construction permit for Hermes Unit 1, for which the NRC staff had conducted a full EIS and determined the action would result in “SMALL (*i.e.*, not detectable or so minor that they will neither destabilize nor noticeably alter any important attribute of an environmental resource) impacts for all resource areas.” *Id.* at 72,436. The NRC staff also concluded that “it would be prudent to first prepare an EA to determine whether preparation of an EIS would be necessary or whether a FONSI could be issued for the Hermes 2 [construction permit] based on factors unique to the Hermes 2 [construction permit] application.” *Id.* at 72,436. The NRC staff incorporated by reference significant portions of the final EIS for Hermes Unit 1 construction permit because the staff found that the final EIS for Hermes Unit 1 issued in 2023 covered the same site and Hermes Unit 1 and Hermes Unit 2 had significant design similarities. *Id.* at 72,437.

⁵⁷ 10 CFR 51.22(c)(9).

environment.”⁵⁸ As noted above, NRC staff did not rely on this categorical exclusion and instead prepared an EA.⁵⁹ And, as Applicants have explained in Applicants’ Answer, the LARs are not a licensing action that automatically requires an EIS under 10 CFR 51.20(b).⁶⁰

NEPA defines an EA as “a concise public document prepared by a Federal agency to set forth the basis of such agency’s finding of no significant impact or determination that an environmental impact statement is necessary.”⁶¹ NRC regulations require an EA to include a “brief discussion” of the need for the proposed action, an alternatives analysis, the environmental impacts of the proposed action, alternative actions, and a list of agencies or parties consulted in the preparation of the EA.⁶² If NRC staff determines, after preparation of the EA, that the proposed licensing action does not pose a reasonably foreseeable significant effect on the quality of the human environment, NRC will issue a FONSI.⁶³ Otherwise, NRC will prepare an EIS. In novel circumstances such as the Palisades restart, staff has authority to publish a draft FONSI for public comment before making a final decision,⁶⁴ which it has done here. Both a draft and final FONSI must briefly present the reasons why the proposed action will not have a significant effect on the quality of the human environment.⁶⁵ The discussion “should provide ‘sufficient evidence and analysis for determining whether to prepare an [EIS] or [FONSI].’”⁶⁶

⁵⁸ 10 CFR 51.22(a).

⁵⁹ *See supra* Section II.A.

⁶⁰ Applicants’ Answer at 54-55.

⁶¹ 42 U.S.C. § 4336(b)(2). The statute imposes a 75 page limit, excluding citations and appendices. *Id.* § 4336a(e)(2).

⁶² 10 CFR 51.30(a).

⁶³ 10 CFR 51.31(a), 51.32(a); NRC, Procedure for Determination of Level of Review, at 1 (May 30, 2024) (ML24078A048).

⁶⁴ 10 CFR 51.33(b)(1)(ii).

⁶⁵ 10 CFR 51.32(a)(3).

⁶⁶ *Crow Butte Resources, Inc.* (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), CLI-19-5, 89 NRC 329, 341 (2019) (quoting NUREG-1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, at 1–2 (Aug. 2003) (ML032450279)).

3. Admissibility Standard for NEPA Contentions

To proffer an admissible NEPA contention, petitioners are required to contest specific portions of the agency’s NEPA analysis and demonstrate that the analysis either lacks information NRC was obligated to include or that staff’s analysis is otherwise unreasonable.⁶⁷ “[T]he proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA.”⁶⁸ As with all contentions, specificity is required.⁶⁹ Petitioners cannot simply raise general criticisms of staff’s environmental review in the abstract; they must connect the dots by challenging specific portions of the agency’s analysis and explaining *how* that analysis is unreasonable or *why* additional information calls into question its ultimate conclusions.⁷⁰ Bare assertions that more information should have been considered or more analysis could have been conducted are not enough.⁷¹ It is not the purpose of licensing boards “to ‘flyspeek’ environmental documents or to add details or nuances.”⁷² Alleged deficiencies must be material to staff’s ultimate conclusions; otherwise, there would be no end to the environmental review process.⁷³

⁶⁷ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-24-08, 100 NRC __, __ (Aug. 27, 2024) (slip op. at 5-6).

⁶⁸ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012).

⁶⁹ *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-15-20, 82 NRC 211, 221 (2015); *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999).

⁷⁰ *Turkey Point*, LBP-24-03, 100 NRC at __ (March 7, 2024) (slip op. at 12-13).

⁷¹ *Seabrook*, CLI-12-5, 75 NRC at 323–24.

⁷² *Sys. Energy Res., Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005) (citing *Hydro Resources*, CLI-01-4, 53 NRC at 71).

⁷³ *Seabrook*, CLI-12-5, 75 NRC at 323.

IV. Each of the Amended and Substituted Contentions is Untimely and Inadmissible

A. Amended and Substituted Contention 2 is Untimely and Inadmissible

Petitioning Organizations present proposed Amended and Substituted Contention 2 as:

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.⁷⁴

Below this heading, which is a random list of concerns, only a few of which are within the scope of the Draft EA, Petitioning Organizations assert that NRC should have prepared an EIS instead of an EA because (1) Applicants are required to apply for a new operating license,⁷⁵ (2) restarting a plant is similar to licensing actions that require an EIS under 51.20(b) (i.e., building a new plant or renewing an operating license),⁷⁶ (3) the License Renewal SEIS was deficient,⁷⁷ (4) operating the plant through 2031 (or beyond, if Palisades applies for and is granted subsequent license renewal) will generate additional radioactive waste,⁷⁸ (5) restarting the plant presents unresolved

⁷⁴ New and Amended Contentions at 1.

⁷⁵ *Id.* at 2–3.

⁷⁶ *See id.* at 1–2.

⁷⁷ *Id.* at 4.

⁷⁸ *Id.* at 4–5.

seismic safety issues,⁷⁹ and (6) the restart involves “significant construction” activities and “engineering alterations” that require additional license amendments.⁸⁰ These claims, some of which are copied and pasted from the original Petition, are too late, irrelevant to staff’s NEPA review, and so high level that they present no specific issue of law or fact to warrant an evidentiary hearing. They dispute no specific section of the Draft EA, much less call into question the reasonableness of its ultimate conclusion. None of the information Petitioning Organizations rely on to support rewriting their contention long after the intervention deadline is new or materially different from the information that was previously available. Accordingly, proposed Amended and Substituted Contention 2 should be dismissed as untimely and inadmissible.

1. Proposed Amendment and Substituted Contention 2 is Not Based on New or Materially Different Information

In their Motion, Petitioning Organizations assert the following bases to satisfy the 2.309(c)(1) standard:

Contention 2 asserts that an Environmental Impact Statement (EIS) must be prepared, rather than an EA. The unprecedented action for restarting a closed reactor in decommissioning status presages more actual and potential environmental effects than a simple renewal of an operating license for a reactor presumably in continuous operations – and a simple renewal requires an EIS. Holtec’s Palisades restart scheme also involves a vast amounts of public funding – \$3.12 billion of federal and state taxpayer bailouts, grants, and subsidies awarded so far, with more than \$5 billion more requested by the company, and counting. Furthermore, the Palisades restart case will set a precedent for the attempted restart of other closed reactors. These facts make the Palisades attempt to restart a major federal action with significant impacts on the environment.⁸¹

⁷⁹ *Id.* at 5–6.

⁸⁰ *Id.* at 6–7.

⁸¹ Motion at 2–3.

But the Motion cites nothing from the Draft EA as presenting new factual information on the nature of the licensing actions or the restart project itself, the existence of state and federal support for the project, or the possibility that other licensees might also restart other reactors. Indeed, all of these claims were in Petitioning Organizations' original Petition:

Because the Palisades restart would reverse the physical mothballing of a permanently shutdown nuclear plant to restore power operations and the restart is being financed with some \$1.52 billion through the U.S. Department of Energy, as well as another \$1.3 billion through the U.S. Department of Agriculture, the restart is a "major federal action" under the National Environmental Policy Act.⁸²

The proposal to restart Palisades is more significant in its environmental impacts than a license renewal because there is considerable evidence that safety systems and components are being altered while the plant is not under an unconditioned operating license. A license renewal is simply a continuation of the status quo. Restarting Palisades, on the other hand, is an unprecedented undertaking that will require substantial effort to bring the plant up to acceptable condition, if it can even be done. But even a license renewal requires an EIS, pursuant to 10 C.F.R. § 51.20(b)(2).⁸³

All parties agree that Holtec's attempt to restart the closed Palisades nuclear reactor is unprecedented. It has national implications in that there are at least two other reactors, Duane Arnold in Iowa and Three Mile Island in Pennsylvania, where restart of a shutdown reactor is also being considered.⁸⁴

None of this is new or materially different from information available to Petitioning Organizations at the time the initial contentions were to be filed. Petitioning Organizations made all these arguments before the intervention deadline, and they cannot, therefore, justify those same entities' attempt to revise proposed Contention 2 now.

⁸² Petition at 44.

⁸³ *Id.* at 47–48.

⁸⁴ *Id.* at 52.

Second, Petitioning Organizations claim that NRC’s issuance of an EA and FONSI that purportedly “does not substantiate that it is sufficient under NEPA to avoid preparing an EIS” constitutes new and materially different information.⁸⁵ But they do not rely on any of the details in the Draft EA that support the NRC staff’s draft FONSI, and merely attempt to challenge the conclusion in a cursory, unsupported manner. Unfortunately for Petitioning Organizations, the draft FONSI’s conclusion is not new and materially different from the information presented in the LARs. The original LARs each claimed a categorical exclusion under NEPA was applicable—that the LARs are in a “category of actions [that] does not individually or cumulatively have a significant effect on the human environment.”⁸⁶ Petitioning Organizations did not challenge the applicability of the categorical exclusion in their Petition. They claimed, instead, that an EIS is required because Applicants need a new operating license and the LARs are deficient because they do not include an environmental report that satisfies 10 CFR 51.45.⁸⁷ But, of course, Applicants did not apply for a new operating license, and, as discussed in Applicants’ Answer, Applicants had no obligation to file an environmental report for these LARs.⁸⁸ Petitioning Organizations had an obligation to dispute the applications that were actually submitted, including the LARs’ invocation

⁸⁵ Motion at 4.

⁸⁶ 10 CFR 51.22(a); Admin Controls LAR at 21-22; Emergency Planning LAR at 29-31; Tech Spec LAR at 94-95; MSLB LAR at 9-10. Likewise, the New and Significant Review also explained that the 2013 License Renewal GEIS (defined below) and License Renewal SEIS collectively found the individual and cumulative impacts of operating Palisades through 2031 to be SMALL, and the “[u]pdated information, analyses, and reviews of site-specific issues provided in this [New and Significant Review] did not identify any new and significant impacts that would alter the conclusions of the NRC in its SEIS.” New and Significant Review at 116 (citing NUREG-1437, Rev. 1, License Renewal SEIS and Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Final Report (June 2013) (Vol. 1 ML13106A24, Vol. 2 ML13106A242, Vol. 3 ML13106A244) (“2013 License Renewal GEIS”). The Notice of Intent, published three months before the intervention deadline, also stated that NRC intended to issue a draft FONSI. Notice of Intent, 89 Fed. Reg. at 53,660.

⁸⁷ Petition at 43, 46.

⁸⁸ Applicants’ Answer at 54 n. 212.

of the categorical exclusion and that the environmental effects of the restart are not significant.⁸⁹ They chose to aim at a different target using a different legal theory. They cannot retroactively change that strategic decision simply because the progress of this proceeding has demonstrated that it was the wrong decision.⁹⁰

In similar circumstances, dealing with similar claims raised by most of the same Petitioning Organizations, the Commission rejected their attempt to raise “environmental concerns that they argue are not bounded by prior generic or site-specific environmental impact statements” after their initial petition because the petitioners “did not acknowledge or challenge the categorical exclusion” invoked by the original application.⁹¹ As the Commission explained, “[a]lthough the NRC is ultimately responsible for satisfying the requirements of NEPA, our rules of practice require petitioners to base their contentions on the application or other information *available at the time of the petition.*”⁹² The same rules apply here. Petitioning Organizations failed to challenge the conclusion in the LARs that the restart will not have a significant environmental effect. They cannot bring a late-filed contention simply because NRC has now agreed with that conclusion via a different path—certainly not by regurgitating the same generic arguments and citing old

⁸⁹ 10 CFR 2.309(f)(1)(vi) (contentions “must include references to specific portions of *the application* . . . that the petitioner disputes . . . 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” (emphasis added)); *Susquehanna*, CLI-17-4, 85 NRC at 74 (2017) (proposed contentions must refer to the “specific portions of the application . . . that the petitioner disputes,” along with the “supporting reasons for each dispute” (internal quotations omitted)).

⁹⁰ *LES*, CLI-05-20, 62 NRC at 532 (“[A]n intervenor ‘may not freely change the focus of an admitted contention as litigation progresses, but is bound by the terms of the contention.’” (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 386 (2002)); *see also Crow Butte*, CLI-19-5, 89 NRC at 340 (rejecting a late-filed contention because the differences between the original application and the EA did not prevent the petitioners from raising their contention at the outset of the proceeding).

⁹¹ *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 69 (2022).

⁹² *Id.* (citing 10 CFR 2.309(f)(1)(vi), (f)(2)) (emphasis added).

information that were available to the Petitioning Organizations long before NRC published the draft FONSI.⁹³

To be sure, NRC’s evaluation that led to preparation of the Draft EA could have resulted in a decision to prepare an EIS instead of issuing a draft FONSI, but as the Commission has advised petitioners, if they “choose to wait to raise contentions that could have been raised earlier[, they] do so at their peril.”⁹⁴ Petitioning Organizations do not rely on any of the details in the Draft EA to support Proposed Amended and Substituted Contention 2—they are challenging the conclusion, without engaging any of the specifics. It is a fundamental feature of the 10 CFR 2.309(c) good cause standard that new information must be relevant to the new or amended contentions and to NRC’s determination under NEPA.⁹⁵ In other words, to satisfy the 10 CFR 2.309(c) standard based on publication of the Draft EA, Petitioning Organizations had to actually identify and dispute specific information in the Draft EA.⁹⁶ While the Motion and the Amended and Substituted Contention 2 superficially say the FONSI is not justified, they do not engage with any of the details in the Draft EA. And all of the information they rely on in support of the Amended and Substituted Contention 2 was available to Petitioning Organization long before publication of the Draft EA, as explained below.⁹⁷

⁹³ See *Turkey Point*, LBP-24-08, 100 NRC at __ (slip op. at 15) (“[T]he fact that an analysis has been revised does not open the door to any challenge, however tangential, that could have been raised previously but was not.”).

⁹⁴ *Fermi*, CLI-15-1, 81 NRC at 7; *Crow Butte*, CLI-19-5, 89 NRC at 344 n.57 (explaining that environmental challenges should not wait for staff’s review).

⁹⁵ *Clinton ESP*, LBP-05-19, 62 NRC at 163 (“[D]ata or conclusions cannot be significantly different if they are not material to the determinations the Staff must make under NEPA. And new information . . . cannot be ‘materially different’ . . . if it does not raise a genuine dispute on a material issue of law or fact.”).

⁹⁶ See *Turkey Point*, LBP-24-08, 100 NRC at __ (slip op. at 10) (“[W]ithout references to the specific information . . . , we are unable to conclude that the information . . . is new and materially different from previously available information.”).

⁹⁷ *Sys. Energy Res., Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144, 146 (2007) (“A contention filed late is excused only when the ‘information upon which the amended or new contention is based was not previously available.’” (quoting 10 CFR 2.309(c)(1)(i)).

Aside from the arguments that have simply been carried forward from the original Petition, Petitioning Organizations’ new claims are that NRC was required to prepare an EIS because (1) the License Renewal SEIS was deficient,⁹⁸ (2) restarting the plant will generate additional radioactive waste that must be considered,⁹⁹ (3) the plant has unresolved seismic safety issues,¹⁰⁰ and (4) the restart involves construction and engineering activities that will require additional licensing and safety reviews.¹⁰¹ None of these points, or the underlying information Petitioning Organizations rely on, are new or materially different from the information previously available to Petitioning Organizations. In fact, all of them are recycled from either the original Petition or Petitioning Organizations’ perennial objections to Palisades that they have been filing for decades.

The License Renewal SEIS is not new information, nor is the fact that Applicants and NRC intended to rely on it. The License Renewal SEIS found that the environmental impacts of operating Palisades through 2031 are SMALL, and that “these impacts would not result in significant cumulative impacts.”¹⁰² The LARs cited the License Renewal SEIS in support of the categorical exclusion and explained that the New and Significant Review “concluded that the proposed licensing actions environmental impacts are consistent with the findings in the [License

⁹⁸ New and Amended Contentions at 5–6.

⁹⁹ *Id.* at 4–5.

¹⁰⁰ *Id.* at 5–6.

¹⁰¹ *Id.* at 6–7.

¹⁰² License Renewal SEIS at 9-5, 9-8; 1996 License Renewal GEIS at Section 9.

Renewal SEIS].”¹⁰³ Petitioning Organizations did not challenge this in the Petition, and there has been no new information presented in the Draft EA on these points. Therefore, they cannot use the existence of or reliance on the License Renewal SEIS as a basis for amending contentions under 10 CFR 2.309(c). This point is driven home by the fact that Petitioning Organizations have raised similar challenges to the License Renewal SEIS in prior adjudicatory proceedings (and they have all been rejected).¹⁰⁴

Next, Petitioning Organizations claim that Palisades will generate additional radiological waste if it resumes operations through 2031 or beyond.¹⁰⁵ The License Renewal SEIS discusses radioactive waste management and the environmental impacts of waste generated at the plant through 2031, concluding that the environmental impacts of radioactive waste are SMALL.¹⁰⁶

¹⁰³ Tech Spec LAR at 94–95; Admin Controls LAR at 21-22; Emergency Planning LAR at 29–31; MSLB LAR at 9–10. The Notice of Intent also clearly says NRC staff intended to rely on the License Renewal SEIS in preparing the Draft EA:

To inform its environmental review, the NRC staff is considering a number of sources, including the previous NRC environmental review for PNP license renewal that is documented in the October 2006 “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 27, Regarding Palisades Nuclear Plant—Final Report” (hereafter “License Renewal EIS Supplement”). The License Renewal EIS Supplement addresses the environmental impacts of continued operation during the license renewal period, which is the same operating period applicable to HDI’s requests for reauthorization of power operations.

Notice of Intent, 89 Fed. Reg. at 53,660.

¹⁰⁴ *E.g.*, *Palisades*, CLI-22-8, 96 NRC at 68-69 (2022) (rejecting as inadmissible Beyond Nuclear’s, Michigan Safe Energy Future, and Don’t Waste Michigan’s NEPA contentions, including those relating to off-site waste disposal and spent nuclear fuel storage, that purportedly were not bounded by prior environmental impact statements); Nuclear Information and Resource Service, West Michigan Environmental Action Council, Don’t Waste Michigan, Green Party of Van Buren County, and Michigan Land Trustees Request for Hearing and Petition to Intervene at 5 (Aug. 8, 2005) (ML052940221); Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don’t Waste Michigan, and Michigan Safe Energy Future at 40, 43, Docket No. 50-255-ER (Dec. 5, 2023) (ML23339A192) (purporting to raise challenges to Applicant’s NEPA analysis for the exemption request related to the Palisades restart); Petition to Intervene and Request for Adjudicatory hearing by Beyond Nuclear, Don’t Waste Michigan and Michigan Safe Energy Future at 3-4, Docket No. 50-255-LT-3, (Aug. 27, 2024) (ML24240A210) (expressing concerns about the seismic stability of the ISFSI pad).

¹⁰⁵ New and Amended Contentions at 5.

¹⁰⁶ License Renewal SEIS at 6-2 to 6-9, 9-8.

Entergy Nuclear Operations, Inc, the prior owner of Palisades, and HDI filed annual radiological effluent reports providing extensive details on radiological effluents during operations and shutdown.¹⁰⁷ The New and Significant Review discusses waste generation at the plant and explained that “[t]here are no planned modifications to PNP’s radioactive waste management system that would increase the amount of radioactive waste generated in relation to the amount generated prior to ceasing operations,” and “continued use of existing systems and procedures to ensure proper storage and disposal would allow the impacts to be SMALL.”¹⁰⁸ While Petitioning Organizations have not engaged with any of the public information that would allow them to quantify or characterize those waste streams, all of that information was available to them prior to the intervention deadline and, thus, the (obvious) fact that operating a nuclear plant produces radioactive waste cannot serve as a basis for now amending their contentions.

As for the second claim that Palisades will generate waste after 2031 if Palisades is granted subsequent license renewal, approval of the LARs would not authorize operations past 2031, and so NRC is not required to consider those future environmental impacts.¹⁰⁹ Petitioners cannot satisfy 10 CFR 2.309(c)’s good cause standard based on information that is “not material to the

¹⁰⁷ See, e.g., HDI PNP 2023-007, Letter from J. Fleming, HDI to NRC Document Control Desk, “2022 Annual Radioactive Effluent Release and Waste Disposal Reports” (Apr. 19, 2023) (ML23109A271); PNP 2022-003, Letter from B. Dotson, Entergy Nuclear Operations, Inc., to NRC Document Control Desk, “2021 Annual Radioactive Effluent Release and Waste Disposal Report” (Apr. 25, 2022) (ML22115A111).

¹⁰⁸ New and Significant Review at 64, 113; see also Environmental RAI Response, Encl. 23 at 1–2 (explaining that waste generated during restart activities is expected to be the same “waste types . . . generated during operations (radwaste, hazardous waste, construction debris, scrap metal, universal waste, nonhazardous solid waste)”).

¹⁰⁹ *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-14-9, 80 NRC 15, 45-46 (2014) *aff’d* CLI-15-13, 81 NRC 1, 7-8 (2015) (“An action with potential impacts subsequent to the initial federal action may not constitute a proposed action if it is insufficiently certain.” (citing *Webster v. U.S. Department of Agriculture*, 2011 WL 8788223, at *8 (N.D. W. Va. June 13, 2011)); see also *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-16-9, 83 NRC 472, 474-75 (2016) (“[T]he prospect of a future license amendment does not create a present hearing opportunity.”).

determinations the Staff must make under NEPA.”¹¹⁰ Even if it were relevant, NRC’s updated 2024 License Renewal GEIS, which was finalized in August 2024, explains that the environmental effects of onsite management of radioactive waste during a subsequent renewal period are expected to continue to be SMALL.¹¹¹ So even if this out-of-scope information is considered under 10 CFR 2.309(c), it is not new.

Third, the Petitioning Organizations cite Palisades’s alleged failure to comply with NRC seismic safety standards, referring to an affidavit by Dr. Ross Landsman that Petitioning Organizations filed in 2005 in connection with their then-challenge to the initial renewal of Palisades’s operating license.¹¹² This same report is referenced several times in their original Petition in this proceeding.¹¹³ It suffices to say, the information is not new, NRC is clearly not required to re-review seismic safety when conducting NEPA reviews,¹¹⁴ and Petitioning

¹¹⁰ *Clinton ESP*, LBP-05-19, 62 NRC at 163 (“[D]ata or conclusions cannot be significantly different if they are not material to the determinations the Staff must make under NEPA.”).

¹¹¹ NUREG-1437, Vol. 1, Rev. 2, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, at 4-135 to 4-137 (Aug. 2024) (ML24086A526) (“2024 License Renewal GEIS”). HDI’s notice of its intent to apply for subsequent license renewal was also filed before the intervention deadline. HDI PNP 2024-016, Notice of Intent to Pursue Subsequent License Renewal (Apr. 18, 2024) (ML24109A162).

¹¹² Nuclear Information and Resource Service, West Michigan Environmental Action Council, Don’t Waste Michigan, Green Party of Van Buren County, and Michigan Land Trustees Request for Hearing and Petition to Intervene at 5 (Aug. 8, 2005) (ML052940221). The licensing board in that proceeding did not admit the issue for hearing because it was a compliance argument, which must be brought under 10 CFR 2.206. *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 359–60 (2006). Petitioning Organizations appear to have raised this issue in most comments and intervention petitions they have filed since then. *See supra* n.104.

¹¹³ Petition at 6-8, 10-11, 13-15, 18, 20.

¹¹⁴ 10 CFR 2.309(f)(2) (“Participants may file new or amended *environmental* contentions after the deadline in paragraph (b) of this section . . . if the contention complies with the requirements in paragraph (c) of this section” (emphasis added)). *See also Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97-98 (1983) (“NEPA has twin aims. First it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process. . . . The role of the courts is simply to ensure that the agency has adequately considered and disclosed the environmental impacts of its actions and that its decision is not arbitrary and capricious.” (internal quotations and citations omitted)); *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-6, 81 NRC 340, 377-78 (2015) (reversing an ASLB panel’s decision to admit a contention regarding emergency preparedness because “the license renewal environmental review may not serve as a ‘back door’ to litigate the effectiveness of site emergency plans” which address safety issues).

Organizations have not connected this report to the Draft EA’s analysis of the environmental effects from postulated accidents¹¹⁵ or otherwise explained why their perennial objections to the Palisades independent spent fuel storage installation (“ISFSI”) is new or materially different information that is relevant to NRC’s satisfaction of its obligations under NEPA.

Finally, Petitioning Organizations claim that the restart will involve “significant construction” and “engineering alterations” that Petitioning Organizations claim will require additional permitting and license amendments and warrants “intensified technical scrutiny.”¹¹⁶ It is not clear if Petitioning Organizations are advancing a safety argument or a NEPA argument because Petitioning Organizations do not connect any of this back to the conclusions of the Draft EA or the agency’s obligations under NEPA. They opine that these activities might require “a license or permit of [sic] license amendment,” but do not allege any particular environmental impact.¹¹⁷

Regardless, none of this information is new or materially different than what was previously available. Two of the buildings Petitioning Organizations object to were built a decade ago, as stated in the New and Significant Review and the Draft EA.¹¹⁸ Petitioning Organizations cite plans for two other buildings and the upgraded heat exchangers. Information about these activities and their environmental impacts was also available long before publication of the Draft

¹¹⁵ See Draft EA at 3-64 to 3-65.

¹¹⁶ New and Amended Contentions at 6–7.

¹¹⁷ See *id.* at 6.

¹¹⁸ New and Significant Review at 19 (explaining that Entergy added “two new storage buildings,” “FLEX Storage Building A” and “FLEX Storage Building B,” in response to NRC’s Beyond-Design-Basis External Events order) (citing PNP 2015-083, Letter from A. Vitale, Entergy Nuclear Operations, Inc., to NRC Document Control Desk, Notification of Full Compliance with NRC Order EA-12-049, “Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events” and Attachment 5 (Dec. 16, 2015) (Letter ML15351A369 and Attachment 5, Final Integrated Plan (ML15351A360)); Draft EA at 3-7 (citing the New and Significant Review and explaining that “[s]ince the 2006 SEIS, two new Diverse and Flexible Coping Strategies buildings were constructed”).

EA. The 2013 License Renewal GEIS evaluated prospective impacts from normal operation and upkeep at a nuclear plant—including replacement or addition of buildings, roads, and other ground and subsurface structures at plant sites—and concluded that the environmental impacts are SMALL.¹¹⁹ The New and Significant Review explains: “Holtec does plan to upgrade or replace some equipment and facilities to support and maintain power operations[; h]owever, these upgrades do not involve ground disturbance beyond the already developed and disturbed area.”¹²⁰ “There are plans for construction of staff support facilities [and] the east independent spent fuel storage installation (ISFSI) is being expanded. These projects would be taking place within the existing developed areas.”¹²¹ Given the programmatic controls applicable to any such activities, the New and Significant Review “did not identify any new and significant information for onsite and offsite land use and aesthetics” that warranted revisiting the SMALL determination for land use impacts,¹²² and “compliance with facility permits and procedures ensures that impacts to soil and surface water quality from soil erosion [potentially caused by these activities] would remain SMALL.”¹²³ Enclosure 1 to Applicants’ Environmental RAI Response filed in October 2024 includes much more detail regarding the structures cited in the Amended and Substituted Contention 2, confirmed that any “[l]and disturbance will be within the existing previously developed areas,” and identified certain permits from the State of Michigan that applies to some

¹¹⁹ 2013 License Renewal GEIS at 2-4, 4-2, S-8.

¹²⁰ New and Significant Review at 18.

¹²¹ *Id.* at 23.

¹²² *Id.* at 80.

¹²³ *Id.* at 87; *see also id.* at 114 (“As discussed in Section 3.1, there are plans for construction of staff support facilities . . . [T]he impacts of these projects would be limited to the site and would not contribute to cumulative impacts for any resource area.”) *see also* RAI Follow-up (discussing the planned excavation depth for the new buildings and describing the groundwater intrusion management plan in accordance with the Palisades National Pollution Discharge Elimination System Program and associated Stormwater Pollution Prevention Plan).

of the activities.¹²⁴ Petitioning Organizations claim that they are entitled to ignore request for additional information (“RAI”) responses under 10 CFR 2.309(c), but, as explained below, that is wrong.¹²⁵ Finally, Applicants’ plan to upgrade plant heat exchangers was discussed extensively in the original Petition.¹²⁶ All of this information was previously available, and Petitioning Organizations have not explained why any of this is “material to the determinations the Staff must make under NEPA.”¹²⁷ It does not, therefore, supply the good cause required to amend their contentions at this stage of the proceeding.

For all of the foregoing reasons, Petitioning Organizations’ attempt to restate Contention 2 should be rejected for failing to satisfy 10 CFR 2.309(c)(i) and (ii).¹²⁸

2. Petitioning Organizations’ New Arguments Do Not Support Admission of Amended and Substituted Contention 2

Even if the Board were to consider Petitioning Organizations’ untimely Amended and Substituted Contention 2, it does not satisfy the NRC admissibility requirements. As explained above,¹²⁹ to proffer an admissible contention on the Draft EA, Petitioning Organizations must challenge specific portions of the Draft EA, explain why staff’s evaluation is unreasonable, and why the alleged deficiencies would change the ultimate conclusions of the Draft EA and FONSI. Rather than doing that, Petitioning Organizations have made a series of high-level and conclusory claims that do not challenge any specific section of the Draft EA, do not provide any expert

¹²⁴ Environmental RAI Response at Encl. 1, at 2 & Att. 1. HDI also sent a follow-up email providing more details on November 14, 2024, which was also available on ADAMS long before publication of the Draft EA. RAI Follow-up.

¹²⁵ See *infra* Section IV.C.1.

¹²⁶ Petition at 58, 60-61, 71.

¹²⁷ *Clinton ESP*, LBP-05-19, 62 NRC at 163.

¹²⁸ *Palisades*, CLI-06-17, 63 NRC at 732.

¹²⁹ See *supra* Section III.A.

testimony or analytical support to demonstrate that the Draft EA or draft FONSI are unreasonable, and do not connect any of the high-level claims to the conclusions of the Draft EA. All of Petitioning Organizations’ new arguments amount to series of generic complaints cast in the general direction of NRC’s NEPA process (including the License Renewal SEIS NRC completed in 2006) but lacking any of the specificity or support required by 10 CFR 2.309(f)(1). Applicants address each of the arguments below.

First, the revised contention repeats the same incorrect claim that Applicants are applying for new operating license and so an EIS is required by 10 CFR 51.20(b).¹³⁰ Applicants responded to this argument in Applicants’ Answer.¹³¹ Petitioning Organizations have not changed the argument nor does the Draft EA provide any new information on this front. Therefore, Petitioning Organizations have failed to meet the requirements of 10 CFR 2.309(f)(1)(iv) to demonstrate that the issue is within the scope of the proceeding or to raise a genuine dispute with the Applicants on a material issue of law or fact as required by 10 CFR 2.309(f)(1)(iv).

Next, Petitioning Organizations claim that, because the restart is a major *licensing* action, it is, therefore, a “major federal action” requiring an EIS.¹³² Petitioning Organizations do not explain why the significance of the NRC licensing mechanics have any bearing on the significance of the environmental impact. NEPA requires an EIS for “major Federal actions *significantly affecting the quality of the human environment.*”¹³³ There is no requirement in NEPA or NRC regulations that requires an agency to consider the significance of the licensing activity, only the

¹³⁰ New and Amended Contentions at 2–3.

¹³¹ Applicants’ Answer at 32-39.

¹³² New and Amended Contentions at 3–4.

¹³³ 42 U.S.C. § 4332(C) (emphasis added); *id.* at § 4336(b)(1) (requiring an EIS for agency action “that has a reasonably foreseeable significant effect on the quality of the human environment”).

significance of the environmental effects,¹³⁴ and, therefore, the proposed Amended and Substituted Contention 2 cannot demonstrate a genuine dispute of material fact and is inadmissible pursuant to 10 CFR 2.309(f)(1)(vi).

Relatedly, Petitioning Organizations state that the restart “presents the same significant impacts on the environment as bringing a new reactor on line” and “significant impacts at least equal to, and clearly more than, the simple renewal of an existing license.”¹³⁵ As an initial matter, statutes must be applied as written, and “cannot [be] re-writ[ten] or expand[ed] to apply to circumstances that may be deemed ‘analogous’ to the limited situations addressed by the statute.”¹³⁶ Simply analogizing these licensing actions to those that automatically require an EIS under NRC’s regulations misses the point. NEPA requires an EIS for actions with a “reasonably foreseeable significant effect on the quality of the human environment.”¹³⁷ NRC prepared an EIS for the initial license renewal because its regulations automatically require one, regardless of the expected impact.¹³⁸ Yet after the extensive review that accompanied the License Renewal SEIS, NRC concluded that the environmental effects of operating Palisades through 2031 are SMALL

¹³⁴ See *Mulgrew v. U.S. Dep’t of Trans.*, No. 23-CV-10365 (LJL), 2024 WL 3251732, at *23 (S.D.N.Y. June 20, 2024) (“There is a first time for every type of project. NEPA is not intended to halt all innovation in its tracks. It is the environmental impacts and not the policy approach or project that must be novel to necessitate an EIS.” (citations omitted)); *NextEra Energy Point Beach, LLC* (Point Beach Nuclear Plant, Units 1 and 2), CLI-22-05, 95 NRC 97, 104 (2022) (“Under NEPA, ‘[a]n agency has no obligation to gather or consider environmental information if it has no statutory authority to act on that information.’” (quoting *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 387 n.77 (2016)); *Pa’ina Hawaii, LLC* (Materials License Application), CLI-08-16, 68 NRC 221, 227-28 (2008) (“NEPA does not require an agency to assess *every* impact or effect of its proposed action, only effects on the environment. To be encompassed by NEPA, there needs to be a reasonably close causal relationship between a *change in the physical environment* and the effect at issue.” (emphasis in original)).

¹³⁵ New and Amended Contentions at 2.

¹³⁶ See *Hudson v. State Farm Mut. Auto. Ins. Co.*, No. 3:12-CV-83, 2013 WL 5744774, at *5 (E.D. Tenn. Oct. 23, 2013) (citation omitted).

¹³⁷ 42 U.S.C. § 4336(b)(1).

¹³⁸ 10 CFR 51.20(b)(2); see SECY-24-0046, Encl. 2 at 1 (“[T]he current regulations in 10 CFR 51.20(b) require an EIS or a supplement to an EIS for certain licensing actions (e.g., constructing a nuclear power reactor, renewing an operating license for a power reactor, constructing, or operating an enrichment plant).”)

(“not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource”) and the aggregate of the SMALL impacts “would not result in significant cumulative impacts.”¹³⁹ The New and Significant Review submitted by Applicants concluded that it “did not identify any new and significant information that would change the findings listed in the SEIS. Therefore, the SEIS findings remain valid for the resumption of power operations.”¹⁴⁰ The only question that matters, indeed, the determinative factor under the statute, is whether these actions present “a reasonably foreseeable significant effect on the quality of the human environment.”¹⁴¹ A conclusory assertion that restarting a plant is like some other action that automatically requires an EIS (without any significance review) does not present a material dispute with the Draft EA’s fact-intensive evaluation and reasoned conclusion that the proposed set of Federal actions for the reauthorization of power operations at Palisades presents no reasonably foreseeable significant effects and, therefore, proposed Amended and Substituted Contention 2 fails to meet the requirements of 10 CFR 2.309(f)(1)(iv) and (vi).

This argument-by-analogy also ignores the fact that, given Congress’s direction in the Fiscal Responsibility Act and ADVANCE Act, staff has proposed to amend 10 CFR 51.20(b) to

¹³⁹ License Renewal SEIS at 9-3, 9-5, 9-8; *see also* New and Significant Review at 114. Relatedly, the NRC staff has developed internal guidance regarding when new information might require a supplement to an already issued NEPA review document. Staff Process for Determining if a Supplement to an Environmental Impact Statement is Required in Accordance with Title 10 of the *Code of Federal Regulations*, Part 51.92(a) or 51.72(a) (Nov. 24, 2014) (ML13199A170) (“Staff Process”). “The time that has passed post-[final EIS] issuance *has no bearing on whether new information is significant or not*. . . . [T]he term ‘new information’ should be understood to include substantial changes to the proposed action and new and potentially significant changes in circumstances or information relevant to environmental concerns.” *Id.* at 1. The Staff Process cites to Commission case law that new information requiring a supplement is only that which presents “a *seriously* different picture of the environmental landscape.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 28 (2006) (emphasis in the original; citation and internal quotation marks omitted). Commission case law only requires environmental report supplementation when “new information identifies a ‘previously unknown’ environmental concern, but not where the new information ‘amounts to mere additional evidence supporting one side or the other of a disputed environmental effect.’” *S. Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-11, 75 NRC 523, 533 n.53 (citing *PFS*, CLI-06-3, 19 NRC at 28).

¹⁴⁰ New and Significant Review at 115.

¹⁴¹ 42 USC 4336(b).

eliminate the list of actions that automatically trigger an EIS and instead make the determination based on the “reasonably foreseeable significant effect” of each proposed action.¹⁴² NRC has granted an exemption from 10 CFR 51.20(b) to allow preparation of an EA and FONSI for new reactor construction.¹⁴³ The Commission told Congress the agency is prepared to grant similar exemptions on a case-by-case basis.¹⁴⁴ NRC prepared an EA and FONSI when it reinstated the Bellefonte construction permit application.¹⁴⁵ And NRC performed no additional environmental reviews in connection with the restarts of the Browns Ferry units that were offline much longer than Palisades.¹⁴⁶ In other words, the analogy works both ways, which further illustrates why such superficial comparisons do not present a material dispute with the detailed evaluation in the Draft EA of the reasonably foreseeable environment effects of *these proposed actions*, requiring rejection of the proposed contention for failure to satisfy 10 CFR 2.309(f)(1)(vi).

Additionally, Petitioning Organizations claim that the License Renewal SEIS was deficient because it did not adequately address earthquakes and so the Draft EA suffers the same alleged

¹⁴² SECY-24-0046, Encl. 2, pp.8-9

¹⁴³ *See supra* Hermes Exemption & n.56.

¹⁴⁴ NRC, Modernization of Nuclear Reactor Environmental Reviews, Report for the U.S. Senate Committee on Environment and Public Works and the U.S. House of Representatives Committee on Energy and Commerce, at 6-7, 11 (Jan. 2025) (ML24290A159) (“NRC ADVANCE Act Report”).

¹⁴⁵ NRC, Bellefonte Nuclear Power Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact, 74 Fed. Reg. 9308 (Mar. 3, 2009).

¹⁴⁶ The NRC directed the shutdown of all three units at the Browns Ferry Nuclear Plant (“Browns Ferry”) in 1985 to address performance and management issues, although the reactors retained NRC operating licenses. The NRC authorized the restart of Unit 2 in 1991, Unit 3 in 1995, and Unit 1 in 2007. Based on a review of publicly available documents related to the restarts, the NRC does not appear to have conducted any formal environmental review under NEPA before allowing the restart of each of the plants. *See* Preliminary Notification of Event or Unusual Occurrence PNO-II-91-26, “Subject: Unit 2 Restart” (May 23, 1991) (ML20073Q394) (preliminary notification of authorization to restart operations for Browns Ferry Unit 2 without discussion of environmental concerns); SECY-95-264, Restart of the Browns Ferry Nuclear Plant Unit 3 (Nov. 1, 1995) (ML20094M512) (request by NRC staff for Commission authorization for restart of Browns Ferry Unit 3 that does not discuss environmental issues); Letter from W. Travers, Region II, NRC, to P. Swafford, Tennessee Valley Authority, Browns Ferry Nuclear Plant, Unit 1 – Authorization to Restart – Docket No. 50-259 (May 15, 2007) (ML071350293) (authorizing restart of power operations after completion of recovery plans and without discussion of environmental issues).

flaw.¹⁴⁷ They raised this argument in the license renewal proceeding, and a licensing board dismissed it as beyond the scope of that proceeding.¹⁴⁸ So too here—this twenty-year-old claim continues to be a compliance argument directed at the sufficiency of a seismic safety analysis. Amended and Substituted Contention 2 does not explain why the Draft EA was required to address this issue; they cite NRC safety regulations but no NEPA requirement.¹⁴⁹ The revised contention also does not challenge the Draft EA’s conclusion that “the environmental impacts of postulated accidents of the proposed Federal actions would be NOT SIGNIFICANT.”¹⁵⁰ Their dispute with the Draft EA is merely that it does not contain the word “earthquake” or “seismic” enough.¹⁵¹ This fails to satisfy *any* of the requirements in 10 CFR 2.309(f)(1).

Next, Petitioning Organizations take aim at the Draft EA’s discussion of radioactive waste but, again, miss in every relevant way. They claim that the Draft EA should not have relied on the License Renewal SEIS’s evaluation of radioactive waste (which reviewed the impacts of radioactive waste generated from Palisades’s operations through 2031 and concluded that they are SMALL¹⁵²) because “the baseline for determining the environmental impact of restarting Palisades should be the status of Palisades when it went into decommissioning mode, not when it was in operation.”¹⁵³ This claim is impossible to make sense of for three reasons. First, their starting premise is wrong: the Draft EA clearly recognizes that the plant is shut down and would transition

¹⁴⁷ New and Amended Contentions at 4–5.

¹⁴⁸ *Palisades*, LBP-06-10, 63 NRC at 359–60.

¹⁴⁹ Petitioning Organizations cite to NRC safety regulations at 10 CFR Part 50, Appendix S and 10 CFR 72.103 that govern seismic design criteria for reactors and ISFSIs. New and Amended Contentions at 6. But, as the Commission held in the *Indian Point* decision, the environmental review process is not a “back door” to challenge safety issues. *Indian Point*, CLI-15-6, 81 NRC at 377-78.

¹⁵⁰ Draft EA at 3-65.

¹⁵¹ New and Amended Contentions at 5.

¹⁵² License Renewal SEIS at 6-2 to 6-3, 8-4.

¹⁵³ New and Amended Contentions at 5.

back into operations if the restart is approved.¹⁵⁴ Second, Petitioning Organizations offer no explanation for why they believe the transition from shutdown to restart will generate waste in a manner that creates a significant environmental impact, and they simply ignore the sections of the Draft EA that speak directly to this.¹⁵⁵ And third, they appear to criticize the Draft EA because the plant “will produce tons of radioactive waste for another 6 years” (i.e., until 2031), but that is the operational period that the License Renewal SEIS and the Draft EA considered.¹⁵⁶ It is not at all clear what Petitioning Organizations are actually objecting to, at least with respect to operations through 2031.

Petitioning Organizations also claim that the Draft EA failed to review radioactive waste generation during the subsequent license renewal period (i.e., past 2031).¹⁵⁷ Approval of the LARs would not authorize Applicants to operate Palisades past 2031; accordingly, NRC has no obligation to consider the environmental impacts of that operational period.¹⁵⁸ The fact that

¹⁵⁴ Draft EA at 3-1 (“Palisades is currently in a decommissioning state. Therefore, the affected environment will be defined for each resource area given this temporal baseline.”); *id.* at 3-61 (“No significant design configuration or operational changes are expected to impact waste management as a result of the proposed Federal actions. The facility would return to the same operational state prior to decommissioning and would have the same level of impacts as concluded in the 2006 SEIS.”).

¹⁵⁵ *See id.* at 3-60 (“Holtec estimated the total amount of radioactive wastes generated during refueling activities as part of the preparations for the resumption of power operations as 44,520 ft³ (1,260 m³) of Class A waste, 240 ft³ (7 m³) of Class B waste, and 1,770 ft³ (50 m³) of Class C waste”); Environmental RAI Response, Encl. 23 at 1–2 (explaining that waste generated during restart activities is expected to “be those generated during operations (radwaste, hazardous waste, construction debris, scrap metal, universal waste, nonhazardous solid waste)” and provided estimated volumes based on “a typical PNP refueling outage”).

¹⁵⁶ License Renewal SEIS at 1-8 (“NMC submitted an application to the NRC . . . to renew this OL for an additional 20 years of operation (i.e., until March 24, 2031).”); Draft EA at 4-5 (“A low quantity of uranium would be used during the 7-year operational period (resumption of operations).”).

¹⁵⁷ New and Amended Contentions at 5.

¹⁵⁸ The NRC generally defines “cumulative impacts” that must be analyzed under NEPA as including “other past, present, and reasonably foreseeable actions occurring in the vicinity of the nuclear plant.” *See* 10 CFR 51.53(c)(3)(2)(O). “Reasonably foreseeable actions” do *not* include “future, inchoate plans of the Licensee” or future licenses for which the licensee has not yet applied. *Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2)*, CLI-02-14, 55 NRC 278, 292 (2002); *see also Lands Council v. Powell*, 395 F.3d 1019, 1023 (9th Cir. 2005) *amending Lands Council v. Powell*, 379 F.3d 738 (2004) (“The agency is required to analyze the cumulative effects of projects that it is already proposing. For any project that is not yet proposed . . . a cumulative effects analysis would be both speculative and premature.”).

Applicants have notified NRC of their intent to submit a subsequent license renewal application in the future does not change that.¹⁵⁹ Once a subsequent license renewal application is actually before the Commission, 10 CFR 51.20(b) requires the agency to prepare an EIS addressing the environmental impacts for the subsequent renewal period. All that said, the Draft EA *did* consider the cumulative effects of radioactive waste management during a possible subsequent license renewal period and concluded that “the incremental effects of the proposed Federal actions related to waste management when added to the effects of other past, present, and reasonably foreseeable actions would not have significant cumulative effects.”¹⁶⁰ The 2024 License Renewal GEIS NRC recently prepared to address subsequent license renewal also concluded that environmental effects of onsite management of low-level and high-level radioactive waste during a subsequent license renewal period are expected to continue to be SMALL.¹⁶¹ Beyond the conclusory claim that “production of many tons of radioactive . . . waste almost 30 years into the future . . . poses significant direct environmental impacts,” Petitioning Organizations make no attempt to quantify the environmental effects or demonstrate that they are significant—much less challenge the conclusions of the Draft EA. Accordingly, this argument is out of scope, and, even if it is considered, it fails to raise a genuine dispute with Applicants in violation of 10 CFR 2.309(f)(1)(iii) and (vi).

Finally, Petitioning Organizations claim that the restart will involve “significant construction” and “engineering alterations.”¹⁶² They say that these activities are “poorly detailed” in the Draft EA, but they do not explain why the Draft EA is required to discuss these activities in

¹⁵⁹ *Catawba*, CLI-02-14, 55 NRC at 292-93.

¹⁶⁰ Draft EA at 3-61; *id.* at G-1, Table G-1, line 2 (listing the subsequent license renewal application in the list of foreseeable actions considered in the cumulative impacts analysis).

¹⁶¹ 2024 License Renewal GEIS at 4-135 to 4-137.

¹⁶² New and Amended Contentions at 6–7.

more detail than it does, they did not review or challenge the information that is available,¹⁶³ and they do not assert (much less demonstrate) that these activities present a significant environmental impact that would call into question the conclusions of the Draft EA.¹⁶⁴ Applicants also continue to highlight the heat exchanger upgrade that featured prominently in their original Petition, but not because Petitioning Organizations claim the upgrade will cause a significant environmental impact; rather, their argument is that the upgrade is not enough, and Applicants are required to do more to address climate change.¹⁶⁵ This is not a NEPA contention; this is a safety contention (indeed, it is one of the arguments advanced under their proposed Contention 4), which was addressed in Applicants' Answer and again below.¹⁶⁶ Their NEPA claim, that there is not enough

¹⁶³ For example, Petitioning Organizations claim there is “no detail in the EA nor anywhere else in the public domain of the nature and types of radioactive wastes that will be stored in” the new south radioactive material storage building. New and Amended Contentions at 6. But the Environmental RAI Response specifically says the “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).” Environmental RAI Response, Encl. 1, Att. 1 at 4. And the Draft EA explains that “Holtec maintains plans and procedures for management of radioactive and nonradioactive waste and plans to use existing processes for preparation of reauthorization activities resulting in waste generation”; “the proposed Federal actions would not alter radiological or non-radiological waste management processes currently in place at Palisades”; and “staff determined that radioactive and nonradioactive waste management impacts related to the activities from the preparations for resumption of power operations would be NOT SIGNIFICANT.” Draft EA at 3-60 to 3-61. Petitioning Organizations also say that the “two new Diverse and Flexible Coping Strategies Storage buildings” lack any explanation of their usage or purpose (New and Amended Contentions at 6), but the Draft EA explains that buildings have already been built (Draft EA at 2-5 and 3-7), and the New and Significant Review explains that Entergy built them to comply with the Beyond-Design-Basis orders following Fukushima (New and Significant Review at 19). “[C]ontention admissibility and timeliness requirements ‘demand a level of discipline and preparedness on the part of petitioners,’ who must examine the publicly available material and set forth their claims and the support for their claims at the outset.” *La. Energy Servs. L.P.* (Nat’l Enrichment Facility), CLI-04-25, 60 NRC 223, 224–25 (2004) (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428–29 (2003)).

¹⁶⁴ Petitioning Organizations suggest these activities might require “a license or permit of license amendment” or “special permits” (New and Amended Contentions at 6), but even if that were the case, it actually supports the conclusions in the Draft EA. See Draft EA at 3-24 (“Any potential release of pollutants during ground disturbance will be mitigated through Holtec’s SPCC-PIPP and SWPPP and associated BMPs”); *id.* at 3-45 (“if future ground-disturbing activities occur within this area, then a Michigan State critical dune permit would be required. Holtec will have cultural resource protection procedures for any ground-disturbing activities at the site. These procedures were submitted to the Michigan SHPO and federally recognized Indian Tribes for review and comment, and Michigan SHPO provided comments” (citations omitted)).

¹⁶⁵ New and Amended Contentions at 6-8.

¹⁶⁶ Applicants’ Answer at 57-64; *see also supra* Section IV.B.2.

discussion for a couple of buildings, is an abstract complaint that NRC should have done more, but they failed to engage with (or apparently read) any of the specifics or explain why more is required to reach a reasoned decision on the environmental effects of the restart. That does not present an issue for hearing or call into question the reasonableness of the Draft EA or its conclusions.¹⁶⁷

For all of the foregoing reasons, Amended and Substituted Contention 2 does not satisfy the 10 CFR 2.309(f) criteria for an admissible contention. It is both untimely and inadmissible and should be dismissed.

B. Amended and Substituted Contention 4 is Untimely and Inadmissible

Amended and Substituted Contention 4 has not actually been amended, and remains:

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.¹⁶⁸

Contention 4 is not an environmental contention; it is a safety contention. Petitioning Organizations agree.¹⁶⁹ The only change to the contention is that Petitioning Organizations have now pointed to the Draft EA’s discussion of climate change (distilled in Appendix F) as “new

¹⁶⁷ See *Consumers Power Co.* (Midland Plant, Units 1 & 2) ALAB-691, 16 NRC 897, 914 (1982) (the mere existence of a question about the possible materiality of information does not necessarily make the information material).

¹⁶⁸ New and Amended Contentions at 8.

¹⁶⁹ *Id.* at 24 (“Petitioning Organizations are well aware that they are citing environmental evidence collected by the NRC Staff . . . to insist that measures under the Atomic Energy Act be taken to ensure safe operation of Palisades.”).

supporting evidence” for admission of the contention as originally pled.¹⁷⁰ Specifically, Petitioning Organizations seek to bolster the argument advanced by Arnold Gundersen’s original declaration that Applicants will have to modify the plant’s design to address climate change in the future.¹⁷¹ But the Draft EA’s summary of climate change data is not new information; NRC simply did the research Petitioning Organizations neglected to do, using widely-available public tools that long predate the intervention deadline. But even if that information is considered, it does not support admission of Contention 4: Petitioning Organizations have not identified any safety requirement that the current facility design does not meet, and even if they did, that is a compliance matter for a petition under 10 CFR 2.206, not one for adjudication in connection with NRC’s approval of these LARs, which do not request to make any such changes. This argument (and the rest of Contention 4) remains inadmissible for all the same reasons provided in Applicants’ Answer.¹⁷²

1. The Climate Change Information Summarized in the Draft EA is Not New or Materially Different

Petitioning Organizations’ purported basis for satisfying the good cause standard to amend Contention 4 is provided as follows in the Motion:

The new information in Appendix F provides further *confirmation of the statements and opinions of Petitioners’ expert, Arnold Gundersen*, that the effects of climate change on the environment will affect the components and operational procedures of Palisades if it is allowed to restart.¹⁷³

...

The new information regarding climate change contained in Appendix F of the EA is new information that *confirms the existing contention*. This new information is important because it is

¹⁷⁰ *Id.* at 8 n.17. The only text that has materially changed in Contention 4 spans page three pages, from 21 to 24, of the New and Amended Contentions. The other sixteen pages that make up the “amended” contention are copied and pasted from the original Petition (apart from a few revisions to retroactively fix errors in Arnold Gundersen’s original declaration).

¹⁷¹ *See generally* Petition, Exhibit A, at 56-58.

¹⁷² Applicants’ Answer at 57-64.

¹⁷³ Motion at 3 (emphasis added).

comprises [sic] evidence favorable to admissibility of part of the Petitioning Organizations' Contention 4. It was not available at the time Petitioning Organizations brought their Petition to Intervene.¹⁷⁴

As noted above, Petitioning Organizations are not actually amending their original Proposed Contention 4, they are only seeking to supplement the bases of the contention.¹⁷⁵ “New bases for a contention cannot be introduced in a reply brief, *or at any other time after the date the original contentions are due*, unless the petitioner meets the late-filing criteria set forth in 10 CFR § 2.309(c) [or] (f)(2).”¹⁷⁶ Taking Petitioning Organizations at their word, the Draft EA merely compiled data that aligns with the claims Mr. Gundersen already made. Appendix F is a collection of information about the postulated changes to atmospheric and surface water temperatures as well as changes to precipitation patterns in the environs of Palisades now and in the future as a result of climate change.¹⁷⁷ The references in Appendix F are to public information that predates the

¹⁷⁴ *Id.* at 4–5 (emphasis added).

¹⁷⁵ *Id.* (The allegedly “new information is important because it comprises evidence favorable to admissibility of part of the Petitioning Organizations' Contention 4.”); New and Amended Contentions at 8 n.17.

¹⁷⁶ *Palisades*, CLI-06-17, 63 NRC at 732 (emphasis added).

¹⁷⁷ Draft EA at F-1 to F-2.

hearing deadline.¹⁷⁸ This same data was also readily available from other public sources.¹⁷⁹ Appendix F may be a new *document*, but it does not contain new or materially different information—the existence of climate change and its foreseeable environmental effects were available prior to the intervention deadline.¹⁸⁰ “New documents that merely compile preexisting information generally would not meet the ‘materially different’ standard.”¹⁸¹ Petitioning Organizations or Mr. Gundersen could have done the same review of public materials that NRC

¹⁷⁸ Draft EA at F-8 to F-9 (citing NRC, Environmental Impact Statement for an Early Site Permit (ESP) at the Clinch River Nuclear Site (April 2, 2019) (ML19087A266); USGCRP (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 (2023) *available at* <https://doi.org/10.7930/NCA5.2023>). In addition to the underlying data and references, similar summaries of this data were prepared by NRC and available to Petitioning Organizations prior to the intervention deadline. NRC’s policy regarding the need to consider climate change as part of a NEPA environmental review is over fifteen years old. *See Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 31 (2009). In many NEPA documents prepared since then, NRC has summarized the wealth of climate change data as it relates to nuclear facilities. *See generally* 2024 License Renewal GEIS at 3-139 to 3-145, 4-142 to 4-146; NUREG-1437, GEIS for License Renewal of Nuclear Plants, Supp. 61 Regarding License Renewal of Perry Nuclear Power Plant, Draft Report for Comment (Aug. 2024) (ML24241A256); NUREG-1437, GEIS for License Renewal of Nuclear Plants, Supp. 56 Regarding Fermi Nuclear Power Plant (Aug. 2016) (Vol.1: ML16259A103, Vol.2: ML16259A109); 2013 License Renewal GEIS at 4-229 to 4-242. The Environmental RAI Response also provided meteorological and emissions data (including greenhouse gasses) for Palisades and an explanation that “[m]ore recent data is not expected to vary significantly from the historical data” used in the License Renewal SEIS. Environmental RAI Response, Encl. 11, Encl. 13 Att. 1. The Environmental RAI Response also includes a discussion of Palisades’s expected impact to greenhouse gas emissions relative to alternative generation sources and an estimate of annual avoided CO2 emissions if Palisades resumes operations. *Id.*, Encl. 5 at 1, Encl. 18, Att. 1 at 19.

¹⁷⁹ *See Applicants’ Motion to Strike* at 6 n.23.

¹⁸⁰ The Commission’s admission rules allow petitioners to “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.” 10 CFR 2.309(f)(2) (emphasis added). To the extent they are relying on information in the Draft EA to support a new or amended *safety* contention, it is incumbent on them to clearly demonstrate why the Draft EA was the first time that information was available. *Oyster Creek*, CLI-09-7, 69 NRC at 260-61.

¹⁸¹ *Turkey Point*, LBP-24-08, 100 NRC at __ (slip op. at 33) (citing *Crow Butte*, CLI-20-8, 92 NRC at 264-65; *N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 493 (2010); *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 142 (2009).

did in preparing Appendix F. The fact that NRC has done it for them does not provide a basis to amend their contention.¹⁸²

Beyond simply citing the information NRC summarized in Appendix F, Petitioning Organizations also assert that it constitutes “an admission by the agency that was not available previously.”¹⁸³ They emphasize that the Draft EA says “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.”¹⁸⁴ In doing so they cite staff’s hypothesis and ignore the conclusion.¹⁸⁵ But, regardless, there is nothing new and materially different in the NRC’s statement that “climate change may create a new environment that could result in changed impacts” to the operation of nuclear plants in the future.¹⁸⁶ The NRC has documented the possibility that climate change may impact the environment surrounding nuclear

¹⁸² See *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3) CLI-99-11, 49 NRC 328, 342 (1999) (rejecting contentions where petitioners are simply “hoping something will turn up later as a result of NRC staff work” because such petitioners’ dispute is “not with the contents of the application, but with the very structure of the Commission’s adjudicatory process—which requires petitioners to come forward now, rather than later, with contentions”).

¹⁸³ Motion at 11.

¹⁸⁴ New and Amended Contentions at 22 (quoting Draft EA at F-1).

¹⁸⁵ See Draft EA at F-3 (“NRC staff concluded the expected impact determinations (not significant) assigned in Section 3 of this EA would not be altered by the projected effects of climate change.”); *id.* at F-4 (“air quality impacts may see a slight increase in ground level ozone levels but are not significant enough to change the overall impact assessment as the precursor emissions attributable to Palisades are minimal”); *id.* (“Water use by Palisades is projected to remain minor relative to Lake Michigan’s total availability, with no substantial effect on regional water resources or other users. Climate change is not expected to have a significant change in the consumptive water use for the cooling towers because evaporation from the cooling towers might increase under a warming climate but would not be distinguishable from an inter- and intra-annual variability in current evaporation amounts. 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.”); *id.* at F-8 (“NRC staff concludes that the potential effects of climate change would not alter the impact determinations in this EA for the preparation for the resumption of power operations and for the resumption of power operations at Palisades”); see also License Renewal SEIS at A-20 (“any changes in watershed characteristics [caused by climate change] would likely be gradual, allowing water-use conflicts to be resolved as needed”).

¹⁸⁶ Draft EA at F-1. The same statement appears in the 2024 License Renewal GEIS. See 2024 License Renewal GEIS at 4-145 (“Climate change may impact the affected environment in a way that alters the environmental resources that are impacted by the proposed action (license renewal).”)

facilities for many years.¹⁸⁷ And, in fact, Petitioning Organizations cite a Government Accountability Office report and Yale article in the new sections of Amended and Substituted Contention 4 that make the same point—both of which were published six months before the intervention deadline.¹⁸⁸

In sum, Petitioning Organizations characterize NRC’s review of data and documents and articulation of the range of possible effects of climate change on the environment surrounding Palisades as new information to support admissibility of their contention, but precisely the same information upon which the NRC analysis is based was available to Petitioning Organizations when they filed their initial contentions. NRC’s contention admissibility rules require petitioners to come forward with supporting bases for their contentions at the outset, rather than simply “hoping something will turn up later as a result of NRC staff work.”¹⁸⁹ Because Appendix F to the Draft EA is not materially different than the information that was previously available, Petitioning Organizations’ request to amend Contention 4 should be rejected as untimely for failing to satisfy 10 CFR 2.309(c)(i) and (ii).

¹⁸⁷ 2013 License Renewal GEIS at 1-29 (“Changes in climate have the potential to affect air and water resources, ecological resources, and human health, and should be taken into account when evaluating cumulative impacts over the license renewal term.”); *id.* at 4-40 (discussing impacts of climate change on water availability); *id.* at 4-237 to 4-243 (discussing the impacts of climate change on various resource categories); 2024 License Renewal GEIS at 3-139 to 3-145, 4-142 to 4-146 (similar to 2013 License Renewal GEIS); License Renewal SEIS at A-20 (responding to comments regarding climate change impacts on water availability).

¹⁸⁸ New and Amended Contentions at 23 (citing Yale Environment 360, “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> (last visited Mar. 27, 2025); GAO, Nuclear Power Plants, NRC Should Take Actions to Fully Consider the Potential Effects of Climate Change (Apr. 2024) *available at* <https://www.gao.gov/assets/gao-24-106326.pdf> (last visited Mar. 27, 2025).

¹⁸⁹ *Oconee*, CLI-99-11, 49 NRC at 342.

2. Amended and Substituted Contention 4 Remains Inadmissible for the Same Reasons Given in Applicants’ Answer

At its core, Contention 4 is a challenge to NRC’s process for restarting plants and is, therefore, barred by 10 CFR 2.335. The new information Petitioning Organizations have offered in support of proposed Contention 4 does not change the fact that it is inadmissible. Applicants’ Answer fully addresses the issue,¹⁹⁰ but to recap: (1) their argument is that Applicants will be required to make changes to the plant design in the future, and they believe those changes will require a license amendment rather than satisfying the criteria for implementation without a license amendment under 10 CFR 50.59; (2) they have not identified any change proposed by the LARs that is affected by climate change, have not alleged that the LARs are deficient due to climate change, and have not identified any safety requirement that Palisades does not meet today; and (3) they have not identified any specific safety requirement that they allege Palisades will not be able to meet in the future as a result of climate change, much less explained why any modifications to the facility to address such a concern could not satisfy the criteria of 10 CFR 50.59(c). All of their claims are forward looking. “[T]he prospect of a future license amendment does not create a present hearing opportunity.”¹⁹¹ And even if they did identify a future change to the facility design that Applicants failed to properly screen under 10 CFR 50.59, that is a compliance argument that must be raised under 10 CFR 2.206.¹⁹²

Petitioning Organizations’ purportedly new arguments based on the Draft EA do not change any of this. The nature of their claim, even if it were supported, remains beyond the scope of this proceeding, and thus fails to satisfy 10 CFR 2.309(f)(1)(iii). And the new “evidence” they

¹⁹⁰ Applicants’ Answer at 59–60.

¹⁹¹ *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-16-9, 83 NRC 472, 474–75 (2016).

¹⁹² *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994).

point to in the Draft EA does not even support the out-of-scope claim. Petitioning Organizations assert that the Draft EA “admits” that climate change will impact ongoing operations.¹⁹³ That is not what the Draft EA says. The opening paragraph of Appendix F says that “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.”¹⁹⁴ But then the remainder of the Appendix proceeds to determine if that is the case and if any such impacts pose a significant environmental effect. Petitioning Organizations focus on the alleged (but unspecified) impacts of ambient air temperature and Lake Michigan temperature and levels.¹⁹⁵ The Draft EA reviewed both, concluding as follows:

Projected increases in temperature, humidity, and lake surface water temperature could lead to a small increase in the aerosol concentrations within the cooling tower plume; however, this impact is expected to be minor as the substantial majority of aerosol concentrations in the plume are directly attributable to plant operations and are not significantly influenced by environmental conditions. Similarly, air quality impacts may see a slight increase in ground level ozone levels but are not significant enough to change the overall impact assessment as the precursor emissions attributable to Palisades are minimal. Therefore, the *NRC staff expects that climate change would not alter conclusions made in this EA.*¹⁹⁶

...

Although variability in Lake Michigan water levels and ice cover may occur, the volume of effluent discharges from Palisades will remain minimal compared to the lake’s capacity, resulting in no significant impact on water quality or ice cover. Water use by Palisades is projected to remain minor relative to Lake Michigan’s total availability, with no substantial effect on regional water resources or other users. Climate change is not expected to have a significant change in the consumptive water use for the cooling towers because evaporation from the cooling towers might increase

¹⁹³ New and Amended Contentions at 22.

¹⁹⁴ Draft EA at F-1 (emphasis added).

¹⁹⁵ New and Amended Contentions at 18-23.

¹⁹⁶ Draft EA at F-4.

under a warming climate but would not be distinguishable from an inter- and intra-annual variability in current evaporation amounts. 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. Thus, despite probable shifts in hydrology due to climate projections, Palisades resumption of power operations are required to comply with environmental regulations, resulting in minimal impact on water quality and availability. The NRC staff expects that climate change would not alter conclusions made in this EA.¹⁹⁷

. . .
The NRC staff concludes that the potential effects of climate change would not alter the impact determinations in this EA for the preparation for the resumption of power operations and for the resumption of power operations at Palisades.¹⁹⁸

Petitioning Organizations do not challenge (or even acknowledge) these conclusions in the Draft EA or take issue with the sufficiency of NRC staff’s NEPA analysis. Indeed, they originally challenged the climate and meteorological information Applicants submitted in their original Contention 7,¹⁹⁹ but they agree that the Draft EA’s Appendix F mooted that contention.²⁰⁰ The conclusion Petitioning Organizations draw from all this is that NRC must conduct a full reevaluation of the plant’s design basis “for [the effects of climate change] at midcentury on the structures and components of Palisades.”²⁰¹ They do not explain why such a comprehensive review

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at F-8.

¹⁹⁹ Petition at 68.

²⁰⁰ Petitioning Organizations’ Mootness Brief at 3 (“[P]ublication of the EA assuages . . . the omission of discussion of climate change effects claimed in Contention 7.”). Not only that, Petitioning Organizations are now relying on Appendix F to support their own arguments.

²⁰¹ New and Amended Contentions at 23.

is required by NEPA or any other requirement applicable to NRC.²⁰² They also overlook the statements in the Draft EA that the NRC has already considered these projections.²⁰³ Apart from the conclusory claim that the impacts of climate change on plant operations will be “significant,”²⁰⁴ they do not attempt to explain *how* the impacts addressed in the Draft EA will affect Palisades’s operations, nor do they make any attempt to quantify the significance of those impacts from a safety or environmental perspective. They do not explain why NRC’s normal oversight and enforcement authority—including the reinstated Reactor Oversight Process at Palisades and the agency’s backfit authority pursuant to 10 CFR 50.109 if specific safety issues are identified in the future—could not address these speculative future impacts the same way they address any new safety information.

In summary, proposed Amended and Superseded Contention 4 has not been modified from the originally proposed Contention 4 presented in the Petition and remains inadmissible for all the reasons set forth in Applicants’ Answer. Petitioning Organizations fail to demonstrate good cause as required by 10 CFR 2.309(c). Moreover, Appendix F to the Draft EA does not actually support their contention, but even if it did, their claim is beyond the scope of this proceeding because

²⁰² NEPA does not require any particular substantive outcome but only asks that the agency sufficiently review the relevant issues to satisfy a rule of reason. *See Robertson*, 490 U.S. at 350; *Ctr. for Biological Diversity*, 67 F.4th at 1182; *Claiborne*, CLI-98-3, 47 NRC at 88. As explained above, the Petitioning Organizations concede that NRC has done so here. The cases cited by Petitioning Organization do not require more. Those cases generally involved either the consideration of mitigation measures, *see Audubon Society of Central Arkansas v. Dailey*, 977 F.2d 428, 436 (8th Cir. 1992), *Sierra Club v. U.S. Dep’t of Transp.*, 753 F.2d 120, 127 (D.C. Cir. 1985), or the general “hard look” standard, *Cabinet Mountains Wilderness v. Peterson*, 685 F.2d 678, 681-82 (D.C. Cir. 1982), but do not require anything like a full reevaluation of Palisades’ design basis. And as the Commission has held, the NRC staff’s environmental review is separate from its safety review. *Indian Point*, CLI-15-6, 81 NRC at 377-78.

²⁰³ Draft EA at F-1 (“NRC staff uses climate change projections for the mid-21st century (i.e., 2036–2065) as the bounding climate scenario for the time period covering the resumption of power operations at Palisades . . .”).

²⁰⁴ New and Amended Contentions at 23.

nothing in the revised arguments within Contention 4 present a genuine dispute with *these LARs* and, thus, should be rejected for failing to satisfy 10 CFR 2.309(f)(1)(iii) and (vi).

C. Amended and Substituted Contention 5 is Untimely and Inadmissible

Petitioning Organizations present Amended and Substituted Contention 5 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.²⁰⁵

This challenge comes too late. The purpose and need statement in the Draft EA is substantially similar—by Petitioning Organizations’ argument, *too* similar—to the purpose and need statement submitted by Applicants on October 4, 2024.²⁰⁶ Even if the untimely argument is considered, Petitioning Organizations’ challenge to the purpose and need statement does not present a material dispute with the Draft EA because it fails to demonstrate that the purpose and need statement is unreasonable.

1. Petitioning Organizations’ Challenge to the Purpose and Need Statement Filed Six Months Ago is Too Late

Petitioning Organizations’ original proposed Contention 5 was a contention of omission, asserting that “[t]here is no purpose and need statement appearing in the document the NRC considers to suffice for Holtec’s Environmental Report. Pursuant to 10 C.F.R. § 51.45, an Environmental Report must contain a statement of the purpose for the project.”²⁰⁷ In their Motion, Petitioning Organizations contend that “the EA filed by the NRC constitutes new information that was not available at the time the contentions were initially filed and that the information in the EA

²⁰⁵ *Id.* at 27.

²⁰⁶ Environmental RAI Response, Encl. 2.

²⁰⁷ Petition at 63–64.

is materially different than any information previously available.”²⁰⁸ Yet, they also say “[t]he purpose and need statement in the EA is virtually identical to the purpose and need statement in Holtec’s RAI response.”²⁰⁹

The only question for purposes of 10 CFR 2.309(c) is whether Petitioning Organizations were free to ignore the Environmental RAI Response that supplied the purpose and need statement on October 4, 2024. They were not. “Where a contention alleges the omission of particular information or an issue from an application, *and the information is later supplied by the applicant* . . . the contention is moot. Intervenors must *timely* file a new or amended contention that addresses the factors in [10 CFR 2.309(c)] in order to raise specific challenges regarding the new information.”²¹⁰ Applicants filed the purpose and need statement nearly six months ago. Petitioning Organizations waited too long to revise their contention of omission.²¹¹

The Commission’s *Fermi* decision emphasizes the risk that intervenors take when they ignore information supplied by the applicant when submitting petitions. In *Fermi*, the Commission upheld dismissal of a proposed contention where intervenors “purposely waited to see whether the Staff would supplement the analysis provided in the [applicant’s] environmental report” during its NEPA review.²¹² Remarking that “our rules of practice require contentions to be raised at the earliest possible opportunity,” the Commission upheld the rejection of the proposed new and

²⁰⁸ Motion at 8.

²⁰⁹ New and Amended Contentions at 28.

²¹⁰ *McGuire/Catawba*, CLI-02-28, 56 NRC at 383 (emphasis added, citations omitted).

²¹¹ The Commission and licensing boards “typically consider 30 to 60 days from the initiating event a reasonable deadline for proposing new or amended contentions.” *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491, 499 (2012) (footnote omitted).

²¹² *Fermi*, CLI-15-1 at 7.

amended contentions as untimely and for failing to “point to any material difference between [applicant’s] or the Staff’s environmental documents.”²¹³

Petitioning Organizations try to avoid this result by claiming that “the only way to provide new information that was omitted from an [environmental report] is in a revised [environmental report], not a response to an RAI.”²¹⁴ They point to an Atomic Safety and Licensing Board decision that said a contention of omission “can be cured by the applicant supplying the missing information in a revised ER or by the NRC Staff supplying the missing information.”²¹⁵ There is no need to debate the meaning of “can” because the Commission has explicitly said that a contention of omission 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.’”²¹⁶ The Commission and licensing boards have held time and time again that contentions must be raised at the earliest possible opportunity.²¹⁷ There is nothing unique about Petitioning Organizations’ claims here that excused them from this longstanding requirement—all the more so because they specifically raised this issue in their original Petition.

Petitioning Organizations also claim that “[t]he environmental document submitted by Holtec [referring to the New and Significant Review] was not an ‘environmental report’ as required by 10 C.F.R. § 51.45. As such, Petitioning Organizations were not able to base any environmental

²¹³ *Id.* at 7–8.

²¹⁴ Motion at 11 (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-6, 90 NRC 17, 21 (2009)).

²¹⁵ *Id.* at 21 (emphasis added).

²¹⁶ *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 444 (2006) (quoting *McGuire/Catawba*, CLI-02-28, 56 NRC at 383) (emphasis added).

²¹⁷ *See, e.g., Pilgrim*, CLI-12-10, 75 NRC at 482-83 (“Our process demands that petitioners carefully review . . . and raise all their distinct challenges at the outset, avoiding piecemeal supplemental contentions unless they could not have been raised earlier.”).

contentions on that document.”²¹⁸ This is a bizarre argument to make given that they filed several environmental contentions challenging the New and Significant Review in their original Petition.²¹⁹ Not only that, they specifically challenged its failure to include a purpose and need statement.²²⁰ Their challenge was mooted by the Environmental RAI Response, at which point they had an obligation to either amend their original contention of omission or abandon it.²²¹ They chose the latter by not updating their challenge to Applicants’ purpose and need statement in a timely manner.²²²

Petitioning Organizations final argument for why they are not too late is that *NRC’s adoption* of the purpose and need statement constitutes “new information.”²²³ They assert, “it was not clear whether that purpose and need version would be published as the purpose and need statement in the NRC Staff’s EA. As an RAI statement, it was Holtec’s, not the NRC’s opinion of what the purpose and need statement would be. But then the NRC Staff adopted it all as the NRC’s purpose and need statement for the restart.”²²⁴ This logic would mean petitioners never have to raise environmental contentions at the outset; they could just wait and see whether NRC relies on the information in the applicant’s submission. That is, of course, not what is required by the NRC’s contention admissibility requirements.²²⁵ Petitioners “who choose to wait to raise contentions that

²¹⁸ Motion at 8-9.

²¹⁹ Petition at 40-45 and 63-73.

²²⁰ *Id.* at 63-65.

²²¹ *USEC*, CLI-06-9, 63 NRC at 444.

²²² While petitioners have an “ironclad obligation” to review the record and formulate their contentions, (*Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 24–25 (2001)), there is not even a question of notice or opportunity here. Both Applicants’ and NRC Staff’s answers specifically pointed out the purpose and need statement in the Environmental RAI Response. Applicants’ Answer at 66-67; NRC Staff’s Answer at 74-75. Petitioning Organizations merely chose to ignore it.

²²³ Motion at 10-11.

²²⁴ *See* New and Amended Contentions at 28.

²²⁵ 10 CFR 2.309(f)(2).

could have been raised earlier do so at their peril. They risk the possibility that there will not be a material difference between [the applicant’s and the NRC’s environmental review documents], thus rendering any newly proposed contention on previously available information impermissibly late.”²²⁶ NRC staff’s incorporation of existing information “does not serve to restart the clock for arguments that could have—and therefore under [the agency’s] contention admissibility requirements should have—been raised at the outset.”²²⁷

For all of these reasons, Petitioning Organizations’ Amended and Superseded Contention 5 should be rejected for failing to demonstrate good cause as required by 10 CFR 2.309(c).

2. Petitioning Organizations’ Challenge to the Purpose and Need Statement Does Not Raise a Material Dispute with the Draft EA

In their proffered Amended and Substituted Contention 5, Petitioning Organizations assert that the purpose and need statement in the Palisades Draft EA “does not comply with the intent of NEPA” because it adheres too closely to Applicants’ goals and, so, is allegedly a “self-serving” statement, containing “unverified” assertions of demand for clean baseload power.²²⁸ Petitioning Organizations claim NRC should have undertaken projections of regional demand load growth, forecasts of new sources of power generation, or other projections of future electricity needs before developing a purpose and needs statement.²²⁹ They also assert that NRC staff should have considered “incremental construction of alternative energy sources and implementation of industrial-scale conservation measures.”²³⁰ But they do not explain why any of this is required by

²²⁶ *Fermi*, CLI-15-1, 81 NRC at 7; see also *Turkey Point*, LBP-24-08, 100 NRC at ___ (slip op. at 14–16) (rejecting a similar argument because the petitioner waited to see how staff addressed comments on a draft document).

²²⁷ *Turkey Point*, LBP-24-08, 100 NRC at ___ (slip op. at 15 n.70) (quoting *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-16-10, 83 NRC 494, 520 (2016)).

²²⁸ New and Amended Contentions at 27.

²²⁹ *Id.* at 29–30.

²³⁰ *Id.* at 30.

NEPA or NRC’s implementing regulations—because it is not—particularly where, as the Draft EA explains, there are two off-takers who have signed power purchase agreements to buy 100% of the output from Palisades once it restarts, objectively demonstrating the need for the Palisades output.²³¹

NEPA requires that an environmental document should “include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action.”²³² The purpose and need of the project are principally relevant to the alternatives analysis required for a full EIS.²³³ However, even in that context, the purpose and need for a project are treated as a given.²³⁴ NRC regulations implementing NEPA state only that an EA should contain a “brief” discussion of the need for the proposed action.²³⁵ Applicable NRC guidance explains:

When writing this portion of the EA, the preparer should discuss the applicant’s motivation for submitting the application to the NRC. For example, does the requested exemption or license amendment provide some benefit to the applicant if granted? How would the applicant be affected if the application was not approved?²³⁶

This guidance is consistent with NEPA’s agnostic approach to the underlying purpose and need of a project. Such statement need only describe the applicant’s motivation for the project and the

²³¹ Draft EA at 1-4.

²³² 42 U.S.C. § 4336a(d).

²³³ 42 U.S.C. § 4332(C)(iii).

²³⁴ *See id.* (the EIS should include a consideration of “reasonable range of alternatives to the proposed agency action . . . that are technically and economically feasible, and meet the purpose and need of the proposal”); *id.* § 4336e(12) (defining the “proposal” as “a proposed action at a stage when an agency has a goal[.]”).

²³⁵ 10 CFR 51.30(a)(1)(i).

²³⁶ LIC-203, Rev. 4, Procedural Guidance for Categorical Exclusions, Environmental Assessments, and Considering Environmental Issues at C-1 (July 13, 2020) (ML20016A379) (“LIC-203”).

effect on the applicant if the application is granted or not.²³⁷ Nothing in the statute or NRC’s regulations and guidance requires anything other than a “brief” description of the project’s purpose and need sufficient to satisfy the rule of reason.²³⁸ In preparing the statement of purpose and need, NRC staff is directed to look at the applicant’s motivation for the project and the potential impacts on the applicant if the project is approved or not.²³⁹

Here, the Draft EA sets forth separately the purpose and need for both the NRC reauthorization actions and DOE’s financial assistance action, neither of which should be read in isolation.²⁴⁰ The Draft EA explains that the purpose and need of the NRC reauthorization actions is “to provide an option that allows for baseload clean energy power generation capability within the term of the Palisades’ RFOLE to meet current system generating needs.”²⁴¹ The purpose and need for the DOE action is to meet the legislative goals given to it by Congress in the Energy Policy Act of 2005 and the Inflation Reduction Act to “finance projects and facilities in the United States that retool, repower, repurpose, or replace energy infrastructure that has ceased operations or to enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases.”²⁴² In addition to these goals, the State of Michigan also demonstrated the need for the project in establishing a clean energy standard for electric

²³⁷ See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 146 (17, 2004) (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir. 1991), *cert. denied*, 501 U.S. 994 (1991) (“The FEIS appropriately gave [the applicant’s] goal of providing an offsite storage alternative great weight. In considering alternatives under NEPA, an agency must ‘take into account the needs and goals of the parties involved in the application.’”).

²³⁸ See *Ctr. for Biological Diversity*, 67 F.4th at 1182; *USEC Inc. (Am. Centrifuge Plant)*, CLI-07-5, 65 NRC 429, 473 (2007) (explaining that the purpose and need section “is simply a statement of what the proposed federal action will accomplish and a description of the underlying need for this action.”).

²³⁹ LIC-203 at C-1.

²⁴⁰ *Hydro Res., Inc.* (P.O. Box 777, Crownpoint, NM 87313), LBP-06-19, 64 NRC 53, 85 (2006) (rejecting intervenors’ argument based on reading a purpose and need statement in isolation).

²⁴¹ Draft EA at 1-3.

²⁴² *Id.* at 1-4.

providers to provide at least 80 percent clean energy by 2035 and 100 percent by 2040.²⁴³ And, of course, Congress enacted the ADVANCE Act explicitly “to advance the benefits of nuclear energy.”²⁴⁴

Both the Commission and courts have held that state and federal legislative goals are an appropriate basis for a project’s purpose and need under NEPA.²⁴⁵ The Draft EA’s purpose and need statement goes on to explain that the power purchase agreements (“PPAs”) under which Wolverine Power Cooperative (“Wolverine”) and Hoosier Energy (“Hoosier”) agreed to purchase the full output from the facility undergirds Applicants’ request to restart the Palisades project.²⁴⁶ The Commission and courts (as well as NRC guidance, as noted above) also explain that agencies

²⁴³ Michigan’s Act No. 235 expressly defines clean energy as including nuclear generation. MICH. COMP. LAWS. § 460.1003(i) (“Act 235”). The State of Michigan also appropriated \$300M in public funds to support the Palisades restart. House Fiscal Agency, General Omnibus Budget of the State of Michigan for Fiscal Year 2024-2025 at 200 (June 26, 2024). The U.S. Congress has itself chosen to incentivize the development of nuclear power in the recently enacted ADVANCE Act, meant to streamline new nuclear licensing, and in the Inflation Reduction Act, which augmented the DOE loan program and provided tax credits that benefit revitalized generation resources. ADVANCE Act § 506, Pub. Law 118-67 (July 9, 2024); 42 U.S.C. § 16517.

²⁴⁴ ADVANCE Act preamble, Pub. Law 118-67 (July 9, 2024).

²⁴⁵ See *Hydro Res.*, LBP-06-19, 64 NRC at 85 (upholding a purpose and need statement based on congressional objectives); see also *Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1085 (9th Cir. 2013) (noting that “an agency must consider the statutory context of the proposed action and any other congressional directives in addition to a private applicant’s objectives” in upholding a purpose and need statement published by a federal agency based on state financial support and stated public interest); *Citizens Against Burlington*, 938 F.2d at 196 (In preparing a purpose and need statement, “an agency should always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency’s statutory authorization to act, as well as in other congressional directives.”).

²⁴⁶ Draft EA at 1-4; see also HDI PNP 2023-028, Letter from J. Fleming, HDI, to NRC Document Control Desk, Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments, Encl. 1 at 14 (Dec. 6, 2024) (ML23340A161) (“LTA”) (“Holtec Palisades has entered into a Power Purchase Agreement (‘PPA’) with Wolverine Power Supply Cooperative, Inc. (‘Wolverine’), and Hoosier Energy Rural Electric Cooperative, Inc. (‘Hoosier’), to collectively sell all of the Facility’s energy and capacity under a long-term, fixed price arrangement that will remain in effect for the full term of the Facility license, including any license renewal terms.”).

should take into consideration the applicant’s economic goals in defining the purpose of a federal action under NEPA.²⁴⁷

Petitioning Organizations cite the D.C. Circuit decision in *Citizens Against Burlington, Inc. v. Busey* to assert that the purpose and need statement must be “reasonable,”²⁴⁸ but then they ignore the D.C. Circuit’s direction for how agencies are supposed to do that. The court focused on two factors in determining the purpose of federal agency actions: (1) “always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency’s statutory authorization to act, as well as in other congressional directives,” and (2) agencies should consider the “needs and goals of the parties involved in the application.”²⁴⁹ Once the agency has considered these two factors, it must merely formulate a stated purpose within a range of reasonable choices.²⁵⁰ The Petitioning Organizations also cite *Environmental Law and Policy Center v. NRC*, but similarly ignore that the Seventh Circuit was “persuaded by the Board’s analysis” that NEPA “does not require an agency to disregard a private applicant’s purpose for a project” so long as that purpose is broad enough to consider reasonable alternatives to the action under consideration.²⁵¹

²⁴⁷ *Hydro Res., Inc.*, CLI-01-4, 53 NRC at 55; *Alaska Survival*, 705 F.3d at 1085; *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 72 (D.C. Cir. 2011) (“An agency determining its objectives for an action should consider the needs and goals of the parties involved in the application or permit as well as the public interest.” (internal quotation omitted)).

²⁴⁸ New and Amended Contentions at 27 (citing *Citizens Against Burlington*, 938 F.2d at 196).

²⁴⁹ *Citizens Against Burlington*, 938 F.2d at 196 (citing *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 372 (D.C. Cir. 1981) (“When Congress has enacted legislation approving a specific project, the implementing agency’s obligation to discuss alternatives in its [EIS] is relatively narrow.”)).

²⁵⁰ *Id.* (“We review that choice, like all agency decisions to which we owe deference, on the grounds that the agency itself has advanced.”).

²⁵¹ *Envtl. Law and Pol’y Center v. NRC*, 470 F.3d 676, 683, 684 (7th Cir. 2006).

In other words, NRC guidance and the very precedent Petitioning Organizations cite supports the dismissal of proposed Amended and Substituted Contention 5.²⁵²

Petitioning Organizations also complain that NRC drafted the purpose too narrowly—in a way that “leaves only one alternative”—because NRC referred to the need for power “within the term of the Palisades’ RFOL” (i.e., from now until 2031).²⁵³ The Draft EA relies on the demonstrated need by Applicants, their PPA off-takers and Michigan officials for near-term clean baseload energy.²⁵⁴ Petitioning Organizations offer only unsupported assertions questioning that need that do not create a genuine factual dispute with the Draft EA. Petitioning Organizations question that “100% of the energy generated by Palisades would be immediately needed,” based

²⁵² Petitioning Organizations completely ignore the state and federal legislative directives related to the project. *See supra* nn.243 & 263. In addition to the Inflation Reduction Act and Michigan legislation, in the 2024 ADVANCE Act Congress set forth the development of nuclear power as a national priority. To this end, the ADVANCE Act includes § 506, which specifically addressing environment review, including review of nuclear projects under NEPA. Congress directed the NRC to prepare a report describing efforts NRC would take “to facilitate efficient, timely, and predictable environmental reviews of nuclear reactor applications for a license under section 103 of the Atomic Energy Act of 1954 (42 U.S.C. 2133), including through expanded use of categorical exclusions, environmental assessments, and generic environmental impact statements.” *Id.* NRC was asked to consider a number of different means to streamline and simplify environmental reviews under NEPA, including incorporation of material by reference, using categorical exclusions, streamlining consideration of alternatives, and using material prepared by the applicant. *Id.* The NRC prepared the NRC ADVANCE Act Report in response, submitting it to Congress in January 2025, proposing a number of steps available to achieve the goals of the ADVANCE Act.

²⁵³ New and Amended Contentions at 29.

²⁵⁴ *See, e.g.*, Draft EA at 2-6 (“[T]he delay needed to finish decommissioning and remove the existing facilities before beginning to construct a new reactor may impede the timely implementation of the purpose and need of the proposed Federal action. . . . Construction of the new reactor would not have to wait for decommissioning of the existing reactor, although building a new reactor would still take longer than resuming operation of an already built reactor.”); Environmental RAI Response, Encl. 2, Att. 1, Letter from Michigan State Representatives to Governor Gretchen Whitmer, at 1 (May 25, 2023) (“The successful re-powering of Palisades would immediately provide safe, carbon-free, and reliable energy to a grid that desperately needs more baseload generation.”); *id.* Encl. 2, Att. 2, Letter from Michigan Congressional Delegation to Secretary Granholm and Chairman Hanson (Dec. 15, 2023) (“The repowering of Palisades represents a critical step in addressing energy shortages, supporting the fight to lower carbon emissions, and promoting economic growth.”). In the separate FERC proceeding for the Palisades restart project, the Michigan Public Services Commission (“PSC”) intervened in support of the restart. In its filings with FERC, the Michigan PSC explained that “[t]he recommissioning of the Palisades Nuclear Plant is key to improving Michigan’s resource adequacy” during a period marked by widespread retirements of dispatchable generation. *In re Holtec Palisades, LLC*, FERC Docket No. ER 25-1083-000, at 3-4 (Feb. 12, 2025) (“Michigan PSC Comments”). The NRC’s reference to the operational term of the existing license reflects the concrete, time-sensitive reliability and policy needs facing the region—not an artificial narrowing of alternatives.

on speculation (relying on a CNN article) that “data center power needs in the U.S. might be seriously overstated.”²⁵⁵ However, they do not explain why this is relevant given that two power cooperatives have signed PPAs to purchase the entire output from the facility.²⁵⁶ Such speculation does not raise a material or supported dispute with any of the bases Applicants and NRC provided in support of the near-term desire to return 800 MW of clean baseload energy to the Michigan and MISO grid.

Relying on the same faulty logic, Petitioning Organizations argue that NRC should have undertaken additional energy forecast studies before formulating the Draft EA’s purpose and need statement, but they do not identify why NEPA, NRC’s regulations, or common sense would require such an extraordinary step by an agency tasked with regulating nuclear safety (not energy markets or long-term capacity planning) for a plant that is already constructed and has executed PPAs for its full output. And the Commission has rejected the argument that NRC staff is required to prepare projections of future electricity needs as part of its evaluation of the purpose and need statement.²⁵⁷

²⁵⁵ New and Amended Contentions at 29–30 (citing D. Goldman, “What is DeepSeek, the Chinese AI startup that shook the tech world?”, CNN.com (Jan. 27, 2025) *available at* <https://www.cnn.com/2025/01/27/tech/deepseek-ai-explainer/index.html> (last visited Mar. 27, 2025)).

²⁵⁶ Environmental RAI Response, Encl. 18, Att. 1 at 18 (“Holtec has entered a long-term power purchase agreement (PPA) with two rural, not-for-profit energy cooperatives – Wolverine Power and Hoosier Energy – who will purchase the plant’s emissions-free baseload generation. That agreement not only ensures the plant’s operational safety and reliability, economic viability, and debt service, but provides long-term price stability for an asset that is both baseload generation and supports the state’s clean climate goals.”); LTA, Encl. 1 at 15 (“Holtec Palisades has entered into a life-of-plant PPA with Wolverine and Hoosier for all Facility energy and capacity during the license term and any subsequent renewal terms. The pricing terms of the PPA are reflected in the proprietary Enclosure 3A. Wolverine and Hoosier are electric cooperatives that serve as their own rate-setting authority. They will recover amounts paid to Holtec Palisades under the PPA through tariff rates charged to their members, which members in turn collect all such costs from their retail ratepayers”).

²⁵⁷ *See Seabrook*, CLI-12-5, 75 NRC at 323. In general, NEPA makes it clear that the responsible agency is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable. 42 U.S.C. § 4336(c) (emphasis added). Petitioning Organizations have not provided any basis for why such a step would even be needed—much less that the cost and schedule for preparing it would be justified—given the stated need for power by multiple state officials, the entities responsible for meeting power requirements and ensuring reliability, and the fact that Holtec has entered into PPAs with local power cooperatives for the full output of the facility.

NRC has made it clear that “it is not necessary to consider the need for power during post-construction licensing (issuing and renewing operating licenses),” because “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.”²⁵⁸ This is equally true for Palisades.²⁵⁹ The impacts associated with siting and construction of Palisades have been considered and incurred decades ago, and while the restart obviously involves costs for planned maintenance, plant upgrades, and associated labor, those costs are vastly different from the costs to construct 800 MW of new generating capacity.²⁶⁰

NRC has carried this logic through to the 2024 License Renewal GEIS, which explains that “the NRC does not have a role in the energy-planning decisions about whether a particular nuclear power plant should continue to operate.”²⁶¹ Instead, “[t]he regulatory authority over licensee economics (including the need for power) falls within the jurisdiction of the States.”²⁶² “The Michigan PSC, which is charged with forecasting need for power in the State of Michigan, has

²⁵⁸ NRC, Denial of Petition of Rulemaking, 68 Fed. Reg. 55,905, (Sept. 29, 2003).

²⁵⁹ And if Petitioning Organizations had actually reviewed the need for power, they would have realized that the organizations like MISO and FERC that are responsible for overseeing the need for power had forecasted the need for the additional power output from Palisades. *See supra* n.254 and *infra* n.263.

²⁶⁰ *See* Draft EA at 2-6 (“This alternative [building a new reactor] would also require substantial construction costs beyond those needed to resume operation of the already built reactor.”). It also bears briefly addressing Petitioning Organizations’ critique of the Draft EA’s lack of discussion of “industrial-scale conservation measures.” New and Amended Contentions at 29. This is really an argument in support of Amended and Substituted Contention 6 (challenging the Draft EA’s alternatives analysis), but it bears noting that 10 CFR Part 51, Appendix A, which provides more information on the format for presentation of material in EISs, requires, “[i]n the case of *nuclear power plant construction or siting*, consideration will be given to the potential impact of conservation measures in determining the demand for power and consequent need for additional generating capacity.” 10 CFR Part 51, App’x A, Section 4 (emphasis added). Petitioning Organizations do not explain why conservation measures should be considered for resumption of power operations at an existing facility nor do they explain why demand side management is a viable alternative to an 800 MW baseload facility. As explained in Applicants’ response to Amended Contention 6, the mere invocation of energy conservation measures does not raise a supported and material dispute with the Draft EAs. *See infra* Section IV.D.2.

²⁶¹ 2024 License Renewal GEIS at 1-4; *see also* 10 CFR 51.95(c)(2) (license renewal SEISs are “not required to include discussion of need for power or the economic costs and economic benefits of the proposed action”).

²⁶² 2024 License Renewal GEIS at 1-4.

undertaken such forecasts and reached conclusions identical to those in the EA.²⁶³ As noted above, the state legislature has set aggressive clean energy goals and appropriated \$300 million to help restart Palisades, and many other state elected officials have written numerous letters supporting the project and explaining the urgent need for near-term clean baseload energy in their state.²⁶⁴ Petitioning Organizations cannot create a genuine issue of fact with unsupported claims that forecasts that clearly were performed have not been performed.

In summary, Petitioning Organizations have failed to demonstrate that the purpose and need statement—which is consistent with state and federal legislative demand signals and the Applicants’ and their customers’ economic goals—is unreasonable or inconsistent with the agency’s requirements under NEPA.²⁶⁵ Amended and Restated Contention 5 thus fails to raise a material dispute with the Draft EA and should be dismissed.

²⁶³ Despite Petitioning Organizations’ suggestion that the need for power from Palisades is based on “mentions of ‘data centers’ and hints of spiking demand for electricity,” from artificial intelligence (New and Amended Contentions at 29), neither the Draft EA nor Applicants’ submissions actually say that. As noted in the Environmental RAI Response, Holtec entered into the PPAs in September 2023 (Environmental RAI Response, Encl. 18, at 19)—well before power and financial markets began to shift as a result of an AI-driven surge in demand for carbon-free baseload power from nuclear generation. In addition, the Michigan PSC has explained that repowering Palisades “is key to improving Michigan’s” power resource adequacy. Michigan PSC Comments at 3-4. And the Midcontinent Independent System Operator (“MISO”), which is responsible for operating the electrical grid in Michigan and ensuring that the region has sufficient power, has flagged significant regional capacity shortfalls in recent planning assessments, including declining reserve margins. MISO, Fact Sheet, 2024 OMS-MISO Resource Adequacy Survey Results (June 2024) *available at* <https://cdn.misoenergy.org/The%20OMS%20MISO%20Survey638555.pdf> (last visited Mar. 27, 2025) (identifying a projected deficit of capacity as soon as summer 2025 and deficits across all seasons in the five-year outlook); *see also* North American Electric Reliability Corporation, 2024 Long-Term Reliability Assessment at 41-42 (Dec. 2024) *available at* https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf (last visited Mar. 27, 2025) (identifying MISO as facing resource capacity shortfalls beginning in 2025). So even if Joint Petitioners’ speculation that DeepSeek will somehow change current U.S. energy demand projections, New and Amended Contentions at 30, they have not explained why that will affect the need for (or the PPA off-takers’ commitment to purchase) power *from Palisades*.

²⁶⁴ *See supra* n.254.

²⁶⁵ *See generally* *Ctr. for Biological Diversity*, 67 F.4th at 1182; *Seabrook*, CLI-12-5, 75 NRC at 323.

D. Amended and Substituted Contention 6 is Untimely and Inadmissible

Amended and Substituted Contention 6 is:

The discussion of alternatives in the EA is inadequate and unsupported by any facts or credible analysis. It therefore violates NEPA.²⁶⁶

Just like Petitioning Organizations' challenge to the Draft EA's purpose and need statement in proposed Amended and Substituted Contention 5, the challenge to its alternatives analysis is too late. The same information was presented in Applicants' Environmental RAI Response that was filed six months ago. Even if this untimely challenge is considered, it fails to raise a material dispute with the Draft EA because, beyond pejorative and conclusory assertions, it does not demonstrate that the alternatives considered by NRC were unreasonable and does not challenge the conclusion "that there are no environmentally preferable alternatives to the proposed Federal actions."²⁶⁷

1. Petitioning Organizations' Challenge to the Alternatives Analysis Filed Six Months Ago is Too Late

Like the original Proposed Contention 5, Proposed Contention 6 was pled as a contention of omission that claimed (incorrectly) that Applicants failed to submit any alternatives analysis.²⁶⁸ Also like Proposed Contention 5, Petitioning Organizations did not amend their contention of omission to challenge the additional alternatives analysis Applicants submitted in the Environmental RAI Response six months ago.²⁶⁹ NRC's alternatives analysis in the Draft EA does

²⁶⁶ New and Amended Contentions at 30.

²⁶⁷ Draft EA at 4-6.

²⁶⁸ The New and Significant Review discussed the no-action alternative. New and Significant Review at 22; Applicants' Answer at 71.

²⁶⁹ Environmental RAI Response, Encl. 5.

not materially differ from the alternatives analysis filed by Applicants.²⁷⁰ Petitioning Organizations advance the same arguments for timeliness to satisfy 10 CFR 2.309(c) for both Amended and Restated Contention 5 and 6.²⁷¹ Applicants' response is the same too: The proposed Amended and Substituted Contention 6 is untimely because Petitioning Organizations did not amend their original contention of omission to challenge the alternatives analysis filed by Applicants six months ago. As such, proposed Amended and Substituted Contention 6 should be rejected for failure to satisfy 10 CFR 2.309(c)(i) and (ii).²⁷²

2. Petitioning Organizations Have Not Raised a Material Dispute with the Draft EA's Alternatives Analysis

In their proffered Amended and Substituted Contention 6, Petitioning Organizations take issue with the Draft EA's consideration of alternatives. They complain that discussion of alternatives in the Draft EA is "inadequate and unsupported by any facts or credible analysis."²⁷³ Petitioning Organizations again take issue with the statement of purpose and need and argue that NRC staff did not conduct their own forecast of energy demands.²⁷⁴ Petitioning Organizations also assert that the range of alternatives considered is inadequate and disagree with the Michigan Legislature's and Governor's policy determination that clean energy includes nuclear power and is needed to satisfy the need for clean energy.²⁷⁵ These arguments are insufficient to create a

²⁷⁰ New and Significant Review at 22 (discussing the no-action alternative as being the same as impact assessment in the Post Shutdown Decommissioning Activities Report submitted in 2022); Environmental RAI Response, Encls. 2 & 5; Draft EA at 2.5 to 2-7.

²⁷¹ See Motion at 9–11. In fact, they claim that they "must now be amended to challenge the substance of the *still* woefully inadequate and insufficient analysis of alternatives to the proposed action" (*id.* at 4 (emphasis added)); i.e., they are challenging the Draft EA by reference to the analysis Applicants already provided but Petitioning Organizations elected not to contest.

²⁷² *Oyster Creek*, CLI-09-7, 69 NRC at 260-61.

²⁷³ New and Amended Contentions at 30.

²⁷⁴ *Id.* at 29-30.

²⁷⁵ *Id.* at 32-33.

genuine dispute of material fact or law that the alternatives analysis in the Draft EA is unreasonable, nor does it call into question the conclusion of the Draft EA that there are no environmentally preferable alternatives to the restart.

Petitioning Organizations' claim that the Draft EA fails to satisfy the requirements of NEPA is not consistent with the plain language of the statute. Under NEPA Section 102, the requirement that a federal agency review and discuss "a reasonable range of alternatives to the proposed agency action," is specific to EISs.²⁷⁶ Although not directly applicable to an EA, the Draft EA nevertheless explored alternatives to the Palisades restart, explaining that section 4332(c)(iii) still "influenced" the development of the Draft EA's alternatives analysis.²⁷⁷ NRC's regulations, for their part, provide that EAs shall identify "the proposed action and include [] Alternatives as required by section 102(2)(E) of NEPA[,] and discuss "[t]he environmental impacts of the proposed action and alternatives as appropriate[.]"²⁷⁸

²⁷⁶ See 42 U.S.C. § 4332(C)(iii). The previous language concerning alternatives was moved from Section 102(2)(C) to new Section 102(C)(iii) by the Fiscal Responsibility Act.

²⁷⁷ Draft EA at 2-5.

²⁷⁸ 10 CFR 51.30(a)(1)(ii), (iii). The language of section 102(2)(E) has been moved to Section 102(H), which provides that federal agencies will "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources[.]" 42 U.S.C. § 4332(H). Petitioning Organizations cite no such conflict in their contentions in order to establish why an alternatives analysis was required by NEPA *at all*. The scope of the Draft EA is limited to reauthorizing power operations at Palisades through March 24, 2031 in order to provide an option for baseload clean energy power generation. Draft EA at 1-3. This is a relatively modest project scope, and it is not one that obviously would involve a significant conflict over alternative uses of available resources. As explained in the Environmental RAI Response, there are no feasible alternatives to making up for lost clean power generation within this window of time. See Environmental RAI Response, Enclosure 5 at 1-2. The draft EA also determined these alternatives were not to be carried forward for more detailed analysis as being unreasonable within the window of time. Draft EA at 2-6 to 2-7 (deciding not to carry forward analyzing impact of replacing Palisades with a new reactor at the site or additional power generating capacity from other sources because of the additional time and cost to construct the new generation). Petitioning Organizations have not established that such a project involves unresolved conflicts and thus fail to lay the necessary groundwork for why an alternatives analysis was required by the NEPA statute in the first place, which is sufficient to reject their challenge to the alternatives analysis staff prepared. As explained in this Section IV.D.2, Petitioning Organizations also failed to raise a material dispute with the alternatives analysis NRC staff prepared in the Draft EA.

Nor do Petitioning Organizations' arguments about NRC staff reliance on LIC-203 have merit.²⁷⁹ That guidance document provides that alternatives to the proposed action must be evaluated in accordance with 10 CFR 51.30(a)(1)(ii) and (iii). "At a minimum, all EAs must include the no-action alternative."²⁸⁰ Nevertheless, "[f]or those actions where impacts are not significant, it is reasonable to consider only a limited range of alternatives."²⁸¹ "This section should include a description of how available resources, such as water, land, or other physical materials, would be used under the proposed action. This consideration would take place when the objective of the proposed action can be achieved in two or more ways that will have differing impacts on one or more natural resources even if a FONSI had been made."²⁸² In other words, alternative analyses are only required where there are unresolved resource conflicts,²⁸³ and in that circumstance applicable guidance requires the NRC staff to consider the no action alternatives together with alternative uses of available resources when the objective of the proposed action can be achieved in multiple ways.

Petitioning Organizations have failed to provide any reasoned or supported basis for why the Draft EA does not comply with these guidelines or is otherwise unreasonable or fails to satisfy the rule of reason.²⁸⁴ Per the relevant guidance, the Draft EA focuses primarily on the no-action alternative. Under that alternative, "the NRC would not approve the exemption request, license

²⁷⁹ See Draft EA at 2-5.

²⁸⁰ LIC-203 at C-4.

²⁸¹ *Id.*; see also *Friends of Ompompanoosuc v. FERC*, 968 F.2d 1549, 1558 (2d Cir. 1992) ("[T]he range of alternatives an agency must consider is narrower when, as here, the agency has found that a project will not have a significant environmental impact."); *River Rd. All., Inc. v. Corps of Eng'rs of U.S. Army*, 764 F.2d 445, 452 (7th Cir. 1985) ("[T]he smaller the impact, the less extensive a search for alternatives can the agency reasonably be required to conduct.").

²⁸² LIC-203 at C-4.

²⁸³ *Id.*; see *supra* n.278.

²⁸⁴ See *Ctr. for Biological Diversity*, 67 F.4th at 1182; *Seabrook*, CLI-12-5, 75 NRC at 323.

transfer request, and LARs for Palisades. In this scenario, Palisades would not be reauthorized for refueling the reactor or resuming power operations and would continue to function as a plant in decommissioning”²⁸⁵ The no-action alternative would not meet the purpose and need of the project “to provide an option for baseload power and contribute to Michigan’s clean energy goal.”²⁸⁶ While Michigan could try to obtain such power elsewhere, “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.”²⁸⁷ While the environmental impacts of restarting Palisades would be “minimal,” NRC staff concluded that “environmental impacts from any land disturbance and operation of construction equipment to build other power generation facilities needed to offset the capabilities of the Palisades facilities could potentially be substantial.”²⁸⁸ NRC staff also considered other alternatives that were not carried forward, including building a new reactor onsite, replacing the Palisades reactor with other generation technology (both onsite and offsite), or fitting the existing Palisades reactor with alternative system designs for processes such as heat dissipation, circulating water, and transmission systems.²⁸⁹ Only the no-action alternative was carried forward.²⁹⁰ The other alternatives were not carried forward primarily because building any new facilities (both onsite or offsite) would result in additional environmental impacts related to land disturbance and use of

²⁸⁵ Draft EA at 2-6.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 2-6 to 2-7.

²⁹⁰ *Id.* at 4-6 (“The NRC staff independently reviewed information concerning other possible alternatives and determined that none were reasonable alternatives warranting further evaluation.”).

construction equipment greater than simply restarting Palisades for the remaining period of its current operating license.²⁹¹

Petitioning Organizations dispute none of these conclusions. Instead, Petitioning Organizations say they would have conducted the alternatives analysis differently, redefining the purpose of the project to reflect their philosophical opposition to the development of power generation in general and specifically to nuclear power.²⁹² But that is not the relevant standard under NEPA.²⁹³ In crafting a range of alternatives, the goals of the project sponsor are given substantial weight in determining whether an alternative is reasonable.²⁹⁴ In this regard, “[a]n agency cannot redefine the [applicant’s] goals,”²⁹⁵ and the alternatives analysis should be based around the applicant’s goals, including its economic goals.²⁹⁶

And once you put aside Petitioning Organizations’ unsupported and generic arguments that the alternatives analysis should have been conducted differently, they have not explained why NRC staff failed to satisfy NEPA when it took a close look at the no-action alternative as well as

²⁹¹ *Id.*

²⁹² New and Amended Contentions at 31-33.

²⁹³ *Seabrook*, CLI-12-5, 75 NRC at 323-24 (2012) (“[T]he proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA.”); *Dominion Nuclear N. Anna, LLC* (Early Site Permit for N. Anna Esp Site), LBP-07-9, 65 NRC 539, 607-08 (2007) (federal courts and the NRC use a “rule of reason” in identifying alternatives and do not require that unreasonable alternatives be examined); *Hydro Resources*, CLI-01-4, 53 NRC at 55 (“Agencies need only discuss those alternatives that are reasonable and ‘will bring about the ends’ of the proposed action.” (quoting *Citizens Against Burlington*, 938 F.2d at 195)).

²⁹⁴ *Progress Energy Florida, Inc.* (Levy Cnty. Nuclear Power Plant, Units 1 & 2), LBP-09-10, 70 NRC 51, 62 (2009) (citing *City of New York v. U.S. Dep’t of Trans.*, 715 F.2d 732, 742 (2d Cir. 1983)).

²⁹⁵ *Citizens Against Burlington*, 938 F.2d at 199.

²⁹⁶ *Hydro Resources, Inc.*, CLI-01-4, 53 NRC at 55. Furthermore, the purpose of the project is not described as the exclusive means of meeting Michigan’s clean energy goals; the proposed action is described as “an option” for baseload clean energy power generation during the RFOL period. *See* Draft EA at 1-3. *See also* *Holtec Palisades, LLC*, Order Granting Waiver Request re: Holtec Palisades, LLC under ER25-1083, 190 FERC ¶ 61, 132, at P 5 (2025) (“Holtec contends that the waiver request does not have undesirable consequences, as it applies solely to one generation resource that is necessary for meeting resource adequacy needs by providing zero-carbon, baseload generating capacity to the MISO region.”). The proposed action leaves open the possibility other generation sources could also provide some portion of Michigan’s clean energy generation.

other on-site and off-site options that might meet Michigan’s clean energy goals for the brief period of time remaining under Palisades’ remaining operational license period. This analysis is not “merely a justification for the proposed project,” as Petitioning Organizations assert,²⁹⁷ but an objective assessment of the alternatives that might be feasible within the limited scope of the proposed action.²⁹⁸ Petitioning Organizations may not like that there are not many alternatives to bringing 800 MW of non-emitting baseload generation back online in a relatively short period of time, and that any such alternatives (even assuming they are economically or regulatorily feasible) would reasonably be expected to have more of an impact on the environment than simply restarting an existing facility, but they have not disputed the Draft EA’s conclusions regarding those impacts with any of the required specificity nor demonstrated that they are unreasonable. Nor have Petitioning Organizations disputed that, as between construction of new generation and restarting existing generation, a restart project is environmentally preferable.²⁹⁹

The cases cited by Petitioning Organizations do not demonstrate that NRC staff had any independent obligation to make “reasonable forecasts of the future” for the Draft EA. As explained above, NRC has determined it is not necessary to consider the need for power during post-construction environmental review like the Palisades restart.³⁰⁰ Rather, the cases cited by Petitioning Organizations emphasize that NRC’s appropriate inquiry is not to forecast whether an environmental effect is “theoretically possible,” but instead to confine its review to those effects

²⁹⁷ New and Amended Contentions at 31.

²⁹⁸ See Draft EA at 2-5 to 2-7 (describing why each alternative was not reasonable).

²⁹⁹ See *S.C. Elec. & Gas Co. & S.C. Pub. Serv. Auth.* (Virgil C. Summer Nuclear Station, Units 2 & 3), 71 NRC 350, 357 (Mar. 17, 2010) (“The only alternatives which are, in the end, relevant to the NRC’s decision are those alternatives that are environmentally preferable.”).

³⁰⁰ See *supra* Section IV.C.2.

that are “reasonably probable” to occur.³⁰¹ Petitioning Organizations ignore definitive statements that an “assessment need not include every environmental effect that could potentially result from the action, but rather ‘may be limited to effects which are shown to have some likelihood of occurring.’”³⁰²

Furthermore, alternative power supply and demand-side management (conservation and efficiency measures) were addressed in HDI’s Environmental RAI Response. The Environmental RAI Response explained that “NRC examined the potential for conservation and energy efficiency programs to provide power replacement. NRC indicated that, while the energy conservation or energy efficiency potential in the United States is substantial, the NRC staff is not aware of any cases where demand side management programs [have] been implemented expressly to replace or offset a large, baseload generation station.”³⁰³ Those responses have been incorporated by reference as part of the Draft EA.³⁰⁴ Petitioning Organizations provide no specific arguments disputing these NRC findings. Conclusory arguments that raise only general criticisms and fail to challenge the information and analysis presented are insufficient to support an admissible contention.³⁰⁵

Petitioning Organizations’ primary objection to restarting Palisades is transparently driven by policy objections to nuclear power.³⁰⁶ Such arguments are neither in scope nor material to the

³⁰¹ *N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 48-49 (1978).

³⁰² *Hydro Res., Inc.*, LBP-04-23, 60 NRC at 447 (quoting *Prairie Island*, ALAB-455, 7 NRC at 48).

³⁰³ Environmental RAI Response, Encl 5 at 1 (referencing 2024 License Renewal GEIS, App. D at D-19).

³⁰⁴ See Draft EA at 1-9 (citing Environmental RAI Response, Encl. 5 at 1-2 (discussing the infeasibility of demand-side management, alternative generation sources, and power purchase agreements)).

³⁰⁵ *Vermont Yankee*, CLI-15-20, 82 NRC at 221; *Turkey Point*, LBP-24-03, 100 NRC at ___ (slip op. at 12-13).

³⁰⁶ New and Amended Contentions at 33 (“[N]uclear power, contrary to the political decision made by Michigan legislators, is neither clean nor renewable[.]”).

NRC’s NEPA analysis and, therefore, do not present an issue for hearing on the Draft EA.³⁰⁷ As has already been stated, it is appropriate to base the purpose and need of a project, at least in part, on legislatively expressed goals.³⁰⁸ Here, Act 235 expressly defines clean energy as including nuclear generation.³⁰⁹ Furthermore, the purpose and need of the project is partially based on DOE’s authority under the Energy Infrastructure Reinvestment Program.³¹⁰ This Program carries out the views of Congress, as expressed in a Congressional directive,³¹¹ to “retool, repower, repurpose, or replace energy infrastructure that has ceased operations.”³¹² Moreover, Congress passed the ADVANCE Act “to advance the benefits of nuclear energy” and specifically directed the NRC to refocus its mission in a manner that is efficient and does not unnecessarily limit the use or the benefits of nuclear energy,³¹³ including evaluating opportunities to streamline the environmental reviews under the Atomic Energy Act and reporting on how to achieve those efficiencies.³¹⁴

Petitioning Organizations also mischaracterize NRC staff’s rejection of the alternative to build alternate power generation on the existing Palisades site. NRC does not say the site is too small. Rather, while the Draft EA explains that “[t]he remaining land would be available to build

³⁰⁷ See *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 216 (2003) (“To trigger an adjudicatory hearing, a petitioner must do more than submit “bare or conclusory allegations; of a dispute with the applicant.” (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001))); see also *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000) (finding “bare assertions and speculation” insufficient to trigger a contested hearing).

³⁰⁸ See *Hydro Res., Inc.*, LBP-04-23, 64 NRC at 85; see also *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 777 (1983) (“The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements.”).

³⁰⁹ See *supra* n.252.

³¹⁰ Draft EA at 1-4.

³¹¹ *Citizens Against Burlington*, 938 F.2d at 196.

³¹² 42 U.S.C. § 16517(a)(1).

³¹³ ADVANCE Act § 501(a).

³¹⁴ ADVANCE Act § 506(b)(2)(G).

a new reactor” at the Palisades site, the Draft EA determined not to carry this alternative forward for further evaluation because “building a new reactor would still require substantial costs beyond those needed to resume operation of an already built reactor.”³¹⁵ Furthermore, “building the new reactor would require substantial additional ground disturbance not needed to put the existing reactor back in operation. The unused lands on the Palisades site include sensitive dune, forest, shoreline, and wetland habitats. Using those lands to build a new reactor could result in loss or degradation of those habitats, as well as generate additional noise, emissions, and other impacts from building new facilities.”³¹⁶ Petitioning Organizations have not provided any basis for concluding that NRC acted unreasonably basis in reaching these conclusions.

The cases cited by Petitioning Organizations to support their argument that the Draft EA fails to fully discuss the no-action alternative are not on point. In arguing that “[t]he no-action alternative must be given adequate discussion and cannot be rejected just because it does not satisfy the alleged purpose and need for the project,” Petitioning Organizations rely on cases considering no action alternatives that are easily distinguishable.³¹⁷ In *Western Watersheds Project v. Abbey*, the Ninth Circuit rejected the alternatives and no-action alternative because “each alternative considered would authorize the same underlying action . . . there is no meaningful difference between the four alternatives.”³¹⁸ Another cited Ninth Circuit opinion rejected a “cursory” consideration of a no-action alternative because the agency merely stated that the no action alternative would provide reduced, rather than expanded services.³¹⁹ Finally, Petitioning

³¹⁵ Draft EA at 2-6 to 2-7.

³¹⁶ *Id.*

³¹⁷ *See* New and Amended Contentions at 31.

³¹⁸ 719 F.3d 1035, 1051 (9th Cir. 2013).

³¹⁹ *Se. Alaska Conservation Council v. Fed. Highway Admin.*, 649 F.3d 1050, 1058 (9th Cir. 2011).

Organizations cite to a Fourth Circuit ruling that NEPA analysis was insufficient because the no-action alternative assumed the existence of the proposed project.³²⁰ None of the issues addressed in these cases apply to the Draft EA at issue here. The Draft EA presents clearly distinguishable alternatives, including the no-action alternative and obtaining additional power from off of the Palisades site, includes a detailed review of the actions to be taken, and reasonably considers the increased costs and time to provide the associated power as grounds to reject any need for further detailed analysis of the alternatives.³²¹ Petitioning Organizations also assert that an alternatives analysis under NEPA requires “a serious investigation” of all reasonable alternatives.³²² However, the cases they cite simply describe the agency’s obligation to conduct a “good faith consideration” of environmental concerns.³²³ Petitioning Organizations have failed to explain why NRC staff failed to satisfy this standard in preparing the Draft EA.

Assuming an alternatives analysis was necessary for purposes of the Draft EA, Petitioning Organizations have not presented a genuine dispute with the reasonableness of the Draft EA’s analysis of the no-action alternative and other on- and off-site alternatives nor have they demonstrated that the Draft EA omitted information required to be considered under applicable law or other requirements as required by 10 CFR 2.309(f)(1)(iv) and (vi). As such, the proposed Amended and Substituted Contention 6 is inadmissible.

E. New Contention 8 is Untimely and Inadmissible

New Contention 8 is:

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

³²⁰ *N.C. Wildlife Fed’n v. N.C. Dep’t of Transp.*, 677 F.3d 596, 602 (4th Cir. 2012).

³²¹ Draft EA at 2-6 to 2-7.

³²² New and Amended Contentions at 31.

³²³ *Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1072 (1st Cir. 1980).

documents is based on CEQ regulations 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.

The contention is both late and fails to raise a dispute with the Draft EA. To be timely, Petitioning Organizations could have raised their New Contention 8 months ago, including at the time the original deadline for filing a petition to intervene. Moreover, even if they had timely raised it, Petitioning Organizations wholly fail to support their proposed New Contention 8 or demonstrate how it is material to the findings that the NRC must make or why it is unreasonable for the Draft EA to rely on previously prepared documentation.

1. New Contention 8 is Untimely

In their Motion and the New and Amended Contentions, Petitioning Organizations claim that the incorporation by reference of other documents into the EIS is not allowed and that such incorporation renders the Draft EA invalid as a result of two recent federal court decisions, the first of which was published in November 2024 and neither of which constitute new information in the Draft EA such that the Board’s scheduling order makes these arguments now timely.³²⁴ The decisions they cite as a basis for that argument invalidated CEQ regulations that the NRC purportedly relied upon to incorporate the documents by reference and, according to Petitioning Organizations, rendering Draft EA “invalid” because those other documents formed a “substantial basis for the discussions and conclusions in the EA.”³²⁵

³²⁴ Motion at 8; New and Amended Contentions at 34 (citing *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024) and *Iowa v. CEQ*, Docket No. 1:24-cv-00089 (ECF 145) (Feb. 3, 2025)).

³²⁵ New and Amended Contentions at 35.

Notably missing from the Motion or the New and Amended Contentions, however, are any new facts (much less facts that were introduced for the first time in the Draft EA).³²⁶ Petitioning Organizations' claim is thus reduced solely to a claim that a change in the law is sufficient to demonstrate that the argument is new and materially different. But Proposed Contention 8 presents a legal argument only—that incorporation of other documents by reference into an EA as authorized by CEQ regulations is invalid if the CEQ regulations are themselves invalid. As discussed below, incorporation by reference is still allowed under NEPA and the NRC's regulations. But a change in controlling law does not constitute new or materially different information within the meaning of 10 CFR 2.309(c)(i) and (ii).³²⁷ Accordingly, New Contention 8 does not satisfy the good cause standard and cannot be raised at this point in the proceeding.

2. New Contention 8 is Inadmissible Under 10 CFR 2.309(f)

In their proffered Amended and Substituted Contention 8, Petitioning Organizations take issue with the Draft EA's incorporation of documents supporting the Draft EA by reference.³²⁸ This argument is meritless.

NRC's ability to incorporate documents by reference does not depend on the validity of CEQ's regulations. It is a well-established principle of administrative law that agencies can rely

³²⁶ To the extent the Petitioning Organizations' justification for late filing can be understood to claim that the Draft EA's reliance on prior NEPA documents is "new," the Notice of Intent and New and Significant Review both clearly establish that the License Renewal SEIS would be relied on and considered in evaluating the environmental impacts of the proposed restart. Notice of Intent, 89 Fed. Reg. at 53,660; New and Significant Review at 9-2 (explaining that the License Renewal SEIS "includes the NRC staff's analysis that considers and weighs the environmental effects of the proposed action, including cumulative impacts, the environmental impacts of alternatives to the proposed action, and mitigation measures available for reducing or avoiding adverse impacts.").

³²⁷ *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-07-9, 65 NRC 139, 142 (2007) (citing *Sys. Energy Res.*, CLI-07-10, 65 NRC at 146) ("An appeals court ruling does not constitute 'new information' on which a party can file a new contention.").

³²⁸ New and Amended Contentions at 34.

on a wide variety of documents included in the administrative record when making decisions.³²⁹ Indeed, it would be difficult to meet NEPA’s new page limitations without incorporation.³³⁰ All of the documents listed in Table 1-2 of the Draft EA are either published NRC guidance or documents included in the public record for the Draft EA available on NRC’s official Agencywide Documents Access and Management System (ADAMS). NRC does not need any explicit regulatory authorization to rely on such documents in preparing an EA. Moreover, the ADVANCE Act itself reflects a Congressional intent to utilize incorporation of documents by reference as a key method of improving the efficiency of environmental review.³³¹

The two court decisions cited by Petitioning Organizations deal only with challenges to CEQ’s regulations.³³² But this argument does not go nearly as far as Petitioning Organizations may think. Even if the CEQ regulations are invalid, NRC’s own NEPA regulations expressly permit incorporation by reference “any information contained in a prior environmental report or supplement thereto that relates to the production or utilization facility or site, or any information contained in a final environmental document previously prepared by the NRC staff that relates to

³²⁹ *Blue Mountains Biodiversity Project v. Jeffries*, 99 F.4th 438, 452 (9th Cir. 2024) (“The ‘whole’ administrative record [] consists of all documents and materials directly or indirectly considered by agency decision-makers[.]”) (quoting *Thompson v. U.S. Dep’t of Lab.*, 885 F.2d 551, 555 (9th Cir. 1989)); *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996) (“The administrative record includes all materials ‘compiled’ by the agency, that were ‘before the agency at the time the decision was made.’”) (Citations omitted).

³³⁰ See 42 U.S.C. § 4336a(e)(2) (as amended by the Fiscal Responsibility Act).

³³¹ See ADVANCE Act at § 506(b)(2)(A) (recommending consideration of “using, through adoption, incorporation by reference”); see also NRC ADVANCE Act Report at 3-4 (“The NRC currently relies on prior EISs and EAs, as well as other available analyses, whenever feasible, whether prepared by the NRC, other Federal agencies, or other entities . . . Applicants can [] realize efficiency gains from these practices through not having to recreate or reproduce existing information, as well as benefiting from a shorter environmental review timeline. . . . Incorporation by reference is a tool that allows agencies to make use of information outside the agencies’ environmental documents in a concise and efficient manner.”).

³³² New and Amended Contentions at 35.

the production or utilization facility or site.”³³³ Accordingly, Contention 8 is barred by 10 CFR 2.335 as a challenge to NRC regulations.³³⁴

Moreover, NRC has never treated CEQ regulations as binding on NRC. The NRC explicitly has not adopted CEQ’s NEPA regulations. Instead, NRC’s process for NEPA review “reflects the Commission’s announced policy to take account of the regulations of the Council on Environmental Quality published November 29, 1978 (43 FR 55978-56007) voluntarily, subject to certain conditions.”³³⁵ The NRC has long maintained that CEQ regulations are not binding on the Commission’s NEPA review.³³⁶

Finally, even if the status of CEQ’s regulations were relevant to this proceeding, CEQ’s interim final rule removing its NEPA regulations from the Code of Federal Regulations is not effective until April 11, 2025.³³⁷ Until such time, “agencies will remain free to use or amend those procedures, and agencies should, in defending actions they have taken, continue to rely on the version of CEQ’s regulations that was in effect at the time that the agency action under challenge

³³³ 10 CFR 51.95(a).

³³⁴ See 10 CFR 51.53(a) (“Any environmental report prepared under the provisions of this section *may incorporate by reference any information contained in a prior environmental report or supplement thereto* that relates to the production or utilization facility or site, or any information contained in a final environmental document previously prepared by the NRC staff that relates to the production or utilization facility or site. Documents that may be referenced include, but are not limited to”) (emphasis added); 10 CFR 51.95(a) (“Any supplement to a final environmental impact statement or any environmental assessment prepared under the provisions of this section *may incorporate by reference any information contained in a final environmental document previously prepared by the NRC staff* that relates to the same production or utilization facility. Documents that may be referenced include, but are not limited to”) (emphasis added).

³³⁵ 10 CFR 51.10(a).

³³⁶ See *Powertech (USA), Inc.* (Dewey-Burdock in Situ Uranium Recovery Facility), CLI-19-9, 90 NRC 121, 127 n.37 (2019); *Dominion Nuclear N. Anna, LLC* (Early Site Permit for N. Anna Esp Site), CLI-07-27, 66 NRC 215, 222 n.21 (2007).

³³⁷ 90 Fed. Reg. 10,610 (Feb. 25, 2025). The D.C. Circuit stayed the mandate in *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024), for one year, beginning on February 28, 2025. *Marin Audubon Soc’y v. Fed. Aviation Admin.*, No. 23-1067, 2025 WL 655062, at *3 (D.C. Cir. Feb. 28, 2025). While Petitioners rely on the *Marin* case, the more immediate impact on CEQ’s regulations is CEQ’s Interim Final Rule.

was completed.”³³⁸ In separate guidance issued to the heads of all federal departments and agencies, CEQ advised that all agencies “must revise or establish their NEPA implementing procedures (or establish such procedures if they do not yet have any) to expedite permitting approvals and for consistency with NEPA” by February 19, 2026.³³⁹ Until such revisions are completed, “agencies should apply their current NEPA implementing procedures.”³⁴⁰ Moreover, “although CEQ is rescinding its NEPA implementing regulations at 40 C.F.R. parts 1500–1508, agencies should consider voluntarily relying on those regulations in completing ongoing NEPA reviews.”³⁴¹ In other words, all federal agencies have been told to continue following their current NEPA procedures for ongoing matters, voluntarily relying on CEQ’s regulations, until relevant NEPA regulations have been updated over the course of the following year. And the Draft EA follows the requirements under NEPA and NRC regulations for all the reasons discussed above.

In short, neither *Marin Audubon Society v. FAA* nor the interim final rule removing CEQ’s regulations from the CFR change the status quo with regard to NRC’s implementation of NEPA. NRC remains free to incorporate documentation as appropriate and may continue to voluntarily rely on CEQ regulation as guidance, at least until NRC has reviewed and modified its regulations as instructed by CEQ on or before February 19, 2026.

³³⁸ 90 Fed. Reg. 10,610.

³³⁹ Katherine R. Scarlett, Chief of Staff, Executive Office of the President, Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies (Feb. 19, 2025) *available at* <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf> (last visited Mar. 27, 2025).

³⁴⁰ *Id.* at 1.

³⁴¹ *Id.*

V. Conclusion

For all of the foregoing reasons, and for the reasons set forth in Applicants' Answer, each of the new or amended contentions proffered by Petitioning Organizations is untimely and inadmissible and they should be dismissed by the Board.

Respectfully submitted,

Signed (Electronically) by Grant W. Eskelsen

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

Executed in Accord with 10 CFR 2.304(d)

M. Stanford Blanton
Alan D. Lovett
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203
(205) 226-3417
(205) 226-8769
sblanton@balch.com
alovett@balch.com

Jason Tompkins
1901 Sixth Avenue North
Birmingham, AL 35203
(205) 226-8743
jtompkins@balch.com

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

March 28, 2025

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

Pursuant to 10 CFR 2.305, I certify that, on this date, a copy of the foregoing “Applicants’ Answer Opposing Beyond Nuclear et al.’s New and Amended Contentions” was served through the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned docket.

Signed (Electronically) by Grant W. Eskelsen

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

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

[certificate of service]