

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

**NRC STAFF BRIEF IN OPPOSITION TO THE BEYOND NUCLEAR, DON'T WASTE
MICHIGAN, MICHIGAN SAFE ENERGY FUTURE, THREE MILE ISLAND ALERT, AND
NUCLEAR ENERGY INFORMATION SERVICE APPEAL OF
THE ATOMIC SAFETY AND LICENSING BOARD'S DECISION IN LBP-25-4**

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May 20, 2025

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INTRODUCTION

In accordance with 10 C.F.R. § 2.311(b), the staff of the U.S. Nuclear Regulatory Commission (Staff) files this brief in opposition to the appeal filed by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (collectively, Petitioners) seeking review of the Atomic Safety and Licensing Board's (Board) decision in LBP-25-4. In that decision, the Board found that none of the Petitioners' seven contentions regarding the Holtec Decommissioning International (HDI), LLC and Holtec Palisades, LLC (collectively, Applicants or Holtec) license amendment requests and exemption request associated with the potential restart of Palisades Nuclear Plant (Palisades) are admissible. The Commission should deny the appeal because Petitioners do not demonstrate that the Board made an error of law or abused its discretion in LBP-25-4.

BACKGROUND

I. Palisades Licensing History and Requests Related to Potential Restart of Palisades

Palisades was licensed for reactor operation until March 24, 2031, under its renewed facility operating license,¹ but by letter dated June 13, 2022, the licensee at the time, Entergy Nuclear Operations, Inc. (Entergy), submitted certifications under 10 C.F.R. § 50.82(a)(1) that operation had permanently ceased and that fuel had been permanently removed from the reactor.² In accordance with 10 C.F.R. § 50.82(a)(2), the docketing of these certifications means that “the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.” Also, the NRC issued amendments changing the operating license, which includes technical specifications (TS), to reflect the authorities and requirements for a reactor in decommissioning.³ Among other things, the amendments removed language from the license regarding the authority to operate the reactor and removed the TS for an operating reactor that are not relevant to decommissioning.⁴ However, even after these amendments became effective during the decommissioning period, the license continues to be

¹ Letter from Juan Ayala, NRC, to Paul A. Harden, Nuclear Management Company, LLC, “Issuance of Renewed Facility Operating License No. DPR-20 for Palisades Nuclear Plant” (Jan. 17, 2007) (ADAMS Accession No. ML070100476).

² Letter from Darrell W. Corbin, Entergy, to NRC Document Control Desk, “Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel” (Jun. 13, 2022) (ML22164A067) (Palisades 50.82(a)(1) Certifications).

³ Letter from Scott P. Wall, NRC, to Vice President for Operations, Entergy, “Palisades Nuclear Plant – Issuance of Amendment Regarding Administrative Controls for Permanently Defueled Condition” (June 4, 2018) (ML18114A410) (Defueled Administrative Controls Amendment); Letter from Scott P. Wall, NRC, to Vice President for Operations, Entergy, “Palisades Nuclear Plant – Issuance of Amendment No. 272 Re: Permanently Defueled Technical Specifications” (May 13, 2022) (ML22039A198) (Defueled TS Amendment).

⁴ See, e.g., Defueled TS Amendment, Enclosure 2 at 14, 17, 30, 34, 36, 39-42 (discussion of changes to License Conditions 2.B.(1) and 2.C.(1) in Sections 4.2.3 and 4.2.8 of the Staff safety evaluation and discussion of changes to the TS in Section 4.3 of the Staff safety evaluation); Defueled Administrative Controls Amendment, Enclosure 2 (discussion of TS changes in Section 4 of the Staff safety evaluation).

a renewed Part 50 facility operating license.⁵

Prior to submitting the Palisades 50.82(a)(1) Certifications, Entergy submitted a license transfer request.⁶ The Staff issued an order approving the requested transfer,⁷ and as a result, Holtec Palisades, LLC (Holtec Palisades) is the licensed owner of Palisades and HDI is the licensed operator for decommissioning of Palisades.⁸ Four hearing requests were filed challenging this transfer request, and the Commission has not yet issued a decision on the issues admitted for hearing.⁹

In 2023, HDI engaged with the Staff regarding the potential restart of reactor operation at Palisades. From September 2023 to May 2024, the NRC received the following licensing and regulatory requests related to the potential restart of Palisades:

- A September 28, 2023, request for an exemption (Exemption Request) “from the 10 CFR 50.82(a)(2) restriction that prohibits reactor power operations and retention of

⁵ See, e.g., Defueled TS Amendment, Enclosure 1 (license change pages repeatedly use the term “Renewed Facility Operating License” or similar terms such as “renewed operating license,” “Facility Operating License,” or “Operating License”).

⁶ Letter from A. Christopher Bakken III, Entergy, to NRC Document Control Desk, “Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments,” at 2 (Dec. 23, 2020) (ML20358A075).

⁷ In the Matter of Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, Holtec International and Holtec Decommissioning International, LLC, Big Rock Point Plant and Palisades Nuclear Plant; Transfer of Licenses; Order, 86 Fed. Reg. 71,528 (Dec. 16, 2021). See also Letter from Scott P. Wall, NRC, to A. Christopher Bakken, III, Entergy, “Palisades Nuclear Plant and Big Rock Point Plant – Order Approving Transfer of Licenses and Draft Conforming Administrative License Amendments (EPID L-2020-LLM-0003)” (Dec. 13, 2021) (ML21292A155 (package)).

⁸ Letter from Scott P. Wall, NRC, to Pierre Paul Oneid, Holtec International, and Kelly D. Trice, HDI, “Palisades Nuclear Plant and Big Rock Point Plant – Issuance of Amendment Nos. 129 and 273 Re: Order Approving Transfer of Licenses and Conforming Administrative License Amendments (EPIDS L-2022-LLM-0002 AND L-2020-LLM-0003)” (Jun. 28, 2022) (ML22173A179 (package)).

⁹ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant & Big Rock Point Site), CLI-22-8, 96 NRC 1 (2022) (denying three hearing requests, but granting, in part, the hearing request from the Michigan Attorney General); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant & Big Rock Point Site), LBP-23-5, 97 NRC 116 (2023) (certifying hearing record to the Commission following oral hearing); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-25-2, 101 NRC __, __ (Apr. 8, 2025) (slip op. at 4) (holding proceeding in abeyance pending further direction).

fuel in the reactor vessel ... by allowing for a one-time rescission of the docketed 10 CFR 50.82(a)(1) certifications.”¹⁰

- The December 6, 2023, license transfer request, which seeks NRC consent to, and a conforming amendment for, a transfer of operating authority from HDI to Palisades Energy, LLC under Renewed Facility Operating License No. DPR-20 for Palisades and the general license for the Palisades Independent Spent Fuel Storage Installation (ISFSI).¹¹
- A December 14, 2023, license amendment request (Primary Amendment Request) in support of resuming power operations that largely seeks to undo the changes made by the previously issued Defueled TS Amendment with some proposed differences from the previous operating reactor TS.¹²
- A February 9, 2024, license amendment request in support of resuming power operations that largely seeks to undo the changes made by the previously issued Defueled Administrative Controls Amendment with some proposed differences from the previous operating reactor TS.¹³
- A May 1, 2024, license amendment request to revise the Palisades site emergency plan to support resuming power operations.¹⁴
- A May 24, 2024, license amendment request to revise the Palisades main steam line break analysis to “support the Palisades restart project.”¹⁵

The four restart-related amendment requests are parts of the licensing and regulatory requests that would be necessary to restart reactor operation at Palisades. The Staff has accepted all of

¹⁰ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82,” at 1 (Sept. 28, 2023) (ML23271A140) (Exemption Request).

¹¹ Letter from Jean A. Fleming, Holtec International and HDI, to NRC Document Control Desk, “Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments,” at 1 (Dec. 6, 2023) (ML23340A161). The restart-related license transfer request was subject to a separate hearing opportunity, and the Commission denied the hearing request filed in that proceeding. *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), CLI-25-3, 101 NRC __, __ (slip op. at 17) (2025).

¹² Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “License Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations” (Dec. 14, 2023) (ML23348A148) (Primary Amendment Request).

¹³ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “License Amendment Request to Revise Selected Permanently Defueled Technical Specifications Administrative Controls to Support Resumption of Power Operations” (Feb. 9, 2024) (ML24040A089).

¹⁴ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “License Amendment Request to Revise the Palisades Nuclear Plant Site Emergency Plan to Support Resumption of Power Operations” (May 1, 2024) (ML24122C666).

¹⁵ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “License Amendment Request to Approve the Biasi Critical Heat Flux (CHF) Correlation for Use with the Palisades Main Steam Line Break (MSLB) Analysis,” at 1 (May 24, 2024) (ML24145A145).

these requests for review. The review is underway, and, to date, no decisions have been made on any of the requests.

II. Petitioners' Hearing Request on the Amendments Related to Restart of Palisades and Board Disposition

On August 7, 2024, the NRC published a *Federal Register* notice of opportunity to request a hearing regarding the four license amendments requested by Holtec.¹⁶ As relevant here,¹⁷ on October 7, 2024, Petitioners submitted a petition to intervene (as resubmitted on the correct docket on October 10, 2024).¹⁸ Petitioners submitted seven contentions and included a demand for a hearing before an Article III judge.¹⁹ Of the seven contentions, four were environmental contentions based, in part, on information in the Applicants' environmental evaluation.²⁰ On October 16, 2024, the Secretary of the Commission referred the petition to the Atomic Safety and Licensing Board Panel, noting that there was no merit to Petitioners' demand for a hearing before an Article III judge.²¹ On November 4, 2024,²² the Staff answered Petitioners' hearing request, asserting that Petitioners' request for a hearing should be granted,

¹⁶ Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Applications for Amendments to Renewed Facility Operating License Involving Proposed No Significant Hazards Considerations and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 89 Fed. Reg. 64,486 (Aug. 7, 2024) (Amendments Notice).

¹⁷ A separate hearing request was filed on the Amendments Notice by a group of individuals that the Board referred to collectively as 'Joint Petitioners'. *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), LBP-25-4, 101 NRC at ___ (slip op. at 2). The Board denied Joint Petitioners' Hearing Petition, but Joint Petitioners did not appeal the Board's decision.

¹⁸ See 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)

¹⁹ See Petition at 25-27, 30-73.

²⁰ Petition at 40-45, 63-73 (Contentions 2, 5, 6, and 7); see 10 C.F.R. § 2.309(f)(2).

²¹ See Memorandum from Carrie M. Safford, Secretary, Office of the Secretary, to E. Roy Hawken, Chief Administrative Judge, Atomic Safety and Licensing Board Panel (Oct. 16, 2024) at 1 (ML24290A145) (October 16 Referral Memorandum).

²² The Board amended its initial prehearing order to provide the Applicants and the Staff the full 25 days to respond to the Petition from the date it was filed on the correct docket. Memorandum and Order (Amending Initial Prehearing Order), at 2 (Oct. 17, 2024) (unpublished) (ML24291A105).

in part, because two of the five Petitioners established standing and portions of Contention 7 met the requirements for contention admissibility as a contention of omission.²³ The Applicants, in its answer, asserted that the petition should be denied because Petitioners had not demonstrated standing, did not proffer an admissible contention, and the Petition was untimely.²⁴ The Petitioners replied on November 12, 2024.²⁵

On January 31, 2025, the NRC staff published its Draft Environmental Assessment and Draft Finding of No Significant Impact (Draft EA/FONSI).²⁶ On February 3, 2025, the Board requested that the participants file briefs addressing the impact the Draft EA/FONSI had on Petitioners' pending environmental contentions.²⁷ The participants' responses indicated that they generally agreed that proposed Contentions 5, 6, and 7 were moot, including the portion of proposed Contention 7 that Staff had argued was admissible.²⁸

²³ See NRC Staff Answer to Intervention Petition from Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service in Palisades Restart Amendments Proceeding (Nov. 4, 2024) (ML24309A277) (Staff Answer).

²⁴ See Applicants' Answer Opposing Beyond Nuclear et al.'s Petition for Hearing (Nov. 4, 2024) (ML24309A302) (Applicants' Answer).

²⁵ Petitioning Organizations' Combined Reply to Answers Filed by NRC Staff and Holtec to the Petition to Intervene (Nov. 12, 2024) (ML24317A201) (Reply).

²⁶ "Draft Environmental Assessment and Draft Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project" (Draft for Comment) (Jan. 2025) (ML24353A157) (Draft EA/FONSI); Holtec Decommissioning International, LLC and Holtec Palisades, LLC; Palisades Nuclear Plant; Draft Environmental Assessment and Draft Finding of No Significant Impact, 90 Fed. Reg. 8721 (Jan. 31, 2025). Cf. Notification of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact (Jan. 31, 2025) (ML25031A007).

²⁷ See Memorandum and Order (Scheduling Briefing Concerning the Draft Environmental Assessment and Draft Finding of No Significant Impact) (Feb. 3, 2025) (ML25034A217).

²⁸ NRC Staff Position on the Effect of the Staff's Draft Environmental Assessment and Draft Finding of No Significant Impact on the Admissibility of Petitioning Organizations' Proposed Environmental Contentions (Feb. 19, 2025) (ML25050A569); Applicants' Brief in Response to Board's Order Requesting Briefing on Impact of Draft Environmental Assessment and Draft Finding of No Significant Impact (Feb. 19, 2025) (ML25050A567); Petitioning Organizations' Brief on Effects of Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant (Feb. 19, 2025) (ML25050A618); NRC Staff Response to Petitioning Organizations' Brief on the Effect of the Staff's Draft Environmental Assessment and Draft Finding of No Significant Impact on the Admissibility of the Proposed Environmental Contentions (Feb. 26, 2025) (ML25057A395); Applicants' Response Brief Regarding Impact of Draft EA/FONSI (Feb. 26, 2025) (ML25057A328); Petitioning Organizations' Response Brief on Effects of Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant (Feb. 26, 2025) (ML25057A497).

The Board held oral argument on contention admissibility on February 12, 2025.²⁹ On March 31, 2025, the Board issued its decision in LBP-25-4 holding that while all of the five Petitioners had demonstrated standing, they did not propose an admissible contention and denied the petition.³⁰ However, the Board did not terminate the proceeding as Petitioners' motion to admit new and amended contentions is pending before the Board.³¹ On April 25, 2025, Petitioners filed the instant appeal of LBP-25-4.³²

DISCUSSION

In LBP-25-4, the Board correctly rejected Petitioners' Contentions 1, 2, 3, and 4 for failing to satisfy the Commission's contention admissibility requirements, and dismissed Contentions 5, 6, and 7 as moot.³³ On appeal, the Petitioners challenge the Board's determination that Contentions 1, 2, 3, and 4 were inadmissible, but do not demonstrate that the Board erred or abused its discretion by denying the petition for hearing.³⁴ In the following discussion, the Staff presents a summary of (A) the legal principles applicable to Commission review of the Board's decision, (B) the standards governing the admissibility of contentions, and (C) the Staff's consideration of the regulatory framework and environmental review of the potential restart of a reactor in decommissioning. Second, the Staff shows that the Board correctly held that the Petitioners did not demonstrate that their proposed contentions were admissible.

²⁹ Transcript of Palisades Nuclear Plant Oral Argument Hearing (Feb. 12, 2025) (ML25045A183).

³⁰ See LBP-25-4, 101 NRC at ___ (slip op at 64).

³¹ *Id.*

³² Notice and Brief of Appeal of LBP-25-4 by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (Apr. 25, 2025) (Appeal).

³³ See LBP-25-4, 101 NRC at ___ (slip op. at 2).

³⁴ Appeal at 33.

I. Applicable Legal Standards

A. Standards for Commission Review

In accordance with 10 C.F.R. § 2.311(c), a licensing board decision denying a petition to intervene and/or request for hearing “is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted.” As stated in 10 C.F.R. § 2.311(b), the appeal must be initiated by filing a notice of appeal with a supporting brief that must conform to the requirements of 10 C.F.R. § 2.341(c)(3).

In reviewing a licensing board’s decision, the Commission generally defers to the board’s threshold rulings on standing and contention admissibility unless it finds an “error of law or abuse of discretion,”³⁵ and leaves to the board’s judgment a determination whether a proposed contention has a sufficient factual basis to be admitted for hearing.³⁶ Therefore, an appeal from a board’s threshold determination on contention admissibility that does not point to an error of law or abuse of discretion by the board, but simply restates the appellant’s prior positions and its general disagreement with the board’s decision, with or without additional support, will not be granted.³⁷ In addition, a petitioner may not, for the first time on appeal, “present[] arguments and evidence never provided to the Board.”³⁸ And an argument previously

³⁵ See, e.g., *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 710 (2012); see also *Calvert Cliffs Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 914 (2009) (“We give substantial deference to our boards’ determinations on threshold issues, such as standing and contention admissibility, and we will affirm decisions on the admissibility of contentions where the appellant points to no error of law or abuse of discretion.”) (internal quotation marks omitted).

³⁶ *Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-16-13, 83 NRC 566, 574 (2016).

³⁷ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 NRC 215, 219 (2017).

³⁸ *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 503–05 (2007).

made before the presiding officer but not discussed on appeal is considered abandoned.³⁹ For questions of law, the Commission's review is *de novo*.⁴⁰ The Commission may affirm a board's decision on any ground supported in the record, whether previously relied upon or not.⁴¹

B. Standards Governing Contention Admissibility

The NRC's contention admissibility requirements are set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice. To be admissible, a newly proffered contention must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) ... provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief[.]⁴²

Failure to satisfy any of the six pleading requirements renders a contention inadmissible.⁴³

³⁹ *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 257 (2010) (citing *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 253 (2001); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 414 (1990)).

⁴⁰ See, e.g., *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-16-18, 84 NRC 167, 171 (2016).

⁴¹ *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160, 166 (2005).

⁴² 10 C.F.R. § 2.309(f)(1)(i)-(vi).

⁴³ *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2) CLI-16-5, 83 NRC 131, 136 (2016).

Further, “[c]ontentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner.”⁴⁴

The § 2.309(f)(1) requirements are intended to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”⁴⁵ The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing.”⁴⁶ The NRC’s contention admissibility requirements are “strict by design and intended to ensure that adjudicatory proceedings are triggered only by substantive safety or environmental issues, rooted in a reasonably specific factual or legal basis” and “to screen out ill-defined, speculative, or otherwise unsupported claims.”⁴⁷ Further, “a proposed contention must be rejected if it raises issues beyond the scope of the proceeding as established by the Commission’s hearing notice.”⁴⁸ Moreover, 10 C.F.R. § 2.335 forbids challenges to NRC regulations in adjudicatory proceedings, absent a petition for waiver or exception (accompanied by affidavit) that demonstrates *prima facie* that “special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it)

⁴⁴ 10 C.F.R. § 2.309(f)(2).

⁴⁵ Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) (final rule).

⁴⁶ *Id.*

⁴⁷ *Exelon Generation Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 471-72 (2019) (internal quotation marks omitted).

⁴⁸ *Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), LBP-20-8, 92 NRC 23, 46 (2020) (citing *Public Service Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)).

would not serve the purposes for which the rule or regulation was adopted.”⁴⁹

Presiding officers are expected “to examine cited materials to verify that they do, in fact, support a contention.”⁵⁰ Also, a document cited by a petitioner “as the basis for a contention is subject to scrutiny both for what it does and does not show.”⁵¹ A presiding officer may view a petitioner’s supporting information in a light favorable to the petitioner,⁵² but the presiding officer is not to “search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves.”⁵³

C. The Staff’s Consideration of the Regulatory Framework and Environmental Review of the Potential Restart of a Reactor in Decommissioning

The Staff’s consideration of all restart-related requests is governed by the existing regulatory framework and Commission-established policy on the reauthorization of reactor operations for plants in decommissioning. In denying a petition for rulemaking (2021 PRM Denial), the Commission stated that “the NRC may consider requests from licensees to resume operations under the existing regulatory framework.”⁵⁴ The Staff has concluded, generally, that a facility licensee in decommissioning may apply to use the license amendment, transfer, and exemption processes, as applicable, to seek approval for the actions necessary to authorize the restart of a reactor in decommissioning for two principal reasons.

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

⁵⁰ *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006).

⁵¹ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 107 and n. 131 (2018).

⁵² *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

⁵³ *USEC*, CLI-06-10, 63 NRC at 457.

⁵⁴ Criteria To Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362, 24,363 (May 6, 2021) (denying a petition for rulemaking) (2021 PRM Denial). After Petitioners filed this appeal, the Commission reaffirmed its policy that the NRC may consider licensee requests to resume operations under the existing regulatory framework. *Palisades*, CLI-25-3, 101 NRC at __ (slip op. at 17).

First, a 10 C.F.R. Part 50 facility operating license continues in effect for reactors in decommissioning because entering the decommissioning process involves a change in license authority and not a change to the form of the license itself. Specifically, 10 C.F.R. § 50.82(a)(2) provides that upon docketing the § 50.82(a)(1) certifications, “the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.” In other words, the authority to operate is gone but the same Part 50 license remains. The continuation of the Part 50 license is made explicit by 10 C.F.R. § 50.51(b), which states “Each license for a facility that has permanently ceased operations, *continues in effect* beyond the expiration date to authorize ownership and possession of the production or utilization facility, until the Commission notifies the licensee in writing that the license is terminated.”⁵⁵ Thus, the Palisades license remains a renewed Part 50 facility operating license during the decommissioning process, and the NRC’s regulatory requirements for operating licenses continue to apply to Palisades absent an exemption or an exclusion in the NRC’s regulations for plants in decommissioning.

Second, because the license for a reactor in decommissioning remains a facility operating license, licensing and regulatory requests within the existing regulatory framework may be used to restore the licensed authority for reactor operation. The license amendment, license transfer, and exemption processes are all within the existing regulatory framework and may be applied to a reactor in decommissioning as follows:

- Because license amendments are typically used to change the authorities and requirements for a reactor in decommissioning, the amendment process may be used to restore those authorities so long as the amendment standards in 10 C.F.R. § 50.92(a) are met.
- The license transfer process may be used to transfer authorities under the existing license to a transferee that is qualified to hold a license for reactor operation under 10 C.F.R. § 50.82(c)(1).

⁵⁵ 10 C.F.R. § 50.51(b) (emphasis added).

- Although § 50.82(a)(2) prohibits reactor operation for a reactor in decommissioning, the exemption process established by 10 C.F.R. § 50.12 is available to remove regulatory restrictions, including the one in § 50.82(a)(2), if all exemption requirements are met.

To address Staff's NEPA obligations, Staff has prepared a Draft EA/FONSI that covers the restart-related amendment requests, transfer request, and exemption request.⁵⁶ The Staff stated in its Notice of Intent to Prepare EA and Conduct Scoping that it would be considering the environmental information that HDI submitted in its "New and Significant Review" attached to its Exemption Request in Staff's environmental review.⁵⁷

II. The Board Correctly Held that the Petitioners Failed to Present at Least One Admissible Contention Pursuant to 10 C.F.R. § 2.309 (f)(1)

In their brief on appeal, the Petitioners contend that the Board erred in rejecting four of their seven proposed contentions, but provide no facts or law to support their arguments.⁵⁸ Instead, the Petitioners repeat arguments from their hearing petition, mischaracterize the Board's ruling, and raise new unavailing arguments for the first time on appeal. As more fully set forth below, the Staff submits that the Board correctly rejected all four of the contentions, and the Petitioners have not shown that the Board committed any error of law or abuse of discretion in doing so. The Board's decision in LBP-25-4 should therefore be affirmed.

A. The Petitioners Do Not Identify Any Error of Law or Abuse of Discretion in the Board's Denial of Contention 1

In LBP-25-4, a majority of the Board correctly held that Holtec's request for an exemption from the § 50.82(a)(2) prohibition on operation of the reactor and emplacement or

⁵⁶ See Staff Answer at 23-27 (explaining the relationship between the Staff's environmental review and the hearing request requirements). See *also* Draft EA/FONSI at § 1.1.1 "Proposed Actions of the NRC."

⁵⁷ 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, 53,660 (Jun. 27, 2024) (Notice of Intent to Prepare EA and Conduct Scoping).

⁵⁸ Appeal at 13-32.

retention of fuel in the reactor is within the scope of this license amendment proceeding.⁵⁹

Additionally, the entire Board appropriately dismissed Contention 1 because the Petitioners' arguments challenging whether the Exemption Request meets § 50.12(a),⁶⁰ did not satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(iv)-(vi).⁶¹

On appeal, Petitioners argue that the Board misapplied the standards for contention admissibility and erred in requiring Petitioners to present enough evidence to prove the merits of their contentions.⁶² However there is no basis for these assertions. It is well-established that the Commission's contention admissibility rules are "strict by design."⁶³ Petitioners recite numerous legal holdings from Commission cases purporting to demonstrate that the NRC's contention admissibility standards are not so strict, but these include cases cited by the Board in LBP-25-4 and cases that reiterate the same principles used by the Board in its determination.⁶⁴ Moreover, Petitioners do not explain how the Board erred or misapplied the contention admissibility standards in relation to any of the Board's particular findings on Contention 1, and they mischaracterize the NRC's 1989 rule revising the agency's hearing procedures and erroneously suggest that the contention admissibility standards were intended to parallel the standard for dismissing a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.⁶⁵ In referencing Rule 12(b)(6), the Commission was referring to a single paragraph in a provision of

⁵⁹ LBP-25-4, 101 NRC at ___ (slip op. at 41-43). Judge Arnold submitted a concurring opinion that concurs with all of the major decisions in LBP-25-4, but disagrees that the Exemption Request falls within the scope of this proceeding. LBP-25-4, 101 NRC at ___ (concurring opinion at 1).

⁶⁰ Petition at 32-40.

⁶¹ LBP-25-4, 101 NRC at ___ (slip op. at 49-51 and n.260).

⁶² Appeal at 10, 17-18.

⁶³ See *Indian Point*, CLI-16-5, 83 NRC at 136 (internal citations omitted).

⁶⁴ Compare Appeal at 9-10 (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237, 242 (2008); *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000) with LBP-25-4, 101 NRC at ___ (slip op. at 49-51 and n. 242).

⁶⁵ Appeal at 11-12 (citing Fed. R. Civ. P. 12(b)(6)).

10 C.F.R. Part 2 that no longer exists in the rules today.⁶⁶ Accordingly, Petitioners' do not demonstrate that the Board erred or abused its discretion in denying Contention 1.

In their appeal, the Petitioners argue that the majority of the Board erred in finding that the Exemption Request is within the scope of this proceeding.⁶⁷ In doing so, Petitioners mischaracterize the Board majority's findings as "simply conclud[ing] that because the exemption was necessary to the restart plan, it was therefore inextricably intertwined with the [license amendment request]."⁶⁸ However, as the majority of the Board correctly noted, the regulation in § 50.82(a)(2) expressly prohibits what Holtec seeks to accomplish with the Primary Amendment Request – power operations at Palisades.⁶⁹ To issue the Primary Amendment Request, the NRC Staff is required to make the necessary findings that the facility will operate in conformity with the rules and regulations of the Commission.⁷⁰ Therefore, the Board majority correctly held that an exemption from the prohibition on operation found in 10 C.F.R. § 50.82(a)(2) "is necessary for the NRC to find that the amendment complies with NRC regulations."⁷¹ Petitioners repeat their and Holtec's previous arguments on why the Exemption Request is outside the scope of this proceeding.⁷² However, Petitioners' recitation of their prior arguments does not address or dispute the Board's finding that an exemption from § 50.82(a)(2)

⁶⁶ See Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,169, 33,171 (Aug. 11, 1989) (final rule) (explaining that § 2.714(d)(2)(iii) was intended to parallel the standard in Rule 12(b)(6)). The provision in 10 C.F.R. § 2.714(d)(2)(iii) was removed from Part 2 as part of the major revisions to Part 2 in 2004 that, among other things, replaced the previous intervention standards in 10 C.F.R. § 2.714(b) and (d) with the current standards in 10 C.F.R. § 2.309(d) and (f). See Changes to Adjudicatory Process, 69 Fed. Reg. 2182 (Jan. 14, 2004) (final rule).

⁶⁷ Appeal at 15.

⁶⁸ *Id.*

⁶⁹ LBP-25-4, 101 NRC at __ (slip op. at 43) (citing 10 C.F.R. §§ 50.57(a), 50.82(a)(2), 50.92(a)).

⁷⁰ 10 C.F.R. §§ 50.57(a), 50.92(a).

⁷¹ LBP-25-4, 101 NRC at __ (slip op. at 43) (citing 10 C.F.R. §§ 50.57(a), 50.82(a)(2), 50.92(a)).

⁷² Appeal at 13-15.

is necessary for the NRC to find that the amendment complies with NRC regulations.⁷³

Moreover, contrary to the Petitioners' assertions, the majority of the Board specifically considered applicable Commission case law regarding the applicability of the "inextricably intertwined" standard to the Exemption Request.⁷⁴ Accordingly, Petitioners do not demonstrate that the Board erred or abused its discretion in its denial of Contention 1.⁷⁵

Petitioners also argue that the Board majority should have made a similar analysis as Judge Arnold did in his concurring opinion, which they claim, "correctly made the distinction between the concepts of intertwined and linked, relying on the statements of NRC counsel that the exemption and LARs could be separated."⁷⁶ But Petitioners do not engage with any of the arguments in the concurring opinion or explain how it demonstrates that the majority somehow erred. At oral argument, the Staff stated that the NRC "does have authority to grant an amendment application in part just like there was an application for an operating license and we granted a low power license," but it is not planning to do that here.⁷⁷ Based on these statements, the concurring opinion asserts that the Staff could completely decouple the license amendments from the Exemption Request such that they are not inextricably intertwined.⁷⁸ However, section 50.82(a)(2) explicitly prohibits "operation of the reactor or emplacement or retention of fuel into the reactor vessel."⁷⁹ Thus, an exemption from the § 50.82(a)(2) prohibition

⁷³ *Turkey Point*, CLI-17-12, 86 NRC at 219.

⁷⁴ See LBP-25-4, 101 NRC at ___ (slip op. at 43 n.214) (citing *Palisades*, CLI-22-8, 96 NRC at 14; *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 551-52 (2016); *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 470 (2001)).

⁷⁵ Petitioners' assertion that the Board considered these arguments in a single short paragraph is also without merit. Appeal at 15. The Board's decision, giving due consideration to this issue along with applicable NRC case law and regulations, spans several pages. See LBP-25-4, 101 NRC at ___ (slip op. at 41-43).

⁷⁶ Appeal at 15 (citing LBP-25-4, 101 NRC at ___ (concurring opinion at 2, 5)).

⁷⁷ Tr. at 61-62.

⁷⁸ LBP-25-4, 101 NRC at ___ (concurring opinion at 5).

⁷⁹ 10 C.F.R. § 50.82(a)(2).

would still be necessary to grant a partial amendment allowing emplacement of fuel in the reactor or operations at low power.⁸⁰ Regardless, the Staff would be required to issue the remaining portion of the amendment authorizing operations at full power, to which the Exemption Request would be inextricably intertwined; thus, the Exemption Request would still be subject to challenge in this proceeding. Accordingly, the Petitioners' reliance on the concurring opinion does not demonstrate that the Board majority based its determination that the Exemption Request falls within the scope of this license amendment proceeding on legal error or abuse of the Board's discretions.

In LBP-25-4, the Board appropriately noted that throughout Contention 1, Petitioners rely on conclusory statements in the petition or in the declaration from their expert.⁸¹ The Board correctly determined that the Petitioners provided no reference to legal authority for their assertion that § 50.12(a)(1) requires Applicants to demonstrate "affirmative legal authorization" for their Exemption Request.⁸² Petitioners criticize the Board for not citing to any legal authority for its claim that silence is authorization.⁸³ However, the Board made no such claim, and was merely providing an example of where Petitioners failed to provide the required information under § 2.309(f)(1)(vi) to provide an adequate legal basis to support Contention 1.⁸⁴ As the Board correctly noted, the Commission has long held that conclusory statements, even if made by an expert, are insufficient to establish the legal and factual basis for an admissible contention.⁸⁵ Accordingly, Petitioners have failed to demonstrate that the Board erred or abused its discretion in its denial of Contention 1.

⁸⁰ 10 C.F.R. §§ 50.57(a), 50.82(a)(2), 50.92(a).

⁸¹ LBP-25-4, 101 NRC at __ (slip op at 50).

⁸² *Id.*

⁸³ Appeal at 17.

⁸⁴ LBP-25-4, 101 NRC at __ (slip op. at 50).

⁸⁵ *Id.* (citing *Pilgrim*, CLI-12-15, 75 NRC at 714; *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 216 (2003); *Oyster Creek*, CLI-00-6, 51 NRC at 208).

Regarding Petitioners' arguments that no special circumstances exist under § 50.12(a)(2)(ii), the Board correctly determined that Petitioners' arguments overlooked the application of the rule to the particular circumstances presented in this proceeding.⁸⁶ The Board also correctly determined that Petitioners' § 50.12(a)(2)(iii) arguments made only generalized claims about the economic burdens of others and did not explain how the timing of Holtec's decision to pursue restart was material to an assessment of the costs from Holtec's claimed hardship and those contemplated at the time § 50.82(a)(2) was adopted.⁸⁷ Further, the Board properly found that Petitioners' § 50.12(a)(2)(vi) claims that restart would not be in the public interest were conclusory and speculative, and Petitioners did not link their claims to any material circumstance not considered when § 50.82(a)(2) was adopted.⁸⁸ Moreover, noting that the Petitioners conceded that Holtec does not claim to satisfy § 50.12(a)(2)(i), (iv), and (v), the Board correctly determined that Petitioners raise no genuine dispute regarding the Holtec's showing of special circumstances under these subsections.⁸⁹

To challenge the Board's dismissal of the argument that special circumstances do not exist under § 50.12(a)(2)(ii) because the Exemption Request does not serve the purpose of the rule in § 50.82, Petitioners mischaracterize the Board's ruling.⁹⁰ Section 50.82(a)(2) precludes operation of a reactor or emplacement or retention of fuel in the reactor vessel after the NRC has docketed a licensee's certifications of permanent cessation of operations and permanent removal of fuel. Petitioners fault the Board's determination that the restart of Palisades is a

⁸⁶ *Id.* at 50.

⁸⁷ *Id.* at 50-51.

⁸⁸ *Id.* at 51.

⁸⁹ LBP-25-4, 101 NRC at __ (slip op. at 48 n. 244). The Commission "will not consider granting an exemption" unless one or more of the special circumstances enumerated in 10 C.F.R. § 50.12(a)(2) is present. *Id.* at 44 (citing 10 C.F.R. § 50.12(a)(2)).

⁹⁰ Appeal at 17.

circumstance that would achieve the underlying purpose of the rule.⁹¹ But Petitioners mischaracterize the Board's statements as well as the applicable exemption standard. To determine whether the special circumstances criteria in § 50.12(a)(2)(ii) are met, the "particular circumstances" of the case must be considered.⁹² And as the Board correctly concluded, Petitioners' arguments overlook the application of the rule to the particular circumstances presented in this proceeding – the Applicants' plan to restart Palisades.⁹³

Moreover, the Board appropriately declined to read into the rule the Petitioners' implied limitation that the NRC would not be able to permit rescission of the § 50.82(a)(1) certifications under any circumstance.⁹⁴ Contentions that are nothing more than generalizations providing the petitioners' view of what applicable rules and policies ought to be must be rejected.⁹⁵ On appeal, Petitioners do not engage with any of the Board's arguments and merely reiterate their prior arguments from their hearing request that the purpose of § 50.82 is to provide a process for decommissioning and operating license termination and that restart of Palisades would not serve that purpose.⁹⁶

Throughout their appeal, Petitioners continue to recite the same arguments they set forth in their initial hearing petition. However, Commission case law is clear that an appeal of a contention admissibility ruling that consists of just a "[r]ecitation of an appellant's prior positions in a proceeding or statement of general disagreement with a decision's result" is not sufficient.⁹⁷ For example, they argue on appeal as they did in their hearing petition that Contention 1 should

⁹¹ *Id.*

⁹² 10 C.F.R. § 50.12(a)(2)(ii) ("Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule").

⁹³ LBP-25-4, 101 NRC at __ (slip op at 50).

⁹⁴ *Id.*

⁹⁵ *Millstone*, CLI-03-14, 58 NRC at 218.

⁹⁶ Appeal at 17.

⁹⁷ *Turkey Point*, CLI-17-12, 86 NRC at 219.

have been admitted; Holtec bears a heavy burden to justify its Exemption Request; and exemptions may only be granted under “exigent circumstances” and should be granted sparingly.⁹⁸ Petitioners do not, however, challenge the Board’s conclusions or otherwise demonstrate that the Board somehow erred or abused its discretion in its denial of Contention 1.⁹⁹ In another example, Petitioners assert that the Board “did not really discuss or address” Petitioners’ arguments as to why the Exemption Request did not satisfy the requirements of § 50.12.¹⁰⁰ As a result, Petitioners dedicate nearly six pages of their appeal to repeating arguments from their hearing request because they “believe the Commission would benefit from such a discussion.”¹⁰¹ However, as described above, the Board’s decision in LBP-25-4 demonstrates that the Board carefully considered the Petitioners’ claims regarding § 50.12(a)(1) criteria and § 50.12(a)(2) special circumstances criteria and properly determined that the contention admissibility standards in § 2.309(f)(1)(iv)-(vi) were unmet warranting denial of Contention 1. Petitioners’ repetition of their arguments from their initial hearing request fails to demonstrate that the Board committed a legal error or abused its discretion in its denial of Contention 1.¹⁰²

In arguments raised for the first time on appeal, Petitioners accuse Holtec and the Staff of abusing the exemption procedures since they are being used for restart efforts at Three Mile Island and Duane Arnold.¹⁰³ They also assert that the exemption is a new policy and unofficial

⁹⁸ Compare Appeal at 16 with Petition at 31-32.

⁹⁹ Appeal at 16. Petitioners’ arguments are also based on outdated case law and Commission policy that predates the current § 50.12 exemption standards promulgated in 1985. Specific Exemptions; Clarification of Standards, 50 Fed. Reg. 50,764 (Dec. 12, 1985) (final rule). Moreover, the cases Petitioners reference pertain to Commission policy specifically related to exemptions from the requirements from § 50.10(c) for site preparation activities, which is not relevant to Holtec’s Exemption Request from § 50.82(a)(2).

¹⁰⁰ Appeal at 18.

¹⁰¹ Compare Appeal at 18-23 with Petition at 33-40.

¹⁰² *Turkey Point*, CLI-17-12, 86 NRC at 219.

¹⁰³ Appeal at 16-17.

rulemaking procedure, “that bypasses the formal rulemaking requirements of 10 C.F.R. §§ 2.800 *et seq.*”¹⁰⁴ However, the Commission should not entertain these new arguments raised for the first time on appeal.¹⁰⁵ Moreover, these arguments challenging the NRC’s exemption process in 10 C.F.R. § 50.12 amount to an impermissible attack on the NRC’s regulations contrary to 10 C.F.R. § 2.335. Because these arguments do not address any of the Board’s rulings in LBP-25-4, Petitioners fail to demonstrate that the Board committed any error of law or abuse of discretion in dismissing Contention 1.

For the reasons discussed above, the Commission should affirm the Board’s ruling that Contention 1 is inadmissible.

B. The Petitioners Do Not Identify Any Error of Law or Abuse of Discretion in the Board’s Denial of Contentions 2 and 3

In Contention 2, Petitioners asserted that the Staff must prepare an Environmental Impact Statement (EIS), rather than an Environmental Assessment (EA) because (1) an operating license is required, and (2) restart is a “major federal action.”¹⁰⁶ In Contention 3, Petitioners asserted that the Applicants must obtain a new operating license rather than amend their current operating license.¹⁰⁷ The Board correctly noted that Contentions 2 and 3 are substantially similar and share the same foundational underpinning, so the Board considered them together in its decision.¹⁰⁸

¹⁰⁴ *Id.* at 17.

¹⁰⁵ *See Shieldalloy*, CLI-07-20, 65 NRC at 503–05 (quoting *USEC*, CLI-06-10, 63 NRC at 458) (“The purpose of an appeal to the Commission is to point out errors made in the Board’s decision, not to attempt to cure deficient contentions by presenting arguments and evidence never provided to the Board.”).

¹⁰⁶ Petition at 40-45.

¹⁰⁷ Petition at 45-48.

¹⁰⁸ LBP-25-4, 101 NRC at ___ (slip op. at 51).

In LBP-25-4, the Board appropriately determined that Contentions 2 and 3 do not satisfy the contention admissibility requirements because the Petitioners failed to satisfy 10 C.F.R. § 2.309(f)(1)(iii), (v), (vi) as the issues were beyond the scope of the proceeding and because they are not supported by sufficient information to raise a genuine dispute on a material issue of law or fact.¹⁰⁹ The Board pointed to the Commission's policy that restart requests may be evaluated using the agency's existing regulatory framework and concluded that Petitioners' claims that restart cannot be accomplished through the existing regulatory framework amounted to an impermissible challenge to agency policy and regulations.¹¹⁰ Further, the Board determined that the Petitioners' claim that an EIS is required in accordance with 10 C.F.R. § 51.20 fails for the same reasons, and Petitioners did not provide sufficient support to raise a genuine dispute that the Palisades restart would be a "major Federal action[] significantly affecting the quality of the human environment" to require the Staff to prepare an EIS.¹¹¹ Finally, the Board rejected Petitioners' challenge to the Staff's characterization of the Applicants' environmental document in support of restart as an environmental report.¹¹²

On appeal, the Petitioners present three distinct arguments that the Board erred, each of which are new arguments raised for the first time through their appeal, and none of which demonstrates that the Board erred or abused its discretion in rejecting Contentions 2 and 3.¹¹³ In sum, Petitioners argue that (1) a construction permit is required for Palisades pursuant to 10 C.F.R. § 50.92(a),¹¹⁴ (2) the Commission's policy outlining a pathway to restart through the existing regulatory framework does not preclude Petitioners' challenge to the restart process

¹⁰⁹ LBP-25-4, 101 NRC at ___ (slip op. at 51-55).

¹¹⁰ *Id.* at ___ (slip op. at 53).

¹¹¹ *Id.* at ___ (slip op. at 54).

¹¹² *Id.* at ___ (slip op. at 55).

¹¹³ Appeal at 23-29.

¹¹⁴ *Id.* at 23-24.

because it was an interpretive rule requiring notice and comment,¹¹⁵ and (3) this proceeding is Petitioners' first opportunity to dispute the restart pathway.¹¹⁶

Petitioners first raised their argument that a *construction* permit is required pursuant to § 50.92(a) to restart Palisades in their reply,¹¹⁷ and re-assert on appeal that a construction permit is required for restart of operation at Palisades.¹¹⁸ Arguments must be raised in the initial hearing request and not in a reply¹¹⁹ or on appeal.¹²⁰ As the assertion that a construction permit is required was raised for the first time in their reply and not in their initial petition, the Board did not make an error of law or abuse its discretion by not considering this argument.¹²¹

Even if the Commission were to consider Petitioners' late § 50.92(a) argument here on appeal, Petitioners do not provide sufficient information to show that a genuine dispute exists on a material issue of law or fact.¹²² As Petitioners point out, to trigger the need for a construction permit, the change must "essentially [render] major portions of the original safety analysis for the facility inapplicable to the modified facility."¹²³ But Petitioners do not point to any specific changes that would render major portions of the safety analysis inapplicable to Palisades.¹²⁴ Petitioners point to a License Amendment Request, but do not connect how this change, subject to NRC technical review and to a separate hearing opportunity, renders any portion of the

¹¹⁵ *Id.* at 25-29.

¹¹⁶ *Id.* at 29.

¹¹⁷ Reply at 22-23.

¹¹⁸ Appeal at 24.

¹¹⁹ *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224 (2004).

¹²⁰ *Shieldalloy*, CLI-07-20, 65 NRC at 503-05.

¹²¹ In their Petition, Petitioners only asserted that Holtec must obtain a new operating license to restart Palisades. See, e.g., Petition at 40-55.

¹²² 10 C.F.R. § 2.309(f)(1)(vi).

¹²³ Appeal at 24 (citing *Portland General Electric Co.* (Trojan Nuclear Plant), LBP-77-69, 6 NRC 1179, 1183 (1977); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 391-92 (2001)).

¹²⁴ Appeal at 24.

original safety analysis inapplicable to Palisades.¹²⁵ Further, Petitioners assert that the Structures, Systems, and Components (SSCs) at Palisades must be replaced or repaired.¹²⁶ But they provide no support or explanation for why replacing or repairing SSCs would render any portion of the original safety analysis inapplicable to Palisades. Therefore, while the Board was correct not to consider this argument as it was late, Petitioners' argument that a construction permit is required does not meet the contention admissibility requirements and is inadmissible.¹²⁷

On appeal, Petitioners argue for the first time that it was improper for the Board to foreclose a challenge to the agency's regulations based on the Commission's policy in the 2021 PRM Denial because, according to Petitioners, the denial of the rulemaking petition is an interpretive rule that must be subject to notice and comment rulemaking, also known as the *Paralyzed Veterans* doctrine.¹²⁸ Further, Petitioners assert for the first time through their appeal that it was improper for the NRC staff to publish guidance consistent with this Commission policy without notice and comment rulemaking.¹²⁹ The Board appropriately characterized Contentions 2 and 3 as an impermissible challenge to NRC regulations and Commission policy,¹³⁰ which requires a waiver for Petitioners to be able to challenge, but they did not request a waiver.¹³¹ In their appeal, Petitioners claim that they are not attacking generic NRC

¹²⁵ *Id.* (citing Holtec Palisades, LLC; Palisades Nuclear Plant; License Amendment Request, 90 Fed. Reg. 15,722 (Apr. 15, 2025) (Steam Generator Amendment Notice)).

¹²⁶ Appeal at 24.

¹²⁷ 10 C.F.R. § 2.309(f)(1)(vi).

¹²⁸ Appeal at 26-27 (citing *MetWest Inc. v. Sec'y of Labor*, 560 F.3d 506, 509-12 (D.C. Cir. 2009); *Alaska Professional Hunters Ass'n v. F.A.A.*, 177 F.3d 1030, 1034 (D.C. Cir. 1999); *Paralyzed Veterans of America v. D.C. Arena*, 117 F.3d 579, 586 (D.C. Cir. 1997); *Syncor Int'l Corp. v. Shalala*, 127 F.3d 90, 94-95 (D.C. Cir. 1997)).

¹²⁹ Appeal at 27-28.

¹³⁰ LBP-25-4, 101 NRC at ___ (slip op. at 53 and n.274) (citing Denial of Petition for Rulemaking, 86 Fed. Reg. 24,362 (May 6, 2021); 10 C.F.R. §§ 50.12, 50.90, 50.92).

¹³¹ *Id.* at ___ (slip op. at 53 and n.275) (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); 10 C.F.R. § 2.335).

requirements or making generalized grievances about NRC policies, and then proceed to attack NRC requirements through generalized grievances about NRC policies.¹³²

Specifically, Petitioners seek to circumvent this categorical bar to their challenge to the NRC regulations and Commission policy by characterizing, for the first time in their appeal, the Commission's policy governing restart¹³³ as an improperly issued interpretive rule.¹³⁴ Even if the Commission's policy outlined in the 2021 PRM denial is an interpretive rule,¹³⁵ Petitioners' argument that notice and comment rulemaking is required for interpretive rules relies on overturned precedent. In *Perez v. Mortgage Bankers Ass'n* the Supreme court held that the *Paralyzed Veterans* doctrine is "contrary to clear text of the APA's rulemaking provisions and improperly imposes on agencies an obligation beyond the APA's maximum procedural requirements."¹³⁶ The Supreme Court held that an agency is not required to use notice-and-comment procedures to issue, amend or repeal an interpretive rule.¹³⁷ Therefore, there is no basis in law for Petitioners' assertion that it was improper for the Board to rely on the Commission' policy as stated in the 2021 PRM Denial to bar Petitioners' challenge. Petitioners also assert that (1) the Commission's policy regarding restart was dicta and (2) the Staff's implementation of the Commission's policy amounts to a post hoc rationalization of the restart process.¹³⁸ But the Commission's policy that the existing regulatory framework may be used by

¹³² Appeal at 25-29.

¹³³ 2021 PRM Denial; See also *Palisades*, CLI-25-3, 101 NRC at ___ (slip op at 17).

¹³⁴ Appeal at 26-27.

¹³⁵ It is unlikely that the Commission's statement in the 2021 PRM denial that "the existing regulatory framework may be used to address the issue..." is an 'interpretative rule' as Petitioners assert. See *MetWest Inc. v. Sec'y of Labor*, 560 F.3d 506 at 509-10 ("[w]e have held that conditional or qualified statements, including statements that something **"may be"** permitted, do not establish definitive and authoritative interpretations.") (emphasis added).

¹³⁶ *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 100 (2015) (internal quotation marks omitted).

¹³⁷ *Id.* at 100 - 103 (2015).

¹³⁸ Appeal at 27-28.

a licensee to restart a reactor was unambiguous and essential to the 2021 PRM Denial,¹³⁹ and has been reaffirmed by the Commission.¹⁴⁰ Further, the ‘guidance’ Petitioners point to does not have the significance they attach to the document, as Inspection Manual Chapter 2562 (IMC 2562) concerns inspection and oversight and is not guidance for the licensing aspect of restart.¹⁴¹ Lastly, the Board’s decision mentioned IMC 2562,¹⁴² not the Palisades Inspection Plan which Petitioners cite in their appeal.¹⁴³ Therefore, Petitioners do not demonstrate the Board made an error of law or abused its discretion when it determined that these arguments amount to an impermissible challenge to agency policy and regulations.

Finally, Petitioners claim on appeal that the Board is incorrectly precluding any contentions to challenge the restart pathway and this is the public’s first opportunity to challenge the restart pathway.¹⁴⁴ The Board correctly determined that Petitioners claims are an impermissible challenge to agency policy and regulations.¹⁴⁵ Petitioners could have petitioned for a waiver to challenge the NRC’s regulations, but Petitioners did not request one.¹⁴⁶ Therefore, Petitioners do not demonstrate the Board made an error of law or abused its discretion when it found that Contentions 2 and 3, which share the same foundational underpinning, are inadmissible.

¹³⁹ 2021 PRM Denial, 86 Fed. Reg. at 24,363 (“The NRC is denying the petition because the issue raised by the petitioner does not involve a significant safety or security concern **and the existing regulatory framework may be used to address the issue raised by the petitioner.**”) (emphasis added).

¹⁴⁰ *Palisades*, CLI-25-3, 101 NRC at ___ (slip op. at 17).

¹⁴¹ Tr. at 88-89 (citing NRC Inspection Manual Chapter 2562, “Light-Water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations” (July 29, 2024) (ML24150A239) (IMC 2562)).

¹⁴² LBP-25-4, 101 NRC at ___ (slip op. at 42-43 and n.210).

¹⁴³ Appeal at 27 n. 41 (citing Palisades Nuclear Plant Restart Inspection Plan (Aug. 20, 2024) (ML24228A195)).

¹⁴⁴ Appeal at 29.

¹⁴⁵ LBP-25-4, 101 NRC at ___ (slip op. at 53 and n.275).

¹⁴⁶ 10 C.F.R. § 2.335.

For the reasons discussed above, the Commission should affirm the Board's ruling that Contentions 2 and 3 are inadmissible.

C. The Petitioners Do Not Identify Any Error of Law or Abuse of Discretion in the Board's Denial of Contention 4

In Contention 4, Petitioners asserted that the NRC has no authority to approve the license amendments requested by Holtec because there is no dedicated regulatory procedure for restarting a closed reactor.¹⁴⁷ Without requesting a waiver, Petitioners challenged the staff's ability to use the NRC's existing regulatory framework to authorize restart, claiming that restart is a major question requiring clear congressional approval, and challenged the Applicants' proposed use of 10 C.F.R. § 50.59 to reinstate UFSAR Revision 35.¹⁴⁸ Additionally, Petitioners speculated that the quality assurance records for Palisades were destroyed, without explaining how that would be material to this license amendment proceeding.¹⁴⁹

In LBP-25-4, the Board appropriately determined that Contention 4 does not satisfy the contention admissibility requirements because the Petitioners failed to satisfy 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).¹⁵⁰ First, the Board correctly found that Petitioners' arguments regarding the NRC's authority to allow Applicants to restart Palisades is a challenge to the agency's regulations and Commission policy, and is not within the scope of this adjudicatory proceeding.¹⁵¹ Second, the Board rightly concluded that Petitioners' 10 C.F.R. § 50.59 arguments were "based on a misinterpretation of that section and otherwise amount to an impermissible challenge to a regulation."¹⁵² The Board correctly pointed out that it is the

¹⁴⁷ Petition at 48.

¹⁴⁸ *Id.* at 51-63.

¹⁴⁹ Petition at 63.

¹⁵⁰ LBP-25-4, 101 NRC at ___ (slip op. at 58 and n.305).

¹⁵¹ *Id.* at ___ (slip op. at 58 and n. 306).

¹⁵² *Id.* at ___ (slip op. at 59-60).

outcome of the process that is subject to challenge, not the process itself.¹⁵³ Lastly, the Board correctly determined that Petitioners' argument related to the purported destruction of quality assurance records did not raise a genuine, material dispute and to the extent that Petitioners intended to challenge the Applicant Quality Assurance plan for operations, that challenge should have been raised in the Palisades license transfer proceeding.¹⁵⁴

On appeal, with the same argument Petitioners advance in their appeal of Contentions 2 and 3, Petitioners assert that the Commission's policy in the 2021 PRM Denial, and the Staff's Inspection Plan for Palisades, requires notice and comment pursuant to the *Paralyzed Veterans* doctrine.¹⁵⁵ This doctrine is not good law and does not support Petitioners' appeal.¹⁵⁶ Therefore, Petitioners do not demonstrate the Board made an error of law or abused its discretion when it rejected Petitioners' challenge to NRC Regulations and Commission policy.¹⁵⁷

On appeal, to challenge the Board's determination that it, "[i]n the face of the Commission's policy to use its long-standing licensing and regulatory processes, we do not see how [Petitioners] have met their burden to provide sufficient support for their claim that application of the major questions doctrine forecloses the agency's review of the license amendment requests without express statutory authorization," the Petitioners claim that the Board misunderstood their rationale for citing *West Virginia v. EPA*.¹⁵⁸ While not essential to its

¹⁵³ *Id.* at ___ (slip op. at 60 and n.319).

¹⁵⁴ *Id.* at ___ (slip op. at 61).

¹⁵⁵ Appeal at 30-31.

¹⁵⁶ *Supra* at Discussion Section II.B.

¹⁵⁷ LBP-25-4, 101 NRC at ___ (slip op. at 58).

¹⁵⁸ *Id.* at ___ (slip op. at 59) (internal quotation marks and citations omitted); Appeal at 31-32 (citing *West Virginia v. EPA*, 597 U.S. 697 (2022)).

resolution of Contention 4,¹⁵⁹ the Board correctly concluded that other than offering conclusory assertions, that Petitioners do not explain how the restart of Palisades is an “extraordinary case.”¹⁶⁰ On Appeal, Petitioners now simply restate their conclusory assertions without addressing how the Palisades restart fits into the *West Virginia v. EPA* framework.¹⁶¹ A recitation of Petitioners’ prior positions in a proceeding is not sufficient to support their appeal and does not demonstrate the Board made an error of law or abused its discretion when it correctly noted in dicta that there was no merit to Petitioners’ invocation of the *West Virginia v. EPA* doctrine.¹⁶²

Finally, on Appeal, Petitioners assert that the Board mischaracterized their arguments that the “major componentry at Palisades must be subject to a 50.59 threshold analysis” and will result in a new and changed UFSAR.¹⁶³ But the Board correctly characterized Petitioners’ arguments as “a misinterpretation of [10 C.F.R. § 50.59] and otherwise amount to an impermissible challenge to a regulation.”¹⁶⁴ The Board appropriately characterized Petitioners’ challenge as to the *use* of the process, and noted that it is the outcome that would be subject to challenge.¹⁶⁵ In their Appeal, Petitioners start with their conclusion that the previous UFSAR cannot support operations after restart and speculate that Holtec’s implementation of the 10 C.F.R. § 50.59 process will be deficient.¹⁶⁶ Petitioners continue to request a hearing to challenge the Applicants’ process instead of challenging the outcome of the process, which the

¹⁵⁹ LBP-25-4, 101 NRC at ___ (slip op. at 58) (“The Commission has determined that the agency’s existing regulatory framework applies to restart requests, and a challenge to the use of this framework is a challenge to both the NRC’s regulations and Commission policy. **Therefore, we need not decide whether restart constitutes a ‘major question’ that requires clear Congressional approval.**”) (emphasis added) (internal citations omitted).

¹⁶⁰ *Id.* at ___ (slip op. at 59) (internal citations omitted).

¹⁶¹ Appeal at 31-32.

¹⁶² *Turkey Point*, CLI-17-12, 86 NRC at 219.

¹⁶³ Appeal at 32.

¹⁶⁴ LBP-25-4, 101 NRC at ___ (slip op. at 59-60).

¹⁶⁵ *Id.* at ___ (slip op. at 60).

¹⁶⁶ Appeal at 32.

Board appropriately rejected.¹⁶⁷ Therefore, Petitioners do not demonstrate the Board made an error of law or abused its discretion when it held that Petitioners' challenge to the Applicants' use of the 10 C.F.R. § 50.59 process amounted to an improper challenge to an agency regulation.

For the reasons discussed above, the Commission should affirm the Board's ruling that Contention 4 is inadmissible.

CONCLUSION

For the reasons set forth above, the Staff submits that the Board correctly denied the Petitioners' petition to intervene, for failing to proffer at least one admissible contention. The Petitioners have not demonstrated any error of law or abuse of discretion in the Board's decision. Accordingly, the Petitioners' appeal of LBP-25-4 should be denied.

Respectfully submitted,

/Signed (electronically) by/

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Executed in Accord with 10 CFR 2.304(d)

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¹⁶⁷ LBP-25-4, 101 NRC at ___ (slip op. at 60).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of HOLTEC DECOMMISSIONING INTERNATIONAL, LLC, AND HOLTEC PALISADES, LLC (Palisades Nuclear Plant)	Docket No. 50-255-LA-3
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Certificate of Service

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing, “NRC STAFF BRIEF IN OPPOSITION TO THE BEYOND NUCLEAR, DON’T WASTE MICHIGAN, MICHIGAN SAFE ENERGY FUTURE, THREE MILE ISLAND ALERT, AND NUCLEAR ENERGY INFORMATION SERVICE APPEAL OF THE ATOMIC SAFETY AND LICENSING BOARD’S DECISION IN LBP-25-4,” dated May 20, 2025, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the captioned proceeding, this 20th day of May 2025.

/Signed (electronically) by/

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Dated in Rockville, Maryland
this 20th day of May 2025