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February 13, 2023

NRC Freedom of Information Officer
U.S. Nuclear Regulatory Commission
Mail Stop TWFN-6 A60M
Washington, DC 20555-0001
Via email only to FOIA.resource@nrc.gov

RE: FOIA request for unredacted February 1, 2023 Holtec International letter to NRC
Division of Operating Reactor Licensing

Dear NRC FOIA Officer:

I hereby request certain documents described below pursuant to the Freedom of Information Act (FOIA, 5 U.S.C. § 552, as amended) on behalf of two clients, Beyond Nuclear ("BN"), a Takoma Park, MD nonprofit organization, and Don't Waste Michigan ("DWM"), a Monroe, Michigan nonprofit organization.

On behalf of BN and DWM, I request the complete and unredacted version of a letter and its enclosures dated February 1, 2023. The letter is addressed to Mr. Bo Pham, Director, NRC Division of Operating Reactor Licensing, and is from Jean A. Fleming, Vice-President of Licensing, Regulatory Affairs & PSA of Holtec International. The subject is "Palisades Nuclear Plant, Docket No. 50-255, Renewed Facility Operating License No. DPR-20." There are two enclosures, one an unredacted 10 CFR § 2.390 affidavit, and the other, a completely-redacted document entitled, "Regulatory Path to Reauthorize Power Operations at the Palisades Nuclear Plant – Proprietary." This letter and two enclosures were installed in the ADAMS archive on February 9, 2023 and these items are found at ML23032A399. The document is 17 pages long.

Both DWM and BN are nonprofit public advocacy and education organizations which actively inform the public on matters affecting commercial nuclear power plant operations and other nuclear power infrastructure plans, policies and proposals. Both organizations address these aims through publications, commentary to the press, sponsorship of educational programs and events, public appearances of their staff and members, litigation and the development of institutional expertise. Both organizations have educated the public, litigated,

and publicly commented on federal and state of Michigan actions affecting the operations, decommissioning and contemplated restart of the Palisades Nuclear Power Plant located in Van Buren County, Michigan.

The documents sought by DWM and BN are expected to reveal Holtec International's suggested regulatory steps to bring about the unprecedented reopening and recommissioning of a shutdown, defueled nuclear power plant which is presently being decommissioned. Holtec's suggested regulatory path to reopen Palisades is bogus. It is of interest to the public because Holtec has no competitor. Palisades is the only closed reactor whose owner is trying to reopen it; indeed, there has never been a similar effort made to reopen a closed reactor. No one is watching the Palisades controversy to learn some clever regulatory trick. There are no genuine prospects for a Palisades restart.

An analysis of Holtec's request for proprietary business secrecy under the U.S. Department of Justice's "Step-By-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA"¹ shows that Holtec's proposed regulatory pathway is simply not proprietary. Even if Holtec's information is closely-held, the NRC gave Holtec no express or implied assurance of confidentiality when it was submitted under 10 CFR § 2.390. That regulation sets out a procedure by which the NRC might grant confidentiality; it expresses no presumption of proprietary confidentiality. This FOIA request triggers the § 2.390(b)(5) determination by the NRC (applying § 2.390(b)(4)) whether Holtec's letter contains trade secrets or privileged or confidential commercial or financial information. If it does, then the NRC must decide whether the right of the public to be fully apprised of the bases for and effects of the proposed action outweighs Holtec's concern for protection of a competitive position, and whether the information should be withheld from public disclosure.

Releasing unredacted versions of the requested documents will significantly add to public understanding of the NRC's role in this unprecedented attempt to restore Palisades to operability.

The information the NRC provides in response to this FOIA request will not be used for commercial gain. It will be published on the BN website (which averages hundreds of hits per week) and will be disseminated to the media and Congress as a component of DWM's and BN's education of the public about the operations and regulation of the Palisades nuclear plant. DWM's and BN's steps to make information about this important controversy available to the public will foster openness in government and facilitate public understanding.

This request is not meant to be exclusive of any other records which, though not

¹<https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential>

specifically requested, would have a reasonable relationship to the subject matter of this request. In the event that access to any of the requested records is denied, please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. I therefore request that the NRC provide me with all non-exempt portions which are reasonably segregable. I further request that the NRC describe the deleted material in detail and specify the statutory basis for the as well as the agency's reasons for believing that the alleged statutory justification(s) apply in this instance. If the NRC will not release the requested documents in full, please separately state the NRC's reasons for not invoking its discretionary powers to do so. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. The NRC's written justification might help to avoid unnecessary litigation.

I reserve my clients' right to appeal the withholding or deletion of any information, and expect that the NRC will list the office and address where such an appeal can be sent. Because we anticipate that the agency will make the requested materials available within the statutorily prescribed period, we also request that you waive any applicable fees, since disclosure meets the statutory standard for waiver of fees in that it is clearly "in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. § 552(a)(4)(A). If for some reason the fee waiver request is denied, while reserving our right to appeal such a decision, we are willing to pay up to \$25.00 to cover costs of document search and duplication.

Access to the requested records should be granted within twenty (20) working days from the date of your receipt. Your failure to respond in a timely manner will be treated as a denial of this request, and the requesters may immediately file an appeal.

Thank you.

Sincerely,

/s/ Terry J. Lodge

Terry J. Lodge, Esq.

Counsel for Don't Waste Michigan
and Beyond Nuclear