

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
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HOLTEC DECOMMISSIONING)	Docket No. 50-255-ER
INTERNATIONAL, LLC)	
)	
(Palisades Nuclear Plant Request for)	
Exemption))	
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**MOTION FOR SECRETARY ORDER DENYING BEYOND NUCLEAR ET AL.’S
PETITION FOR A HEARING ON AN EXEMPTION REQUEST**

Pursuant to 10 C.F.R. §§ 2.323(a)(2) and 2.346(h), Holtec Decommissioning International, LLC (“HDI”) respectfully requests that the Commission Secretary promptly issue an order denying the Petition¹ filed by Beyond Nuclear, Don’t Waste Michigan, and Michigan Safe Energy Future (“Petitioners”) requesting an adjudicatory hearing on HDI’s September 28, 2023 exemption request.² As the Petition acknowledges, and as the Commission has clearly held, the Atomic Energy Act (“AEA”) does not grant a hearing right on exemption requests.³ The Secretary has the authority under 10 C.F.R. § 2.346(h) to deny the Petition to avoid unnecessary expenditure of NRC staff’s and HDI’s resources.⁴ The Secretary has done precisely that in similar circumstances and should do so here.⁵

¹ Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don’t Waste Michigan, and Michigan Safe Energy Future (Dec. 5, 2023) (ADAMS Accession No. ML23339A192) (hereinafter “Petition”).

² Letter from HDI to NRC, Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82 (Sept. 28, 2023) (ADAMS Accession No. ML23271A140).

³ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-05, 51 N.R.C. 90, 94–96 (2009).

⁴ 10 C.F.R. § 2.346(h) (“[T]he Secretary or the Assistant Secretary is authorized to: . . . (h) Deny a request for hearings, where the request fails to comply with the Commission’s pleading requirements set forth in this part, and fails to set forth an arguable basis for further proceedings . . .”).

⁵ Letter from NRC Secretary Vietti-Cook to Susan Shaprio, Objection to NRC’s Grant of an Exemption to Indian Point Unit 3 (Jan. 30, 2008) (ADMAS Accession No. ML080300243).

The Petitioners have previously submitted several NRC filings raising many of the same issues, which NRC staff or the Secretary have addressed or dismissed in accordance with NRC’s procedural rules.⁶ That Petitioners have now styled a filing as a “Petition to Intervene and Request for Adjudicatory Hearing” does not change the fact that they have not challenged a licensing action that affords them an opportunity to request a hearing. The Petition acknowledges that “the Commission has held that § 189(a) [of the AEA] does not apply to proceedings involving a request for an exemption,” but states that Petitioners nevertheless submitted the filing “so as not to waive any procedural requirement” and because “NRC’s consideration of Holtec’s Request for Exemption in [Petitioners’] estimation comprises a licensing-related act that comprises a proceeding pursuant to [10 C.F.R.] § 2.309.”⁷ Petitioners are not at risk of waiving any procedural requirement because the AEA does not grant them a right to request a hearing on HDI’s exemption request. Petitioners will get their chance to contest licensing actions that are subject to hearing requests under the AEA. But simply stating (incorrectly, and in contravention to Commission precedent) that the exemption request is such a “licensing-related act” does not convert the exemption request into a “proceeding . . . for the granting, suspending, revoking, or amending of any license or construction permit,”⁸ or avoid the Commission’s holdings “that Congress intentionally limited the opportunity for a hearing to certain designated agency actions . . . that do not include exemptions.”⁹

⁶ See Letter from NRC to Kevin Kamps (July 14, 2022) (ADAMS Accession No. ML22186A159); Order of the Secretary Denying Petition for Declaratory Order (Mar. 1, 2023) (ADAMS Accession No. ML23060A477); Palisades Post-Shutdown Decommissioning Activities Report Comment Resolution (May 2, 2023) (ADAMS Accession No. ML23087A039); NRC Safety Evaluation Related to License Transfer (Dec. 13, 2021) (ADAMS Accession No. ML21292A148).

⁷ Petition, at 19.

⁸ AEA § 189a(1)(A), 42 U.S.C. § 2239(a)(1)(A).

⁹ *Zion Nuclear Power Station*, 51 N.R.C., at 96 (emphasis in original).

For these reasons, the Petition should be summarily denied by Secretary order. Subject to issuance of such an order, and in the absence of a scheduling order, HDI reserves the right to file an answer to the Petition on the schedule set forth in 10 C.F.R. § 2.309(i)(1).

Pursuant to 10 C.F.R. § 2.323(b), counsel for HDI certifies that HDI has consulted with Petitioner's counsel in an attempt to resolve the issue raised in this motion. Petitioners' counsel indicated that they intend to reply and object to this motion.

Respectfully submitted this 11th day of December, 2023.

HOLTEC DECOMMISSIONING
INTERNATIONAL, LLC

/Signed electronically by Alan D. Lovett/

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that the foregoing motion has been served upon the Electronic Information Exchange, the NRC’s e-filing system, in the above-captioned proceeding this 11th day of December, 2023.

Signed (electronically) by
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Counsel for Holtec Decommissioning
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Dated: December 11, 2023