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April 4, 2023

Robert J. Feitel, Director
U.S. Nuclear Regulatory Commission
Office of the Inspector General
Mail Stop O12-A12
11555 Rockville Pike
Rockville, MD 20852
Via Fax to (301) 415-5091

Thomas Ashley, Acting Director
U.S. Nuclear Regulatory Commission
Office of Investigations
11555 Rockville Pike O-3 F1
Rockville, MD 20852

RE: Request for investigation of NRC Staff for misfeasance, malfeasance and/or nonfeasance regarding oversight of decommissioning of Palisades Nuclear Plant; Request for Investigation of Holtec International, LLC concerning misuse or misappropriation of Decommissioning Trust Fund (DTF) resources of Palisades Nuclear Plant

Dear Inspector-General Feitel and Director Ashley:

Beyond Nuclear (“BN”), a nonprofit nuclear oversight group located in Takoma Park, Maryland, and Don’t Waste Michigan (“DWM”), a nonprofit grassroots safe energy group in Monroe, Michigan, hereby request that the NRC Office of Inspector-General and the NRC Office of Investigations commence an investigation into possible misfeasance, malfeasance and/or nonfeasance committed by Nuclear Regulatory Commission (“NRC”) Staff and the staff of Holtec International, LLC and its subsidiaries, in connection with oversight of Holtec International, LLC (“Holtec”) as owner of and responsible party for the Decommissioning Trust Fund set aside for the decommissioning of Palisades Nuclear Generating Plant (“Palisades”) located in Van Buren County, Covert Township, Michigan.

Holtec, as current owner of Palisades, is pursuing at least \$10,900,000,000 in governmental subsidies. Holtec has applied for more than \$2,000,000,000 in U.S. Department of Energy (“DOE”) grants and loans to restart the Palisades reactor and is negotiating with Michigan’s governor and legislative leaders for an additional bailout believed to exceed \$1,000,000,000. Holtec is actively chasing \$7,400,000,000 from another DOE loan fund to build

up to four small modular reactors at the Palisades site. Through it all, Holtec is expending tens of millions of dollars which were set aside for decommissioning Palisades. Some of those funds, by Holtec's admissions, are being used to keep the plant in a holding state while Holtec staff who are also evidently being paid from decommissioning funds pursue governmental aid to finance the restart of operations.

The Palisades Decommissioning Trust Fund ("PDTF") is composed of ratepayer dollars which from 1971-2007 were collected and are held in an income-gathering trust governed by state law. PDTF dollars are restricted to decommissioning uses, generally, facility dismantlement and radiological contamination clean up. The funds are not for shutdown expenses. Trust Fund monies are also not for site restoration nor spent nuclear fuel management, but the NRC granted waivers and exemptions allowing \$35,000,000 and \$166,200,000, respectively, to be spent on these non-decommissioning expenditures. Beyond Nuclear and Don't Waste Michigan respectfully demand that the NRC Inspector-General and the Director of the NRC Office of Investigations undertake investigations of the apparent misuse of PDTF resources detailed below to ascertain whether federal law has been broken.

I. The Permanent Shutdown of Palisades

The 800-MWe Palisades Nuclear Generating Station permanently ended commercial power generation activities on May 20, 2022. The reactor's entire inventory of nuclear fuel was unloaded from the core on June 10, 2022 by former owner Entergy. On June 13, 2022, Entergy sent the NRC a letter entitled "Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel."¹ When Entergy filed these certifications, Palisades' 10 CFR Part 50 operating license ceased to authorize reactor operation, and the regulations prohibited any future placement or retention of fuel in the reactor vessel. 10 CFR § 50.82(a).

In June 2022, Entergy sold Palisades to Holtec International, LLC for \$166,000,000. Holtec took over direct control of the plant on June 28, 2022.

The NRC had authorized Entergy on December 13, 2021 to expend money from the PDTF² that was to be strictly limited to spent fuel management and site restoration as noted above. The NRC also waived advance notification before Entergy could draw down funds.³ Holtec, as successor owner, has been spending money from the PDTF since June 2022,⁴ but the question of whether trust funds are being spent according to regulations and NRC's previous approval is now a matter of controversy.

¹ The June 13, 2022 Certifications letter is available online at

<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML22164A067>

² Palisades Site-Specific Decommissioning Cost Estimate,

<https://holtecinternational.com/wp-content/uploads/2022/06/HDI-Palisades-PSDAR.pdf> at p. 46.

³ NRC Exemption granted to Palisades, ADAMS No. ML21286A506 at p. 10,

<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML21286A506>

⁴ Holtec Decommissioning International (HDI) predicted that it would be expending DTF funds by the time the license transfer from Entergy to HDI was completed, which transfer was completed on June 28, 2022. See *Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, Holtec International and Holtec Decommissioning International, LLC* (Palisades Nuclear Plant and Big Rock Point Site), 95 NRC ___, CLI-22-08 at 38 (July 15, 2022).

II. Holtec's Campaign for Bailout Funds

On July 5, 2022, Holtec applied for federal Infrastructure Investment and Jobs Act funds under the Civil Nuclear Credits Program. On November 18, 2022, Holtec publicly announced that the July 5, 2022 application had been rejected by DOE. Then, on December 19, 2022, Holtec stated that it would apply for the second round of DOE CNCP funding. The DOE published new "guidance" in early March 2023 containing an interpretation of the IJA that conflicts directly with the statute's wording in order to make Palisades an eligible funding recipient. Holtec seeks a bailout of \$1,200,000,000 from DOE's Civil Nuclear Credit Program under § 40323 of the IJA (42 USC § 18753) to cover some costs of restoring Palisades to full operations.

Holtec simultaneously has applied to DOE's Loans Program Office for \$1,000,000,000 under a federal loan program to restore Palisades to operations.⁵

Michigan's Governor, Gretchen Whitmer, has committed to helping identify state funding to reopen Palisades in the rumored sum of \$1,300,000,000, and to have the Michigan Public Service Commission assist in setting up a long-term purchased power agreement ("PPA") where Palisades can sell its power at a price significantly above market rates to a guaranteed customer.⁶ Under the terms of the 2007-2022 PPA, with Consumers Energy at times the utility was left paying 57 percent more than the going market rate for electricity.⁷

In addition, Holtec is pursuing \$7,400,000,000 from the DOE Loans Office to develop up to four small modular reactors ("SMRs") at the Palisades site.⁸

III. Holtec's Unprecedented Regulatory Reversal for Reactor Restart

There is no directly comparable example in the United States history of commercial nuclear power to this proposal to reopen Palisades. The statutory regulations promulgated pursuant to the Atomic Energy Act provide oversight from commencement of power plant construction, through plant operations, through long-term decommissioning and dismantling of nuclear power reactors. There has been no previous reversal of the NRC's regulatory process before. But that is Holtec International's goal.

Considerable public opposition is building to the reopening of Palisades and restoration of reactor operations. Beginning in June 2022,⁹ nearly 200 grassroots environmental and civic organizations have stepped up to publicly oppose Holtec's attempts to garner IJA funds from DOE.¹⁰

On February 1, 2023, Holtec sent a heavily-redacted letter to the NRC, suggesting a regulatory pathway to the reopening of Palisades. Holtec later provided the NRC a less-redacted version of the letter, a copy of which is attached to this correspondence as Exhibit A. The letter

⁵ <https://www.powermag.com/biden-administration-pledges-1-2-billion-to-keep-u-s-nuclear-reactors-online/>

⁶ <https://www.michigan.gov/whitmer/news/press-releases/2022/09/09/whitmer-announces-plan-with-holtec-to-reopen-palisades-plant>

⁷ <https://www.bridgemi.com/michigan-environment-watch/fresh-palisades-closure-michigan-will-study-sates-nuclear-prospects>

⁸ <https://holtecinternational.com/2022/06/28/palisades-and-big-rock-point-are-the-latest-nuclear-plants-to-join-holtecs-decommissioning-fleet/>

⁹ <https://beyondnuclear.org/environmental-coalition-to-governor-whitmer-cease-and-desist-from-massive-bailout-scheme-at-palisades-zombie-atomic-reactor-restarting-dangerously-age-degraded-nu/>

¹⁰ <https://beyondnuclear.org/4417-2/>

posits “a one-time exemption from 10 CFR 50.82(a)(2),”¹¹ followed by a series of license amendments, as the means by which Palisades would legally be restored to operate.

The NRC convened a partly-public meeting with Holtec on March 20, 2023. In Holtec’s slideshow presentation at that meeting, the company repeated its aim of a straight reversal of the shutdown of Palisades via NRC exemption.¹² At p. 8 of the slide show, Holtec states as its goal, “Request exemption from 10 CFR 50.82(a)(2) – withdrawal (2) certifications – Certification of permanent cessation of operations and Certification of permanent fuel removal.”

IV. Alleged Misuse of Palisades Decommissioning Trust Fund Resources

By this letter, neither BN nor DWM are challenging the lawfulness or procedural regularity of Holtec International’s pathway to return Palisades to power operations. Rather, BN and DWM request investigation of NRC Staff and Holtec International for Holtec’s admissions at the meeting that it is using PDTF funds to cover the costs of maintaining Palisades in its present state in order to reopen the plant. BN and DWM further seek investigation into the apparent facts that the company is using PDTF money to pay technical staff who are planning for, and negotiating terms and conditions with, the NRC for the return to operations. Finally, BN and DWM demand an inquiry into the NRC Staff’s role in failing to oversee these claimed improper expenditures. Holtec International, or one of its subsidiaries, is the trustee of the PDTF and as such is legally required to manage these ratepayer funds and investments in such a way as to decommission and dismantle the Palisades nuclear plant. If substantiated, the apparent misuse of tens or even hundreds of millions of dollars to stabilize and fund Palisades for continued operations violates the Atomic Energy Act and NRC regulations.

A public observer of the March 20 meeting kept an audio recording of the meeting,¹³ which BN and DWM have transcribed, and provided a copy along with this letter as Exhibit B.

A. Holtec Admits It Is Not Actively Dismantling the Plant

As the March 20, 2023 Holtec-NRC meeting began, Kelly Trice, president of Holtec Decommissioning International (“HDI”), was asked by Jean Fleming, Holtec International’s vice-president, to provide an overview of Palisades’ status:

Speaker15: [Kelly Trice] [00:09:53] So Palisades, I think everybody knows, was shut down roughly May last year, has been shut down ever since. ***Generally, we've maintained the plant in its current status. Not a lot of decommissioning has started at this point. We still retain about 220ish people still on site. The plant is in a pre (inaudible) fire status.*** The spent fuel pool is essentially full with spent fuel at this point. And I think, you know, the concept of reauthorizing reauthorizing power operations is a is a new concept, although it's been somewhat tested, a variety of regulatory processes. So but there's also four pillars. And when we talk about schedule and the need for

¹¹ Holtec Letter (3/13/2023) at p. 2/17 of .pdf.

¹² See slides at pp. 7-8 of Holtec’s March 20, 2023 presentation, accessible online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML23075A112>

¹³ A copy of the transcript accompanies this letter as Exhibit B (hereafter referred to as “Tr.”). The audio version is accessible at https://drive.google.com/file/d/14WkEz5fhyVK0DbSdqJGUAld5p11Td_2J/view?usp=share_link

scheduling this, there's four pillars, a couple of regulatory or a couple of federal agencies, a state agency at minimum involved. So the key steps to this is we have applied for a DOE loan under the DOE loan program office to be able to have the capital to restart this plant. DOE is going through its process to restart that plant. And at this point, the schedule is still being determined as we go through the RAI process. ***I think we've had four rounds of RAIs in the last couple of weeks or so.*** The next step is we've asked Michigan for participation as well. So the state of Michigan has some asks that require legislation that they would have to pass in order for this plant to start up.

Tr. 5-6 (Emphasis added).

The above Holtec statements show that Holtec is spending resources, not for the decommissioning of Palisades, but to “maintain” it in its “current status” to more easily restart operations while Holtec garners federal and state grant and loan funds and addresses regulatory details for the restart. Holtec has 220 staff presently working at the site for these purposes. HDI’s president also mentioned that the DOE Staff is submitting multiple Requests for Additional Information (RAIs) to Holtec, which is more evidence of Holtec’s financing of work on its monetary aid requests at the expense of the PDTF, not to mention financing of work on its regulatory relief requests from NRC.

Later in the meeting, Justin Poole, who led the meeting for the NRC Staff, asked Holtec to clarify what the company meant by stating that it had not yet performed significant decommissioning work. Michael Schultheis, Holtec Decommissioning International, LLC’s manager of regulatory assurance, responded:

Speaker1: [Justin Poole} [00:25:14] So. You had said earlier, this is Justin Poole again. You had said earlier in the presentation that you hadn't done any significant decommissioning work could maybe go a little bit more on that. I mean, I know we've had internal discussions and one of the questions was, I mean, have any of the systems really been. Broken into, so to speak, and opened up. Has there been any do you guys have an SME program for those systems or are you it's a system you're not using anymore, so you're just abandoning it. And how would that fit back into the the what do you call it, your return to service? Kind of.

Speaker16: [Jean Fleming, Holtec International vice-president for licensing] [00:25:57] Thanks, Justin. Mike, why don't you take note?

Speaker4: [00:25:58] Yeah. Mike Schultheiss with Holtec. So, Justin, thanks for that. Correct. ***We have not started any dismantlement on the plant proper itself. We've done it a simple modification to our cooling tower structure, which would be easily modified back. Other than that, there's been no modifications, generally speaking, for the plant.*** Um, SME programs, yes, we still have a program in place today, so as applications are still applicable in doing any work. But we have not been doing work on the plant proper itself. ***Primarily our work has been hazard reduction at the site, some security modifications for efficiencies, things like that.***

Tr. 12 (Emphasis added).

B. Holtec States That It Is Paying Salaries To Maintain Plant For Restart From Decommissioning Trust Fund

When Justin Poole of the NRC Staff asked how Holtec would handle the multiple license amendment requests it anticipates will be submitted, Holtec succinctly stated it was paying its staff from the PDTF for activities aimed at restarting Palisades power generation operations:

Speaker1: [Justin Poole] [00:35:20] What is the plan for the all the applications you have in house on the decommissioning side as you are debating this decision on possible restart?

Speaker16: [Jean Fleming, Holtec International vice-president for licensing] [00:35:32] So we would we would request that the NRC continue their review of those of those applications. As Kelly said. Right? If if all of those factors don't come together, then eventually a decision is going to be have to have to be made of whether to attempt to restart or to continue with decommissioning. So to rescind those at this point would be premature in the decision making process. And we – I - know that that answer doesn't help with the resources. Right.

Speaker15: [possibly Kelly Trice, Holtec Decommissioning International president] [00:36:03] But it is a time critical decision. So kind of the approvals that we're talking about with the offsite emergency plan and stuff like that, I think the timing is like June, Julyish time frame. ***So if we had indications that we thought the Department of Energy was going to be able to approve, if we thought the state of Michigan was going to do its legislation, and if we thought the power purchase agreement was going to go through, we might lean forward and not do some of those changes just to make it easier to restart this plant.*** If we don't have an indication and we think it could take 6 or 12 months longer then ***we're probably going to have a different viewpoint, you know, simply the preservation of the decommissioning trust fund. Which is what we're using to pay the salaries right now.***

Tr. 17 (Emphasis added).

Thus Holtec indicated that the company understands it is presently using PDTF money to pay for unapproved, non-permitted non-decommissioning activities and that if the plans for restart do not come together quickly in the form of probable regulatory approvals, Holtec might have to preserve the PDTF for actual decommissioning.

Despite the clarity of the above Holtec statement that the company is presently paying salaries from the PDTF for unapproved, non-permitted non-decommissioning activities, Justin Poole, NRC Staff lead for the meeting, pointedly denied the meaning of Holtec's admission. During the public comment part of the meeting, after Kevin Kamps of Beyond Nuclear criticized Holtec for inappropriately, and even illegally, expending PDTF resources for Holtec's planned restart, Justin Poole denied the clear import of Holtec's statements:

Speaker2: [Kevin Kamps][00:46:14] Very good. Thank you. My name is Kevin Kamps and I serve as radioactive waste specialist at Beyond Nuclear and a board of directors member for Don't Waste Michigan. And boy, where to start? I heard a [Holtec] tech representative say that they are drawing down from the decommissioning trust fund

to pay the salaries right now for this restart scheme. You know, we contested NRC approval of Holtec's request for exemptions on decommissioning trust fund expenditures, but NRC approved them anyway. And they were for spent nuclear fuel management and for site restoration. So I don't think site restoration as defined means restart restoration or restoration of operations. It means putting the physical site into a restored state, sort of glorified landscaping with, you know, stormwater drains that are more significant to the environment. So a question I have for NRC is how is this legal? How are these salaries being paid from the decommissioning trust fund? My family in Kalamazoo has paid into the decommissioning trust fund for decades, and the decommissioning trust fund is already short of what's needed to clean up the radiological contamination that's been caused after 50 plus years of operations. This this is outrageous. This is illegal. I think a good summary for my comments at the end of this meeting here. I would just repeat what I said in April of 2022. At the Palisades Decommissioning Panel in South Haven when Holtec floated initially the idea of building SMRs small modular nuclear reactors at the site. Over my dead body. Over my dead body. Are you all going to get away with this. We are going to fight you at every turn. This is making a mockery not only of the decommissioning trust fund and what it's supposed to be for and what it's supposed to mean. It's making a mockery of the NRC. NRC has regulations that they waive and exempt willy-nilly to accommodate the industry. But this proposal is outlandish. This is off the deep end nuts. And we are going to fight this proposal at every turn. And just to end, because I know there's others who want to speak, I would like to direct everyone's attention to a Radwaste Monitor, Exchange Monitor article by Benjamin Weiss, dated February 10th, 2023. NRC commissioner says Holtec must start from scratch to power up Palisades. Commissioner Crowley, I think has a real strong sense of common sense here. Some of the points he made in this article in this interview were, you know, if Palisades was going to keep operating, wouldn't the advocates for restored operations have planned for this in advance? Instead of letting the reactor shut down permanently and restrict its operating license?

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Speaker1: [Justin Poole] [00:49:59] Thank you. Tanya. ***I just want to say our to our understanding, the funds are not being used by Holtec to or any of this restart discussion. What they said was that the the funds were being used to pay workers that are at the site now doing whatever decommissioning activities are being done or decommissioning.*** And then this meeting, you know, we're not talking about at this meeting that, you know, if Holtec was to come in and want to put an SMR on the site, that would be something, you know, off in the future and would be a whole other set of public meetings.

Tr. 21-23 (Emphasis added).

V. Legal Implications of Misuse of Decommissioning Trust Fund Monies

BN and DWM submit that the Atomic Energy Act and regulations promulgated pursuant to it, and Internal Revenue Service regulations, are possibly being violated by Holtec's alleged misuse of PDTF resources.

NRC regulations at 10 CFR § 50.2 define "decommissioning" as follows:

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

- (1) Release of the property for unrestricted use and termination of the license; or
- (2) Release of the property under restricted conditions and termination of the license.

The decommissioning of Palisades is governed primarily by 10 CFR § 50.82. Nuclear reactor licensees are required to provide financial assurance for radiological decommissioning by complying with 10 CFR § 50.75 during the time a facility is operating. Palisades' method for meeting financial assurance requirements was the creation of a trust.

According to a guidance document published in 2015¹⁴ by the Nuclear Energy Institute ("NEI"), a member organization of commercial nuclear power generating companies, "activities that go beyond the scope of decommissioning, as defined in 10 CFR § 50.2, such as restoration costs to prepare the site for its next use after license termination is complete, are not decommissioning activities."¹⁵

Internal Revenue Service regulations require that the PDTF must have been established and that it be maintained at all times pursuant to an arrangement that qualifies as a trust under State law. 26 CFR § 1.468A-5(a)(1)(i). Expenditures from the PDTF must be used to satisfy, in whole or in part, Holtec's liability for decommissioning costs of Palisades. 26 CFR § 1.468A-5(a)(3)(i)(A). An IRS finding that improper expenditures have been made from the PDTF could jeopardize the trust's status as a tax-favored mechanism which could have implications for the continued investment of PDTF resources in an income-generating manner.

Holtec may also have made material false representations in connection with the intended expenditures of PDTF assets in violation of 18 U.S.C. § 1001(a).

VI. Conclusion: Inspector-General and Office of Investigations Inquiries Are Warranted

Beyond Nuclear and Don't Waste Michigan request formal investigations be conducted by the NRC Inspector-General and the NRC Office of Investigations of the possible misuses of Palisades Decommissioning Trust Fund resources as described above. The troubling indifference of the NRC Staff, as regulators, to the misuse of PDTF resources also warrants examination. The NRC Staff is actively considering an unprecedented reversal of the shutdown status and limited NRC licensure of Palisades and appears to be collaborating in Holtec International's scheme to finance the restart of Palisades with public resources dedicated to the decommissioning of the plant.

¹⁴ "Use of the Nuclear Decommissioning Trust Fund," ADAMS ML15335A187, <https://www.nrc.gov/docs/ML1533/ML15335A187.pdf>

¹⁵ *Id.* at 1.

Respectfully,

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