**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**
**BEFORE THE COMMISSION**

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| In the Matter of: | ) | |
| HOLTEC DECOMMISSIONING INTERNATIONAL, LLC AND HOLTEC PALISADES, LLC | ) | Docket No. 50-255-LA-3 |
| Palisades Nuclear Plant | ) | May 20, 2025 |

# HOLTEC DECOMMISSIONING INTERNATIONAL, LLC AND HOLTEC PALISADES, LLC BRIEF IN OPPOSITION TO APPEAL

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**BRIEF IN OPPOSITION TO APPEAL**

In accordance with 10 CFR § 2.311(b), Holtec Decommissioning International, LLC and Holtec Palisades, LLC (collectively, "Applicants") submit this brief in opposition to the Notice of Appeal (the "Appeal")[1] filed on April 25, 2025 by Beyond Nuclear, Don't Waste Michigan, Michigan Clean Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (collectively, "Petitioners"). Petitioners appeal the Atomic Safety and Licensing Board's ("Board") March 31, 2025 decision in LBP-25-04[2] denying Petitioners' petition to intervene and request for hearing,[3] which was filed in response to the Commission's notice that offered an opportunity to request hearing on four license amendment requests filed by Applicants (the

[1] Notice of Appeal of ASLB Decision LBP-25-04, By Beyond Nuclear, Don't Wasted Michigan, Michigan Clean Energy Future, Three Mile Island Alert and Nuclear Energy Information Service, and Brief in Support of Appeal (Apr. 25, 2025) (ML25115A265) ("Appeal").

[2] *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), LBP-25-04, 101 NRC __ (slip op.) (Mar. 31, 2025) (ML25090A164) ("Order").

[3] 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").

"LARs") for the Palisades Nuclear Plant ("Palisades").[4] For the reasons set forth below, the Commission should deny the Appeal and affirm the Board's decision.

## I. Background and Procedural History

### A. NRC Policy Regarding Reactor Restarts

This proceeding involves licensing actions related to the Applicants' plan to resume power operations at Palisades after it shut down in 2022 and filed the certifications required by 10 CFR § 50.82(a)(1) accompanying the cessation of power operations and reactor defueling.[5] Palisades is the first reactor to ask for approval to restart after this milestone. That said, Applicants' proposed approach for transitioning back to power operations is consistent with NRC guidance and Commission policy and uses the same regulatory tools available to all NRC licensees—indeed, they are the same tools used to transition reactors from power operations into decommissioning. In 2021, the Commission considered a petition for rulemaking asking NRC to amend its rules to address such a situation.[6] The Commission declined to do so, explaining:

> While current regulations do not specify a particular mechanism for reauthorizing operation of a nuclear plant after both certifications [contemplated by 10 CFR § 50.82(a)(1)] are submitted, there is no statute or

[4] 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) ("Federal Register Notice"); PNP 2023-030, Letter from Holtec Decommissioning International, LLC ("HDI") 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"); PNP 2024-001, Letter from HDI 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"); PNP 2024-005, Letter from HDI 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"); PNP 2024-003, Letter from HDI 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").

[5] *See* PNP 2022-010, Letter from Entergy Nuclear Operations, Inc. ("ENOI") to NRC, "Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel" (June 13, 2022) (ML22164A067).

[6] NRC Denial of Petition for Rulemaking, Criteria to Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362 (May 6, 2021) ("PRM Denial").

> regulation prohibiting such action. Thus, the NRC may address such requests under the existing regulatory framework.[7]

The Commission recently affirmed this decision in CLI-25-03, explaining that "the existing regulatory framework allows an applicant to apply for the restart of a shutdown reactor that had already submitted the 10 C.F.R. § 50.82(a)(1) certifications."[8]

### B. Palisades's Current Licensing Basis

Applicants acquired Palisades in June 2022 with the expectation that the facility, which was shutdown at the time, would remain permanently shutdown and they would be responsible for decommissioning. Prior to Applicants' acquisition, ENOI filed the shutdown and defueling certifications and implemented a series of license amendments, exemptions, and changes to modify the licensing basis to reflect the shutdown status.[9] The plant's operating license—Renewed Facility Operating License DPR-20 (the "RFOL")—remains in place; it has simply been modified, along with many other portions of the licensing basis, to reflect the lower risk of a defueled reactor.[10]

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[7] *Id*. at 24,363.

[8] *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), CLI-25-03, 101 NRC __ (Apr. 29, 2024) (slip op. at 17).

[9] *E.g.*, PNP 2017-033, Letter from ENOI to NRC, "Request for Exemption from Specific Provisions in 10 CFR § 73.55" (Jun. 29, 2017) (ML17180A004) (issued Oct. 11, 2017 at ML17216A802); PNP 2017-010, Letter from ENOI to NRC, "Program Approval – Certified Fuel Handler Training and Retraining Program" (Mar. 28, 2017) (ML17087A016) (approved Aug. 21, 2017 at ML17151A350); PNP 2017-035, Letter from ENOI to NRC, "License Amendment Request - Administrative Controls for a Permanently Defueled Condition" (Jul. 27, 2017) (ML17208A428) (approved June 4, 2018 at ML18114A410); PNP 2017-034, Letter from ENOI to NRC, "License Amendment Request – Emergency Plan Revision to Reflect a Permanently Shut Down and Defueled Reactor Vessel" (Aug. 31, 2017) (ML17243A157) (approved Sept. 24, 2018 at ML18170A219); ENOI, License Amendment Request to Revise Renewed Facility Operating License and Technical Specifications for Permanently Defueled Condition (June 1, 2021) (ML21152A108 (Package)) (approved May 13, 2022 at ML22039A198); PNP 2019-001, Letter from ENOI to NRC, "Request for Deferral of Actions Related to a Beyond-Design-Basis External Seismic Event" (Mar. 20, 2019) (ML19079A022) (approved May 8, 2019 at ML19115A413); PNP 2021-020, Letter from ENOI to NRC, "Request for Partial Exemption from Record Retention Requirements in 10 CFR § 50.12" (Jun. 15, 2021) (ML21167A108) (issued Nov. 23, 221 at ML21195A367); PNP 2021-013, Letter from ENOI to NRC, "Request for Rescission of Interim Compensatory Measure from Order EA-02-026" (Jul. 21, 2021) (ML21202A211) (approved June 28, 2022 at ML22159A194).

[10] *See* 10 CFR § 50.51(b); 10 CFR § 50.82(a)(11); *see* Amendment No. 272 to Renewed Facility Operating License No. DPR-20 (May 13, 2022) (ML22039A198) (amendment effective following docketing of § 50.82(a)(1) certifications and reflecting permanently defueled technical specifications); Amendment No. 273 to Renewed Facility

NRC regulations do not prescribe the steps ENOI took to modify the RFOL at shutdown. Rather, like all plants entering decommissioning, ENOI and NRC relied on the standard suite of regulatory processes—exemptions pursuant to 10 CFR § 50.12, license amendments pursuant to § 50.90, and change processes under §§ 50.54 and 50.59—to step down the Part 50 requirements (that still apply because the plant still holds a Part 50 operating license) to reflect the lower risk associated with a defueled reactor.[11] Most of the processes Applicants are using to resume power operations, which are briefly described below, are simply employing these same tools in reverse.

### C. Regulatory Actions to Resume Power Operations

The LARs are only one part of the overall restart process. Applicants are working through a series of other actions that will all need to be completed before Applicants are allowed to resume power operations. These include an exemption request from 10 CFR § 50.82(a)(2),[12] other license amendment requests,[13] a license transfer application,[14] evaluation of licensing changes under 10

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Operating License No. DPR-20 (Jun. 28, 2022) (ML22173A176) (reflecting transfer of the RFOL from Entergy to Holtec).

[11] The NRC has undertaken a rulemaking to update the decommissioning regulations, in part, to "reduce the need for license amendment requests and exemptions from existing regulations" during the transition into decommissioning. NRC Proposed Rule, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, 87 Fed. Reg. 12,254, 12,254 (Mar. 3, 2022) ("Proposed Decommissioning Rule"). For now, though, the process is dependent on the use of license amendments, exemptions, and the 10 CFR §§ 50.59 and 50.54 change processes like the ones implemented by ENOI. *See id.* at 12,264 (explaining the current process for plants transitioning from power operations into decommissioning).

[12] HDI PNP 2023-025, Letter from HDI to NRC, "Request for Exemption from Certain Termination of License Requirements of 10 CFR § 50.82" (Sep. 28, 2023) (ML23271A140) ("Exemption Request").

[13] *See* PNP 2025-003, Letter from HDI to NRC, "License Amendment Request to Revise Selected Permanently Defueled Technical Specifications to Support Repairing of Steam Generator Tubes by Sleeving" (Feb. 11, 2025) (ML25043A348); PNP 2025-002, Letter from HDI to NRC, "License Amendment Request to Include Leak Before Break Methodology for Primary Coolant System Hot and Cold Leg Piping in Palisades Licensing Basis" (Feb. 5, 2025) (ML25035A216). These license amendment requests are beyond the scope of the current proceeding. *See* Order at 60; Palisades Nuclear Plant, License Amendment Request, 90 Fed. Reg. 15,722 (Apr. 15, 2024); Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 90 Fed. Reg. 15,727 (Apr. 15, 2025).

[14] PNP 2023-028, Letter from HDI to NRC, "Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments" (Dec. 6, 2023) (ML23340A161) ("LTA"). Three of the five Petitioners submitted a petition for hearing on the LTA, which the Commission recently rejected. *See Palisades*, CLI-25-03, 101 NRC at __ (slip op. at 17).

CFR §§ 50.54 and 50.59,[15] reinstatement of operational programs, regulatory commitments, and Commission orders applicable to operating reactors,[16] withdrawal of exemptions that will no longer apply,[17] and completion of a restart inspection program.[18] The only LAR mentioned in any of Petitioners' pleadings is the Tech Spec LAR, which would unwind the amendments to the RFOL and technical specifications that were implemented by ENOI to reflect a defueled reactor.[19] NRC's approval of the Tech Spec LAR would not, in and of itself, authorize power operations. NRC has formed a "Restart Panel" to coordinate staff's various restart activities, which include ongoing review of Applicants' submittals, restart inspections,[20] and environmental review.[21] Only upon completion of all these activities will NRC authorize Applicants to transition back to power operations.[22]

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[15] *E.g.*, PNP 2025-008, Letter from HDI to NRC, "Final Safety Analysis Report Update Revision 37" (Mar. 19, 2025) (ML25078A352); PNP 2024-025, PNP 2024-025, Letter from HDI to NRC, "Supplement to Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments, Proposed Power Operations Quality Assurance Program Manual, Revision 0" (May 23, 2024) (ML24144A106).

[16] *E.g.*, HDI PNP 2024-045, Letter from HDI to NRC, "Palisades Nuclear Plant – Milestone Schedule for Generic Letter 2004-02 Remaining Actions" (Dec. 11, 2024) (ML24346A171); Pre-Submittal Slides for Palisades Nuclear Plant Open Phase Detection Closure Plan (Apr. 29, 2025) (ML25115A195).

[17] *See* HDI PNP 2024-047, Letter from HDI to NRC, "Palisades Nuclear Plant – Request to NRC to Rescind Previously Approved Exemptions to Support Transition to a Power Operations Licensing Basis" (Dec. 4, 2024) (ML24339A068).

[18] *See* NRC, Palisades Nuclear Plant Restart Inspection Plan, Light-water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations, Inspection Manual Chapter 2562 (Aug 19, 2024) (ML24228A195).

[19] Tech Spec LAR, Encl. at 3.

[20] NRR and Region III Memorandum, Palisades Nuclear Plant, Restart Panel Charter (Nov. 27, 2023) (ML23297A053).

[21] 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"); Palisades Nuclear Plant; Draft Environmental Assessment and Draft Finding of No Significant Impact, 90 Fed. Reg. 8721 (Jan. 31, 2025).

[22] *See* IMC 2562, Light-Water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations at 10–11 (Apr. 24, 2025) (ML25017A231).

### D. The Petition

The Petition presented seven proposed contentions: Contention 1 claimed that the Exemption Request was within the scope of this proceeding on the LARs and challenged the Exemption Request based on arguments that it did not meet the requirements of 10 CFR § 50.12.[23] Contention 2 claimed that the NRC is required to issue an environmental impact statement ("EIS") because Applicants are applying for a new operating license.[24] Contention 3 claimed Applicants must apply for a new operating license based on a variety of theories.[25] Contention 4 claimed NRC lacks the statutory authority to approve the restart, that Applicants cannot use the 10 CFR § 50.59 process to modify the Palisades Final Safety Analysis Report ("FSAR"), and that ENOI (the prior licensee) destroyed quality assurance records.[26] Contentions 5, 6, and 7 raised three environmental contentions of omission that the parties and the Board agree are now moot.[27]

### E. Board's Decision in LBP-25-04

In its Order on March 31, 2025, the Board found that each of the petitioning organizations had demonstrated standing after concluding that the nature of these LARs warrants application of the NRC's "proximity presumption."[28] But the Board found that none of Petitioners' proposed contentions were admissible. With respect to Contention 1, the Board concluded that the Exemption Request was within the scope of this proceeding on the LARs,[29] but rejected

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[23] Petition at 30.

[24] *Id.* at 40.

[25] *Id.* at 45–48.

[26] *Id.* at 48–50.

[27] Contention 5 claimed Applicants did not submit a required purpose or need statement. *Id.* at 63-64. Contention 6 claimed Applicants did not submit required information regarding alternatives to the restart. *Id.* at 66. Contention 7 claimed Applicants did not submit required information regarding the effects of climate change. *Id.* at 68.

[28] Order at 21–22.

[29] *Id.* at 43. As discussed below, the Petitioners argued in their reply brief that the Exemption Request was not within the scope of this proceeding and should be dismissed. *See* note 126 *infra*.

Petitioners' argument "that the NRC would not be able to allow an exemption from [10 CFR § 50.82] under any circumstance,"[30] as well as Petitioners' claims that the Exemption Request did not satisfy 10 CFR § 50.12.[31] The Board addressed Contentions 2 and 3 together because they are outgrowths of the same argument: that Applicants are required to obtain a new operating license in order to restart Palisades. The Board rejected that argument as "an impermissible challenge to agency policy or regulations,"[32]—because the Palisades operating license is still active and has not been terminated per the prescribed process set forth in 10 CFR §§ 50.51 and 50.82—and dismissed the two contentions based on it because they raised issues beyond the scope of the proceeding, were unsupported, and failed to raise a genuine dispute with these LARs.[33] The Board rejected Contention 4 for similar reasons. First, the Board rejected Petitioners' challenge to NRC's statutory authority as beyond the scope of this proceeding.[34] The Board rejected Petitioners' claims that 10 CFR § 50.59 could not be used to update the FSAR as an impermissible challenge to NRC's regulations.[35] And the Board rejected Petitioners' claims that ENOI destroyed quality assurance records as unsupported.[36] Finally, the Board dismissed Contentions 5, 6, and 7 as moot in light of the NRC's publication of the Draft EA.[37]

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[30] Order at 50.

[31] *Id*.

[32] *Id*. at 53.

[33] *Id*. at 53–54.

[34] *Id.* at 58. The Board also found credible NRC Staff's argument that if the "major question" doctrine applied to this proceeding, it would appear to apply to ***all*** new reactor licensing, undermining the limiting principle the Supreme Court has explained that the doctrine only applies to "extraordinary cases." *Id.* at 58–59 (citing *West Virginia v. EPA*, 597 U.S. 697, 721 (2022)).

[35] Order at 60–61.

[36] *Id.* at 61.

[37] *Id.* at 62–63. Petitioners have filed "amended and substituted" versions of Contentions 2, 4, 5, and 6, as well as a new Contention 8. *See* Petitioning Organizations' Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant (Mar. 3, 2025) (ML25062A309)

The Appeal does not object to the Board's dismissal of Contentions 5–7.[38] Accordingly, Applicants (and the Commission) need only address Contentions 1–4.[39]

## II. Summary of Argument

The Petition was not filed in the proper docket until three days after the Federal Register deadline. The Board showed leniency, despite Petitioners' failure to ask for an extension, but the Commission should find that the Petition was untimely. Even if the Commission considers Petitioners' Appeal, it does not discuss the standard of review that guides the Commission's review of the Order, much less identify an error of law or abuse of discretion by the Board. Most of the arguments in the Appeal are repeated from the original Petition, without engaging with the Board's reasons for rejecting those arguments. Petitioners also add a handful of new arguments for the first time, including a new Administrative Procedure Act ("APA") challenge to the Commission's determination that a plant like Palisades can restart by using the same regulatory processes that transitioned it into decommissioning in the first place. Of course, this new argument does not provide a basis to appeal the Order because Petitioners did not make the argument to the Board. Even if they had, it is beyond the scope of matters that can be litigated in a proceeding on these four LARs. The Board properly held that this proceeding is not a forum to litigate Petitioners' policy objections to NRC's regulatory framework. If Petitioners wish to present those policy

("New and Amended Contentions"). The Order did not address the New and Amended Contentions, which remain pending before the Board as of the date above. *See* Order at 2 n.4.

[38] Appeal at 32–33. Petitioners agreed that Contention 7 is moot. *See* Petitioning Organizations' Brief on Effects of EA/FONSI for Palisades Nuclear Plant, at 3 (Feb. 19, 2024) (ML25050A618). And though Petitioners objected to the timing of the Board's dismissal of their originally-pled Contentions 5 and 6 (*see id.* at 8), they were ultimately satisfied because the Board waited to dismiss those contentions until after Petitioners filed their New and Amended Contentions. Appeal at 33. As of the date hereof, the "amended and substituted" versions of Contentions 5 and 6 remain pending before the Board. Order at 2 n.4, 63.

[39] *See generally Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-05, 33 NRC 238, 241 n.4 (1991) ("[A]n appeal on an issue which is not addressed in an appellate brief is considered to be waived."); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 383 (2001).

arguments, they had the opportunity to do so in a separate petition for rulemaking filed by one of their co-petitioners.[40] If Petitioners wish to litigate whether the PRM Denial was issued in accordance with the APA, they may pursue their rights in that respect too—but not in this proceeding or in their Appeal. Petitioners have not, and cannot, identify any reversible error by the Board. The Commission should affirm the Order and dismiss the Appeal.

## III. Standard of Review on Appeal

Petitioners appeal the Board's Order pursuant to 10 CFR § 2.311(c), challenging the decision not to admit Contentions 1–4 for hearing. In reviewing such decisions, the Commission "will defer to [such] rulings on contention admissibility unless an appeal demonstrates an error of law or abuse of discretion."[41] The Commission generally defers to the Board's judgment as to whether a proposed contention has a sufficient factual basis to be admitted.[42] The party appealing a Board's denial of intervention "bears the responsibility of clearly identifying the errors in the decision below and ensuring that its brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for the appellant's claims."[43] "[T]he Commission affirms Board rulings on admissibility of contentions if the appellant 'points to no error of law or abuse of discretion.'"[44] Appeals that simply repeat or add to

[40] *See* Petition for Rulemaking; Notice of Docketing and Request for Comment, Returning a Decommissioning Plant to Operating Status, 89 Fed. Reg. 76,750 (Sept. 19, 2024). Petitioners also object to the State of Michigan's support for nuclear power. Appeal at 21–22. This proceeding is also not the forum to resolve competing political views.

[41] *Southern Nuclear Operating Co., Inc.* (Vogtle Elec. Generating Plant, Units 3 and 4), CLI-17-02, 85 NRC 33, 40 (2017); *see also Crow Butte Res., Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 26 (2014) (affording "substantial deference" to licensing board decisions).

[42] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 354-55 (2015).

[43] *Advanced Medical Systems, Inc.* (One Factory Row), CLI-94-6, 39 NRC 285, 297 (1994).

[44] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637 (2004) (quoting *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-00-21, 52 NRC 261, 265 (2000)).

previous claims are insufficient to show error.[45] "A mere recitation of an appellant's prior positions in a proceeding or a statement of his or her general disagreement with a decision's result 'is no substitute for a brief that identifies and explains the errors of the Licensing Board in the order below.'"[46] Likewise, "[G]eneral arguments [that] do not come to grips with the Board's reasons for rejecting" a contention will not "revive a contention that lacks support in the law or facts."[47] The Commission has also made clear that it will not consider arguments or legal theories raised for the first time on appeal.[48]

The question before the Board here was whether Petitioners satisfied the requirements of 10 CFR § 2.309. Most relevant here, § 2.309(f)(1) required Petitioners to bring a contention that is within the scope of this licensing proceeding and presents a material dispute with the application, bolstered by meaningful factual and expert support.[49] A contention that fails to comply with even one of the § 2.309(f)(1) criteria is inadmissible.[50] Accordingly, to prevail on appeal, Petitioners bear the burden of demonstrating that the Board erred in *each* of its bases for their contentions.[51] Moreover, the Commission is not limited on appeal to only those bases relied on by the licensing

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[45] *Shieldalloy Metallurgical Corp.* (Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 503 (2007); *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 104 (2007) .

[46] *Tex. Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 198 (1993). *See also Interim Storage Partners LLC* (WCS Consolidated Interim Storage Facility), CLI-20-15, 92 NRC 491, 501 (2020).

[47] *Millstone*, CLI-04-36, 60 NRC at 639.

[48] *See, e.g.*, *Shieldalloy*, CLI-07-20, 65 NRC at 504–05; *Hydro Res., Inc.* (Crownpoint, NM), CLI-06-29, 64 NRC 417, 421 (2006); *Hydro Res., Inc.* (Rio Rancho, NM), CLI-04-33, 60 NRC 581, 591 (2004) ("If a party were free to raise new arguments once it realized 'that may there was something after all to a challenge it either original opted not to make or which simply did not occur to it at the outset,' NRC adjudicatory proceedings would prove, endless.").

[49] 10 CFR §§ 2.309(f)(1)(iii), (v), (vi).

[50] *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 395–96 (2012).

[51] *See Millstone*, CLI-04-36, 60 NRC at 638 (noting that failure to appeal one of a board's § 2.309(f)(1) bases for rejecting a contention is "in and of itself, sufficient justification to reject [the] appeal").

board.[52] The Commission may affirm a licensing board's order on any grounds, including alternative bases for dismissing a petition or appeal.[53]

## IV. Argument

### A. The Petition Was Late, without Good Cause, and Should Be Dismissed

The Appeal states, incorrectly, that the Petition was filed on October 7, 2024.[54] Petitioners filed in the wrong docket, did not respond to emails from the Secretary, did not ask for an extension, and only attempted to explain their lateness in their reply brief in this proceeding.[55] NRC regulations prohibit consideration of late filings absent good cause.[56] Inattention of counsel to the correct docket and their email is not good cause.[57] The Board agreed that Petitioners' counsel's "conduct fell short of what is expected of counsel experienced in NRC adjudicatory proceedings," but nevertheless "decline[d] to impose the harsh result of dismissing Petitioning Organizations' hearing petition due to their counsel's inattention."[58] The Board showed leniency because Applicants had twenty-five days to respond to the Petition once it was properly filed.[59] Fairness to the litigants is one reason for NRC's procedural rules, to be sure, but licensees' right

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[52] *See Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-07, 78 NRC 199, 206 (2013) (finding that the board erred in applying NRC regulations but affirming decision on other grounds).

[53] *See e.g.*, *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160, 166 (2005); *Public Serv. Co. of N.H.* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991).

[54] Appeal at 7.

[55] Order at 13–15; *see also* NRC Secretary Memorandum, Referral of Petition to Intervene and Request for Hearing (Oct. 16, 2024) (ML24290A145).

[56] 10 CFR § 2.307(a). *See also Tenn. Valley Auth.* (Bellefonte Nuclear Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 477 (2010) ("[W]e disfavor motions for extensions of time that are themselves filed out-of-time . . . .").

[57] *Id.* at 476; *see also La. Energy Servs., L.P.* (Nat'l Enrichment Facility), CLI-04-25, 60 NRC 223, 224–25 (2004) ("contention admissibility and timeliness requirements demand a level of discipline and preparedness on the part of petitioners." (internal quotations omitted)).

[58] Order at 15.

[59] *Id.* at 15–16.

to prompt adjudication of challenges to their applications is just as engrained in NRC rules.[60] Delays to the disposition of a petition to intervene provide the opportunity for protracted fights over motions to stay, appeals, judicial challenges, etc.—all of which are compounded by a delay at the start. Excusing Petitioners' inattention to their own rights increases the likelihood that adjudication of their claims will not be fully resolved by the time Applicants are prepared to resume power operations (assuming NRC authorizes it), forcing Applicants to either delay or proceed at risk because the regulatory approvals remain subject to ongoing litigation by Petitioners who did not properly file their objections on time.

The Commission may affirm the Order on alternative grounds and should do so in this instance because Petitioners did not establish good cause for the late filing.

### B. The Commission Should Reject Petitioners' "Backdoor Challenge" of the "Strict" Admissibility Standard for Contentions

Petitioners preface their Appeal by claiming that the "§ 2.309(f) criteria are not as strict as the ASLB claimed," and assert that "the ASLB erred in requiring Petitioners to present enough evidence to prove the merits of the contentions at the admissibility stage."[61] Petitioners invoke this blanket objection throughout their Appeal in response to the Board's conclusion that Petitioners failed to support their arguments with any legal precedent or expert or documentary information, as required by 10 CFR § 2.309(c)(v) and Commission precedent that requires more than "conclusory allegations" to justify an evidentiary hearing.[62] Petitioners contend that the Board

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[60] *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998).

[61] Appeal at 9–10.

[62] Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989) ("1989 Amendments"); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

should have evaluated their contentions under a more lenient standard analogous to the one federal courts employ in adjudicating motions to dismiss.

Petitioners' argument is clearly inconsistent with well-settled precedent and is untimely to boot. It is nothing more than a "backdoor challenge" to the Commission's contention-admissibility standard established in 1989.[63] Petitioners' conflation of the admissibility standard with the standard that applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) has been explicitly rejected by the Commission. Petitioners cite the following block quote from the Commission's 1989 amendments to its procedural rules:

> **[The rule]** was intended to parallel the standard for dismissing a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The intent of Rule 12(b)(6) is to permit dismissal of a claim where the plaintiff would be entitled to no relief under any set of facts which could be proved in support of his claim.[64]

The text redacted by Petitioners from the quoted passage mischaracterizes the limited nature of the Commission's Rule 12(b)(6) reference. The language quoted by Petitioners actually provides:

> The proposed rule also provided in § 2.714(d)(2) that the presiding officer would refuse to admit a contention where:
> ….
> (iii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.
>
> **The requirement in (iii) above** was intended to parallel the standard for dismissing a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The intent of

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[63] *See Beyond Nuclear v. NRC*, 704 F.3d 12, 21 (1st Cir. 2013):

> [Beyond Nuclear] sounds a theme which has no record support—that the NRC improperly made a determination . . . at the admissibility stage, on the merits. . . . This theme by [Beyond Nuclear] is a backdoor challenge to the decision made by the NRC in 1989, at the prompting of Congress, to toughen the standards for getting a hearing on contentions. Congress was concerned and called for change because serious hearing delays—of months or years—occurred, as licensing boards admitted and then sifted through poorly defined or supported contentions. So, the NRC adopted the new rules to "raise the threshold" for admitting contentions. Materials cited as the basis for a contention are subject to scrutiny by the board to determine whether they actually support the facts alleged; otherwise, the aims of the rules and of Congress would be thwarted. (internal citations, quotation marks and brackets omitted).

[64] Appeal at 12 (quoting 1989 Amendments, 54 Fed. Reg. at 33,171) (emphasis added; brackets in original).

> Rule 12(b)(6) is to permit dismissal of a claim where the plaintiff would be entitled to no relief under any set of facts which could be proved in support of his claim.[65]

In other words, instead of grafting the Rule 12(b)(6) standard onto its rule governing the admissibility of contentions, the Commission simply noted that one subpart of its former admissibility standard "parallels" the Rule 12(b)(6) standard (which subpart was deleted in the 2004 amendments to the Commission's adjudicatory procedures).[66] Precedent following the 1989 Amendments makes clear that the Commission has not adopted the Rule 12(b)(6) standard. Under Rule 12(b)(6), courts accept the plaintiff's factual allegations as true and construe all reasonable inferences in the plaintiff's favor.[67] The Commission has expressly rejected this approach for determining the admissibility of contentions:

> [The petitioner] argues that at the contention admissibility stage the Board should construe the *facts* in favor of the petitioner, as a court does when considering motions to dismiss. This argument ignores our very explicit rules on contention admissibility. While a board may view supporting information in a light favorable to a petition, a board may not simply infer the bases for a contention. Failing to provide information required under 10 C.F.R. § 2.309(f)(1) bars admission of the contention.[68]

Indeed, the Commission *expects* its licensing boards to examine the factual underpinnings of contentions at the admissibility stage.[69] Petitioners' wishes to the contrary do not amend the Commission's "strict by design" admissibility requirements.

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[65] 1989 Amendments, 54 Fed. Reg. at 33,171 (emphasis added).

[66] Section 2.714 was moved to 10 CFR § 2.309 as part of amendments to Part 2 in 2004. Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2217 (Jan. 14, 2004).

[67] *See, e.g., Valambhia v. United Republic of Tanz.*, 964 F.3d 1135, 1137 (D.C. Cir. 2020) ("Because this case was resolved on a motion to dismiss, we accept the amended complaint's factual allegations as true and construe all reasonable inferences in the plaintiff's favor.").

[68] *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 275 (2009) (emphasis in original).

[69] *See, e.g., Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plan, Units 2 and 3), CLI-10-09, 71 NRC 245, 261 (2010) ("The decision consists of the Board's determination that the contention was insufficiently supported and failed to show that a genuine dispute exists . . . . The Board—appropriately—reviewed the materials in support of

Regardless, of the merits of this argument, Petitioners made it for the first time in a pleading filed after the Order was issued.[70] "The Commission deems waived arguments or legal theories not raised before a Presiding Officer."[71]

### C. Petitioners Have Not Identified Any Error of Law or Abuse of Discretion in the Board's Bases for Rejecting Contention 1

The Board concluded that Contention 1, challenging the Exemption Request, was inadmissible due to Petitioners' failure to satisfy § 2.309(f)(1)(v) and (vi) because Petitioners did not provide adequate support for their arguments and failed to raise a genuine dispute with the Exemption Request.

Petitioners' first argument on appeal is that "the [E]xemption [R]equest was not within the scope of this licensing proceeding"—*i.e.*, the Board should have rejected their contention under § 2.309(f)(1)(iii) instead of § 2.309(f)(1)(v) and (vi).[72] Petitioners have abandoned Contention 1 by asking the Board to reject it as originally pled. Until their reply brief before the Board, Petitioners took the position that the Exemption Request was a licensing-related action subject to adjudication under Section 189a of the Atomic Energy Act and, thus, within the scope of this proceeding.[73] They explained during oral argument that they changed their mind because they now

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the contention . . . .); *USEC Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006) ("We expect our licensing boards to examine cited materials to verify that they do, in fact, support a contention.").

[70] Petitioners made this Rule 12(b)(6) argument for the first time in their reply brief in support of the New and Amended Contentions (filed after issuance of the Order). *See* Petitioning Organizations' Reply in Support of Amended and New Contentions at 4–5 (Apr. 4, 2025) (ML25094A211).

[71] *Hydro Res.*, CLI-06-29, 64 NRC at 421.

[72] Appeal at 13.

[73] Petitioners claim in their Appeal that they "presented Contention 1 only because the NRC inferred that the exemption request was so closely intertwined with the [LARs] that it must be included as a contention in this proceeding." Appeal at 14. That is incorrect. They cited a Commission Secretary order they prompted by their repeated attempts to challenge the Exemption Request as a *de facto* licensing action. *See* Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future (Dec. 5, 2023) (ML23339A192) ("Exemption Petition") (seeking an adjudicatory hearing on the Exemption Request under Section 189a of the Atomic Energy Act); Petitioners' Memorandum in Opposition to Holtec Motion for Secretary Order

want the Board to reject Contention 1 as out-of-scope so they can file a judicial challenge to the exemption under the APA.[74] In other words, having soured on their original argument that the Exemption Request is within the scope of this proceeding, they asked the Board (and now the Commission) to ignore their Petition and issue an advisory opinion on a point that is no longer in controversy between Applicants and Petitioners[75] so they can try a different theory in federal court. Where a petitioner abandons a contention by asking the presiding officer to dismiss it, basic principles of adjudicatory efficiency and the requirement for a live controversy prevent the party from pursuing it further.[76] The proper disposition of Contention 1 is to treat it as having been

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Denying Petition for a Hearing on Exemption at 4 (Dec. 13, 2023) (ML23347A210) ("[W]hat Holtec seeks is not a bona fide exemption request, but is, instead, a license amendment."); *id.* at 6 ("[T]he exemption sought by Holtec is indeed a 'circumstance' listed in § 189 [of the Atomic Energy Act]."); *id.* at 7 ("What Holtec proposes here is not an exemption at all, but instead, an ill-concealed license amendment. . . . [T]he site-specific 'exemption' sought by Holtec is evidence that the true nature of Holtec's request is a license amendment."); Order of the Secretary, Docket No. 50-255 (Dec. 18, 2023) (ML23352A325) (rejecting the Exemption Petition because the Exemption Request is not a licensing action that provides an independent hearing opportunity); Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy, Petition for a Declaratory Order (Sept. 5, 2024) (ML24250A100) (requesting a declaratory order telling the petitioners whether the Exemption Request can be challenged alongside the LARs); Order of the Secretary, Docket No. 50-255 (Sept. 26, 2024) (ML24270A263) (declining to issue a declaratory order). Faced with their attempts to challenge the Exemption Request as a licensing action, the Secretary simply pointed Petitioners to the relevant precedent and told them to make their arguments in this proceeding for the Board to resolve. *Id.* at 3. In response, the Petition made the same claim that the Exemption Request is a *de facto* licensing action and therefore within the scope of this proceeding. *See* Petition at 28 ("NRC's consideration of Holtec's Request for Exemption in [Petitioners'] estimation comprises a licensing-related act that comprises a proceeding pursuant to § 2.309."); *id.* at 37 ("[N]or has [Holtec] made a good faith attempt to comply with § 50.82. Rather, Holtec is asking for a license amendment – i.e., permanent relief."). It was only in their reply brief before the Board that Petitioners first asserted that the exemption "is not a licensing action," and so "Contention 1 is outside the scope of this proceeding." Petitioning Organizations' Combined Reply to Answers Filed by NRC Staff and Holtec to the Petition to Intervene, at 10 (Nov. 12, 2024) (ML24317A201) ("Petitioners Reply").

[74] Transcript of Palisades Nuclear Plant Oral Argument Hearing at 15:8–16:17 (Feb. 12, 2025) (ML25045A183).

[75] The fact that NRC Staff and the Board agreed with Petitioners' original argument is irrelevant: "[I]t is Petitioners' responsibility, not the Board's, to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission." *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC at 22).

[76] *U.S. Dep't of Energy* (High Level Waste Repository), CLI-08-21, 68 NRC 351, 353 (2008) ("As a general matter, we disfavor the issuance of advisory opinions . . . ."); *S. Cal. Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-10, 78 NRC 563, 568 (2013) ("[T]he possibility that an issue may arise in the future is not grounds to continue with an appeal in a proceeding where no live controversy remains between the litigants."); *Va. Elec. & Power Co.* (N. Anna Power Station, Units 1 & 2), ALAB-790, 20 NRC 1450, 1453 (1984) ("It is well-settled that, '[i]n Commission practice as in judicial proceedings, only a party aggrieved may appeal.'" (quoting *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-644, 13 NRC 903, 914 (1981)).

abandoned by the Petitioners. The Commission should not entertain their request on appeal to issue an advisory opinion on a point that is no longer in controversy or to review an outcome the Petitioners are not aggrieved by because they asked for it.[77]

In the alternative, Petitioners argue that the Board erred and should have admitted Contention 1 for hearing. But they do so by merely (1) repeating (in large part, copying and pasting) arguments from their Petition, (2) expressing general disagreement with the outcome, and (3) making a new argument that the Exemption Request is "unofficial rulemaking."[78] None of this provides a basis for overturning the Order on appeal.

First, repeating arguments from the Petition does not present an issue for appeal.[79] As noted above, Petitioners have not acknowledged the standard of review, much less demonstrated that the Board committed an error of law or abuse of discretion. The Board rejected Contention 1 because Petitioners failed to provide the requisite legal and factual support required by § 2.309(f)(1)(v), instead only providing "conclusory statements either in the petition itself or in declarations from their experts."[80] The only argument Petitioners offer in response is that the Board "misappl[ied] the standards for admissibility."[81] They do not explain *how* the Board misapplied the standard or *why* the Board committed reversible error by finding their conclusory statements to be insufficient

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[77] The "invited error" doctrine provides an alternative basis to reject the Appeal from the Board's dismissal of Contention 1, given that Petitioners are now challenging an outcome they created by challenging the Exemption Request as a licensing action in their original Petition. "A party may not allege on appeal as error an action which he had induced the tribunal to take." *Bhd. of R. R. Trainmen v. Chi., Milwaukee, St. Paul & Pac R.R. Co.*, 380 F.2d 605, 609 (D.C. Cir. 1967). Petitioners chose a strategy but then changed their minds and reversed course; ultimately, though, they got what they asked for in their reply brief and cannot now challenge it. *See United States v. Long*, 997 F.3d 342, 353 (D.C. Cir. 2021) ("Invited error, then, involves intentional 'strategic gambit[s]' designed to induce the trial court to take a desired action." (alteration in original)); *Pensacola Motor Sales Inc. v. E. Shore Toyota, LLC*, 684 F.3d 1211, 1231 (11th Cir. 2012) ("A party that invites an error cannot complain when its invitation is accepted.").

[78] Appeal at 16–17.

[79] *Shieldalloy*, CLI-07-20, 65 NRC at 503.

[80] Order at 49–50.

[81] Appeal at 17.

under established precedent. Instead, Petitioners just refer back to their general discussion of the contention admissibility standard.[82] As discussed in Section IV.B above, Petitioners' preferred version of § 2.309(f)(1)(v)—that would allow them to obtain an evidentiary hearing based on bare assertions—does not exist. But, as it relates to their appeal of the Board's dismissal of Contention 1, one sentence claiming the Board misapplied § 2.309 provides no specific basis for overturning the Order on appeal.[83]

Even so, the Board's conclusion that Contention 1 failed under § 2.309(f)(1)(v) is consistent with decades of decisions by the Commission rejecting similar conclusory claims by these same Petitioners and declarants.[84] Since 1989, the Commission has told petitioners that they have to do more than simply claim something in a pleading to justify the time and effort of a hearing to litigate whether it is actually true. Yet these Petitioners continue to advance a long-rejected argument that NRC licensing boards should take their notice pleadings at face value and let them try to ascertain through discovery whether there are facts to support their allegations. Repeating this argument once again in their Appeal does not provide grounds to overturn the Order.

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[82] *Id.* at 17–18.

[83] *See Millstone*, CLI-04-36, 60 NRC at 639 ("[G]eneral arguments [that] do not come to grips with the Board's reasons for rejecting" a contention will not "revive a contention that lacks support in the law or facts.").

[84] *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 328 (2015) (reversing an ASLB panel's admission of a contention because the declaration of Mr. Gundersen "provide[d] no explanation for his claim" and failed to provide "concrete and specific support" for the contention (quotations omitted)); *Entergy Nuclear Operations Inc.* (Palisades Nuclear Plant), LBP-15-17, 81 NRC 753, 783-84 (2015) (rejecting a contention because Mr. Gundersen provided no "basis or explanation for his belief"); *Southern Nuclear Operating Co., Inc.* (Vogtle Elec. Generating Plant, Unit 3), LBP-20-8, 92 NRC 23, 51 (2020) (rejecting a proposed contention because "Mr. Gundersen makes bare assertions") *aff'd on other grounds* CLI-20-18, 92 NRC 530 (2020); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-08-9, 67 NRC 421, 441–42 (2008) (rejecting a contention based on Mr. Gundersen's affidavit as making "only vague and general statements"), *aff'd* CLI-08-17, 68 NRC 231, 238 (2008) ("The commission reviewed Mr. Gundersen's declaration, but discerns no specific challenge to any relevant analysis in Dominion's amendment application.").

The Board also rejected many of Petitioners' arguments for failure to raise a dispute on a material issue of law or fact, as required by § 2.309(f)(1)(vi).[85] In response, the Appeal simply restates the same arguments the Board rejected without attempting to demonstrate that the Board erred in rejecting them.[86] Regardless, the Board's rejection of their arguments that seek to redefine the 10 CFR § 50.12 standard—*i.e.*, that exemptions require affirmative Congressional authorization, can never be granted from § 50.82, are not available due to unexpected or changed circumstances, and must consider anti-nuclear policy preferences—is consistent with longstanding precedent for how the agency evaluates exemption requests and why NRC requires formal certifications of shutdown and defueling.[87]

Finally, Petitioners claim, for the first time in the Appeal, that the § 50.82 exemption is "an unofficial rulemaking procedure . . . that bypasses the formal rulemaking requirements."[88] Their reasoning is that Constellation and NextEra have also submitted exemption requests to support the potential restart of Three Mile Island Unit 1 and Duane Arnold.[89] They do not connect this new

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[85] Order at 50–51.

[86] The majority of the argument in this section of the Appeal appears to be copied and pasted from the original Petition. *Compare* Appeal at 18–23 *to* Petition at 33–40.

[87] *See generally Brodsky v. NRC*, 507 F. App'x 48, 51 (2d Cir. 2013) ("[I]nsofar as the NRC generally considered whether any law prohibited granting the exemption and concluded that none did, we hold that no more was required by § 50.12."); NRC Final Rule, Decommissioning of Nuclear Power Reactors, 61 Fed. Reg. 39,278, 39,279 (July 29, 1996) (discussing the reason for the 50.82(a)(1) certifications as limiting the performance of "major decommissioning activities" until after they are submitted); Proposed Decommissioning Rule, 87 Fed. Reg. at 12,263 ("[A] licensee formally begins the decommissioning process when it certifies its permanent cessation of operations and permanent removal of fuel from the reactor vessel under §§ 50.82(a)(1) . . . ."); NRC Exemption Issuance, Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2, 88 Fed. Reg. 32,253, 32,256 (May 19, 2023) ("The impact of changes in economic and legislative conditions on licensees' decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is also present."); *San Luis Obispo Mothers for Peace* v. NRC, 100 F.4th 1039, 1058 (9th Cir. 2024) ("NRC reasonably relied on the California Legislature's statements as to both the need for continued operation and the public interest" in granting the exemption, despite the petitioners opposition to that legislation).

[88] Appeal at 17.

[89] *Id.* (referring to Letter from Constellation Energy Generation, LLC to NRC, Docket No. 50-289, "Request for Exemption from Certain Termination of License Requirements of 10 CFR § 50.82" (Nov. 19, 2024) (ML24324A048)

argument back to the Order or explain what legal conclusion the Commission should draw from this assertion. Assuming they are trying to make the argument that the NRC's approval of the § 50.82 Exemption Request for Palisades would violate the APA because other licensees may pursue the same exemption, they are essentially arguing that the APA limits NRC to only granting exemptions from a regulation once. They cite no legal authority for this proposition because it does not exist. In fact, it says the opposite.[90] Regardless of the merits, this argument is too late because Petitioners presented it for the first time on appeal.[91]

In sum, Petitioners have abandoned Contention 1 by changing their argument once they no longer liked it and asking the Board to dismiss it. Even if the Commission considers their alternative challenge to the Order's rejection of the contention, Petitioners have offered no basis to overturn the Order on appeal.

### D. Petitioners Have Not Identified Any Error of Law or Abuse of Discretion in the Board's Bases for Rejecting Contentions 2 and 3

The Board considered Contentions 2 and 3 together because they are based on the same foundational argument: that Applicants are required to obtain a new operating license to restart

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and Letter from NextEra Energy Duane Arnold, LLC to NRC, Docket No. 50-331, "Request for Exemption from Certain Termination of License Requirements of 10 CFR § 50.82" (Jan. 23, 2025) (ML25023A270)).

[90] *See, e.g.*, *Brodsky*, 507 Fed. App'x. at 50:

> Plaintiffs challenge the NRC's authority to issue exemptions from its regulations promulgated under the Atomic Energy Act . . . . The argument is defeated by well-established precedent 'that an agency's authority to proceed in a complex area . . . by means of rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances.' . . .
>
> Equally unavailing is plaintiffs' suggestion that even if the AEA authorized the NRC to grant exemptions, NRC regulations allowed only a "one-time" exemption in 1980. That contention finds no support in the current regulatory text.

(citations omitted). *See also Carolina Power & Light Company* (Shearon Harris Nuclear Power Plant), CLI-86-24, 24 NRC 769, 774 n.5 (1986) (addressing the Commission's authority to grant exemptions in general).

[91] *USEC Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 458 (2006).

Palisades because either: (a) Palisades surrendered its operating license when it shut down,[92] or (b) the § 50.82 certifications of permanent shutdown and defueling are irreversible once they are filed.[93] Their first argument is contrary to 10 CFR § 50.51 and the very existence of the Palisades RFOL,[94] while the second is contrary to NRC regulations, staff guidance, and the Commission's decision that plants can restart.[95] The Board rejected the Petitioners' core argument because it is unsupported, out of scope, and fails to raise a material dispute with the LARs.[96]

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[92] *E.g.*, Petition at 47 ("[T]here is nothing to amend. And Holtec has not cited to any law or regulation that would allow the proposed amendment of a terminated license."); Declaration of Arnold Gundersen in Support of Petition to Intervene and Request for Adjudicatory Hearing by Petitioners, at 25 (included as Exhibit A to the Petition) ("Holtec has created a brand-new term called a renewed facility operating license. The historical record indicates that there is no precedent for renewal once an operating license has been surrendered.").

[93] *See* Petition at 43 ("[T]here is no lawful way that the exemption can be granted and amendments be made to an operating license that is conditioned by certification of fuel removal, and permanent cessation of power operations, and is proceeding through decommissioning."); *id.* at 47 ("[T]he only procedure available in the rules once the operating license no longer allows operations is to continue decommissioning and ultimately formally terminate the license, pursuant to 10 C.F.R. § 50.82(9).").

[94] 10 CFR § 50.51(b) ("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."); *see also* NRC Regulatory Guide 1.184, Decommissioning of Nuclear Power Reactors, Rev. 1, at 7 (Oct. 2013) (ML13144A840) ("Following submission of the certification for permanent cessation of operations, the facility license continues in effect beyond the expiration date until the NRC notifies the licensee in writing that the license has been terminated (10 CFR § 50.51(b)).") ("Reg. Guide 1.184").

[95] Reg. Guide 1.184 at 7 ("Following submission of the certification of permanent cessation of operations, or at any time during the decommissioning process, if the licensee desires to operate the facility again, the licensee must notify the NRC of its intentions in writing. The NRC would handle approval to return the facility to operation on a case-by-case basis, and the approval would depend on the facility status at the time of the request to reauthorize operation."); NRC Letter to Mr. David Kraft of Nuclear Energy Information Service, at 4 (Aug. 4, 2016) (ML16218A266) ("NRC Letter to NEIS") ("With respect to the certification that fuel has been permanently removed from the reactor vessel, there are no regulations that would explicitly prohibit NRC from reauthorizing operation. The licensee would have to apply to the NRC to authorize operation and demonstrate that they meet all of the 10 CFR part 50 requirements. The NRC would have to determine whether there is reasonable assurance that all of the requirements have been met."); PRM Denial, 86 Fed. Reg. at 24,363 ("While current regulations do not specify a particular mechanism for reauthorizing operation of a nuclear power plant after both [50.82(a)(1)] certifications are submitted, there is no statute or regulation prohibiting such action. Thus, the NRC may address such requests under the existing regulatory framework.").

[96] Order at 53 (citing 10 CFR § 2.309(f)(1)(iii), (v), (vi)).

On appeal, Petitioners repeat a few of the same arguments from their prior pleadings without adding anything new,[97] but, more relevantly, they claim that: (1) the Board erred by concluding that a challenge to the PRM Denial is beyond the scope of this proceeding; (2) the PRM Denial is not actually Commission policy; and (3) the PRM Denial violated the APA.[98] These arguments are untimely, provide no basis to overturn the Board's reasoning, and, by focusing exclusively on the PRM Denial, ignore other parts of the Order that are equally fatal to Contentions 2 and 3.

**1. Petitioners' Arguments Are Untimely**

The Appeal is the first time Petitioners have wrangled with the PRM Denial or disputed the idea that they cannot challenge it in this proceeding. As noted above, the theory advanced in the original Petition was that the Palisades operating license does not exist or cannot be amended to allow operation.[99] The Petition itself did not acknowledge 10 CFR § 50.51 or staff guidance addressing the issue they sought to challenge, and while Petitioners indirectly referenced the PRM Denial, it was only to claim, incorrectly, that the denial of the PRM was an NRC staff, not a Commission, decision.[100] In their Reply, Petitioners chose not to respond to the argument by Applicants and NRC Staff that Petitioners cannot challenge the PRM Denial or the regulatory framework for restarting shutdown plants in this proceeding.[101] Instead, they just doubled down

[97] For example, the Appeal repeats an argument Petitioners raised for the first time in their reply brief, that suggests a construction permit, rather than a new operating license, is required for the Palisades restart project. *See* Appeal at 24; Petitioners Reply at 21–22. They do not explain why this argument is relevant to their appeal from the Board's rejection of Contentions 2 and 3, which continues to assert that "a new operating license is required." Appeal at 8, 23.

[98] *Id.* at 25–29.

[99] *See* note 92 *supra.*

[100] Petition at 51.

[101] *See* Applicants' Answer Opposing Beyond Nuclear et al.'s Petition for Hearing, at 15–16 (Nov. 4, 2024) (ML24309A302) ("[The PRM Denial] is not subject to challenge in this adjudicatory proceeding." (citing *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 233 (2020))); *id.* at 31

on their challenge to NRC's regulatory framework.[102] Now that the Board has agreed with Applicants and NRC Staff, Petitioners cannot claim error by making arguments they chose not to raise before the Board.[103]

### 2. Petitioners' Arguments Are Meritless

Even if the Commission were to consider these untimely arguments, they are meritless.

First, the Appeal claims the Board erred by finding their challenges to the NRC regulatory framework to be beyond the scope of this proceeding. Petitioners emphasize that Commission precedent only prevents them from raising "*generalized* grievances about NRC policies."[104] Petitioners say they are not raising generalized grievances because "they are challenging the lack of sufficient facts and law which would allow the Commission to countenance a means of authorizing the ad hoc restart of Palisades."[105] Applicants will not try to guess why Petitioners think there is a difference between challenging NRC policy for plant restarts and litigating the factual and legal basis for that policy—because Petitioners themselves do not explain. The fundamental dispute in their Appeal is with the Commission's determination in the PRM Denial that shutdown plants are capable of restarting using existing regulations. The Appeal explicitly

("Petitioners' arguments amount to the very kind of 'generalized grievances' that the Commission has repeatedly held are not admissible as contentions in adjudicatory proceedings on discrete licensing actions." (citing *Vogtle*, CLI-20-6, 91 NRC at 233; *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 364 (2001))); *id.* at 38 (citing *Millstone*, CLI-01-24, 54 NRC at 364; *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3) CLI-99-11, 49 NRC 328, 334 (1999)); 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, at 35 (Nov. 4, 2024) (ML24309A277).

[102] *See* Petitioners Reply at 24 (arguing that express Congressional authorization is required to restart Palisades).

[103] *See* note 48 *supra*.

[104] Appeal at 25 (quoting *Oconee*, CLI-99-11, 49 NRC at 334) (emphasis added). Petitioners do not explain what they think "generalized grievances" means, but from the context of their arguments Applicants assume they believe the *Oconee* precedent only prevents them from challenging the PRM Denial in the abstract, outside the context of a specific licensing proceeding like this one.

[105] Appeal at 29.

requests to litigate "whether there is, in fact, an existing regulatory pathway to restart,"[106] to assert their preferred position "that the regulatory scheme of shutdown and decommissioning goes only in one direction,"[107] and to "legally question this changed regulatory philosophy."[108] The Board properly concluded that an adjudicatory proceeding on these four LARs is not the forum to do that. This is exactly the kind of policy dispute the *Oconee* decision cited by the Board and a raft of similar decisions prohibit.[109] The Appeal offers no cogent arguments for why the Board committed reversible error on this point.

Second, the Appeal repeats the incorrect claim that the PRM Denial was a decision by NRC staff (rather than the Commission)[110] and suggests that the PRM Denial does not actually support the Palisades restart because it "simply found that a rule was not justified at the time" and "was far more equivocal than the ASLB would have it."[111] Applicants need not re-explain why this is wrong because the Commission recently did so in its order rejecting three of the Petitioners' challenge to the LTA:

> NRC regulations specifically provide that a license "for a facility that has permanently ceased operations continues in effect beyond the expiration date to authorize ownership and possession of the production and utilization facility, until the Commission notifies the licensee in writing that the license is terminated."[112]
>
> . . .

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[106] *Id.* at 28.

[107] *Id.*

[108] *Id.* at 29.

[109] *Oconee*, CLI-99-11, 49 NRC at 334. *See also Consumers Power Co.* (Midland Plant, Units 1 & 2), LBP-82-118, 16 NRC 2034, 2038 (1982) ("Policy questions of this sort are for the Commission to make (e.g., through notices of rulemaking) but are beyond the scope of authority delegated to Licensing Boards.").

[110] Appeal at 25 ("The Board claimed that Petitioners are challenging regulations and policy since *the NRC Staff* has determined that the restart of Palisades can be accomplished using existing regulations." (emphasis added)); *see also* Petition at 51 (claiming the PRM Denial was a decision by the Executive Director for Operations).

[111] Appeal at 25–26.

[112] *Palisades*, CLI-25-03, 101 NRC at __ (slip op. at 16–17) (quoting 10 CFR § 50.51(b)).

> In 2021, we determined that the existing regulatory framework allows an applicant to apply for the restart of a shutdown reactor that had already submitted the 10 C.F.R. § 50.82(a)(1) certifications. In denying a petition for rulemaking, the Commission stated that "the NRC may consider requests from licensees to resume operations under the existing regulatory framework." We determined that no statute or regulation prohibits reauthorizing operation after the section 50.82(a)(1) certificates have been issued.[113]

The Board did not commit reversible error by reaching the same conclusion as to what the PRM Denial said and what those words mean in the present context.

Finally, Petitioners claim that, if the PRM Denial is the NRC's policy, it violated the APA because "it may constitute an interpretive rule and would therefore require notice and comment."[114] Petitioners cite a handful of cases and claims that the PRM Denial "is a new rule," or "changes the agency's interpretation of a rule," or constitutes a "policy change . . . that requires treatment as a rulemaking."[115] As noted above, Petitioners did not make this argument before the Board, and it is, therefore, waived,[116] but even if they had, an adjudicatory proceeding on these LARs is clearly not the time or place to litigate whether a 2021 PRM Denial was issued in compliance with the APA.[117] That said, Petitioners' APA challenge would fail because, among other reasons, the Appeal does not cite any prior NRC interpretation of its regulations that conflicts with the PRM Denial,[118] and the petition for rulemaking was published for comment in the Federal

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[113] *Id.* at __ (slip op. at 17) (quoting PRM Denial, 86 Fed. Reg. at 24,363).

[114] Appeal at 26.

[115] *Id.* at 26, 27.

[116] *Hydro Res.*, CLI-06-29, 64 NRC at 421.

[117] If Petitioners believed the PRM Denial was an improperly promulgated "new rule" as they claim, they are free to pursue whatever remedies they believe they have under the APA, but not in this proceeding, and certainly not for the first time on appeal.

[118] Prior to the PRM Denial, NRC guidance already established that plants like Palisades could pursue a restart under existing regulations. Reg. Guide 1.184 at 7; NRC Letter to NEIS at 4. And, of course, licensees' ability to request exemptions and license amendments is nothing novel; it is the same process used by licensees to transition into decommissioning. *See generally Indep. Equip. Dealers Ass'n v. EPA*, 372 F.3d 420, 425 (D.C. Cir. 2004) (dismissing

Register in accordance with NRC regulations.[119] The illogic of Petitioners' argument would mean federal agencies have to undertake "formal rulemaking" to support their determination that formal rulemaking is not required, which of course is inconsistent with longstanding APA precedent that gives agencies authority to shape their regulations and guidance to best fulfill the directions that Congress has given to them.[120]

### 3. Petitioners' Arguments Are Insufficient to Change the Result

In disputing the Board's dismissal of Contentions 2 and 3, the Appeal only addresses the Board's conclusion that their challenge to the PRM Denial is beyond the scope of this proceeding. But the Board also rejected the core argument underlying these contentions because they challenge NRC regulations, are unsupported, and they fail to raise a material dispute with the LARs.[121] In other words, even ignoring the PRM Denial, the Board found that Petitioners' claims—that Palisades no longer holds a license or cannot ask for an exemption from 10 CFR § 50.82—are unsupported by any factual or legal basis and amount to a collateral attack on 10 CFR § 50.51(b) (which says an operating license continues in effect after shutdown), 10 CFR § 50.12 (which

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a challenge to an EPA notice as an improper rulemaking because the notice "reflected neither a new interpretation nor a new policy, but rather reiterated an interpretation that had been stated as early as 1997, and repeated without change on several occasions since" (internal quotations and edits omitted)).

[119] Petitioners claim, incorrectly, that "[t]here was no public notice and opportunity to comment." Appeal at 30. *See* Petition for Rulemaking, Notice of Docketing and Request for Comment, Criteria to Return Retired Nuclear Power Reactors to Operations, 84 Fed. Reg. 36,036 (Jul. 26, 2019); 10 CFR § 2.803.

[120] The APA's requirements for notice and comment on rulemaking are "maximum procedural requirements which Congress was willing to have the courts impose upon agencies in conducting" rulemakings. *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.* 435 U.S. 519, 524 (1978); *see also FCC v. Schreiber*, 381 U.S 279, 290 (1965) (agencies are "free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties" (internal quotation omitted)). Indeed, the *Vermont Yankee* Court explicitly rejected an argument remarkably similar to that advanced by Petitioners here when declining to require formal rulemaking procedures during all APA rulemakings: if agencies were required to operate under a "vague injunction to employ the 'best' procedures and facing the threat of reversal if they did not, [they] would undoubtedly adopt full adjudicatory procedures in every instance. Not only would this totally disrupt the statutory scheme, through which Congress enacted a formula upon which opposing social and political forces have come to rest, but all the inherent advantages of informal rulemaking would be totally lost." *Vt. Yankee*, 435 U.S. at 546–47 (internal citation and quotation omitted).

[121] Order at 53 (citing 10 CFR § 2.309(f)(1)(v), (vii) and 10 CFR § 2.335).

allows any licensee to request an exemption from NRC regulations), and 10 CFR § 50.90 (which allows any licensee to request a license amendment).

The Appeal offers no response other than to simply repeat the same conclusory claim that "the regulatory scheme of shutdown and decommissioning goes only in one direction,"[122] and "the Holtec exemption request . . . must fail according to the historically limited range of activities for which exemptions have been granted."[123] Merely repeating the same arguments the Board already rejected as conclusory and unsupported does not provide a basis to overturn the Order on appeal.[124] Accordingly, even if the Commission were to ignore the fact that the PRM Denial has resolved the issue, the Appeal does not identify any reversible error in the Board's determination that Petitioners' objections to Applicants' regulatory proposal for how to restart a plant are unsupported, do not raise a dispute with the LARs, and instead simply challenge the normal operation of NRC regulations.

The Appeal also ignored the Board's rejection of their alternative Contention 2 theories: (i) an EIS is required because the Palisades restart is a "major federal action,"[125] or (ii) NRC's

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[122] Appeal at 28.

[123] *Id.* at 29. In this respect, the Appeal mixes Petitioners' argument in support of Contention 1 (that the Exemption Request does not satisfy 10 CFR § 50.12) with the foundational theory of Contentions 2 and 3, which is that "there is no legitimate regulatory pathway to restart a closed decommissioning reactor, a new license must be issued." *Id.* at 25. Regardless, to the extent Petitioners claim that "the historically limited range" of exemptions does not include NRC's approval of the Exemption Request, they were required to explain *why* that is the case: to cite precedent they believe supports their position, to apply that precedent to these facts, and to explain why the Board committed reversible error by concluding otherwise. The Appeal does none of that. *See generally USEC*, CLI-06-10, 63 NRC at 457 ("[I]t is not up to the [presiding officer] to search through pleadings . . . to uncover arguments . . . .").

[124] *Interim Storage Partners*, CLI-20-15, 92 NRC at 498.

[125] *See* Petition at 44–45; Order at 54 ("The question whether this proceeding qualifies as a 'major federal action' alone is not enough to require the preparation of an EIS."). The Appeal suggests that Petitioners are content to rely on their amended and substituted Contention 2. *See* Appeal at 25. The Order does not address Petitioners' New and Amended Contentions. Order at 2 n.4, 51 n.263. That said, Petitioners' amended and substituted Contention 2 relies on the same NEPA argument the Order rejected: that the restart project is a "major federal action" and a "major licensing action" and thus triggers an EIS. *See* New and Amended Contentions at 1–4. Petitioners were not absolved from their responsibility to appeal the Board's dismissal of their original contentions merely because Petitioners have amended those contentions (which largely repeat the same arguments rejected by the present Order on appeal). *See*

NEPA regulations required Applicants to submit an Environmental Report and NRC to prepare an EIS for these LARs.[126]

For the foregoing reasons, Petitioners have not identified any reversible error in the Order's rejection of Contentions 2 and 3. The Commission should accordingly affirm the Board's decision.

### E. Petitioners Have Not Identified Any Error of Law or Abuse of Discretion in the Board's Bases for Rejecting Contention 4

Contention 4 included a mish mash of claims, which the Board distilled into three arguments, only two of which Petitioners discuss in their Appeal: (i) NRC lacks statutory authority to approve the restart because it is a "major question" that requires explicit Congressional authorization,[127] (ii) Applicants cannot use 10 CFR § 50.59 to reinstate portions of the Final Safety Analysis Report ("FSAR"),[128] and (iii) the prior plant owner destroyed quality assurance records.[129] The Board correctly dismissed these arguments because they are out of scope, unsupported, and fail to raise a material dispute with the LARs.[130] The Appeal ignores the Board's dismissal of the third argument regarding the alleged destruction of plant records,[131] so Applicants will only address the first two.

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*generally Shearon Harris*, CLI-01-11, 53 NRC at 383 ("We deem waived any arguments not . . . articulated in the petition for review.").

[126] *See* Petition at 41–48; Order at 54 ("Petitioning Organizations' argument that the Staff must prepare an EIS in accordance with 10 C.F.R. § 51.20 is based on the claim that a new operating license must be obtained, and therefore it fails . . . ."); *id.* at 55 ("[10 CFR § 51.45 and 51.53] do not on their face require the preparation of an environmental report for the types of license amendments at issue here.").

[127] Petition at 51–55.

[128] *Id.* at 55–61.

[129] *Id.* at 63.

[130] Order at 58 (citing 10 CFR § 2.309(f)(1)(iii), (v), (vi)).

[131] The Board rejected Petitioners claim of mass quality assurance record destruction because it is "based entirely on a conclusory assertion" and beyond the scope of this proceeding on the LARs. Order at 61. The Appeal does not mention or object to this portion of the Order. The Petition also included an argument under the Contention 4 subheading that Applicants are required to replace the plant's steam generator. Petition at 61–62. Separately from the LARs at issue in this proceeding, Applicants have filed a license amendment request to modify portions of the facility

In response to the Board's dismissal of their challenge to NRC's statutory authority, the Appeal repeats the same untimely and meritless arguments addressed above for why Petitioners should be allowed to challenge NRC's basic regulatory framework, why the Board over-read the PRM Denial, and why the PRM Denial violates the APA.[132] As explained in Section IV.D above, none of those arguments provide a basis to overturn the Order. Beyond that, Petitioners simply repeat their original arguments and ignore the Board's reasons for finding those arguments inadmissible. First, Petitioners reiterate that Congress must explicitly authorize the restart,[133] but ignore the Board's conclusions that challenges to NRC's statutory authority are beyond the scope of this proceeding[134] and that Petitioners' argument is unsupported in light of the agency's broad authority under the Atomic Energy Act.[135]

Next, the Appeal claims that the Board over-read their 10 CFR § 50.59 argument—attempting to recharacterize the claim not as a challenge to the availability of § 50.59 in general, but instead only a challenge to Applicants' use of § 50.59 to address certain design changes.[136] But Petitioners ignored the Board's determination that *any* challenge to the 50.59 process, either its

licensing basis governing steam generator tube repairs. *See* note 13 *supra*. Petitioners do not dispute the Board's determination that the proper forum for Petitioners' arguments related to the steam generator is in the separate proceeding on that license amendment request. *See* Order at 60.

[132] Appeal at 30–31. *See* Section IV.D.1 and IV.D.2 *supra.*

[133] Appeal at 32.

[134] Order at 58 ("Petitioning Organizations' argument that restart-specific statutory and regulatory provisions are necessary to allow Applicants to restart Palisades is not cognizable in this adjudicatory proceeding." (citing 10 CFR § 2.335(a); *Oconee*, CLI-99-11, 49 NRC at 334)).

[135] Order at 59 (citing *Tenn. Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2) CLI-10-6, 71 NRC 113, 120 (2010)).

[136] *Compare* Appeal at 32 ("The ASLB engages in another false characterization of Contention 4 by referring to 'Petitioning Organizations' claim that 10 CFR § 50.59 may not be used to update the UFSAR.' That is not at all the nature of the contention.") *with* Petition at 49 ("[I]t is not possible in the case of Palisades to turn a [Defueled Safety Analysis Report] into a [Updated FSAR] via reversion under 10 CFR § 50.59."); *id.* at 56 ("10 C.F.R. § 50.59 cannot be used as the vehicle by which Holtec restores Palisades to operations.").

general availability or its specific application to FSAR language, are beyond the scope of NRC adjudicatory proceedings and so do not raise a dispute with these LARs.[137]

By simply repeating their original claims and ignoring the Board's bases for rejecting them, Petitioners fail to identify any basis for overturning the Board's dismissal of Contention 4.[138]

## V. Conclusion

The Board correctly found that Petitioners' contentions were inadmissible under 10 CFR § 2.309(f)(1). On appeal, Petitioners have failed to show that the Board erred or otherwise abused its discretion. Accordingly, Applicants respectfully request that the Commission affirm the Board's Order denying the Petition.

Respectfully submitted,

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[137] Order at 60–61. Like Contention 2, Petitioners have submitted an amended version of Contention 4 in response to NRC's publication of the Draft EA. *See* New and Amended Contentions at 8–27. The Board has not ruled on the admissibility of the New and Amended Contentions. Order at 51 n.263. However, the only difference between the original Contention 4 and the new Contention 4 is that Petitioners now cite the climate change addendum to the Draft EA to bolster their § 50.59 argument that Applicants must update the Palisades FSAR to address climate change. *See* New and Amended Contentions at 21–24. As explained in note 125 *supra*, the fact that Petitioners have submitted an amended contention does not absolve them of their obligation to appeal the Board's disposition of the original contention as beyond the scope of this proceeding, which they have not done.

[138] *Shieldalloy*, CLI-07-20, 65 NRC at 503.

**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**
**BEFORE THE COMMISSION**

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| In the Matter of: | ) | |
| HOLTEC DECOMMISSIONING INTERNATIONAL, LLC AND HOLTEC PALISADES, LLC | ) | Docket No. 50-255-LA-3 |
| Palisades Nuclear Plant | ) | May 20, 2025 |

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305, I certify that on this date copies of the foregoing Brief in Opposition to Appeal were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned matter.

Signed electronically by

/s/ Alan D. Lovett

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