

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
Holtec Decommissioning International, LLC)	Docket No. 50-255-ER
)	
(Palisades Nuclear Plant Request for)	December 18, 2023
Exemption))	
)	

**PETITIONERS’ REPLY IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE
AGAINST PALISADES EXEMPTION**

Now come Beyond Nuclear, Michigan Safe Energy Future, and Don’t Waste Michigan, Petitioners herein (“Petitioners”), by and through counsel, and reply in support of their “Petition for Leave to Intervene” to oppose Holtec Decommissioning International, LLC’s (“Holtec’s”) request for an exemption from the operating license regulations of the Atomic Energy Act. In this memorandum, Petitioners reply to the NRC Staff’s “Answer to Intervention Petition and Hearing Request and to Licensee Motion for Denial of Petition” (“Staff Answer”).

I. The NRC Staff’s Limited Answer

Holtec previously filed, on December 11, 2023, a “Motion for Secretary Order Denying Beyond Nuclear *et al.*’s Petition for a Hearing on an Exemption Request,” to which Petitioners replied on December 13, 2023.

The Staff Answer is limited in its scope, as the agency staff appears to have waived their right and obligation to fully comply with the requirements for answering. 10 CFR § 2.309(i)(1) states that “Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer.” The rule requires a response to the entirety of the petition; but the NRC Staff has chosen only to argue that denial of the Petition is warranted “because the Atomic Energy Act of

1954, as amended (AEA), does not provide a hearing opportunity on an exemption request.” Staff Answer at 1. Petitioners respond to that assertion in this reply.

II. The Exemption Cannot Be Used To Dismiss the Petition If It Would Change or Amend the Present Palisades License

While the Atomic Energy Act (“AEA”) does not grant a hearing right on exemption requests, what Holtec seeks is not a *bona fide* exemption request, but is, instead, a license amendment cloaked as an exemption, per Petitioners’ previous objection.¹

In *Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2)*, CLI-00-05, 51 N.R.C. 90 (2009), the Commission recognized that exemption requests might be used to conceal license amendments and held that only a “pure” exemption was immune from a hearing. *Id.* at 51 NRC 91. The requested exemption at issue there was relief from the need to comply with five separate provisions of 10 C.F.R. § 73.55 that pertain to protecting nuclear reactors against sabotage. ComEd asked to implement a revised “defueled physical security plan” which it asserted would be more appropriate for a permanently shut down and defueled facility. The Commission decided that it “must address whether the requested Zion exemption, regardless of its label, somehow constitutes an action for which a hearing is required, *i.e.*, whether the exemption is in effect an amendment of the facility license or modification of the rules and regulations dealing with the activities of licensees.” *Id.* at 51 NRC 96.

The Commission further considered *Commonwealth of Massachusetts v. NRC*, 878 F.2d 1516 (1st Cir. 1989), where the First Circuit Court of Appeals had ruled that the NRC’s grant of an exemption from having to conduct a full-participation emergency preparedness exercise at the Pilgrim nuclear plant did not constitute an amendment to the Pilgrim license and no hearing was required. 878 F.2d at 1519. The appellate court rejected the state’s argument on the basis that

¹ “Rather, Holtec is asking for a license amendment – *i.e.*, permanent relief.” Petition at 28.

“The exemption did not change Edison’s duty to follow NRC rules; it only changed which rule applied for a brief period of time. Edison was thus operating in accordance with its unaltered license.” 878 F.2d at 1521.

Here, by contrast, Holtec’s exemption would “change or amend” the Palisades license or modify Commission regulations. Holtec’s exemption would “modify” its possession-only license into an operating license request.. *Id.* Holtec thus seeks a sweeping exemption from the licensing requirements of the AEA that regulate inherently dangerous radioactive operations.

Holtec admits, “The proposed exemption would allow resumption of power operations at PNP [Palisades Nuclear Plant] after U.S. Nuclear Regulatory Commission (NRC) approval of operating authority transfer and the license amendments necessary to reinstate the PNP Renewed Facility Operating License (RFOL) power operations license basis (POLB).”² So Holtec wants to be exempted from the continued limitation that its license is “possession only,” *i.e.*, that it may not refuel and operate the Palisades reactor. There is an option available for Holtec, *viz.*, applying for a new operating license, but Holtec is trying to leapfrog over the rigors of that process, even though Holtec has zero prior experience operating a commercial nuclear power reactor, much less restarting a reactor that has been permanently shut down.

Unlike the *Commonwealth of Massachusetts* or *Commonwealth Edison* cases, if the NRC grants the exemption Holtec is pursuing, it would change or amend the Palisades license and modify the Commission’s regulations, and accordingly a hearing is required. Moving from possession-only to an operating license is the most momentous change imaginable. Granting the exemption would modify the Commission's regulations by setting a precedent that there is no finality to defueling and shutdown certifications and changes in license types.

² “Request for Exemption,” p. 6/143 of .pdf.

What Holtec proposes here is not an exemption at all, but instead, an ill-concealed license amendment. It is plant-specific (“HDI is requesting an exemption from 10 CFR 50.82(a)(2) to allow for a one-time rescission of the PNP docketed 10 CFR 50.82(a)(1) certifications”³).

The NRC Staff maintains, incorrectly, that “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.”⁴ Petitioners have brought their Petition out of wary concern about the open-ended “gotcha” provision of the intervention rule, which contradicts the Staff’s dogma. 10 C.F.R. § 2.309(b)(4)(ii) states that:

Unless specified elsewhere in this chapter or otherwise provided by the Commission, the request or petition and the list of contentions must be filed as follows:

(4) In proceedings for which a Federal Register notice of agency action is not published, not later than the latest of:

(ii) Sixty (60) days after the requestor receives actual notice of a pending application, but not more than sixty (60) days after agency action on the application.

On December 6, 2023, regarding Palisades, Holtec Decommissioning International, LLC submitted to the NRC an “Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments.” It was docketed December 12, 2023.⁵ The Petitioners have “actual notice of a pending application” and are timely challenging the underlying exemption for it.

III. Conclusion

The reversal of a decision to surrender an operating license – a decision tantamount to being awarded an operating license – is well beyond the contemplation of the exemption rule. The device of exemption here is being invoked to camouflage the actual nature of the request, which is a license amendment. The exemption being sought would relieve Holtec from adhering

³ “Request for Exemption,” p. 6/143 of .pdf.

⁴ Staff Answer at 4.

⁵ <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML23340A161>

to the core regulations the AEA imposes to ensure safe regulation of commercial nuclear power plants in the interest of the public health and safety, as well as environmental protection. The unprecedented nature of the requested exemption, its astronomical cost (a grand total of nearly \$4.5 billion in public bailouts, and counting), and the very high risks to health, safety, security, and the environment (given Palisades' very troubled safety-significant systems, structures, and components' status, made worse by lack of maintenance since permanent shut down), all militate against finessing a Palisades restart through a mere exemption loophole. Exemptions are for short-duration bypasses of NRC regulations, as for clearance to commence construction of nonnuclear parts of a plant, not for reversing a major licensing event. This request for permission to restart is a major change that requires full-blown "from scratch" licensing proceedings, as NRC Commissioner Crowell himself phrased it just ten months ago.⁶ Holtec's perversion of the regulatory exemption scheme is a departure from the Atomic Energy Act and its regulations.

WHEREFORE, Petitioners pray that the Secretary and/or the Commissioners find and declare that Holtec's request for an exemption is actually a request for a change or amendment to the present possession-only license for Palisades and that Petitioners' sundry objections to the Holtec exemption request be admitted for hearing.

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⁶ www.exchangemonitor.com/nuclear-renaissance-now-or-never-30-minutes-with-bradley-crowell-commissioner-nuclear-regulatory-commission/

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CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305, I hereby certify that copies of the foregoing "Reply In Support of Petition for Leave to Intervene" were served upon the Electronic Information Exchange (NRC Filing System) in the captioned proceeding this 18th day of December, 2023 and that according to the protocols of the EIE they were served upon all parties registered with the system.

Respectfully submitted,

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