

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

HOLTEC DECOMMISSIONING
INTERNATIONAL, LLC

(Palisades Nuclear Plant)

Docket No. 50-255

ORDER

On September 28, 2023, Holtec Decommissioning International, LLC (Holtec) on behalf of Holtec Palisades, LLC submitted an exemption request from certain requirements in 10 C.F.R. § 50.82.¹ On December 5, 2023, Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future (Petitioners) filed a petition to intervene and a request for an adjudicatory hearing on Holtec's exemption request.² In their petition, Petitioners assert, among other arguments, that "Holtec has misused the decommissioning trust fund to keep Palisades in a status to restart the reactor, rather than to decommission the plant" and that "Holtec knew its intent was to restart Palisades, not to continue decommissioning."³ Holtec filed a motion requesting denial of the petition, and Petitioners responded opposing Holtec's motion.⁴ The

¹ Letter from Jean A. Fleming, Vice President, Licensing, Regulatory Affairs & PSA, Holtec International, to NRC Document Control Desk (Sept. 28, 2023) (ADAMS Accession No. ML23271A140) (Exemption Request).

² *Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future* (Dec. 5, 2023).

³ *Id.* at 32, 36.

⁴ *Motion for Secretary Order Denying Beyond Nuclear et al.'s Petition for a Hearing on an Exemption Request* (Dec. 11, 2023); *Petitioners' Memorandum in Opposition to Holtec Motion for Secretary Order Denying Petition for a Hearing on Exemption* (Dec. 13, 2023).

NRC Staff filed an answer arguing that the petition be denied, and Petitioners responded opposing the Staff's answer.⁵

Section 189 of the Atomic Energy Act (AEA) of 1954, as amended, provides a right to request a hearing “[i]n any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees”⁶ As a general matter, exemption requests do not give rise to a hearing opportunity.⁷ But the Commission has held that when an exemption request is inextricably intertwined with a licensing action triggering the opportunity to request a hearing, the hearing may encompass the exemption request as well.⁸

The current exemption request is separate from a licensing action that would provide an opportunity to request a hearing. Therefore, pursuant to my authority under 10 C.F.R. § 2.346(h), I *deny* the petition to intervene and request a hearing. Further, Holtec has

⁵ *NRC Staff Answer to Intervention Petition and Hearing Request and to Licensee Motion for Denial of Petition* (Dec. 15, 2023); *Petitioners' Reply in Support of Petition for Leave to Intervene Against Palisades Exemption* (Dec. 18, 2023).

⁶ AEA § 189(a)(1)(A), 42 U.S.C. § 2239(a)(1)(A).

⁷ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000) (“In short, there is no right to request a hearing in this case because the action involves an exemption from NRC regulations and not one of those actions for which section 189a of the AEA provides a right to request a hearing.”).

⁸ *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 553 (2016); *Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013) (“An exemption standing alone does not give rise to an opportunity for hearing under our rules. But when a licensee requests an exemption in a related license amendment application, we consider the hearing rights on the amendment application to encompass the exemption request as well.” (internal citations omitted)); see *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 470 (2001) (“Where the exemption ... is a direct part of an initial licensing or licensing amendment action, there is a potential that an interested party could raise an admissible contention on the exemption, triggering a right to a hearing under the AEA.”).

separately filed a license amendment request and a license transfer application for Palisades; under the agency's procedures, Petitioners will have an opportunity to petition to intervene and request a hearing on these and any other future requests for license transfers and license amendments.⁹

⁹ Letter from Jean A. Fleming, Vice President, Licensing, Regulatory Affairs & PSA, Holtec International, to NRC Document Control Desk (Dec. 14, 2023) (ML23348A148); Letter from Jean A. Fleming, Vice President, Licensing, Regulatory Affairs, and Probabilistic Safety Analysis, Holtec International, to NRC Document Control Desk (Dec. 6, 2023) (ML23340A161); see *also* Exemption Request at 1 ("This requested exemption, in combination with U.S. Nuclear Regulatory Commission . . . approval of an order to transfer operational authority of [Palisades Nuclear Plant (PNP)] and amendments to the PNP Renewed Facility Operating License . . . is necessary to reauthorize placement of fuel in the PNP reactor vessel and reauthorize power operations at PNP."); *id.* at 2 ("In addition to this exemption request, [Holtec] intends to submit license amendments that will reinstate regulatory requirements to support power operations in accordance with the facility licensing basis that were in effect prior to shutdown.").

Pursuant to my authority under 10 C.F.R. § 2.346(j), I *refer* Petitioners' underlying concerns that Holtec has misused the decommissioning trust fund to the Executive Director for Operations for consideration under 10 C.F.R. § 2.206.

IT IS SO ORDERED.

For the Commission



Carrie M. Safford

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Carrie M. Safford
Secretary of the Commission

Dated at Rockville, Maryland,
This 18th day of December 2023.

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER OF THE SECRETARY** have been served upon the following persons by Electronic Information Exchange.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 18th day of December 2023.