

December 15, 2023

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

HOLTEC DECOMMISSIONING
INTERNATIONAL LLC

(Palisades Nuclear Plant)

Docket No. 50-255-ER

**NRC STAFF ANSWER TO INTERVENTION PETITION AND HEARING
REQUEST AND TO LICENSEE MOTION FOR DENIAL OF PETITION**

INTRODUCTION

The U.S. Nuclear Regulatory Commission (NRC) staff (Staff) herein answers the intervention petition and hearing request (Petition) filed by Beyond Nuclear, Michigan Safe Energy Future, and Don't Waste Michigan (Petitioners) on December 5, 2023, and the motion filed by Holtec Decommissioning International LLC (HDI) on December 11, 2023, requesting denial of the Petition (Motion). The Petition challenges a request for exemption (Exemption Request) on restarting reactor operation at the Palisades Nuclear Plant (Palisades) that HDI submitted on behalf of Holtec Palisades, LLC (Holtec Palisades) on September 28, 2023.

As explained below, the Petition should be denied because the Atomic Energy Act of 1954, as amended (AEA), does not provide a hearing opportunity on an exemption request. Instead, the Petitioners' opportunity to request a hearing on restart-related matters would occur if the NRC notices a hearing opportunity on a licensing request within the scope of the AEA hearing requirement. The Exemption Request states that HDI plans to submit a license transfer request and several license amendment requests in support of restart, and the license transfer request and a license amendment request have recently been submitted. To the extent that the

transfer and amendment requests are submitted and accepted for review, the Staff would publish *Federal Register* notices providing an opportunity for hearing on those requests. Regarding the Motion, the Staff agrees with HDI that the Petition should be denied but otherwise takes no position on the Motion.

BACKGROUND

Palisades was licensed for reactor operation until March 24, 2031. However, by letter dated June 13, 2022, the licensee at the time, Entergy Nuclear Operations, Inc. (Entergy), submitted certifications under 10 C.F.R. § 50.82(a)(1) that operation had permanently ceased and that fuel had been permanently removed from the reactor.¹ In accordance with 10 C.F.R. § 50.82(a)(2), the docketing of these certifications means that “the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.” The NRC also issued an amendment changing the operating license, including technical specifications, to reflect the authorities and requirements for a reactor in decommissioning.² Among other things, this amendment removed language from the license regarding the authority to operate the facility and removed the technical specifications for an operating reactor.³

HDI submitted the Exemption Request on September 28, 2023.⁴ HDI requests “an exemption from the 10 CFR 50.82(a)(2) restriction that prohibits reactor power operations and

¹ Letter from Darrell W. Corbin, Entergy, to NRC Document Control Desk, “Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel,” (June 13, 2022) (ADAMS Accession No. ML22164A067).

² Letter from Scott P. Wall, NRC, to Vice President for Operations, Entergy, “Palisades Nuclear Plant – Issuance of Amendment No. 272 Re: Permanently Defueled Technical Specifications” (May 13, 2022) (ML22039A198).

³ See, e.g., *id.*, Enc. 2 at 14, 30, 34, 36, 39-42 (discussion of changes to License Condition 2.B.(1) in Section 4.2.3 of the Staff safety evaluation and discussion of changes to the technical specifications in Section 4.3 of the Staff safety evaluation).

⁴ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82” (Sept. 28, 2023) (ML23271A140) (Exemption Request).

retention of fuel in the reactor vessel, which is applicable to [Palisades] due to docketing the 10 CFR 50.82(a)(1) certifications, by allowing for a one-time rescission of the docketed 10 CFR 50.82(a)(1) certifications.”⁵ HDI states that the Exemption Request, in combination with a license transfer and license amendments, are “necessary to reauthorize placement of fuel in the [Palisades] reactor vessel and reauthorize power operations at [Palisades].”⁶ The Exemption Request states that HDI intends to submit a license transfer request and three license amendment requests.⁷ The Staff accepted the Exemption Request for Staff review on November 3, 2023.⁸ The license transfer request was submitted on December 6, 2023, and a license amendment request was submitted on December 14, 2023.⁹

The Petition was filed on December 5, 2023, and includes arguments for standing and four proposed contentions.¹⁰ HDI filed its Motion on December 11, 2023, and asks the Secretary to “promptly issue an order denying the Petition” under the authority provided by 10 C.F.R. § 2.346(h) because the AEA grants no hearing opportunity on exemption requests.¹¹ The Petitioners responded to the Motion on December 13, 2023 (Petitioners Response to Motion),

⁵ *Id.* at 1.

⁶ *Id.*

⁷ *Id.*, Enc. 1 at 7.

⁸ Letter from Justin C. Poole, NRC, to Jean A. Fleming, Holtec International LLC, “Palisades Nuclear Plant – Acceptance of Requested Licensing Action Re: Request For Exemption From 10 CFR 50.82(a)(2) to Support Reauthorization of Power Operations (EPID L-2023-LLE-0025)” (Nov. 3, 2023) (ML23291A440).

⁹ Letter from Jean A. Fleming, Holtec International and HDI, to NRC Document Control Desk, “Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments” (Dec. 6, 2023) (ML23340A161); Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “License Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations” (Dec. 14, 2023) (ML23348A148).

¹⁰ *Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don’t Waste Michigan, and Michigan Safe Energy Future* (Dec. 5, 2023) (Petition).

¹¹ *Motion for Secretary Order Denying Beyond Nuclear et al.’s Petition for a Hearing on an Exemption Request*, at 1 (Dec. 11, 2023) (Motion).

arguing that the Motion should be denied because it is a “procedural nullity” and that “a hearing is required” because the Exemption Request, if granted, “would change or amend the Palisades license and modify the Commission’s regulations.”¹²

DISCUSSION

The Petition should be denied because the Commission has long held that AEA § 189 provides no hearing opportunity for exemption requests.¹³ The Petitioners acknowledge the Commission’s precedent in this regard but state they filed the Petition “so as not to waive any procedural requirement[.]”¹⁴ However, there was no procedural requirement, or even opportunity, to file the Petition. Thus, the Petition should be denied.

Even in reactor proceedings subject to an AEA hearing right, no hearing request or intervention petition may be filed until the NRC has published a notice providing such an opportunity. When addressing a petition challenging a license renewal application, the Commission held that “a person cannot intervene in a proceeding before the proceeding actually exists” and that for reactor licensing actions “issuance of a ‘notice of hearing’ or a ‘notice of proposed action’ is a prerequisite to the initiation of a ‘proceeding.’”¹⁵ As stated above, HDI has submitted a license transfer request and a license amendment request and plans to submit additional license amendment requests that are associated with its proposal to restart operation of the Palisades reactor. If these requests are submitted and accepted for review, the Staff would, at an appropriate time, publish *Federal Register* notices providing an opportunity for

¹² *Petitioners’ Memorandum in Opposition to Holtec Motion for Secretary Order Denying Petition for a Hearing on Exemption*, at 1, 6-7 (Dec. 13, 2023) (Petitioners Response to Motion).

¹³ See, e.g., *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant & Big Rock Point Site), CLI-22-8, 96 NRC 1, 14 (2022) (stating that “[a] request for an exemption is not among the listed actions subject to a hearing opportunity under section 189 of the AEA”).

¹⁴ Petition at 19.

¹⁵ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-12, 59 NRC 237, 239-40 (2004), *reconsideration denied*, Commission Order (May 18, 2004) (ML041390500) (unpublished).

hearing. If and when those notices are published, the Petitioners may submit petitions on those transfer and amendment requests, but not before.

For the reasons given above, the Staff agrees with HDI that the Petition should be denied, but the Staff takes no position on the other arguments in the Motion.¹⁶

CONCLUSION

The Petition should be denied because the AEA offers no hearing opportunity on an exemption request. If restart-related actions subject to an AEA hearing opportunity are submitted and accepted for review, the Petitioners may request a hearing once the associated hearing notice is published. Finally, the Staff agrees with HDI that the Petition should be denied but otherwise takes no position on HDI's Motion.

Respectfully submitted,

/Signed (electronically) by/

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Dated December 15, 2023

¹⁶ The Petitioners' response to the Motion includes a four-page argument that a hearing is required on the Exemption Request because, Petitioners argue, granting the request would amend the license and change NRC regulations. Petitioners Response to Motion, at 4-7. This argument may not be considered because it was not included in the Petition. See *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146-47 (2015) (explaining that a reply to an answer to a hearing request may not raise new issues and that a petitioner offering a new argument in support of a contention, "must, among other things, explain why it could not have raised the argument ... earlier"). Regardless, granting the Exemption Request would not change NRC regulations, nor would it amend the license since the license currently does not have the authorities and requirements for an operating reactor, as explained above, and granting the Exemption Request would not change this. As HDI recognizes, additional licensing actions are necessary before the reactor may be fueled or operated again. Exemption Request, at 1.

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Certificate of Service

Pursuant to 10 C.F.R. § 2.305, I hereby certify that the “NRC Staff Answer to Intervention Petition and Hearing Request and to Licensee Motion for Denial of Petition,” has been filed through the NRC’s E-Filing System this 15th day of December 2023.

/Signed (electronically) by/

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Dated December 15, 2023