

November 4, 2024

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOLTEC DECOMMISSIONING
INTERNATIONAL, LLC, AND HOLTEC
PALISADES, LLC

(Palisades Nuclear Plant)

Docket No. 50-255-LA-3

**NRC STAFF ANSWER TO INTERVENTION PETITION FROM BEYOND
NUCLEAR, DON'T WASTE MICHIGAN, MICHIGAN SAFE ENERGY FUTURE,
THREE MILE ISLAND ALERT, AND NUCLEAR ENERGY INFORMATION
SERVICE IN PALISADES RESTART AMENDMENTS PROCEEDING**

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1) and the licensing board's (Board's) order dated October 17, 2024, the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) herein answers an intervention petition (Petition) from Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (collectively, Petitioners) filed on October 10, 2024, challenging license amendment requests associated with the potential restart of Palisades Nuclear Plant (Palisades).¹ As explained below, the Petition should be granted, in part, because two of the Petitioners, Three Mile Island Alert and Nuclear

¹ The Petition was originally filed on October 7, 2024, on the hearing docket for the license transfer request associated with the potential restart of Palisades. On October 8, 2024, the Office of the Secretary informed the participants that it had determined that the filing related to a proceeding separate from the license transfer request and that the submitter had been requested to refile the Petition in that separate proceeding. The Petition was filed on the hearing docket for this proceeding on October 10, 2024.

Energy Information Service, establish standing, and portions of proposed Contention 7 meet the requirements for contention admissibility as a contention of omission.

However, as also explained below, Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future do not establish standing, and the remainder of the proposed contentions are inadmissible. In particular, the remainder of the proposed contentions do not provide material, adequately supported challenges that raise a genuine dispute with the license amendment requests. Also, many of the Petitioners' arguments are outside the scope of the proceeding and challenge NRC regulations and processes. Therefore, the Petition should only be granted in part. Finally, the Petitioners' request for a trial before an Article III judge is without merit.

BACKGROUND

I. Palisades Licensing History Just Prior to Restart Efforts

Palisades was licensed for reactor operation until March 24, 2031, under its renewed facility operating license,² but 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.³ 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." Also, the NRC issued amendments changing the operating license, which includes technical specifications (TS), to reflect the authorities and

² Letter from Juan Ayala, NRC, to Paul A. Harden, Nuclear Management Company, LLC, "Issuance of Renewed Facility Operating License No. DPR-20 for Palisades Nuclear Plant" (Jan. 17, 2007) (ADAMS Accession No. ML070100476).

³ 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) (ML22164A067) (Palisades 50.82(a)(1) Certifications).

requirements for a reactor in decommissioning.⁴ Among other things, the amendments removed language from the license regarding the authority to operate the reactor and removed the TS for an operating reactor that are not relevant to decommissioning.⁵ However, even after these amendments became effective during the decommissioning period, the license is still referred to as a renewed facility operating license in the license itself, and it continues to be a Part 50 operating license.⁶

About 18 months before submitting the Palisades 50.82(a)(1) Certifications, Entergy submitted a license transfer request on behalf of itself, Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC (HDI), to (among other things) make Holtec Palisades, LLC (Holtec Palisades) the licensed owner of Palisades and to transfer licensed operational authority for Palisades from Entergy to HDI.⁷ Four hearing requests were filed challenging this transfer request.⁸ While these hearing requests were pending, the Staff issued an order (2021 Transfer Order) approving the requested transfer (Entergy-Holtec

⁴ See, e.g., Letter from Scott P. Wall, NRC, to Vice President for Operations, Entergy, "Palisades Nuclear Plant – Issuance of Amendment Regarding Administrative Controls for Permanently Defueled Condition" (June 4, 2018) (ML18114A410) (Defueled Administrative Controls Amendment); 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) (Defueled TS Amendment).

⁵ See, e.g., Defueled TS Amendment, Enclosure 2 at 14, 17, 30, 34, 36, 39-42 (discussion of changes to License Conditions 2.B.(1) and 2.C.(1) in Sections 4.2.3 and 4.2.8 of the Staff safety evaluation and discussion of changes to the TS in Section 4.3 of the Staff safety evaluation); Defueled Administrative Controls Amendment, Enclosure 2 (discussion of TS changes in Section 4 of the Staff safety evaluation).

⁶ See, e.g., Defueled TS Amendment, Enclosure 1 (license change pages repeatedly use the term "Renewed Facility Operating License" or similar terms such as "renewed operating license," "Facility Operating License," or "Operating License").

⁷ Letter from A. Christopher Bakken III, Entergy, to NRC Document Control Desk, "Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments," at 2 (Dec. 23, 2020) (ML20358A075).

⁸ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant & Big Rock Point Site), CLI-22-8, 96 NRC 1 (2022).

Transfer).⁹ But the proposed transaction was subject to Palisades entering decommissioning.¹⁰ Therefore, the transfer transaction did not close until June 28, 2022—after Entergy submitted both § 50.82(a)(1) certifications—on which date the Staff issued a conforming administrative amendment to the license (Entergy-Holtec Transfer Conforming Amendment).¹¹

As a result of the Entergy-Holtec Transfer, the license holders for Palisades are HDI and Holtec Palisades. As stated in the 2021 Transfer Order, the Entergy-Holtec Transfer made Holtec Palisades the licensed owner and HDI the licensed operator of Palisades and Big Rock Point.¹² HDI became the licensed operator because the NRC “approve[d] the transfer of operating authority from the currently licensed operator, Entergy Nuclear Operations, Inc. (ENOI), to [HDI].”¹³ This “operating authority” was the “authority to conduct licensed activities at Big Rock Point and Palisades.”¹⁴ After the transfer, “HDI assume[d] responsibility for compliance with NRC regulations and the current licensing bases, including regulatory commitments that

⁹ In the Matter of Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, Holtec International and Holtec Decommissioning International, LLC, Big Rock Point Plant and Palisades Nuclear Plant; Transfer of Licenses; Order, 86 Fed. Reg. 71,528 (Dec. 16, 2021) (2021 Transfer Order). See also Letter from Scott P. Wall, NRC, to A. Christopher Bakken, III, Entergy, “Palisades Nuclear Plant and Big Rock Point Plant – Order Approving Transfer of Licenses and Draft Conforming Administrative License Amendments (EPID L-2020-LLM-0003)” (Dec. 13, 2021) (ML21292A155 (package)).

¹⁰ “Safety Evaluation by the Office of Nuclear Reactor Regulation Related to the Request for Transfer of Control of Facility Operating License No. DPR-6, Renewed Facility Operating License No. DPR-20, and the General Licenses for the Independent Spent Fuel Storage Installations from Entergy Nuclear Operations, Inc. and Entergy Nuclear Palisades, LLC to Holtec International and Holtec Decommissioning International, LLC Big Rock Point Plant and Palisades Nuclear Plant,” at 9 (ML21292A148) (stating, “[T]he proposed transfer transaction is subject to Palisades also having permanently ceased operations. Accordingly, HDI (the proposed licensed operator for decommissioning) would not be authorized under the Palisades license to operate or load fuel in the Palisade[s] reactor pursuant to 10 CFR 50.82(a)(2).”)

¹¹ Letter from Scott P. Wall, NRC, to Pierre Paul Oneid, Holtec International, and Kelly D. Trice, HDI, “Palisades Nuclear Plant and Big Rock Point Plant – Issuance of Amendment Nos. 129 and 273 Re: Order Approving Transfer of Licenses and Conforming Administrative License Amendments (EPIDS L-2022-LLM-0002 AND L-2020-LLM-0003)” (June 28, 2022) (ML22173A179 (package)) (Entergy-Holtec Transfer Conforming Amendment).

¹² 2021 Transfer Order, 86 Fed. Reg. at 71,529. Control of the Big Rock Point licenses is not affected by the transfer request related to potential restart of Palisades.

¹³ *Id.* at 71,528.

¹⁴ *Id.* at 71,529.

exist at the consummation of the proposed transfer transaction, and would implement any changes under applicable regulatory requirements and practices.”¹⁵

Because the Entergy-Holtec Transfer was subject to hearing requests, the 2021 Transfer Order included a condition stating that approval of the transfer “is subject to the Commission’s authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing on the license transfer application.”¹⁶ On July 15, 2022, the Commission denied three hearing requests on the transfer application but granted a hearing request from the Michigan Attorney General and “admit[ted] limited issues pertaining to the Attorney General’s challenge to the proposed transferees’ financial qualifications.”¹⁷ The Commission directed the appointment of a Presiding Officer “to take all necessary actions to compile, complete, and certify the hearing record, including presiding over any oral hearing.”¹⁸ The Presiding Officer held an oral hearing on February 8 and 9, 2023, closed the evidentiary hearing record on February 28, 2023, and certified the hearing record to the Commission on March 22, 2023.¹⁹ The Commission has not yet issued a decision on those hearing issues.

II. Licensing and Regulatory Requests Related to Potential Restart of Palisades

In 2023, HDI engaged with the Staff regarding the potential restart of reactor operation at Palisades. From September 2023 to May 2024, the NRC received the following licensing and regulatory requests related to potential restart of Palisades:

- A September 28, 2023, request for an exemption (Exemption Request) “from the 10 CFR 50.82(a)(2) restriction that prohibits reactor power operations and retention

¹⁵ *Id.*

¹⁶ 2021 Transfer Order, 86 Fed. Reg. at 71,530.

¹⁷ *Palisades*, CLI-22-8, 96 NRC at 7.

¹⁸ *Id.* at 106.

¹⁹ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant & Big Rock Point Site), LBP-23-5, 97 NRC 116 (2023).

of fuel in the reactor vessel ... by allowing for a one-time rescission of the docketed 10 CFR 50.82(a)(1) certifications.”²⁰

- The December 6, 2023, Restart Transfer Request, which seeks NRC consent to, and a conforming amendment for, a transfer of operating authority from HDI to Palisades Energy, LLC (OPCO) under Renewed Facility Operating License No. DPR-20 for Palisades and the general license for the Palisades Independent Spent Fuel Storage Installation (ISFSI).²¹
- A December 14, 2023, license amendment request (Primary Amendment Request) in support of resuming power operations that largely seeks to undo the changes made by the previously issued Defueled TS Amendment with some proposed differences from the previous operating reactor TS.²²
- A February 9, 2024, license amendment request (Administrative Controls Amendment Request) in support of resuming power operations that largely seeks to undo the changes made by the previously issued Defueled Administrative Controls Amendment with some proposed differences from the previous operating reactor TS.²³
- A May 1, 2024, license amendment request (Emergency Plan Amendment Request) to revise the Palisades site emergency plan to support resuming power operations.²⁴
- A May 24, 2024, license amendment request (MSLB Amendment Request) to revise the Palisades main steam line break analysis to “support the Palisades restart project.”²⁵

²⁰ 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,” at 1 (Sept. 28, 2023) (ML23271A140) (Exemption Request).

²¹ 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,” at 1 (Dec. 6, 2023) (ML23340A161) (Restart Transfer Request).

²² 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) (Primary Amendment Request).

²³ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “License Amendment Request to Revise Selected Permanently Defueled Technical Specifications Administrative Controls to Support Resumption of Power Operations” (Feb. 9, 2024) (ML24040A089) (Administrative Controls Amendment Request).

²⁴ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “License Amendment Request to Revise the Palisades Nuclear Plant Site Emergency Plan to Support Resumption of Power Operations” (May 1, 2024) (ML24122C666) (Emergency Plan Amendment Request).

²⁵ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “License Amendment Request to Approve the Biasi Critical Heat Flux (CHF) Correlation for Use with the Palisades

The Staff has accepted all of these requests for review. The review is underway, and no decisions have been made on any of the requests.

The four restart-related amendment requests are parts of the licensing and regulatory requests that would be necessary to restart reactor operation at Palisades. All of the requests listed in the previous paragraph would need to be approved for restart to be authorized. Also, the Emergency Plan Amendment Request includes the following proposal:

As discussed in Reference 5, HDI is proposing to submit to the NRC, approximately four weeks in advance of the date that [Palisades] plans to transition to a power operations plant (transition date), a readiness letter that will state the planned transition date and HDI's satisfaction that the implementation conditions for license transfer, 10 CFR 50.82(a)(2) exemption, and license amendments are met. Additionally, on the designated transition date, HDI will submit a notification letter to docket that [Palisades] has transitioned from a facility in decommissioning to a power operations plant.²⁶

Like the restart-related requests as a whole, this proposal is subject to a detailed Staff technical review.

III. Petitioners' Hearing Request on Amendments Related to Restart of Palisades

On August 7, 2024, the NRC published a *Federal Register* notice of opportunity to request a hearing regarding the Transfer Request (Transfer Notice)²⁷ and a *Federal Register* notice of opportunity to request a hearing regarding the four license amendment requests (Amendments Notice).²⁸ The Transfer Notice established an August 27, 2024, deadline for

Main Steam Line Break (MSLB) Analysis," at 1 (May 24, 2024) (ML24145A145) (MSLB Amendment Request).

²⁶ Emergency Plan Amendment Request at 2.

²⁷ Holtec Decommissioning International, LLC, Holtec Palisades, LLC, and Palisades Energy, LLC; Palisades Nuclear Plant and the Palisades Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of Licenses and Conforming Amendment, 89 Fed. Reg. 64,493 (Aug. 7, 2024) (Transfer Notice).

²⁸ Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Applications for Amendments to Renewed Facility Operating License Involving Proposed No Significant Hazards Considerations and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 89 Fed. Reg. 64,486 (Aug. 7, 2024) (Amendments Notice).

hearing requests, while the Amendments Notice established an October 7, 2024, deadline for hearing requests.²⁹ Three of the Petitioners (Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future) filed a hearing request in response to the Transfer Notice on August 27, 2024. The Petitioners filed the instant Petition in response to the Amendments Notice on October 10, 2024.³⁰ By order dated October 17, 2024, the Board established a November 4, 2024, deadline for answers to the Petition.³¹

DISCUSSION

As discussed below, the Petition should be granted, in part, because two of the Petitioners, Three Mile Island Alert and Nuclear Energy Information Service, establish standing, and portions of proposed Contention 7 meet the requirements for contention admissibility as a contention of omission. However, Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future do not establish standing because their standing arguments focus on the Exemption Request, not the restart-related amendment requests that are the subject of this proceeding. Also, the remainder of the proposed contentions are inadmissible because they offer immaterial, out of scope, and inadequately supported challenges that do not raise a genuine dispute with the licensee. Moreover, many of the proposed contentions' arguments challenge NRC regulations and processes, which is prohibited in this adjudicatory proceeding absent a sufficient petition for waiver or exception under 10 C.F.R. § 2.335 that the Petitioners have not submitted. Therefore, the Petition should only be granted in part. Finally, the Petitioners' request for a trial before an Article III judge is without merit.

²⁹ Transfer Notice, 89 Fed. Reg. at 64,493; Amendments Notice, 89 Fed. Reg. at 64,487.

³⁰ *Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service* (Oct. 10, 2024) (Petition). As explained above, the Petition was originally filed by the October 7, 2024, deadline but on the wrong hearing docket. Also, the Staff notes that co-counsel for the Petitioners have not yet filed notices of appearance required by 10 C.F.R. § 2.314(b).

³¹ *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), LBP Memorandum and Order (Amending Initial Prehearing Order) (Oct. 17, 2024) (unpublished) (ML24291A105).

I. Three of the Petitioners Have Not Demonstrated Standing While Two of the Petitioners Have Demonstrated Standing

A. Standing Requirements

Section 189a. of the Atomic Energy Act, as amended (AEA), requires the Commission to “grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.”³² A request for a hearing or petition for leave to intervene in a proceeding must demonstrate standing in accordance with the NRC’s requirements at 10 C.F.R. § 2.309(d). Pursuant to § 2.309(d)(1), the request for a hearing or petition for leave to intervene must state:

- (i) The name, address and telephone number of the petitioner;
- (ii) The nature of the petitioner’s right under the AEA to be made a party to the proceeding;
- (iii) The nature and extent of the petitioner’s property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the petitioner’s interest.³³

The burden of demonstrating standing is on the petitioner.³⁴ In addition, for the purposes of determining standing the petition will be construed in the petitioner’s favor³⁵ and its material allegations will be accepted as true.³⁶

³² 42 U.S.C. § 2239(a)(1)(A).

³³ 10 C.F.R. § 2.309(d)(1).

³⁴ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 194 (1999).

³⁵ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015).

³⁶ *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 286 (1995) (citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975), and *Kelley v. Selin*, 42 F.3d 1501, 1507-08 (6th Cir. 1995)), *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, and *aff’d in part*, CLI-95-12, 42 NRC 111 (1995); *see also U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 192 n.39 (2010) (citing *Kelley*, 42 F.3d at 1507-08).

The Commission uses contemporaneous judicial concepts of standing when evaluating whether a petitioner has established standing.³⁷ Accordingly, a petitioner must allege an injury in fact that is fairly traceable to the challenged NRC action and that is likely to be redressed by a decision favorable to the petitioner.³⁸ In addition, the alleged injury must arguably fall within the “zone of interests” protected by the AEA.³⁹

While the Commission generally requires the elements of standing be pled with specificity, it has also found standing in certain cases under a “proximity presumption.” In proceedings for “construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool,”⁴⁰ the Commission permits a petitioner who “lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor” to establish standing without needing to make an individualized showing of injury, causation, and redressability.⁴¹ The determination of how proximate a petitioner must be to a source of radioactivity “depends on the danger posed by the source at issue.”⁴² In practice, the Commission has applied the proximity presumption in construction permit, operating license, and license renewal proceedings for power reactors to find standing where a petitioner resides within approximately 50 miles of the facility.⁴³ The Commission has also found standing under the proximity presumption where the petitioner has a property interest

³⁷ See *Turkey Point*, CLI-15-25, 82 NRC at 394; see also *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

³⁸ *Turkey Point*, CLI-15-25, 82 NRC at 394.

³⁹ *Entergy Nuclear Operations, Inc., and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 258 (2008).

⁴⁰ *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

⁴¹ *Calvert Cliffs*, CLI-09-20, 70 NRC at 915.

⁴² *Florida Power and Light Co.* (Turkey Point, Units 3 and 4), LBP-01-6, 53 NRC 138, 148 (2001).

⁴³ See *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 n.15.

near the facility.⁴⁴ In license amendment proceedings, however, the proximity presumption applies where the license amendment presents an “‘obvious’ potential of offsite radiological consequences.”⁴⁵ A determination of an obvious potential for offsite radiological consequences takes into account “the nature of the proposed action and the significance of the radioactive source.”⁴⁶

An organization may establish representational standing by demonstrating, typically via affidavit, that “at least one of its members may be affected” by the proceeding and that these members have authorized the organization to represent them and to request a hearing on their behalf.⁴⁷ Further, the “member seeking representation must qualify for standing in [their] own right; the interests that the representative organization seeks to protect must be germane to its purpose; and neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal action.”⁴⁸

B. The Petition’s Standing Arguments Do Not Demonstrate Standing with Respect to Three of the Petitioners and Do Demonstrate Standing with Respect to Two of the Petitioners

The Petition states that “three organizations – Beyond Nuclear, Don’t Waste Michigan, and Michigan Safe Energy Future – are each petitioning on behalf of two of their members, all of whom herewith have submitted declarations.”⁴⁹ Two other Petitioners, Three Mile Island Alert and Nuclear Energy Information Service, also assert representational standing elsewhere in the

⁴⁴ See *USEC, Inc. (American Centrifuge Plant)*, CLI-05-11, 61 NRC 309, 314-15 (2005) (granting standing based on petitioner holding title to home near uranium enrichment facility notwithstanding that petitioner did not reside at the home).

⁴⁵ *Zion*, CLI-99-4, 49 NRC at 191 (1999) (quoting *St. Lucie*, CLI-89-21, 30 NRC at 330); see also *Turkey Point*, LBP-01-6, 53 NRC at 148.

⁴⁶ *Exelon Generation Co, LLC & PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 580-81 (2005).

⁴⁷ *FirstEnergy Nuclear Operating Co. and FirstEnergy Nuclear Generation, LLC* (Beaver Valley Power Station, Units 1 and 2), CLI-20-5, 91 NRC 214, 220-21 (2020).

⁴⁸ *Beaver Valley*, CLI-20-5, 91 NRC at 220.

⁴⁹ Petition at 23-24.

Petition.⁵⁰ As discussed below, Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future have not demonstrated standing because their members' standing arguments relate to the Exemption Request and not to HDI's four license amendment requests, which are the subject of this proceeding. Three Mile Island Alert and Nuclear Energy Information Service, whose members' standing arguments are tied to HDI's license amendment requests in addition to the Exemption Request, have demonstrated standing.

1. *Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future Have Not Satisfied Their Burden of Demonstrating Representational Standing*

Beyond Nuclear (BN), Don't Waste Michigan (DWM), and Michigan Safe Energy Future (MSEF) each seek to establish representational standing to intervene in this proceeding based on the individual standing of two of their respective members.⁵¹ The Petition includes signed and dated declarations from William D. Reed⁵² and Carolyn Ferry,⁵³ members of BN; Alice Hirt and Joseph C. Kirk, members of DWM; and James Scott and Ann Scott, members of MSEF.⁵⁴ In their declarations, these individuals each designate the respective organization of which they are a member to represent their interests in this proceeding.⁵⁵

The NRC's hearing regulations require hearing requests to state the "requestor's/petitioner's ... interest *in the proceeding*" and "[t]he possible effect of any decision

⁵⁰ See *id.* at 16-21.

⁵¹ See *id.* at 4, 9, 12-13.

⁵² The Petition itself refers to "W. Dillon Reed," Petition at 4-5, but the signed, individual member declaration refers to "William D. Reed." The Staff is using "William D. Reed" for consistency and in deference to the individual's apparent preference.

⁵³ The Petition itself refers to "Caroline Ferry," Petition at 4, 7, but the signed, individual member declaration refers to "Carolyn Ferry." As with references to William D. Reed, the Staff is using "Carolyn Ferry" for consistency and in deference to the individual's apparent preference.

⁵⁴ See William D. Reed Declaration; Carolyn Ferry Declaration; Alice Hirt Declaration; Joseph C. Kirk Declaration; James Scott Declaration; Ann Scott Declaration.

⁵⁵ William D. Reed Declaration at 3; Carolyn Ferry Declaration at 3; Alice Hirt Declaration at 2-3; Joseph C. Kirk Declaration at 2-3; James Scott Declaration at 2-3; Ann Scott Declaration at 2-3.

or order that may be issued *in the proceeding* on the requestor's/petitioner's interest."⁵⁶ As stated in the notice of hearing opportunity, this proceeding is limited to four license amendment requests submitted by HDI.⁵⁷ The Petition's standing arguments, however, state that the six individuals BN, DWM, and MSEF seek to represent oppose HDI's Exemption Request but does not state any opposition to or otherwise challenge the license amendment requests.⁵⁸ In fact, the Petition does not reference the license amendment requests at all in discussing these six individuals' basis for standing or the standing of the organizations of which they are members.⁵⁹ Because the Petition's standing arguments for the individuals that BN, DWM, and MSEF seek to represent never articulate their interest in the proceeding on the amendment requests or how approval of them would affect their interests, the Petition's standing arguments do not satisfy 10 C.F.R. § 2.309(d)(1)(iii)-(iv). Similarly, the standing arguments do not demonstrate a "concrete and particularized injury *that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision*"⁶⁰ because any decision in this proceeding would be on the license amendment requests, which these individuals do not challenge.⁶¹ Therefore, the Petition does not demonstrate that BN, DWM, and MSEF have representational standing.

The Board need not further consider the standing declarations for BN, DWM, MSEF, and the six individuals they seek to represent because the Petition itself must explain how the

⁵⁶ 10 C.F.R. § 2.309(d)(1)(iii)-(iv) (emphasis added).

⁵⁷ Amendments Notice, 89 Fed. Reg. at 64,488 ("The scope of this notice is limited to comments, requests for a hearing, and petitions for leave to intervene related to the four proposed license amendment requests listed in tabular form in Section III of this document.").

⁵⁸ See, e.g., Petition at 5, 7, 9, 11, 13, 14 (stating that William D. Reed, Carolyn Ferry, James Scott, Ann Scott, Alice Hirt, and Joseph C. Kirk, respectively, "oppose[] the granting of an exemption by the NRC" with no reference to the license amendment requests).

⁵⁹ See *id.* at 4-16, 21-25.

⁶⁰ *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 (emphasis added) (internal quotation marks omitted).

⁶¹ See Petition at 24 ("As each of the member declarants explains, they will suffer (or will be under the threat of suffering) concrete and particularized injuries from the restored operations of Palisades *if the exemption sought by Holtec is granted.*") (emphasis added).

supporting documents included with it provide a basis for standing. For example, the Commission concluded in one proceeding that the petitioner did not establish standing because it “does not address standing *in its Petition*”; in its assessment of standing, the Commission did not consider a member declaration submitted with the Petition.⁶² Here, because the six individuals’ standing arguments in the Petition do not provide a basis for standing, the Board need not consider their declarations. Consistent with Commission precedent, the Staff will not attempt to infer an argument for standing on behalf of the Petitioner; the Petition should be considered as it was pled.⁶³

As with the Petition, the standing declarations for BN, DWM, MSEF, and the six individuals they seek to represent do not provide a basis for standing. In their declarations, the individuals demonstrate an awareness of the license amendment requests but again challenge only the Exemption Request.⁶⁴ These six individuals, therefore, have not articulated an interest

⁶² *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 228 n.15, 238 (2020) (emphasis added). The member’s declaration in *Vogtle* provided the member’s name and address, affirmed she was a member of the petitioning organization, stated her safety concerns, and authorized the petitioner to represent her and protect her interests in the proceeding. Declaration of Susan Bloomfield (ML20111C451) (Apr. 10, 2020).

⁶³ See *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 194 (1999) (internal quotation marks omitted) (“We do not expect our adjudicatory Boards, unaided by the parties, to sift through the parties’ pleadings to uncover and resolve arguments not advanced by litigants themselves. The burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner. It should not be necessary to speculate about what a pleading is supposed to mean.”)

⁶⁴ William D. Reed Declaration at 1; Carolyn Ferry Declaration at 1; Alice Hirt Declaration at 1; Joseph C. Kirk Declaration at 1; James Scott Declaration at 1; Ann Scott Declaration at 1 (“I oppose the granting of the exemption by the NRC”). These declarations reference the license amendment requests only as part of a general description of the requested licensing actions. See, e.g., William D. Reed Declaration at 1 (“HDI has submitted several requests for NRC approval to support allowing the resumption of power operations through March 24, 2031. These requests include four license amendment requests and an exemption request.”). While the standing declarations of Alice Hirt, Joseph C. Kirk, James Scott, and Ann Scott describe this proceeding as either a “license transfer and/or amendment proceeding[.]” Alice Hirt Declaration at 2; Joseph C. Kirk Declaration at 2; James Scott Declaration at 2; or a “license transfer and amendment proceeding[.]” Ann Scott Declaration at 2, this reference to the license amendment requests does not constitute a challenge to those requests nor does it articulate their interest in this proceeding on HDI’s license amendment requests. See 10 C.F.R. § 2.309(d)(1)(iii). The declarations of William D. Reed and Carolyn Ferry describe this proceeding as a “regulatory exemption proceeding.” William D. Reed Declaration at 3; Carolyn Ferry Declaration at 3.

in the license amendment requests or explained how approval of the amendment requests would affect their interests as required by 10 C.F.R. § 2.309(d)(1)(iii) and (iv). Similarly, their standing arguments do not demonstrate a “concrete and particularized injury that is fairly traceable to the challenged action and *is likely to be redressed by a favorable decision*”⁶⁵ because any decision in this proceeding would be on the license amendment requests, which these individuals do not challenge. Therefore, William D. Reed, Carolyn Ferry, Alice Hirt, Joseph C. Kirk, James Scott, and Ann Scott have not demonstrated standing in this proceeding. Because BN, DWM, and MSEF must demonstrate that the individuals whom they seek to represent have demonstrated standing in their own right,⁶⁶ and because these individuals have failed to do so, BN, DWM, and MSEF have not satisfied their burden of demonstrating representational standing.⁶⁷

BN, DWM, and MSEF state in the Petition and in their declarations that they, as organizations, oppose HDI’s license amendment requests,⁶⁸ but this is immaterial to determining whether they demonstrate representational standing on behalf of their members, and these organizations have not asserted organizational standing in their own right. Therefore, BN, DWM, and MSEF’s own opposition to the license amendment requests does not help to demonstrate that they have representational standing to intervene in this proceeding.

Finally, the Staff notes that, as discussed below, the Petitioners may file contentions challenging the Exemption Request under Commission precedent providing that a petitioner

⁶⁵ *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 (emphasis added) (internal quotation marks omitted).

⁶⁶ *Beaver Valley*, CLI-20-5, 91 NRC at 220.

⁶⁷ Consistent with Commission precedent, the Staff will not attempt to infer an argument for standing on behalf of Petitioners; the Petition should be considered as it was pled. See *Zion*, CLI-99-4, 49 NRC at 194.

⁶⁸ Petition at 4 (“Five petitioning organizations, Beyond Nuclear, Michigan Safe Energy Future, Don’t Waste Michigan, Three Mile Island Alert and Nuclear Energy Information Service demonstrate below that they have standing to pursue contentions against Holtec’s request for license amendments. ... Petitioners contend that the requested license amendments must not be granted”).

may raise arguments related to an exemption request when such arguments “are *material* to a proposed licensing action” and “directly bear[] on *whether the proposed action should be granted*.”⁶⁹ However, Commission precedent on the ability to challenge an exemption request that is intertwined with a proposed licensing action has been applied to contention admissibility, not standing.⁷⁰ Contention admissibility and standing are different concepts governed by different criteria set forth in NRC regulations.⁷¹ Contentions are addressed at *whether the proposed action should be granted* and must, among other things, demonstrate their materiality to the findings the NRC must make in order to issue a licensing action;⁷² therefore, the “materiality” of an exemption request to a licensing action is directly relevant to the NRC’s contention rule. Standing, however, is focused on the asserted injury that would accrue *if the proposed action is granted*, i.e., the injury that would accrue from the “decision or order that may be issued in the proceeding,”⁷³ which in this instance is the decision on the restart-related amendment requests, not the Exemption Request.

As explained above, BN, DWM, and MSEF have not asserted any injuries from the proposed amendments, having challenged only the Exemption Request. In any case, granting the exemption would not cause injury because it would merely remove a prohibition on potential operation of Palisades; it would not authorize restart of the reactor. The amendment requests, however, propose changes to the license to authorize restart.⁷⁴ Even if HDI’s Exemption

⁶⁹ *Palisades*, CLI-22-8, 96 NRC at 14 (emphasis added).

⁷⁰ See, e.g., *Palisades*, CLI-22-8, 96 NRC at 66; *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 16 & n.78 (2021).

⁷¹ Compare 10 C.F.R. § 2.309(d) (standing requirements), with 10 C.F.R. § 2.309(f) (contention admissibility requirements).

⁷² 10 C.F.R. § 2.309(f)(1)(iv).

⁷³ 10 C.F.R. § 2.309(d)(1)(iv).

⁷⁴ See Primary Amendment Request, at 1. Among the changes to the license that the Primary Amendment Request proposes is authorization to operate the facility “at steady state reactor core power levels not in excess of 2565.4 Megawatts thermal (100 percent rated power)[.]” *Id.*, Enclosure, Attach. 1, at 3.

Request could in some way be tied to an injury-in-fact from the license amendment requests, Petitioners have not made that connection in the Petition, as it was their burden to do.⁷⁵

For the reasons stated above, BN, DWM, and MSEF have not satisfied their burden of demonstrating representational standing and should not be admitted as parties to this proceeding. Nevertheless, the Staff addresses the contentions submitted by BN, DWM, and MSEF in Discussion Section III, below, and concludes that one contention is admissible in part.

2. *Three Mile Island Alert and Nuclear Energy Information Service Have Satisfied Their Burden of Demonstrating Representational Standing*

Three Mile Island Alert (TMIA) is a nonprofit organization with approximately 500 members that is opposed to commercial nuclear power for safety and economic reasons.⁷⁶ Nuclear Energy Information Service (NEIS) is a nonprofit organization with over 200 members that is committed to ending nuclear power and advocating for energy alternatives.⁷⁷ TMIA and NEIS each seek to establish representational standing to intervene in this proceeding based on the individual standing of one of their respective members.⁷⁸ The Petition includes signed and dated declarations from David Staiger, a member of TMIA, and John Brenneman, a member of NEIS.⁷⁹ In their declarations, these individuals each designate the respective organization of which they are a member to represent their interests in this proceeding.⁸⁰

TMIA and NEIS state in the Petition that their members “oppose[] the granting of the exemption by the NRC and all of the license amendments” because of safety, public health, and

⁷⁵ See *Zion*, CLI-99-4, 49 NRC at 194.

⁷⁶ Petition at 16.

⁷⁷ *Id.* at 19.

⁷⁸ See *id.* at 16-17, 19.

⁷⁹ See David Staiger Declaration; John Brenneman Declaration.

⁸⁰ David Staiger Declaration at 2-3; John Brenneman Declaration at 2-3.

environmental concerns.⁸¹ Davis Staiger and John Brenneman's declarations also state opposition to the license amendment requests and connect the challenged actions that are the subject of this proceeding—the license amendment requests—to the injuries they claim they will suffer if the NRC issues the amendments.⁸² They therefore address their “interest in the proceeding” and “[t]he possible effect of any decision or order that may be issued in the proceeding” on that interest. TMIA and NEIS make similar statements in the Petition and in their respective declarations opposing the license amendment requests and the Exemption Request.⁸³

While TMIA and NEIS are challenging license amendment requests, the requests, if granted, would support restart of the Palisades reactor and resumption of power operations at the facility.⁸⁴ Although the license amendment and operating license processes are different, granting the amendment requests along with HDI's other related requests would, like granting an initial operating license, permit the applicant to operate a nuclear reactor at full power where reactor operation was not previously permitted. Taking into account the nature of the challenged action (restarting the Palisades reactor from its current defueled state to full-power operations) and the significance of the radioactive source involved (operation of the reactor itself), the license amendment requests presents an “‘obvious’ potential of offsite radiological consequences.”⁸⁵ As the Commission has stated,

[T]he “common thread” in the [NRC] decisions applying the 50-mile presumption “is a recognition of the potential effects at significant distances from the facility of the accidental release of fissionable materials.” The NRC's regulations also recognize that an accidental release has potential effects within a 50-mile radius of a reactor. The Commission ... has applied its expertise and concluded that

⁸¹ Petition at 17, 19-20.

⁸² See David Staiger Declaration at 1-2; John Brenneman Declaration at 1-2.

⁸³ See Petition at 16, 19; Eric Epstein Declaration at 1; David Kraft Declaration at 1.

⁸⁴ Primary Amendment Request, at 1.

⁸⁵ *Zion*, 49 NRC at 191 (quoting *St. Lucie*, CLI-89-21, 30 NRC at 330).

persons living within a 50-mile radius of a proposed new reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility.⁸⁶

The same logic applies here. The amendment requests TMIA and NEIS contest propose changing the license to enable a currently shutdown and defueled reactor to resume operation at full power, which would involve generating radioactivity in the reactor core. This, on its face, entails an obvious potential for offsite consequences in the unlikely event of an accident. For these reasons, it is appropriate to apply, for purposes of standing, the 50-mile proximity presumption used in operating license proceedings.

In their declarations, David Staiger and John Brenneman state that they live within 50 miles of Palisades.⁸⁷ These declarations demonstrate that at least one member of TMIA and NEIS would have standing to intervene in their own right based on the proximity presumption.⁸⁸ In keeping with Commission case law, the interests that TMIA and NEIS seek to protect in this proceeding are germane to their purposes, and neither the asserted claims nor the requested relief require an individual member to participate in this proceeding.⁸⁹ For these reasons, TMIA and NEIS have satisfied their burden of demonstrating representational standing.

II. Additional Context on the Licensing Process and the Environmental Review

Before addressing the proposed contentions individually, the Staff will first address two more general matters that provide important context for the Board's consideration of several of the contentions. These two general matters relate to (1) the Staff's consideration of licensing

⁸⁶ *Calvert Cliffs*, CLI-09-20, 70 NRC at 917 (alterations in original) (quoting *Calvert Cliffs 3 Nuclear Project, LLC* (Combined License Application for Calvert Cliffs Unit 3), LBP-09-4, 69 NRC 170, 182-83 (2009)).

⁸⁷ David Staiger Declaration at 1; John Brenneman Declaration at 1.

⁸⁸ Using the addresses provided on page 1 of their respective declarations, the Staff verified, using the straight-line measurement tool in Google Maps, that Messrs. Staiger and Brenneman live approximately 39.1 miles and 45 miles, respectively, from the Palisades containment building.

⁸⁹ *Beaver Valley*, CLI-20-5, 91 NRC at 220 (citing *Palisades*, CLI-08-19, 68 NRC at 258-59; *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999)).

and regulatory requests related to the potential restart of Palisades and (2) the relationship between the environmental review and the hearing request requirements.

A. Staff Consideration of Licensing and Regulatory Requests Related to the Potential Restart of Palisades

Here, the Staff explains explain how it is considering the licensing and regulatory requests related to the potential restart of reactor operation at Palisades within the existing regulatory framework. The Staff is doing so because the proposed contentions appear to rely on certain erroneous assumptions about the licensing and regulatory processes applicable to restart of Palisades. Although this proceeding does not concern all of the restart-related requests, the Staff will here address all of them (license amendments, license transfer, and exemption) so that the role the challenged requests have in the Palisades restart efforts can be considered in their proper context.

To begin, the Staff's consideration of all restart-related requests is governed by Commission-established policy on the reauthorization of reactor operations for plants in decommissioning. In denying a petition for rulemaking (2021 PRM Denial), the Commission stated that "the NRC may consider requests from licensees to resume operations under the existing regulatory framework."⁹⁰ Therefore, the Staff has examined whether the license amendment, license transfer, and exemption processes may be used to seek the resumption of reactor operation at Palisades under the existing regulatory framework given the current status of the Palisades license.

Although the Staff has not completed its review of any of the restart-related requests, the Staff has concluded, generally, that a facility licensee in decommissioning may apply to use the license amendment, transfer, and exemption processes, as applicable, to seek approval for the

⁹⁰ Criteria To Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362, 24,363 (May 6, 2021) (denying a petition for rulemaking) (2021 PRM Denial).

actions necessary to authorize the restart of a reactor in decommissioning. As discussed below, the Staff has reached this conclusion for two principal reasons.

First, a facility operating license continues in effect for reactors in decommissioning because entering the decommissioning process involves a change in license authority and not a change to the form of the license itself. Specifically, 10 C.F.R. § 50.82(a)(2) provides that upon docketing the § 50.82(a)(1) certifications, “the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.” In other words, the authority to operate is gone but the same Part 50 license remains. The continuation of the Part 50 license is made explicit by 10 C.F.R. § 50.51(b), which states “Each license for a facility that has permanently ceased operations, *continues in effect* beyond the expiration date to authorize ownership and possession of the production or utilization facility, until the Commission notifies the licensee in writing that the license is terminated.”⁹¹ Thus, the Palisades license remains a renewed Part 50 facility operating license during the decommissioning process.

The following examples from the broader regulatory context and the Palisades license itself also support the Staff’s understanding:

- Both 10 C.F.R. § 50.59 and the 1996 Decommissioning Rule refer to termination of an operating license, meaning that the license is still an operating license at the point of termination.⁹²
- Commission precedent has applied requirements for operating licenses to plants in decommissioning.⁹³

⁹¹ 10 C.F.R. § 50.51(b) (emphasis added).

⁹² See 10 C.F.R. § 50.59(d)(3) (referring to the “termination of an operating license issued under this part”); Decommissioning of Nuclear Power Reactors, 61 Fed. Reg. 39,278, 39,278 (July 29, 1996) (final rule) (referring to the “termination of an operating license”) (1996 Decommissioning Rule).

⁹³ See *EnergySolutions, LLC* (Zion Nuclear Power Station, Units 1 & 2), CLI-22-9, 96 N.R.C. 107, 113 & n.29 (2022) (applying the requirements in 10 C.F.R. § 50.80(b)(1)(i) for construction permits and operating licenses to license transfers for facilities in decommissioning).

- Section 50.54 applies by its terms to operating licenses and combined licenses and yet includes a provision applicable to a “nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted.”⁹⁴
- Other important requirements for operating licenses, such as the requirement in § 50.54(a)(1) to implement a quality assurance program, do and should continue to apply in decommissioning.
- The license change pages from the Defueled TS Amendment, which was intended to reflect the modified responsibilities and authorities for Palisades in decommissioning, refer to the Palisades license as a renewed facility operating license.⁹⁵

As a consequence, the NRC’s regulatory requirements for operating licenses continue to apply to Palisades absent an exemption or an exclusion in the NRC’s regulations for plants in decommissioning. Regulatory requirements that still apply include those in 10 C.F.R. § 50.59 for final safety analysis reports (FSARs) and in 10 C.F.R. § 50.54(a) for quality assurance (QA) plans.

Second, because the license for a reactor in decommissioning remains a facility operating license, licensing and regulatory requests within the existing regulatory framework may be used to restore the licensed authority for reactor operation. The license amendment, license transfer, and exemption processes are all within the existing regulatory framework and may be applied to a reactor in decommissioning as follows:

⁹⁴ 10 C.F.R. § 50.54 (introductory paragraph and paragraph (y))

⁹⁵ Defueled TS Amendment, Enclosure 1, Attach. (attached license change pages 1-3, Appendix A title page, and Appendix B title page that refer to the license as a “Renewed Facility Operating License” or use similar terms, such as “renewed operating license,” “Facility Operating License,” or “Operating License”). Retaining the term “operating license” was intentional, as the Staff issued a request for additional information (RAI) in which it explained why the Palisades license would still be a renewed facility operating license during the decommissioning phase. Letter from Scott P. Wall, NRC, to Vice President, Operations, Entergy, “Palisades Nuclear Plant – Request for Additional Information Regarding License Amendment Request for Permanently Defueled Amendment Request (EPID L-2021-LLA-0099),” Enclosure at 1-2 (Apr. 14, 2022) (ML22102A248). Entergy responded by withdrawing its proposal to delete the term “operating” when it appeared before “license.” Letter from Phil Couture, Entergy, to NRC Document Control Desk, “Response to Request for Additional Information Regarding License Amendment Request to Revise Facility Operating License and Technical Specifications for a Permanently Defueled Condition,” Enclosure at 2-4 (Apr. 21, 2022) (ML22111A127). Even if this proposal had not been withdrawn, that would not have changed the status of the license under NRC regulations, as discussed above.

- Because license amendments are typically used to change the authorities and requirements for a reactor in decommissioning,⁹⁶ the amendment process may be used to restore those authorities so long as the amendment standards in 10 C.F.R. § 50.92(a) are met.
- The license transfer process may be used to transfer authorities under the existing license to a transferee that is qualified to hold a license for reactor operation under 10 C.F.R. § 50.80(c)(1).
- Although § 50.82(a)(2) prohibits reactor operation for a reactor in decommissioning, the exemption process established by 10 C.F.R. § 50.12 is available to remove regulatory restrictions, including the one in § 50.82(a)(2), if all exemption requirements are met.

For these reasons, the Staff has concluded that a licensee in decommissioning may seek the restart of reactor operation by applying to use relevant processes within the existing regulatory framework, including the license amendment, license transfer, and exemption processes.

B. Relationship Between the Environmental Review and Hearing Request Requirements

The Staff is here addressing as a general matter how certain information provided by HDI to support the environmental review relates to the hearing request requirements. The Staff is doing so because the amendments proceeding involves an unusual situation where the amendment requests invoke a categorical exclusion for the environmental review, but the Staff has instead decided to prepare an environmental assessment (EA). Relatedly, none of the proposed contentions address the applications' arguments on the categorical exclusion criteria but instead contest other environmental information submitted by HDI. As discussed below, this other environmental information challenged by the Petitioners falls within the NRC definition of "environmental report," and the Petitioners may challenge it in accordance with 10 C.F.R. § 2.309(f)(2).

⁹⁶ See, e.g., Defueled Administrative Controls Amendment; Defueled TS Amendment.

In each of the restart-related license amendment requests, HDI asserts that the categorical exclusion in 10 C.F.R. § 51.22(c)(9) applies.⁹⁷ However, the Staff has determined not to invoke any categorical exclusions for the environmental review. Instead, the Staff has decided to prepare an EA that covers the restart-related amendment requests, transfer request, and exemption request, as discussed in a June 27, 2024 *Federal Register* notice (Notice of Intent to Prepare EA and Conduct Scoping).⁹⁸ As described therein, if the Staff is able to determine that there are no significant impacts, the Staff intends to publish for comment a draft EA and a draft finding of no significant impact.⁹⁹

While the Staff is not relying on the categorical exclusion arguments, three of the four amendment requests reference a separate HDI environmental evaluation in Enclosure 2 of the Exemption Request. For example, after stating that a categorical exclusion applies, the Primary Amendment Request further states:

In support of this conclusion, as described in Reference 3, an independent environmental review of potentially new and significant information, and environmental issues not addressed in the October 2006 *Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 27, Regarding Palisades Nuclear Plant* [License Renewal EIS Supplement] was performed. The review concluded that the proposed licensing actions environmental impacts are consistent with the findings in the [Palisades] RFOL Supplemental Environmental Impact Statement (NUREG 1427, Supplement 27), and hence the NRC staff recommendation to the Commission is applicable to this activity.¹⁰⁰

⁹⁷ Primary Amendment Request, Enclosure at 94-95; Administrative Controls Amendment Request, Enclosure at 21-22; Emergency Plan Amendment Request, Enclosure at 29-31; MSLB Amendment Request, Enclosure at 9-10.

⁹⁸ Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Notice of Intent to Conduct Scoping Process and Prepare an Environmental Assessment, 89 Fed. Reg. 53,659, 53,660 (June 27, 2024) (Notice of Intent to Prepare EA and Conduct Scoping).

⁹⁹ *Id.*

¹⁰⁰ Primary Amendment Request, Enclosure at 94-95. The Reference 3 mentioned in the quoted text is the Exemption Request.

The Administrative Controls Amendment Request and the Emergency Plan Amendment Request have the same text.¹⁰¹ The referenced “new and significant” review found in Enclosure 2 of the Exemption Request was submitted to aid the NRC in its environmental review, which the Staff is conducting under the National Environmental Policy Act of 1969, as amended (NEPA) § 102(2), among other provisions. Therefore, Enclosure 2 meets the definition of “Environmental Report” in 10 C.F.R. § 51.14, and the Staff will hereafter refer to it as the Environmental Report.¹⁰²

Further, given the content of the Environmental Report and its ultimate conclusions, the Staff understands that it serves to support a determination that there would be no significant impact from restart of reactor operation at Palisades. The Environmental Report does not address conformance with the categorical exclusion criteria in 10 C.F.R. § 51.22(c)(9) but rather discusses the continued relevance of the environmental impact determinations in the License Renewal EIS Supplement. Specifically, the Environmental Report states that the License Renewal EIS Supplement reports SMALL impacts in all categories for which an impact determination was made and that HDI did not identify any new and significant information that would change these determinations.¹⁰³ A SMALL impact determination means that “[f]or the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource.”¹⁰⁴ The Environmental Report further states, “Holtec considered that any new information regarding environmental issues with

¹⁰¹ Administrative Controls Amendment Request, Enclosure at 21; Emergency Plan Amendment Request, Enclosure at 29-30.

¹⁰² See 10 C.F.R. § 51.14 (stating that “Environmental report” means “a document submitted to the Commission by an applicant for a permit, license, or other form of permission, or an amendment to or renewal of a permit, license or other form of permission, or by a petitioner for rulemaking, in order to aid the Commission in complying with section 102(2) of NEPA”).

¹⁰³ Exemption Request, Enclosure 2 at 116 (Environmental Report).

¹⁰⁴ 10 C.F.R. Part 51, App. B, Table B-1 n.3. See *a/so* Exemption Request, Enclosure 2 at 9 (Environmental Report).

MODERATE or LARGE impacts would be significant.”¹⁰⁵ Therefore, the Staff understands that the Environmental Report has the purpose of confirming that restart of Palisades would not have a significant environmental impact, consistent with the generic finding of no significant impact that the categorical exclusion cited by HDI represents.¹⁰⁶

Moreover, the Environmental Report and the License Renewal EIS Supplement to which it relates are being considered by the Staff in its environmental review, which is assessing whether NRC approval of the restart-related actions would have a significant impact. As the Staff stated in its Notice of Intent to Prepare EA and Conduct Scoping:

To inform its environmental review, the NRC staff is considering a number of sources, including the previous NRC environmental review for [Palisades] license renewal that is documented in the October 2006 “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 27, Regarding Palisades Nuclear Plant—Final Report” (hereafter “License Renewal EIS Supplement”). The License Renewal EIS Supplement addresses the environmental impacts of continued operation during the license renewal period, which is the same operating period applicable to HDI’s requests for reauthorization of power operations. The NRC staff is also considering the environmental information that HDI submitted in Enclosure 2, “Environmental New and Significant Review Proposed Resumption of Power Operations Palisades Nuclear Plant,” of the September 28, 2023, exemption request. As stated in the exemption request, Enclosure 2 documents HDI’s “environmental review of potentially new and significant information, and environmental issues not addressed in the” License Renewal EIS Supplement.¹⁰⁷

Therefore, the Environmental Report continues to relate to the environmental review for the restart-related amendment requests. As such, the Petitioners may challenge, and are indeed obligated to challenge, the Environmental Report under 10 C.F.R. § 2.309(f)(2), which requires contentions to be “based on documents or other information available at the time the petition is to be filed,” including (as relevant here) the “application, ... environmental report or other

¹⁰⁵ Exemption Request, Enclosure 2 at 9 (Environmental Report).

¹⁰⁶ See NEPA § 111(1), 42 U.S.C. § 4336e(1) (providing that a categorical exclusion is “a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 102(2)(C)” of NEPA). See also 10 C.F.R. § 51.22(a).

¹⁰⁷ Notice of Intent to Prepare EA and Conduct Scoping, 89 Fed. Reg. at 53,660.

supporting document filed by an applicant or licensee.” While subject to challenge, the Staff notes that the Environmental Report is being submitted voluntarily because NRC regulations do not require the submission of an Environmental Report for reactor license amendment requests in this context.¹⁰⁸ Therefore, the environmental report content requirements of 10 C.F.R. § 51.45 and other Part 51 regulations for the content of environmental reports do not apply to the instant Environmental Report. However, the Staff’s environmental review is subject to, and will satisfy, the requirements of NEPA and NRC regulations for environmental assessments and associated determinations and findings, including discussion of the environmental impacts of the proposed actions.

III. The Petition Proffers a Contention of Omission that Is Admissible in Part

A. Contention Admissibility Requirements

The NRC’s contention admissibility requirements are set forth in 10 C.F.R. § 2.309(f) of the Commission’s Rules of Practice. To be admissible, a newly proffered contention must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) ... provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must

¹⁰⁸ See 10 C.F.R. § 51.45(a) (referring to environmental reports “required by §§ 51.50, 51.53, 51.54, 51.55, 51.60, 51.61, 51.62, or 51.68,” where none of the cited regulations apply to reactor license amendments in this context). Section 51.53(d) refers to environmental reports for certain types of amendment requests, but these are not associated with restart of reactor operation for a plant in decommissioning.

include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief[.]¹⁰⁹

Failure to satisfy any of the six pleading requirements renders a contention inadmissible.¹¹⁰

Further, “[c]ontentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner.”¹¹¹

The § 2.309(f)(1) requirements are intended to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”¹¹² The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing.”¹¹³ The NRC’s contention admissibility requirements are “strict by design and intended to ensure that adjudicatory proceedings are triggered only by substantive safety or environmental issues, rooted in a reasonably specific factual or legal basis” and “to screen out ill-defined, speculative, or otherwise unsupported claims.”¹¹⁴ Further, “a proposed contention must be rejected if it raises issues beyond the scope of the proceeding as established by the Commission’s hearing

¹⁰⁹ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

¹¹⁰ *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2) CLI-16-5, 83 NRC 131, 136 (2016).

¹¹¹ 10 C.F.R. § 2.309(f)(2).

¹¹² Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) (final rule).

¹¹³ *Id.*

¹¹⁴ *Exelon Generation Co.* (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 471-72 (2019) (internal quotation marks omitted).

notice.”¹¹⁵ Moreover, 10 C.F.R. § 2.335 forbids challenges to NRC regulations in adjudicatory proceedings, absent a petition for waiver or exception (accompanied by affidavit) that demonstrates *prima facie* that “special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted.”¹¹⁶

Presiding officers are expected “to examine cited materials to verify that they do, in fact, support a contention.”¹¹⁷ Also, a document cited by a petitioner “as the basis for a contention is subject to scrutiny both for what it does and does not show.”¹¹⁸ A presiding officer may view a petitioner's supporting information in a light favorable to the petitioner,¹¹⁹ but the presiding officer is not to “search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves.”¹²⁰

B. Proposed Contention 1 Is Inadmissible

Proposed Contention 1 is stated as follows:

Holtec seeks an exemption from the requirements of 10 C.F.R. § 50.82, pursuant to 10 C.F.R. § 50.12. The proposed exemption would remove the 10 C.F.R. § 50.82(a)(2) restriction that prohibits reactor power operations and retention of fuel in the reactor vessel when the reactor is in the process of decommissioning. Holtec's proposed exemption does not comply with the requirements for an

¹¹⁵ *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), 92 NRC 23, 46 (2020) (citing *Public Service Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)).

¹¹⁶ 10 C.F.R. § 2.335(a)-(c). Whether special circumstances are present is assessed under the *Millstone* factors. *Exelon Generation Co.* (Limerick Generating Station, Units 1 & 2), CLI-13-7, 78 NRC 199, 205 (2013) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560 (2005)).

¹¹⁷ *USEC*, CLI-06-10, 63 NRC at 457.

¹¹⁸ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 107 & n.131 (2018).

¹¹⁹ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

¹²⁰ *USEC*, CLI-06-10, 63 NRC at 457.

exemption set forth in 10 C.F.R. § 50.12. Therefore, the NRC must not allow Holtec to use this exemption.¹²¹

In support of proposed Contention 1, the Petitioners provide several arguments challenging the Exemption Request and whether it meets the criteria for granting an exemption under 10 C.F.R. § 50.12. First, the Petitioners assert that Holtec has not demonstrated that “exigent circumstances” are present.¹²² Next, the Petitioners challenge Holtec’s assertions that it meets the exemption criteria in § 50.12(a)(1) that the exemption is authorized by law and will not present an undue risk to the public health and safety and common defense and security.¹²³ Additionally, the Petitioners argue that the Exemption Request does not meet any of the criteria for demonstrating that special circumstances exist under § 50.12(a)(2)(i)-(vi).¹²⁴

Staff Response: The Petitioners describe the Exemption Request as the “linchpin” of Holtec’s “multifaceted scheme” to “remove Palisades from decommissioning status and return Palisades to active power operations.”¹²⁵ The Petitioners assert that because Holtec cannot meet the exemption criteria in § 50.12, “the NRC must not grant Holtec’s requested exemption.”¹²⁶ Specifically, the Petitioners argue that the Exemption Request must not be granted because the Exemption Request does not demonstrate that: 1) exigent circumstances are present; 2) the Exemption Request is authorized by law; 3) there is no undue risk to public health and safety; and 4) special circumstances exist. While the Staff agrees that the Petitioners may file contentions challenging the Exemption Request, the Staff concludes that proposed Contention 1 is inadmissible because it raises arguments that are outside the scope of this

¹²¹ Petition at 30.

¹²² Petition at 31-32.

¹²³ Petition at 32-34.

¹²⁴ Petition at 34-40.

¹²⁵ Petition at 30.

¹²⁶ Petition at 30.

proceeding, immaterial to the findings the Staff must make to issue the Exemption Request, unsupported, and do not raise a genuine dispute with the Exemption Request on a material issue of fact or law.

1. *The Exemption Request is Inextricably Intertwined with the Restart-Related Amendment Requests*

Although the Petitioners do not address this issue in their Petition, the Staff notes that the Exemption Request is inextricably intertwined to the restart-related amendment requests, and therefore, can be challenged through the filing of contentions in this license amendment proceeding. As the Commission has noted, “when a requested exemption raises questions that are material to a proposed licensing action -- directly bears on whether the proposed action should be granted -- a petitioner in an adjudicatory proceeding on the licensing action may raise arguments relating to the exemption request.”¹²⁷ In the Staff’s view, the Exemption Request is inextricably intertwined with the restart-related amendment requests because the NRC may not make the findings to issue these amendments without the Exemption Request being granted.¹²⁸ Accordingly, the Exemption Request is subject to challenge in this license amendment proceeding.¹²⁹

Although the Exemption Request is subject to challenge in this adjudicatory proceeding, as described below, proposed Contention 1 is inadmissible because it raises arguments that are outside the scope of this proceeding, immaterial to the findings the Staff must make to issue the

¹²⁷ See *Palisades*, CLI-22-8, 96 NRC at 14.

¹²⁸ NRC approval of the restart-related amendment requests would, among other things, amend the license to authorize power operations at Palisades. See, e.g., Primary Amendment Request, at 1. To grant the restart-related amendments, the NRC must find that the request complies with NRC regulations. See, e.g., 10 C.F.R. §§ 50.92; 50.57. However, to make these findings, the prohibition on operation found in 10 C.F.R. § 50.82(a)(2) must be removed for Palisades through the exemption process.

¹²⁹ See Order of the Secretary (denying petition to intervene and request a hearing on the Exemption Request), at 2-3 (Dec. 18, 2023) (unpublished) (ML23352A325); Order of the Secretary (providing clarification to the Petitioners’ question regarding the Exemption Request), at 2-3 (Sept. 26, 2024) (unpublished) (ML24270A263).

Exemption Request, unsupported, and do not raise a genuine dispute with the Exemption Request on a material issue of fact or law in accordance with 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

2. *The Petitioners' Arguments Regarding Exigent Circumstances Are Inadmissible Because They Concern Immaterial Issues and Do Not Raise a Genuine Dispute with the Exemption Request on a Material Issue of Fact or Law*

In proposed Contention 1, the Petitioners appear to assert that the Exemption Request should be denied because it does not demonstrate that “exigent circumstances” are present.¹³⁰ However, the Petitioners do not demonstrate the materiality of their concern or that there is a genuine, material dispute with the application because the Petitioners’ rely on outdated case law and Commission policy that predates the current § 50.12 exemption standards promulgated in 1985 (1985 Specific Exemptions Rule)¹³¹ that apply to the Exemption Request. For example, the Petitioners quote from a 1982 D.C. Circuit case for its argument that exemptions under § 50.12 are only available in the presence of “exigent circumstances.”¹³² But the D.C. Circuit case, and the 1977 *WPPSS* case it references, both predate the 1985 Specific Exemptions Rule.¹³³ Similarly, the Petitioners point to a 1974 *Federal Register* notice and assert that the “Commission has also emphasized that § 50.12 exemptions are to be granted sparingly and only in cases of undue hardship,”¹³⁴ but this notice also predates the 1985 Specific Exemptions Rule.

¹³⁰ Petition at 31-32.

¹³¹ Specific Exemptions; Clarification of Standards, 50 Fed. Reg. 50,764 (Dec. 12, 1985) (final rule) (1985 Specific Exemptions Rule).

¹³² Petition at 31 (citing *NRDC v. NRC*, 695 F.2d 623 (D.C. Cir. 1982) (citing *Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719, 723 (1977))).

¹³³ *NRDC*, 695 F.2d at 625; *WPPSS* at 723. The Staff also notes that these cases pertain to Commission policy specifically related to exemptions from the requirements from § 50.10(c) for site preparation activities, which is not relevant to HDI’s Exemption Request from § 50.82(a)(2). Also, § 50.12(b) provides specific criteria for exemptions from § 50.10.

¹³⁴ Petition at 31 (citing Pre-Construction Permit Activities, 39 Fed. Reg. 14,506, 14,507 (Apr. 24, 1974)). The Staff notes that the portion of this *Federal Register* notice referenced in the Petition explains the Commission’s policy of granting *exemptions from § 50.10(c)* sparingly and only in cases of undue hardship.

Further, the Petitioners point to the Commission's 1984 decision in *Shoreham*, which held that exemptions under § 50.12 must demonstrate the presence of "exigent" or "exceptional" circumstances that consider "the equities of the situation."¹³⁵ Although *Shoreham* served as a primary basis for the changes incorporated into the 1985 Specific Exemptions Rule,¹³⁶ the final version of the rule did not wholly adopt the equities considerations discussed in *Shoreham*. Indeed, the 1985 Specific Exemptions Rule revised the standards for granting an exemption under 10 C.F.R. § 50.12, and added a provision in § 50.12(a)(2) that "the Commission will not consider granting an exemption unless special circumstances are present."¹³⁷ The 1985 Specific Exemptions Rule does not use the terminology that "exigent circumstances" or "exceptional circumstances" must be present nor does it include all the equities considerations discussed in *Shoreham*.¹³⁸ Thus, the legal standard applicable to the Exemption Request is the version of § 50.12 promulgated in the 1985 Specific Exemptions Rule, not the case law cited in the Petition. Accordingly, to the extent the Petitioners assert that the Exemption Request must demonstrate "exigent" or "exceptional" circumstances, these arguments are inadmissible because they do not reflect the current version of the requirements applicable to the Exemption Request, and therefore, are not material to the NRC's findings to issue the Exemption Request under § 2.309(f)(1)(iv) and do not demonstrate a genuine dispute with the application on a material issue of fact or law under § 2.309(f)(1)(vi).

¹³⁵ Petition at 32 (citing *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 NRC 1154, 1156 n.3 (1984); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-84-45, 20 NRC 1343, 1376-1377 (1984)).

¹³⁶ 1985 Specific Exemptions Rule, 50 Fed. Reg. at 50,765.

¹³⁷ *Id.* at 50,770-73.

¹³⁸ Compare *Shoreham*, CLI-84-8, 19 NRC at 1156 n.3 with § 50.12(a)(2)(i)-(vi) (describing the special circumstances criteria).

3. *The Petitioners' Arguments That the Exemption Request Is Not Authorized by Law Are Inadmissible Because They Raise Issues That Are Out of Scope, Immaterial, and Do Not Raise a Genuine Dispute with the Application*

In proposed Contention 1, the Petitioners assert that the Exemption Request does not satisfy the criterion in § 50.12(a)(1) that granting the exemption must be authorized by law. Specifically, the Petitioners argue that “Holtec does not cite any law that authorizes the exemption, but merely says that the Atomic Energy Act does not prohibit it.”¹³⁹ The Petitioners, however, do not accurately characterize HDI’s justification in the Exemption Request. In its Exemption Request, HDI states that the requested exemption “does not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission’s regulations,” not simply that the AEA does not prohibit the exemption.¹⁴⁰ Moreover, the Petitioners provide no legal basis for their assertions that HDI’s justification in the Exemption Request is deficient or that “affirmative legal authorization must be demonstrated.”¹⁴¹ Indeed, HDI’s justification is consistent with the preamble to the 1985 Specific Exemptions Rule which states, “As in the existing rule, an exemption must be ‘authorized by law.’ Apart from the very fact of granting the exemption relief itself, the granting of the exemption cannot be in violation of other applicable laws, such as the Atomic Energy Act or the National Environmental Policy Act.”¹⁴² Thus, by demonstrating that the exemption is not in violation of the AEA or other applicable laws, a licensee effectively meets the § 50.12(a) criterion that the exemption is authorized by law.

The Petitioners also seem to take issue with HDI’s reference to the 2021 PRM Denial and assert that in this denial, the Commission “mentioned in passing that the existing regulations might be available, through an exemption, to accomplish the purpose, but § 50.12

¹³⁹ Petition at 32.

¹⁴⁰ Exemption Request, Enclosure 1, at 9.

¹⁴¹ Petition at 33.

¹⁴² 1985 Specific Exemptions Rule, 50 Fed. Reg. at 50,776.

was not mentioned.”¹⁴³ However, in the 2021 PRM Denial, the Commission stated that “the NRC may consider requests from licensees to resume operations under the existing regulatory framework.”¹⁴⁴ As discussed in Discussion Section II.A, the § 50.12 exemption process is part of the existing regulatory framework and, therefore, may be used by a licensee to seek approval to authorize restart of a reactor in decommissioning. Thus, to the extent that the Petitioners are challenging the existing regulatory framework or the exemption process in § 50.12, such challenges are disallowed by 10 C.F.R. § 2.335 and are otherwise immaterial and outside the scope of this proceeding. For these reasons, the Petitioners’ arguments that HDI has not demonstrated that the Exemption Request is authorized by law is inadmissible because it raises issues that are out of scope, immaterial, and do not raise a genuine dispute with the Exemption Request on a material issue of fact or law under 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi).

4. *The Petitioners’ Arguments That the Exemption Request Does Not Meet the No Undue Risk Standard Are Inadmissible Because They Raise Issues That Are Out of Scope, Immaterial, and Do Not Raise a Genuine Dispute with the Application*

In proposed Contention 1, the Petitioners also argue that the Exemption Request does not satisfy the criteria in § 50.12(a)(1) that granting the exemption will not present an undue risk to the public health and safety and common defense and security.¹⁴⁵ The Petitioners challenge the Exemption Request by asserting that “Holtec simply states that Palisades will be returned to the condition it was in prior to decommissioning”¹⁴⁶ which they claim is problematic because “there were significant safety problems with the plant” and “risks to the public health and safety prompted Palisades to be shut down earlier than anticipated.”¹⁴⁷ As support, the Petitioners

¹⁴³ Petition at 32-33.

¹⁴⁴ 2021 PRM Denial, 86 Fed. Reg. at 24,363.

¹⁴⁵ Petition at 33.

¹⁴⁶ Petition at 33.

¹⁴⁷ Petition at 33.

point to the declaration of their expert, Arnold Gundersen (Gundersen Declaration).¹⁴⁸

Specifically, the Petitioners reference Mr. Gundersen's assertions that "[t]he overall design of the Palisades reactor is not licensable to 21st century standards," that Palisades is "one of the world's most decrepit and flawed nuclear reactors," and that when Entergy sold Palisades to Holtec, "the reactor was operating with poorly maintained parts, woefully inadequate safety equipment and outmoded components."¹⁴⁹ However, neither the Petition nor the Gundersen Declaration contain any factual basis to support these conclusory assertions. Conclusory assertions, even by an expert, do not support the admissibility of a contention.¹⁵⁰ Moreover, the Petitioners, through their Petition and Gundersen Declaration, do not specifically challenge or dispute any portion of the Exemption Request or the restart-related amendments that are the subject of this proceeding.

Additionally, the Petitioners mischaracterize the arguments in the Exemption Request as simply stating that the plant will be returned to the condition it was in prior to decommissioning. HDI's primary argument that the Exemption Request will not present an undue risk to public health and safety is based on its proposal to restore the Palisades' licensing basis through NRC review and approval of the restart-related amendment requests and Restart Transfer Request, which will ensure compliance with NRC safety regulations.¹⁵¹ HDI further states in its Exemption Request that "NRC inspection activities during development and implementation of the return to service plans provide added assurance that SSCs will function as required by the reinstated" licensing basis.¹⁵² The Petitioners do not provide any information in the Petition or the

¹⁴⁸ See Petition, Exhibit A (Gundersen Declaration).

¹⁴⁹ Petition at 33-34 (citing Gundersen Declaration, at 22, 8).

¹⁵⁰ See *USEC*, CLI-06-10, 63 NRC at 472.

¹⁵¹ Exemption Request, Enclosure 1, at 12.

¹⁵² *Id.*

Gundersen Declaration to address or challenge any of the justifications HDI presented in the Exemption Request.

Each of the restart-related licensing requests - the license amendment and transfer requests - address changes to the Palisades license, UFSAR, emergency preparedness plans, licensed operating authority, etc., for a reactor in operation, and each of these changes are subject to specific NRC safety regulations. Licensees must comply with NRC safety regulations, and compliance with NRC safety regulations is presumptively protective of public health and safety.¹⁵³ With respect to licensing actions, the NRC adheres to the “no undue risk” standard, which the Commission has stated is equivalent to the “adequate protection” standard set out in AEA § 182a. (42 U.S.C. § 2232(a)), governing approval of licensing actions.¹⁵⁴ Thus, any challenge to whether the plant will safely operate should address the safety regulations pertinent to these requests. While the Petitioners and their expert make many conclusory assertions regarding plant safety at Palisades, they do not assert that any specific safety regulations are unmet. Also, the restart-related amendment and transfer requests provide opportunities to raise concerns that the proposed restart does not satisfy the NRC’s safety regulations. Therefore, the Petitioners’ challenge to the Exemption Request is effectively a back-door challenge to the NRC’s existing safety regulations using the general “no undue risk” standard in § 50.12(a)(1) and is barred under § 2.335.

Further, contrary to the Petitioners assertions, the Staff notes that the submission of the § 50.82(a)(1) certifications was a voluntary action on the part of Entergy, not the result of any NRC finding or action that a safety problem existed.¹⁵⁵ The “no undue risk” standard in

¹⁵³ See, e.g., *AmerCen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 327, 340 (2007) (citing *Maine Yankee Atomic Power Company* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1009 (1973)).

¹⁵⁴ Revision of Backfitting Process for Power Reactors, 53 Fed. Reg. 20,603, 20,606 (June 6, 1988) (Final Rule).

¹⁵⁵ See generally Palisades 50.82(a)(1) Certifications.

§ 50.12(a)(1) is particularly pertinent where a licensee proposes meeting the underlying purpose of the specific safety requirements in NRC regulations in an alternate manner. In that case, the licensee must ordinarily show that the proposed alternate approach is another way to meet the general safety objective of the regulation. But § 50.82(a)(2) does not impose specific safety requirements. It simply demarcates the point at which a licensee is no longer authorized to operate a reactor. Accordingly, there is no reason (and the Petitioners do not provide any reason) why meeting the NRC's safety regulations for operation would somehow fail to meet the no undue risk standard. For these reasons, the Petitioners' arguments challenging whether the Exemption Request has met the "no undue risk" standard are inadmissible because they are unsupported and do not present a genuine dispute with the application on a material issue of law or fact under 10 C.F.R. § 2.309(f)(1)(vi).

The Petitioners also rely on Mr. Gundersen's assertions challenging "Holtec's void of corporate nuclear power plant construction and operating experience,"¹⁵⁶ and arguments that the project underestimates the extreme costs and duration for making repairs.¹⁵⁷ However, these assertions regarding Holtec's purported lack of operating experience and extreme project costs appear to challenge Holtec's technical and financial qualifications to operate Palisades, which are issues relevant to the Restart Transfer Request and not any of the restart-related license amendment requests that are the subject of this proceeding or the Exemption Request that is intertwined with the amendment requests.¹⁵⁸ Accordingly, these arguments, which the Petitioners' could have properly raised within the scope of the license transfer proceeding, are

¹⁵⁶ Petition at 33-34 (citing Gundersen Declaration, at 11).

¹⁵⁷ Petition at 34 (citing Gundersen Declaration, at 21).

¹⁵⁸ See 10 C.F.R. § 50.80(b)(1)(i) (stating that a license transfer application for an operating license shall include, "as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license"). As noted above, three of the Petitioners filed a hearing request in the transfer proceeding; however, that request did not raise any challenges to Holtec's financial or technical qualifications.

inadmissible here because they fall outside the scope of this license amendment proceeding and are immaterial to the findings the Staff must make to issue the restart-related license amendments and Exemption Request.

For the reasons discussed above, the Petitioners have not demonstrated that granting the Exemption Request will present an undue risk to the public health and safety and common defense and security. Their contention is therefore inadmissible because it raises concerns that are out of scope, immaterial, unsupported, and do not raise a genuine, material dispute with the application under 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

5. *The Petitioners' Arguments That the Exemption Request Does Not Meet Any of the Special Circumstances Criteria in § 50.12(a)(2) Are Inadmissible Because They Raise Issues That Are Out of Scope, Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Application*

In proposed Contention 1, the Petitioners assert that the Exemption Request does not meet any of the special circumstances criteria in 10 C.F.R. § 50.12(a)(2).¹⁵⁹ The regulations in § 50.12(a)(2) only require the presence of one of the special circumstances listed in § 50.12(a)(2)(i)-(vi). Thus, in order to prevail in their assertion that the Exemption Request should be denied, the Petitioners must demonstrate that no special circumstances exist that warrant approval of the exemption. As explained below, the Petitioners present several flawed arguments that ultimately fail to demonstrate that the Exemption Request provides no special circumstances under § 50.12(a)(2). Accordingly, the Petitioners' Contention 1 is inadmissible because it raises issues that are out of scope, immaterial to the findings the Staff must make to issue the Exemption Request, unsupported, and does not raise a genuine dispute with the Exemption Request on a material issue of fact or law under 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

¹⁵⁹ Petition at 34-40.

a. The Petitioners' Arguments Regarding the Special Circumstances Criteria in § 50.12(a)(2)(ii) Do Not Raise a Genuine, Material Dispute with the Exemption Request

In proposed Contention 1, the Petitioners assert that the Exemption Request does not meet the special circumstances criteria in 10 C.F.R. § 50.12(a)(2)(ii) that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule.¹⁶⁰ Specifically, the Petitioners assert that the purpose of “§ 50.82 is to ensure that the reactor is certified to be in decommissioning status in order to facilitate decommissioning,” and that “[i]t is absurd to think that § 50.82 is not serving its purpose in this case” considering that “Palisades has been in the process of decommissioning since June 2022.”¹⁶¹

But the Petitioners seem to misunderstand the standard in § 50.12(a)(2)(ii). To determine whether the special circumstances criteria in § 50.12(a)(2)(ii) are met, the “particular circumstances” of the case must be considered.¹⁶² The particular circumstances of the case, as described in the Exemption Request, are that HDI, a licensee in decommissioning for which the § 50.82(a) certifications have been docketed, is seeking to restart the reactor and exit the decommissioning process.¹⁶³ Considering that HDI is seeking to restart the reactor and exit the decommissioning process, HDI must demonstrate that the § 50.82(a)(2) prohibition on operation would not serve the underlying purpose of the rule under these particular circumstances. The Petitioners do not explain, nor does the Staff perceive, why the purpose of § 50.82(a)(1)-(2), or the regulation itself, should be interpreted to prohibit a licensee from requesting an exemption to restart operation of a plant in decommissioning if the licensee seeks to operate the reactor again. Ultimately, if restart is approved, the facility would still need to be decommissioned,

¹⁶⁰ Petition at 34-35.

¹⁶¹ Petition at 34.

¹⁶² 10 C.F.R. § 50.12(a)(2)(ii) (“Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule”).

¹⁶³ Exemption Request, Enclosure 1, at 10.

following submission and docketing of the § 50.82(a) certifications after any subsequent period of operation.

The Petitioners also challenge the statement in the Exemption Request that § 50.82(a) serves to notify the NRC of the licensee's intent to place the plant into a decommissioning status and argue that if the intent of the rule was to provide notification, then Holtec could rescind the certification.¹⁶⁴ While it is clear on the face of the regulations that the § 50.82(a) certifications serve the purpose of notifying the NRC of the licensee's decommissioning plans,¹⁶⁵ the Petitioners provide no legal basis for why an exemption from the § 50.82(a)(2) restriction prohibiting power operation would be unnecessary to restart operations. Moreover, the Exemption Request provides another purpose for the § 50.82(a)(2) rule—that the “certifications also identify the point in time when a reactor formally enters the decommissioning process.”¹⁶⁶ The Staff notes that the statement that the “certifications also identify the point in time when a reactor formally enters the decommissioning process”¹⁶⁷ is an accurate summary of the plain language of § 50.82(a)(1)-(2) and the Petitioners do not dispute this purpose. For these reasons, the Petitioners' arguments are inadmissible because they do not raise a genuine dispute with the Exemption Request on a material issue of fact or law under 10 C.F.R. § 2.309(f)(1)(vi).

b. The Petitioners Arguments Regarding the Special Circumstances Criteria in § 50.12(a)(2)(iii) Do Not Raise a Genuine, Material Dispute with the Exemption Request

In proposed Contention 1, the Petitioners assert that the Exemption Request does not meet the special circumstances criteria in 10 C.F.R. § 50.12(a)(2)(iii) that compliance would

¹⁶⁴ Petition at 35.

¹⁶⁵ See e.g., 10 C.F.R. § 50.82(a)(1)(i) (“When a licensee has determined to permanently cease operations the licensee shall, within 30 days, submit a written certification to the NRC”); § 50.82(a)(1)(ii) (“Once fuel has been permanently removed from the reactor vessel, the licensee shall submit a written certification to the NRC”).

¹⁶⁶ Exemption Request, Enclosure 1 at 10.

¹⁶⁷ *Id.*

result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted.¹⁶⁸ The Exemption Request states that without the exemption, HDI would not be able to obtain authorization to operate Palisades which “would result in an undue hardship, by preventing the return to the Michigan electrical grid of 800 megawatts of safe and reliable carbon-free electricity, and a dependable baseload generation vital to Michigan residents and businesses, thus unfairly hindering economic development in the state.”¹⁶⁹ The Petitioners challenge this argument and assert that “[e]ven if, as Holtec contends, reopening Palisades would benefit the people of Michigan (a concept with which Petitioners vehemently disagree), that does not show an undue hardship on Holtec.”¹⁷⁰ The Petitioners appear to be arguing that the Exemption Request does not show an undue hardship to Holtec itself. However, the Petitioners provide no legal basis for the assertion that undue hardship must be experienced by the licensee or applicant itself. Therefore, the Petitioners do not raise a genuine, material dispute with the Exemption Request.

The Petitioners also point to *NRDC v. NRC*, and argue that Holtec has not demonstrated “an exigent circumstance or undue hardship.”¹⁷¹ However, as previously stated, *NRDC v. NRC* predates the 1985 Specific Exemptions rule that promulgated the version of § 50.12(a)(2) currently applicable to the Exemption Request, and is, therefore, inapplicable here. Regardless, the Petitioners do not explain how the case supports their position that HDI has not demonstrated undue hardship. Finally, to the extent the Petitioners are arguing that the Exemption Request should have considered the economic interest of others,¹⁷² these

¹⁶⁸ Petition at 35-36.

¹⁶⁹ Exemption Request, Enclosure 1, at 11.

¹⁷⁰ Petition at 35.

¹⁷¹ Petition at 35 (citing *NRDC*, 695 F.2d at 623).

¹⁷² Petition at 36 (“Regional grid planners, other utilities, business forecasters and their clients all have had to adjust to the decision. The class of those whose economic interests must be taken into consideration along with those of Holtec is quite extensive.”).

arguments appear to contradict the Petitioners' prior argument that Holtec needs to show undue hardship on itself. For the reasons discussed above, the Petitioners' arguments are inadmissible because they do not raise a genuine dispute with the Exemption Request on a material issue of fact or law under 10 C.F.R. § 2.309(f)(1)(vi).

c. The Petitioners Arguments Regarding the Special Circumstances Criteria in § 50.12(a)(2)(vi) Are Out of Scope, Immaterial, Unsupported and Do Not Raise a Genuine, Material Dispute with the Exemption Request

In proposed Contention 1, the Petitioners assert that the Exemption Request does not meet the special circumstances criteria in 10 C.F.R. § 50.12(a)(2)(vi) that there is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.¹⁷³ In doing so, the Petitioners provide several arguments that assert that Holtec has not demonstrated that the Exemption Request is in the public interest.¹⁷⁴ The Petitioners' arguments, however, rely on outdated legal authorities and standards that are inapplicable to HDI's Exemption Request from § 50.82(a)(2). Specifically, the Petitioners rely on CLI-82-23 and CLI-77-11 and characterize the public interest standard as "stringent" and note that "exemptions of this sort are to be granted sparingly and only in extraordinary circumstances."¹⁷⁵ But both of these cases predate the 1985 Specific Exemptions rule which promulgated the version of § 50.12 applicable to the Exemption Request and focus on exemptions under a different standard – § 50.12(b), which applies only to exemption requests from the requirements in § 50.10 related to site preparation activities.¹⁷⁶

¹⁷³ Petition at 37-40.

¹⁷⁴ Petition at 37-40.

¹⁷⁵ Petition at 37 (citing *United States Department of Energy* (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 426 (1982) (citing *WPPSS*, CLI-77-11, 5 NRC 719 (1977))).

¹⁷⁶ See *Clinch River Breeder Reactor*, CLI-82-23, 16 NRC at 418, 422-26 (applying the exemption standards in § 50.12(b)); *WPPSS*, CLI-77-11, 5 NRC at 722 (referencing the exemption standards in § 50.12(b)). See also 10 C.F.R. § 50.12(b).

In the Exemption Request, HDI relies on the NRC regulatory basis document developed in support of the 2017 proposed decommissioning rule and states that the “NRC designed the current 10 CFR Part 50 regulations for reactor decommissioning for plants that were expected to be permanently shut down at the end of their operating license term.”¹⁷⁷ The Exemption Request also states that the current regulation in § 50.82 “was not written to address the unique [Palisades] circumstance of returning to power operations” after the § 50.82 certifications have been docketed by the NRC.¹⁷⁸ HDI also points to the support from the Michigan Governor demonstrating the state’s “urgency and necessity” for the reauthorization of power operations and Palisades.¹⁷⁹

The Petitioners appear to challenge HDI’s arguments and attempt to assert that the NRC may have considered the possibility of restarting a reactor when it promulgated the decommissioning rules,¹⁸⁰ but they provide no support for this position, nor do they acknowledge or challenge HDI’s reference to the NRC regulatory basis document as support for HDI’s position. Similarly, the Petitioners speculate, without any support, that “if the NRC had considered the possibility of restarting a decommissioning reactor, it would have provided for that possibility in the rules.” Moreover, the Petitioners assert that “Holtec must establish that restarting Palisades is in the public interest,”¹⁸¹ but they do not challenge the public interest justification in the Exemption Request related to the State of Michigan’s “urgency and necessity” for reauthorization of power operations at Palisades as a material circumstance not considered

¹⁷⁷ Exemption Request, Enclosure 1, at 11 (citing Regulatory Improvements for Power Reactors Transitioning to Decommissioning, Regulatory Basis Document (Nov. 20, 2017) (ML17215A010)).

¹⁷⁸ Exemption Request, Enclosure 1, at 11-12.

¹⁷⁹ *Id.* at 12.

¹⁸⁰ Petition at 37.

¹⁸¹ Petition at 37.

when § 50.82 was approved.¹⁸² For these reasons, the Petitioners' arguments are unsupported and do not demonstrate that a genuine dispute exists with the application on a material issue of fact or law.

Next, the Petitioners appear to challenge Holtec's approach to seeking reauthorization to restart power operations at Palisades. The Petitioners state that "Holtec insists that its scheme to restart is just a simple matter of getting the requested exemption and then a few license amendments."¹⁸³ The Petitioners then quote a portion of an interview with Commissioner Crowell and assert that "Commissioner Crowell acknowledges that a Palisades restart would be a difficult and complicated process."¹⁸⁴ The Petitioners' arguments here, however, are not clear and they do not explain how the Commissioner's statements support their position that the criteria in § 50.12(a)(2)(vi) have not been met. To the extent that the Petitioners are challenging Holtec's use of the existing regulatory framework, such arguments are precluded by 10 C.F.R. § 2.335 and are otherwise immaterial and outside the scope of this proceeding.

The Petitioners also argue that "Holtec relies on the fact of having monetary support appropriated by the Michigan legislature to support its argument that restarting Palisades is in the public interest."¹⁸⁵ However, this assertion lacks any factual basis. The Exemption Request does not appear to rely on monetary support in the justification of the § 50.12(a)(2)(vi) criteria, and the Petitioners provide no specific references or page numbers to any such discussion. Accordingly, these arguments are unsupported and do not raise a genuine, material dispute with the application.

¹⁸² Exemption Request, Enclosure 1, at 12.

¹⁸³ Petition at 37.

¹⁸⁴ Petition at 37-38.

¹⁸⁵ Petition at 38.

The Petitioners argue that “political support of Holtec does not equate to a scientific or technical basis for the restart scheme.”¹⁸⁶ As support, the Petitioners attempt to rely on their expert, Mark Z. Jacobson, who purportedly “makes it clear that nuclear power is not the energy source of the future, and consequently restarting Palisades is not in the public interest.”¹⁸⁷ However, the Petitioners’ claims appear to lack sufficient expert support as the discussion referenced in the Petition does not actually appear in Mr. Jacobson’s Declaration that is attached as Exhibit C to the Petition.¹⁸⁸ Moreover, to the extent that the Petitioners’ arguments here seek to challenge the State of Michigan’s decision-making with respect to its energy and economic policies related to nuclear power, the Staff notes that those matters fall outside the NRC’s regulatory authority.¹⁸⁹ Accordingly, the Petitioners’ assertions are unsupported and immaterial to the findings the Staff must make to issue the Exemption Request.

The Petitioners also rely on statements from Kevin Kamps and Arnold Gundersen regarding Holtec’s fixed-price power purchase agreement to assert that public monetary support from the State of Michigan and Federal Government “does not mean Holtec’s scheme is in the public interest.”¹⁹⁰ However, these assertions also appear to lack expert support as neither Kevin Kamps nor Arnold Gundersen purport to be experts regarding the financial arguments raised by the Petitioners in proposed Contention 1.¹⁹¹ Moreover, as noted above, the Petitioners

¹⁸⁶ Petition at 38-39. The Staff notes that the Petitioners’ statements regarding “political support” appear to be based on “monetary support” as discussed in the Petitioners’ preceding sentence. *Id.*

¹⁸⁷ Petition at 39.

¹⁸⁸ *Compare* Petition at 39 *with* Petition, Exhibit C (Declaration of Mark Z. Jacobson). The Petitioners cite to page 9 of Exhibit C, but the 9th page appears to be an unrelated portion of Mr. Jacobson’s Curriculum Vitae (CV).

¹⁸⁹ See Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,468 (June 5, 1996) (“The NRC acknowledges the primacy of State regulators and utility officials in defining energy requirements and determining the energy mix within their jurisdictions.”).

¹⁹⁰ Petition at 39-40.

¹⁹¹ The Declaration of Kevin Kamps describes Mr. Kamps as a “radioactive waste specialist,” and does not include a resume or CV. See Petition, Exhibit B (Kamps Declaration). Similarly, based on a review of

do not challenge the specific public interest justifications in the Exemption Request. Additionally, to the extent the Petitioners' challenge Holtec's scientific or technical basis for restart, they do not assert that any specific safety regulations are unmet or specify some sort of deficiency with the restart-related amendments subject to this proceeding. Therefore, the Petitioners do not demonstrate that there is a genuine, material dispute with the application.

For the reasons discussed above, the Petitioners' assertions are inadmissible because they are out of scope, immaterial, unsupported and do not raise a genuine, material dispute with the Exemption Request under § 2.309(f)(1)(iii)-(vi).

d. The Petitioners Do Not Challenge or Do Not Otherwise Raise a Genuine, Material Dispute with the Exemption Request Regarding the Special Circumstances Criteria in § 50.12(a)(2)(i), (iv), and (v)

The Petitioners also mention the special circumstances criteria under § 50.12(a)(2) that HDI does not rely upon in its Exemption Request, including § 50.12(a)(2)(i), (iv), and (v). The Petitioners do not appear to raise any challenges with respect to the criteria in § 50.12(a)(2)(i) and (v), and acknowledge that Holtec does not rely on these criteria in the Exemption Request.¹⁹² Regarding the criteria in § 50.12(a)(2)(iv) that special circumstances are present where "[t]he exemption would result in benefit to public health and safety that compensates for any decrease in safety that may result from the grant of the exemption," the Petitioners assert that restart of Palisades would result in harm to public health and safety.¹⁹³ Specifically, the Petitioners rely on statements from Kevin Kamps regarding Palisades' embrittled reactor.¹⁹⁴

his Declaration and CV, the Staff notes that Mr. Gundersen, who has a Masters degree in Nuclear Engineering and extensive background in nuclear engineering, does not appear to have formal education or training relevant to the financial topics discussed in proposed Contention 1. See Petition, Exhibit A.

¹⁹² Petition at 34, 37.

¹⁹³ Petition at 36.

¹⁹⁴ Petition at 36 (citing Petition, Exhibit B, at 4).

However, Mr. Kamps provides no factual basis for his conclusory assertions,¹⁹⁵ nor does he establish his expertise on the subject of embrittlement.¹⁹⁶ Nevertheless, as the Petitioners acknowledge, Holtec does not actually rely § 50.12(a)(2)(iv) to support their justification in the Exemption request. Accordingly, the Petitioners' assertions are inadmissible because they are unsupported and do not raise a genuine, material dispute with the Exemption Request under § 2.309(f)(1)(v)-(vi).

For the reasons discussed above, proposed Contention 1 is not admissible under 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi).

C. Proposed Contention 2 Is Inadmissible Because It Raises Claims that Are Immaterial and Lack Factual Support

Proposed Contention 2 is stated as follows:

An Environmental Impact Statement (EIS), not an Environmental Assessment (EA), must be compiled for the proposed restart of the Palisades reactor. An EIS is required because of the major regulatory decision sought by Holtec.¹⁹⁷

In proposed Contention 2, Petitioners argue that Holtec is seeking the issuance or renewal of a reactor operating license and that, consequently, the Staff must prepare an EIS in accordance with 10 C.F.R. § 51.20(b).¹⁹⁸ Petitioners also assert that there is "no regulatory pathway" to restart reactor operations at Palisades other than by applying for a new operating license under 10 C.F.R. Part 50,¹⁹⁹ and that even if the existing regulatory framework could be used, an EIS would still be required under 10 C.F.R. § 51.20(b)(2).²⁰⁰ Petitioners additionally claim that Holtec has failed to submit an environmental report and that the environmental

¹⁹⁵ See *USEC*, CLI-06-10, 63 NRC at 472.

¹⁹⁶ As explained previously, the Kamps Declaration describes Mr. Kamps as a "radioactive waste specialist," and does not include a resume or CV. See Kamps Declaration.

¹⁹⁷ Petition at 40.

¹⁹⁸ *Id.* at 41.

¹⁹⁹ *Id.* at 44.

²⁰⁰ *Id.* at 41.

document Holtec did submit fails to comply with NRC requirements for environmental reports.²⁰¹ Finally, Petitioners assert that the potential restart of reactor operations at Palisades is a “major federal action” under NEPA,²⁰² and that an EIS is required due to the “major regulatory decision sought by Holtec.”²⁰³

Staff Response: Proposed Contention 2 does not satisfy 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi) and therefore is inadmissible because it (1) addresses matters that are immaterial to the NRC findings necessary to grant the license amendment requests, (2) lacks adequate factual support, and (3) does not demonstrate a genuine dispute with the licensee on a material issue of law or fact.

First, Petitioners assert that “Holtec seeks the issuance or renewal of a full power or design capacity license to operate Palisades, *i.e.*, an operating license.”²⁰⁴ This is incorrect. As part of the potential restart of reactor operations at Palisades, HDI has submitted four license amendment requests—which are the subject of this proceeding—among other related requests. HDI has not submitted an application for a new or renewed operating license under 10 C.F.R. Part 50.

Second, Petitioners claim that with the end of operations at Palisades, “Holtec now has an operating license with conditions that permanently shut down the reactor.”²⁰⁵ As a result, Petitioners assert, “[t]here is no regulatory pathway” by which Holtec may restart the reactor other than through submission of a new operating license application under 10 C.F.R. Part 50,²⁰⁶

²⁰¹ *Id.* at 43.

²⁰² *Id.* at 44-45.

²⁰³ *Id.* at 40.

²⁰⁴ *Id.* at 41.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 44.

and that, as a consequence, the Staff must prepare an EIS.²⁰⁷ But as discussed in Discussion Section II.A above, the Staff's consideration of all restart-related requests is governed by the existing regulations and Commission-established policy that "the NRC may consider requests from licensees to resume operations under the existing regulatory framework."²⁰⁸ In carrying out this Commission policy, the Staff has concluded, generally, that a facility licensee in decommissioning may apply to use the license amendment, transfer, and exemption processes, as applicable, to seek approval for the actions necessary to authorize the restart of a reactor in decommissioning.

As explained in Discussion Section II.A above, the Staff reached this conclusion in part because the 10 C.F.R. Part 50 operating license for a reactor in decommissioning continues in effect during the decommissioning process until it is terminated, such that entering the decommissioning process effectuates a change in license authority but does not change the form of the license itself.²⁰⁹ In other words, the Palisades license remains a renewed facility operating license until terminated at the conclusion of the decommissioning process.²¹⁰ This conclusion is also supported by other regulatory provisions, including 10 C.F.R. §§ 50.59 and 50.54 and the 1996 Decommissioning Rule, as well as by Commission precedent and by the Palisades license itself.²¹¹

As a result, the NRC's regulatory requirements for operating licenses continue to apply to Palisades, and licensing and regulatory requests within the existing regulatory framework,

²⁰⁷ *Id.* (citing 10 C.F.R. § 51.20(b)(2) (requiring preparation of an EIS for a new or renewed license to operate a nuclear power reactor under 10 C.F.R. Part 50)).

²⁰⁸ 2021 PRM Denial, 86 Fed. Reg. at 24,363 (denying a petition for rulemaking).

²⁰⁹ *See supra* Discussion Section II.A; 10 C.F.R. § 50.51(b) ("Each license for a facility that has permanently ceased operations, *continues in effect* beyond the expiration date to authorize ownership and possession of the production or utilization facility, until the Commission notifies the licensee in writing that the license is terminated.") (emphasis added).

²¹⁰ *See supra* Discussion Section II.A.

²¹¹ *See id.*

including license amendment, transfer, and exemption requests, may be used to restore the licensed authority for reactor operation.²¹² In accordance with this Commission policy and acting within the existing regulatory framework, HDI submitted four license amendment requests, among other related requests, to support the potential restart of reactor operations at Palisades. The Staff accepted these requests for docketing and is in the process of conducting its detailed technical review to determine their sufficiency; no approvals have been granted. Therefore, the Petitioners' argument is incorrect.

Petitioners also assert that an EIS must still be prepared even if it is assumed, *arguendo*, that the existing regulatory framework could be used to enable restart of a reactor in decommissioning, because 10 C.F.R. § 51.20(b)(2) requires preparation of an EIS.²¹³ But this provision applies to applications for new or renewed operating licenses and is irrelevant to this proceeding on HDI's license amendment requests.²¹⁴ Petitioners' arguments related to the purported need for an EIS are therefore inadmissible under 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi) because they address matters that are immaterial to the NRC findings necessary to grant the license amendment requests, lack adequate factual support, and fail to show that a genuine dispute exists on a material issue of law or fact.

Third, Petitioners argue that Holtec has not submitted an environmental report and that the Staff is incorrectly treating Enclosure 2 of the Exemption Request as an environmental report.²¹⁵ But as discussed in Discussion Section II.B above, the "new and significant" environmental review found in Enclosure 2 of the Exemption Request was submitted to aid the NRC in its environmental review, which the Staff is conducting under NEPA § 102(2), among

²¹² See *id.*

²¹³ Petition at 41.

²¹⁴ 10 C.F.R. § 51.20(b)(2) (requiring an EIS for the "[i]ssuance or renewal of a full power or design capacity license to operate a nuclear power reactor" under 10 C.F.R. Part 50).

²¹⁵ Petition at 43.

other provisions. Enclosure 2 therefore meets the definition of “Environmental Report” in 10 C.F.R. § 51.14.²¹⁶

Petitioners also claim that the requirements in 10 C.F.R. §§ 51.53 and 51.45 apply to HDI’s Environmental Report and that the Environmental Report fails to comply with those requirements.²¹⁷ This is incorrect because HDI is not an applicant for a new or renewed operating license or otherwise requesting a licensing action of the type to which those sections apply.²¹⁸ But even assuming either §§ 51.53 or 51.45 were applicable here, Petitioners do not explain how the Environmental Report fails to comply with the requirements in those provisions or point to specific portions of the Environmental Report that are deficient. Nor do Petitioners explain how their assertion of deficiencies in the Environmental Report is relevant to proposed Contention 2, which relates to whether the NRC must prepare an EIS in the first instance instead of an EA. Petitioners’ arguments related to the Environmental Report address matters that are immaterial to the NRC findings necessary to grant the license amendment requests, lack factual support, and fail to show that a genuine dispute exists on a material issue of law or fact, and therefore are inadmissible under 10 C.F.R. 2.309(f)(1)(iv), (v), and (vi).

Lastly, Petitioners argue that restarting reactor operations at Palisades is a “major federal action” under NEPA,²¹⁹ and the caption for proposed Contention 2 asserts that the NRC

²¹⁶ 10 C.F.R. § 51.14 (defining “Environmental Report” as “a *document* submitted to the Commission by an applicant for a permit, license, or other form of permission, or an amendment to or renewal of a permit, license or other form of permission, or by a petitioner for rulemaking, *in order to aid the Commission in complying with section 102(2) of NEPA*”) (emphasis added).

²¹⁷ Petition at 43.

²¹⁸ See 10 C.F.R. § 51.53(b)-(c) (specifying environmental-report requirements applicable to new and renewed operating license applicants); § 51.45(a) (referring to environmental reports “required by §§ 51.50, 51.53, 51.54, 51.55, 51.60, 51.61, 51.62, or 51.68,” where none of the cited regulations apply to reactor license amendments in this context). Section 51.53(d) refers to environmental reports for certain types of amendment requests, but these are not associated with restart of reactor operation for a plant in decommissioning.

²¹⁹ Petition at 44-45.

must prepare an EIS “because of the major regulatory decision sought by Holtec.”²²⁰ But whether an EIS must be prepared does not turn on whether a proposed NRC action is a “major federal action” under NEPA. Pursuant to NEPA § 102(2)(C), a “detailed statement” (i.e., an EIS) must be prepared for “major Federal actions *significantly affecting the quality of the human environment*.”²²¹

As the Staff stated in its Notice of Intent to Prepare EA and Conduct Scoping, the Staff does not yet know the significance of potential impacts from the proposed actions and is preparing an EA to evaluate the proposed actions’ environmental impacts.²²² If the Staff determines in its EA that the proposed license amendments would significantly affect the quality of the human environment, the Staff would be required to prepare an EIS. The mere fact that a proposed action is a “major federal action” under NEPA, however, does not on its own necessitate preparation of an EIS. Indeed, the statutory text of NEPA itself indicates that the term “major federal action” may be associated with an EA as well as an EIS.²²³ Proposed Contention 2 is thus inadmissible under 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi) because it addresses matters that are immaterial to the NRC findings necessary to grant the license amendment requests, lacks factual support, and fails to show that there is a genuine dispute on a material issue of law or fact.

For all of the reasons stated above, proposed Contention 2 is inadmissible and should be rejected.

²²⁰ *Id.* at 40.

²²¹ NEPA § 102(2)(C), 42 U.S.C. 4332(2)(C) (emphasis added); *see also* 10 C.F.R. § 51.20(a) (requiring preparation of an EIS where the proposed NRC action is a “major Federal action significantly affecting the quality of the human environment”).

²²² Notice of Intent to Prepare EA and Conduct Scoping, 89 Fed. Reg. at 53,660.

²²³ *See* NEPA § 107(h)(2)(B)(iii), 42 U.S.C. § 4336a(h)(2)(b)(iii) (providing that for certain congressional reports, agencies are to provide the date on which they “issued a notice of intent to prepare the environmental assessment or environmental impact statement for the major Federal action”).

D. Proposed Contention 3 Is Inadmissible Because It Raises Immaterial and Unsupported Claims

Proposed Contention 3 is stated as follows:

Presently, pursuant to 10 C.F.R. § 50.82(a)(2), the current Palisades operating license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. What Holtec obtained from Entergy when Holtec purchased Palisades, and what Holtec now has, is an operating license conditioned by the certification that nuclear fuel has permanently been removed from the core, and consequently no new fuel may be introduced into the Palisades reactor, nor may it be operated to produce electricity. In order to resume power operations at Palisades, Holtec must obtain a new operating license.²²⁴

The proposed contention's Basis argues that "[b]oth Holtec and the NRC have admitted that there is no provision in the AEA or NRC regulations for reversing a permanent shutdown and restarting a nuclear reactor that has been placed in decommissioning status."²²⁵ The Petitioners further assert that the Palisades license is subject to a condition prohibiting fuel loading and operation, and that "[w]ithout an unconditioned operating license, Holtec cannot simply amend what it does not have."²²⁶ Finally, Petitioners state that "Holtec has not cited to any law or regulation that would allow the proposed amendment of a terminated license" and that "[t]here is no procedure in the NRC rules for reinstating the operating license."²²⁷

Staff Response: Proposed Contention 3 does not meet the contention admissibility criteria in § 2.309(f)(1)(iv), (v), or (vi) because it raises immaterial and unsupported claims that are based on an inaccurate understanding of the current Palisades license and the NRC's regulatory processes. As discussed above in Discussion Section II.A, existing regulatory

²²⁴ Petition at 45.

²²⁵ *Id.*

²²⁶ *Id.* at 45-46.

²²⁷ *Id.* at 47. The Basis also repeats the claim from proposed Contention 2 that an EIS is required for restart and references exemption arguments from proposed Contention 1. *Id.* at 45-48. Those claims are fully addressed above and will not be further considered here except as necessary to address the arguments of this proposed contention.

processes, including the license amendment process, may be used to restore the authority to operate the reactor because HDI still holds an operating license. The Palisades license is still a renewed facility operating license, even during decommissioning, because the license “continues in effect” after permanent cessation of operation until the license is terminated.²²⁸ While the docketing of the § 50.82(a)(1) certifications means that reactor operation is no longer authorized, that is a change in license authority, not a change to the form of the license. Moreover, several other NRC regulations and the license itself all indicate that the Palisades license is a renewed facility operating license.²²⁹ Thus, Petitioners’ claim that NRC rules lack a procedure for “reinstating the operating license” is inapposite.

As explained previously, the Palisades license no longer authorizes reactor operation because (1) § 50.82(a)(2) currently prohibits reactor operation and (2) previously approved amendments removed the authorities and requirements for reactor operation from the license. However, the exemption process in 10 C.F.R. § 50.12 may be used to remove regulatory restrictions, including the one in § 50.82(a)(2), provided that special circumstances, as required by 10 C.F.R. § 50.12(a)(2) are present, and the license amendment process may be used to restore the authorities and requirements for reactor operation that were removed by previous amendments. The Petitioners neither explain why changes that were made by license amendment may not be undone by the same process nor explain how doing so would violate NRC requirements for license amendments.

The Petitioners argue that “Holtec and the NRC have admitted that there is no provision in the AEA or NRC regulations” for restart,²³⁰ but Petitioners cite no support for this assertion. The Staff acknowledges that the AEA and NRC regulations do not *specifically* address restart of

²²⁸ 10 C.F.R. § 50.51(b).

²²⁹ See Discussion Section II.A

²³⁰ Petition at 45.

reactors in decommissioning, but the general regulatory provisions for amendment of licenses, exemptions, and transfers adequately cover the approvals needed for reactor restart, as explained above in Discussion Section II.A. And no provision of the AEA or NRC regulations specifically prohibit restart. The Petitioners do not address the license amendment provisions, much less explain why they could not apply, by their terms, and together with the exemption request, to exit decommissioning and restart a reactor, generally, or to restart Palisades, specifically. The Staff's detailed technical review is underway and no decisions to approve restart have been made, but the Staff has identified no legal barrier to HDI requesting to exit decommissioning and restart operation of Palisades.

The Petitioners' claim that "Holtec has not cited to any law or regulation that would allow the proposed amendment of a terminated license" is unsupported and incorrect on two counts. First, the amendment requests cite to the regulations for license amendments.²³¹ Second, the Palisades license has not been terminated and is still in effect. In accordance with 10 C.F.R. § 50.82(a)(11), termination of the license would not occur until the completion of dismantlement in accordance with an approved license termination plan and a final radiation survey showing that the site and facility meet the decommissioning criteria in 10 C.F.R. Part 20, Subpart E. These events have not occurred and would not occur until well into the future even if HDI was not seeking to restart operation of Palisades.

Finally, Petitioners contend that § 50.82(a)(2) conditions the license to prevent fuel load and operation and that "[w]ithout an unconditioned operating license, Holtec cannot simply amend what it does not have."²³² However, the exemption process in 10 C.F.R. § 50.12 applies to all the regulations in 10 C.F.R. Part 50 and may, therefore, form the basis for a request to remove the restriction regarding loading fuel and operation in § 50.82(a)(2), as discussed

²³¹ See, e.g., Primary Amendment Request at 1, 2 (citing 10 C.F.R. §§ 50.90, 50.91, 50.92).

²³² Petition at 46.

above, and Petitioners' proposed Contention 1 that contests the Exemption Request is inadmissible. To the extent Petitioners may be presenting a general argument that only an unconditioned operating license may be amended, that argument is incorrect. All NRC-issued operating licenses have conditions, and NRC regulations provide for the amendment of licenses.²³³ By its very nature, the amendment of a license includes adding, removing, or otherwise modifying conditions of the license. Therefore, this argument also does not support contention admissibility.

For the reasons discussed above, proposed Contention 3 raises immaterial issues, lacks adequate support, and does not demonstrate a genuine, material dispute with the application. Therefore, proposed Contention 3 does not satisfy § 2.309(f)(1)(iv), (v), or (vi).

E. Proposed Contention 4 Is Inadmissible Because It Raises Immaterial, Unsupported, and Out of Scope Arguments that Impermissibly Challenge NRC Regulations

Proposed Contention 4 is stated as follows:

Holtec and the NRC admit that there is no provision in law or regulation for the NRC to authorize the restart of Palisades as a closed reactor. They are cobbling together a "pathway" to restart, using a "creative" procedure based on existing regulations that they believe allows Holtec to bypass the requirement of compiling a new Updated Final Safety Analysis Report (UFSAR) in favor of returning the UFSAR Revision 35, which was in place when the Palisades reactor was closed. Since there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by Holtec.²³⁴

The Petitioners offer four distinct arguments in support of Contention 4 that the Staff will address as Bases A, B, C, and D.²³⁵ Under Basis A, the Petitioners claim that authorizing the restart of a reactor in decommissioning "is a major question lacking clear Congressional

²³³ See 10 C.F.R. §§ 50.90, 50.91, 50.92.

²³⁴ Petition at 48.

²³⁵ These four bases correspond to Subsections A through D under the header "Facts Upon Which Petitioners Intend to Rely In Support of This Contention." *Id.* at 51-63.

authority.”²³⁶ The Petitioners further assert the NRC lacks “regulatory authority” to grant the requested amendments because “there is no set procedure in the NRC regulations for restarting a closed reactor.”²³⁷ In Basis B, the Petitioners argue that HDI cannot use the 10 C.F.R. § 50.59 process “to reinstate UFSAR Revision 35” because § 50.59 allows only “narrow and minimal” changes.²³⁸ The Petitioners specifically contend that HDI will need to make changes as a result of climate change that will “exceed the minimum change thresholds of 10 C.F.R. § 50.59(c)(2).”²³⁹ For Basis C, the Petitioners criticize HDI’s practices in maintaining the steam generators during decommissioning and argue that HDI’s strategy to repair the steam generators tubes “is a major engineered change” and “may cause additional unforeseen troubles.”²⁴⁰ Under Basis D, the Petitioners claim that there was a “[m]ass destruction” of quality assurance (QA) records that “will make restoration of operations very difficult or impossible.”²⁴¹

Staff Response: Proposed Contention 4, which claims that the “NRC has no authority to approve the license amendments requested by Holtec,”²⁴² is inadmissible because it rests on immaterial, unsupported, and out-of-scope arguments that do not demonstrate a genuine, material dispute with HDI. In addition, the fundamental argument of the proposed contention, that the NRC lacks authority to approve the amendments, impermissibly challenges NRC regulations. Moreover, three of the four Bases are not related to the proposed contention; regardless, the assertions therein are immaterial, unsupported, and out of scope. For this

²³⁶ *Id.* at 51.

²³⁷ *Id.*

²³⁸ *Id.* at 55.

²³⁹ *Id.* at 57.

²⁴⁰ *Id.* at 61-62.

²⁴¹ *Id.* at 63.

²⁴² Petition at 48.

reason, proposed Contention 4 does not satisfy § 2.309(f)(1)(ii), (iii), (iv), (v), (vi), and raises challenges barred by § 2.335.

1. *The Petitioners' Basis A "Major Questions Doctrine" Arguments Are Inadmissible*

The Petitioners' arguments under Basis A are inadmissible because they are immaterial and inadequately supported; do not raise a genuine, material dispute with the licensee; and challenge NRC regulations.²⁴³ To begin, the situation here comes nowhere close to implicating the "major questions" doctrine. In *West Virginia v. EPA*, the Court held that the doctrine applied where the Federal agency "claimed to discover ... unheralded power representing a transformative expansion in its regulatory authority" in the "vague language" of an "ancillary provision" of a "long-extant" and "rarely ... used" statutory provision that had been designed as a "gap filler."²⁴⁴ Other "major questions" decisions discussed by the Court similarly involved a major asserted expansion of agency authority based on "cryptic" or otherwise unclear text.²⁴⁵ As the Court stated, "Extraordinary grants of regulatory authority are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle device[s].'"²⁴⁶ Here, however, the Staff is not asserting a major expansion of hitherto unclaimed statutory authority. Rather, the Staff is evaluating amendment and exemption requests from an existing licensee under NRC regulations for a plant already licensed and regulated by the NRC to determine whether it is safe to operate again under a proposed licensing basis similar to what the plant was operated under before.

In addition, the Staff is considering these requests under clear and long-standing license amendment and exemption authorities. For example, the Staff is applying its long-standing license amendment regulations, and long-standing AEA provisions establish the NRC's

²⁴³ See 10 C.F.R. §§ 2.309(f)(1)(iv), (v), (vi); 2.335.

²⁴⁴ *West Virginia v. Environmental Protection Agency*, 597 U.S. 697, 724-25 (2022) (cleaned up).

²⁴⁵ *Id.* at 721-722.

²⁴⁶ *Id.* at 723 (quoting *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001)) (alteration in original)

authority to issue license amendments.²⁴⁷ Similarly, the Staff is applying the criteria in its exemption regulation, § 50.12, which attained its current form in a 1985 final rule that affirmed the NRC's statutory authority to issue exemptions.²⁴⁸ Neither the Staff nor HDI is proposing novel or unusual interpretations of the NRC's existing statutory authority or employing vague, ancillary statutory provisions to justify expansions of that statutory authority. Indeed, as explained above, the restart-related amendment requests largely aim to undo previously-issued license amendments that removed, at the licensee's request, the authority to operate. And the Exemption Request seeks relief from a regulatory (not statutory) prohibition on operation of a plant in decommissioning that applies to Palisades only because of a voluntary choice by Entergy, not due to safety concerns.

The Petitioners contend that the "major questions" doctrine applies "in cases addressing issues of economic and political significance,"²⁴⁹ but the doctrine is not as expansive as that. True, the Court referenced economic and political significance, but only in combination with consideration of the "history and the breadth of the authority that [the agency] has asserted,"²⁵⁰ which is illustrated by the discussion above on cases where the agency argued for a major expansion of statutory authority on thin bases. The Petitioners also cite the decision by the U.S. Court of Appeals for the Fifth Circuit in *Texas v. NRC*,²⁵¹ but that case was wrongly decided because, like the Petitioners, the court of appeals applied the "major questions" doctrine based solely on the "economic and political significance" of the issue, and not the other relevant factors

²⁴⁷ See 10 C.F.R. §§ 50.90, 50.91, 50.92; AEA §§ 182b., 189, 42 U.S.C. §§ 2232(b), 2239.

²⁴⁸ See 1985 Specific Exemptions Rule, 50 Fed. Reg. at 50,766-67.

²⁴⁹ Petition at 53.

²⁵⁰ *West Virginia v. EPA*, 597 U.S. at 721 (internal quotation marks omitted, alteration in original).

²⁵¹ Petition at 53 (citing *Texas v. Nuclear Regulatory Commission*, 78 F.4th 827 (5th Cir. 2023), *cert. granted sub nom. NRC v. Texas*, No. 23-1300, 2024 WL 4394124 (U.S. Oct. 4, 2024), and *cert. granted sub nom. Interim Storage Partners, LLC v. Texas*, No. 23-1312, 2024 WL 4394130 (U.S. Oct. 4, 2024)).

cited in *West Virginia v. EPA*.²⁵² The court of appeals' analysis of the issue, amounting to two paragraphs, does not constitute a persuasive application of *West Virginia v. EPA*.

Regarding economic and political significance, the Petitioners argue that restart of Palisades is unprecedented and has national implications for the potential restart of two other plants.²⁵³ However, the requested restart of Palisades involves the use of long-standing licensing and regulatory processes as discussed above. Also, the economic decision of Palisades' owners to seek restart is not connected to the economic decisions of other owners of other plants in decommissioning. Further, the Staff fails to see how the requests challenged here—involving potentially reauthorizing operation of an already-built reactor at an existing site under an existing license with a proposed licensing basis similar to what the plant previously operated under—has substantially more economic and political significance than licensing construction *and* operation of a new power reactor, which may also involve a new site and a new licensing basis. Petitioners also contend that restart of Palisades is more significant than the reinstatement of the terminated construction permit for Bellefonte.²⁵⁴ Similarly, the Staff does not understand how the requests challenged here have substantially more economic and political significance than reinstating a terminated construction permit that authorizes continued construction of a power reactor (with the ultimate purpose of licensed operation). Thus, if the challenged restart requests involve an issue of such “economic and political significance” that the “major questions” doctrine applies, then the doctrine would appear to apply to all new reactor licensing, a result that would undermine the Court’s characterization of the doctrine as one reserved for “extraordinary cases.”²⁵⁵

²⁵² Compare *Texas v. EPA*, 78 F.4th at 844 with *West Virginia v. EPA*, 597 U.S. at 721-23, 24-25.

²⁵³ Petition at 52.

²⁵⁴ Petition at 55.

²⁵⁵ *West Virginia v. EPA*, 597 U.S. at 721.

Further, even if the “major questions” doctrine applied, it would serve only as a guide for interpreting statutory language.²⁵⁶ The Petitioners neglect to even cite the statutory language they believe is implicated by the restart-related amendment and exemption requests, much less explain how the NRC is improperly interpreting this language or why it could not be applied to the licensee requests being challenged here. As explained above, the proposed use of the amendment and exemption processes are well within the NRC’s statutory authority. Therefore, as explained above, Basis A does not satisfy the contention admissibility criteria in § 2.309(f)(1)(iv), (vi).

Moreover, the Petitioners do not argue in Basis A that the standards for license amendments and exemptions are not satisfied. Instead, the Petitioners appear to be challenging the license amendment and exemption processes, themselves, arguing that these processes may not be applied to restart of Palisades.²⁵⁷ This represents a challenge to the NRC’s regulations, which § 2.335 forbids absent a petition for waiver or exception (accompanied by affidavit) that demonstrates *prima facie* that “special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted.”²⁵⁸ The Petitioners have not cited § 2.335, much less submitted a petition for waiver or exception (with affidavit) that meets the requirements of § 2.335.

Finally, the Petitioners’ other Basis A arguments are similarly unavailing. For example, the Petitioners claim that “the NRC has no regulatory authority to grant the license amendments requested by Holtec” because “there is no set procedure in the NRC regulations for restarting a

²⁵⁶ *Id.* at 721-722.

²⁵⁷ Petition at 51-53.

²⁵⁸ 10 C.F.R. § 2.335(a)-(c). Whether special circumstances are present is assessed under the *Millstone* factors. *Exelon Generation Co.* (Limerick Generating Station, Units 1 & 2), CLI-13-7, 78 NRC 199, 205 (2013) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560 (2005)).

closed reactor.”²⁵⁹ The Petitioners also contend that the decommissioning process set forth in 10 C.F.R. § 50.82 does not “indicat[e]” or “hint” that “the decommissioning process leading to license termination can be reversed.”²⁶⁰ While the Petitioners are correct that there is no specific NRC regulation that addresses exiting decommissioning and restarting a reactor, the Petitioners’ arguments do not relate to or support the Basis A assertion that the NRC lacks *statutory* authority to grant the amendment and exemption requests. The Petitioners also overlook the Commission’s policy that requests to exit decommissioning and restart a reactor could be considered under the existing regulatory framework.²⁶¹ Also, the Petitioners’ assertions here largely mirror arguments in their inadmissible proposed Contention 3, and the Petitioners do not explain which criteria in the license amendment or exemption regulations are unsatisfied, much less provide a supported argument therefor that is sufficient to demonstrate a genuine dispute with HDI. For example, that § 50.82(a) does not hint that a plant in decommissioning may restart operation does not establish that an exemption seeking authority to exit decommissioning and restart operation of the reactor is inappropriate because the exemption process exists to address matters not contemplated during rulemakings.²⁶² Therefore, this aspect of Basis A does not satisfy § 2.309(f)(1)(iv)-(vi).

The Petitioners also assert that “the overall design of the Palisades reactor is not licensable to 21st century standards,”²⁶³ but this claim does not relate to, much less support, the statutory authorization concerns made in Basis A or the claim made in the proposed contention

²⁵⁹ Petition at 51.

²⁶⁰ *Id.* at 54.

²⁶¹ 2021 PRM Denial, 86 Fed. Reg. at 24,363.

²⁶² See 1985 Specific Exemptions Rule, 50 Reg. at 50,764 (stating, “The Commission believes that it is not possible for its regulations to predict and accommodate every conceivable circumstance”).

²⁶³ Petition at 52.

that “the NRC has no authority to approve the license amendments requested by Holtec.”²⁶⁴ Even considered independently, the assertion regarding 21st century standards is not admissible because the Petitioners do not (a) identify specific portions of the application that are deficient, (b) show that the issues raised are material to the NRC findings necessary to issue the amendments, (c) or provide sufficient information to demonstrate a genuine dispute with HDI on a material issue of law or fact, as required by § 2.309(f)(1)(iv), (vi). Also, the Petitioners and their expert offer only conclusory assertions and vague, speculative hypothetical scenarios in support of the argument,²⁶⁵ which do not support contention admissibility.²⁶⁶

For the reasons given above, the Petitioners’ Basis A arguments do not meet § 2.309(f)(1)(iv)-(vi) and represent an impermissible attack on NRC regulations contrary to § 2.335.

2. The Petitioners’ Basis B Section 50.59 Process Arguments Are Inadmissible

The Petitioners’ Basis B arguments regarding Holtec’s use of the § 50.59 process are inadmissible under § 2.309(f)(1)(ii), (iii), (iv), (v), and (vi) because they do not constitute a basis for the contention, are immaterial and outside the scope of the proceeding, rely on unsupported speculation, and do not demonstrate a genuine, material dispute with HDI. As discussed below, Basis B is inadmissible because it does not provide support for the proposed contention and otherwise challenges the use of processes outside the scope of this proceeding rather than the specific UFSAR content that the restart-related amendment requests rely on. Also, the Petitioners’ arguments reflect a misunderstanding of how changes to the UFSAR may be

²⁶⁴ *Id.* at 48.

²⁶⁵ Petition at 52; Gundersen Declaration at ¶¶ 54-56.

²⁶⁶ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012) (stating, “Bare assertions and speculation, even by an expert, are insufficient to trigger a full adjudicatory proceeding”) (internal quotation marks omitted); *Power Authority of the State of New York* (James A. Fitzpatrick Nuclear Power Plant & Indian Point Nuclear Generating Unit No. 3), CLI-00-22, 52 NRC 266, 315 (2000) (stating, “Unsupported hypothetical theories or projections, even in the form of an affidavit, will not support invocation of the hearing process”).

approved via license amendment, and how current regulations ensure that the UFSAR will be updated to reflect the outcome of approved license amendments. Further, Basis B relies on unsupported speculation regarding changes that Petitioners believe HDI will need to make in response to climate change. Finally, to the extent that Basis B challenges NRC regulations on license amendment and change control processes, those challenges are not cognizable in this proceeding.

To begin, the Petitioners' claims regarding the § 50.59 process do not appear to relate to, much less support, the only affirmative claim presented in proposed Contention 4: "Since there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by Holtec."²⁶⁷ Therefore, the Basis B arguments do not support the contention as required by § 2.309(f)(1)(ii). To the extent the Petitioners may be challenging the NRC's authority to approve updated FSAR content via license amendment or challenge § 50.59 itself, those challenges are inconsistent with NRC regulations (e.g., §§ 50.59, 50.90, and 50.92) and are therefore prohibited by 10 C.F.R. § 2.335.

Regardless, the Petitioners focus on HDI's reference to using the 10 C.F.R. § 50.59 process to update the FSAR is misplaced because it concerns the implementation of processes outside the scope of the proceeding. The fundamental objective of § 50.59 is to determine whether certain changes to matters described in the FSAR (or tests or experiments not described in the FSAR) require NRC approval in the form of a license amendment.²⁶⁸ In other words, § 50.59 is procedural in nature and implemented to determine *whether* to submit a license amendment request. Any amendment request would come later, and the process for evaluating amendment requests is separate from the § 50.59 process. Moreover, the Primary

²⁶⁷ Petition at 48.

²⁶⁸ See 10 C.F.R. § 50.59(c). See also *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), LBP-15-17, 81 NRC 753, 791 (2015) (citing 10 C.F.R. § 50.59(c)(1)).

Amendment Request describes HDI's plan to "implement[]" the § 50.59 process "coincident with the associated license amendments."²⁶⁹ Thus, HDI's planned use of the § 50.59 process would occur upon implementation of the amendments if they are approved and, therefore, is not part of this proceeding on whether the amendments should be approved in the first place. And while use of the § 50.59 process may lead to future license amendment requests, the Commission has stated, "the prospect of a future license amendment does not create a present hearing opportunity."²⁷⁰ Consequently, the Petitioners' challenge to the use of the § 50.59 process does not satisfy § 2.309(f)(1)(iii), (iv), and (vi) because it is outside the scope of the proceeding and immaterial to the findings the NRC must make to issue the restart-related amendment requests.

The instant proceeding provides members of the public the opportunity to challenge the proposed content of the UFSAR for restart, but the Petitioners have not specifically done so. In accordance with 10 C.F.R. § 50.92(a), the NRC's determination on the amendment requests "will be guided by the considerations which govern the issuance of initial licenses ... to the extent applicable and appropriate." Those considerations include the FSAR content requirements of 10 C.F.R. § 50.34(b) for matters within the scope of the proposed amendments. In proposed Contention 4, the Petitioners acknowledge that HDI proposes to update the UFSAR to reflect Revision 35, the version in effect prior to the plant entering decommissioning.²⁷¹ The Primary Amendment Request has numerous references to UFSAR Revision 35 throughout, both as a general matter and as support for specific license changes.²⁷² The Primary Amendment Request also includes the ADAMS accession number for this revision of the

²⁶⁹ Primary Amendment Request, Enclosure at 4.

²⁷⁰ *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-16-9, 83 NRC 472, 474-75 (2016).

²⁷¹ Petition at 48, 57.

²⁷² See, e.g., Primary Amendment Request, Enclosure at 4, 80.

Updated FSAR.²⁷³ The other restart-related amendment requests also reference UFSAR Revision 35.²⁷⁴ The Petitioners could have specifically explained any purported deficiencies in the content of UFSAR Revision 35 for restart or in how HDI is using Revision 35 in support of specific changes to the license, but the Petitioners neglected to do so. In addition, the Petitioners note that numerous technical specification changes are necessary to restart a plant in decommissioning.²⁷⁵ But the restart-related amendments requests address these changes to the technical specifications, and the Petitioners have not specifically challenged them. As such, the Petitioners have not identified the specific portions of the application they dispute and have not demonstrated a genuine, material dispute with the application as required by 10 C.F.R. § 2.309(f)(1)(vi).

Moreover, even though implementation of § 50.59 is outside the scope of the proceeding, the Staff will, in the interests of eliminating confusion, explain how 10 C.F.R. §§ 50.59(c)(3) and 50.71(e) address updates to the FSAR for information in approved license amendment requests. Taking the latter regulation first, licensees are required by § 50.71(e) to periodically update the FSAR to reflect (among other things) “all safety analyses and evaluations performed by the applicant or licensee ... in support of approved license amendments.” Additionally, § 50.59(c)(3) addresses updates to the FSAR to reflect changes made between the periodic updates under § 50.71(e): “In implementing this paragraph, the FSAR (as updated) is considered to include FSAR changes resulting from evaluations performed pursuant to this section and analyses performed pursuant to § 50.90 since submittal of the last update of the final safety analysis report pursuant to § 50.71 of this part.” The “analyses performed pursuant to § 50.90” are those included or referenced in license

²⁷³ Primary Amendment Request, Enclosure at 96.

²⁷⁴ Administrative Controls Amendment Request, Enclosure at 20; Emergency Plan Amendment Request, Enclosure at 8; MSLB Amendment Request, Enclosure at 3, 6.

²⁷⁵ Petition at 56.

amendment requests.²⁷⁶ Therefore, if the restart-related amendments are approved, existing regulations would require the updated FSAR to reflect those licensee analyses and evaluations submitted in the amendment requests, including the proposed FSAR content described or referenced therein.²⁷⁷ Further, § 50.59(c) would require the licensee to assess subsequent changes to the facility and procedures in support of authorized restart against that updated FSAR to determine whether NRC approval is required. The criteria of § 50.59(c) would require a license amendment for significant changes,²⁷⁸ and any amendment request would be subject to a hearing opportunity.

The Petitioners also cite a Holtec press release regarding replacement of the component cooling water (CCW) heat exchangers and speculate that the licensee will be required to make numerous plant changes due to climate change that will require license amendments under § 50.59.²⁷⁹ However, as explained above, the licensee's implementation of the § 50.59 process is outside the scope of the proceeding and immaterial to the required NRC findings to issue the amendments. Also, the Petitioners never identify a purported deficiency in the application regarding the CCW heat exchangers. Rather, the Petitioners state that "the heat exchanger is

²⁷⁶ See 10 C.F.R. § 50.90 (application requirements for license amendments); 10 C.F.R. § 50.32 (allowing applicants to "incorporate by reference information contained in previous applications, statements or reports filed with the Commission").

²⁷⁷ Although existing regulations address updates to the UFSAR pursuant to approved license amendments as a general matter, the issued amendment may also specify that information within the scope of the NRC's approval that is to be included in the UFSAR. See, e.g., Letter from Robert F. Kuntz, NRC, to David P. Rhoades, Constellation Energy Generation, LLC, "LaSalle County Station, Units 1 and 2 - Issuance of Amendment Nos. 262 and 247 Re: Revised Design Bases of Lower Downcomer Braces (EPID L-2023-LLA-0008)," Enclosure 1 at 2 (Feb. 9, 2024) (ML24018A068) (stating that "[i]mplementation of the amendment shall also include revision of the Updated Final Safety Analysis Report as described in the licensee's letter dated January 12, 2023").

²⁷⁸ See 10 C.F.R. § 50.59(c)(2) (requiring a license amendment for changes that would meet any one of eight criteria, including those that result in "more than a minimal increase" in the likelihood or consequences of accidents or of malfunctions of SSCs important to safety).

²⁷⁹ Petition at 57-61.

not a safety system or component that must be addressed within a Safety Analysis Report”²⁸⁰—the Staff notes that the CCW heat exchangers are in fact discussed in UFSAR Revision 35,²⁸¹ but the Petitioners’ statement shows they are not attempting to challenge the application content regarding the CCW heat exchangers. Further, the Petitioners’ claims regarding potential changes to the rest of the plant are vague and conclusory in nature and founded in speculation—neither they nor their expert provide a factually supported prediction of how climate change will specifically affect the area around Palisades and how such changes would affect how specific components meet the specific design basis parameters and characteristics in the referenced UFSAR Revision 35 such that a change under § 50.59 would need to be considered. Vague, unsupported speculation, even by an expert, does not support contention admissibility.²⁸² Finally, even if Petitioners’ speculation is correct—i.e., that the licensee makes changes in the future that cross the thresholds in § 50.59(c)(2)—the licensee would be required to seek a license amendment from the NRC at that time, and the Petitioners would have an opportunity to challenge that amendment request. Thus, the Petitioners have not demonstrated a dispute with the licensee on a material issue of law or fact as required by § 2.309(f)(1)(vi).

For the reasons given above, the Petitioners’ Basis B arguments regarding Holtec’s use of the § 50.59 process are inadmissible under § 2.309(f)(1)(iii), (iv), (v), and (vi).

3. The Petitioners’ Basis C Steam Generator Arguments Are Inadmissible

In Basis C, the Petitioners criticize the licensee’s maintenance of the steam generators during decommissioning and claim that HDI’s strategy to repair the steam generators tubes (as described in a news article) “is a major engineered change” and “may cause additional

²⁸⁰ Petition at 60.

²⁸¹ See e.g., UFSAR Revision 35, at §§ 9.1.2.3 and 9.3.2.3 (ML21125A331).

²⁸² *USEC*, CLI-06-10, 63 NRC at 457; *Pilgrim*, CLI-12-15, 75 NRC at 714; *Fitzpatrick*, CLI-00-22, 52 NRC at 315.

unforeseen troubles.”²⁸³ The Petition also suggests that the steam generators ought to be replaced rather than repaired.²⁸⁴ However, as discussed below, Basis C does not support the contention, raises immaterial issues that are outside the scope of the proceeding, does not contest the information in the application on steam generators, and does not demonstrate a genuine, material dispute with the licensee. Therefore, Basis C does not satisfy § 2.309(f)(1)(ii), (iii), (iv), or (vi) and is, thus, inadmissible.

First, the Petitioners’ steam generator claims do not relate to or support proposed Contention 4, which claims that “[s]ince there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by Holtec.”²⁸⁵ Therefore, the Basis C arguments do not support the contention as required by § 2.309(f)(1)(ii).

Second, Basis C does not reference or dispute the application’s specific content on steam generators. The Primary Amendment Request has literally hundreds of references to “steam generator” or its abbreviation “SG.”²⁸⁶ These include discussion of TSs 3.4.17, 5.5.8, and 5.6.8 on steam generator tube integrity, the steam generator program, and reports of licensee inspections.²⁸⁷ Further, the UFSAR Revision 35 referenced in the application addresses steam generator tube plugging in the Chapter 14 accident analysis, which the Petition never

²⁸³ *Id.* at 61-62 (italization removed). See also Gundersen Declaration at ¶¶ 89-112.

²⁸⁴ Petition at 62.

²⁸⁵ Petition at 48.

²⁸⁶ See, generally, Primary Amendment Request.

²⁸⁷ *Id.*, Enclosure at 55, 78, 84; Enclosure, Attach. 2 at 3.4.17-1, 3.4.17-2, 5.0-10 to 5.0-12, 5.0-26, 5.0-27. TS 3.4.17 addresses the integrity of the steam generator tubes (including plugging) as this relates to the primary containment pressure boundary function of the steam generators; TS 5.5.8 addresses the steam generator program (including provisions for tube integrity criteria, repair criteria, monitoring, and inspection); and TS 5.6.8 addresses the submission of reports of licensee inspections conducted under TS 5.5.8. *Id.*

discusses.²⁸⁸ Therefore, contrary to 10 C.F.R. § 2.309(f)(1)(vi), Basis C does not specifically identify the portions of the application information on steam generators that Petitioners dispute and the reasons for each dispute, or demonstrate a genuine, material dispute with the application.

Third, Basis C never establishes the materiality of the concerns raised therein to this proceeding. The Petitioners never reference NRC regulatory requirements, much less explain how applicable regulations remain unsatisfied. They suggest that the steam generators be replaced but point to no NRC requirement that they must be replaced. They raise concerns with HDI's repair strategy, but in doing so they take issue with the content of a news article, not the application.²⁸⁹ They also never explain why NRC regulations would make the licensee's specific repair strategy part of this amendment proceeding. The content of the TSs and UFSAR is part of this proceeding, but the Petitioners do not contest this content. The licensee's activities to comply with the operating reactor TSs and comport with an operating reactor UFSAR are subject to NRC inspection and oversight *outside of the proceeding*. Similarly, HDI's past maintenance of the steam generators is outside this proceeding. Therefore, Basis C does not demonstrate that it raises material arguments as required by § 2.309(f)(1)(iv), (vi), and to the extent it challenges licensee activities outside the amendment process, Basis C also does not satisfy § 2.309(f)(1)(iii).

Ultimately, if the restart-related requests are approved, restart would be subject to NRC requirements in the TSs and the regulations (including the requirements in § 50.59 that control changes to the UFSAR). The licensee's compliance with these requirements (including those related to steam generator tube integrity) would be subject to NRC inspection and oversight.

²⁸⁸ See, e.g., UFSAR Revision 35, §§ 14.3, 14.12, 14.17 (ML21125A341).

²⁸⁹ See Petition at 62 (citing Gundersen Declaration at ¶¶ 107); Gundersen Declaration at ¶¶ 105-06 (citing the repair strategy as described in a Reuters news article).

Reactor operation would only be permitted to the extent that the licensee meets the requirements for operation. And the Staff can, and will, take action (including the issuance of orders, if necessary) to ensure that any restart of operation at Palisades is safe. Finally, if HDI's repair strategy requires NRC approval in the form of the license amendment, the Petitioners and their contact would have an opportunity to challenge a new amendment request or a supplement to an existing amendment request on the matter.²⁹⁰

As explained above, the Basis C arguments regarding steam generator issues at Palisades do not support admissibility of proposed Contention 4 because they do not satisfy § 2.309(f)(1)(ii), (iii), (iv), and (vi).

4. The Petitioners' Basis D QA Records Arguments Are Inadmissible

Under Basis D, the Petitioners claim that there was a "[m]ass destruction" of quality assurance (QA) records that "will make restoration of operations very difficult or impossible."²⁹¹ However, Basis D does not support the proposed contention and is itself unsupported, immaterial, and outside the scope of the proceeding, contrary to § 2.309(f)(1)(ii)-(vi).

First, the Petitioners' QA records claims do not relate to or support proposed Contention 4, which asserts that "[s]ince there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by Holtec."²⁹² Therefore, Basis D does not satisfy § 2.309(f)(1)(ii).

Second, Basis D raises arguments within the scope of the transfer proceeding, not this proceeding on the amendment requests. As stated in the Amendments Notice, this proceeding "is limited" to the four restart-related amendment requests listed therein, while the Restart

²⁹⁰ HDI indicated at an October 3, 2024, meeting of the Advisory Committee on Reactor Safeguards (ACRS) that it intended to submit a license amendment request on the steam generators, but the NRC has not yet received a submission from the licensee. The transcript for this ACRS meeting has not yet been released.

²⁹¹ *Id.* at 63.

²⁹² Petition at 48.

Transfer Request was the subject of a separate notice.²⁹³ The QA matters raised in Basis D are addressed in the Restart Transfer Request, not the amendment requests. Regarding QA records, the Restart Transfer Request states:

(d) Quality Assurance Program

[Palisades] is currently operating under its Fleet Decommissioning Quality Assurance Program. Coincident with the transfer of operational authority, HDI will reinstate a power operations [Quality Assurance Program Manual (QAPM)] pursuant to 10 CFR 50.54(a). Upon transfer, OPCO will retain authority and responsibility for the functions necessary to fulfill the quality assurance requirements required by the POTS [i.e., power operations technical specifications] and as specified in the power operations QAPM.

*HDI has maintained IT infrastructure and records required to comply with NRC recordkeeping requirements that will apply upon reinstatement of the POLB [i.e., power operations licensing basis]. OPCO will have full access to all such assets and records following transfer of operational authority.*²⁹⁴

Subsequently, HDI supplemented the transfer application to include a proposed QA program manual for NRC review (QA Program Manual Supplement).²⁹⁵ “[A] proposed contention must be rejected if it raises issues beyond the scope of the proceeding as established by the Commission's hearing notice.”²⁹⁶ Thus, if the Petitioners wished to raise QA matters regarding proposed restart of Palisades, they were required to do so in the transfer proceeding, but they did not file any such claims. Therefore, Basis D is outside the scope of this proceeding and is not material to the required NRC findings to issue the amendments, and Basis D consequently does not satisfy § 2.309(f)(1)(iii), (iv), or (vi).

²⁹³ Amendments Notice, 89 Fed. Reg. at 64,488.

²⁹⁴ Restart Transfer Request, Enclosure 1 at 19-20 (emphasis added).

²⁹⁵ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “Supplement to Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments, Proposed Power Operations Quality Assurance Program Manual, Revision 0” (May 23, 2024) (ML24144A106) (QA Program Manual Supplement).

²⁹⁶ *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), LBP-20-8, 92 NRC 23, 46 (2020) (citing *Public Service Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)).

Third, even if Basis D were somehow within the scope of this proceeding, the arguments therein are unsupported, do not contest the application, and do not demonstrate a genuine, material dispute with the licensee. Based on the Gundersen Declaration, the Petitioners claim a “[m]ass destruction” of QA records occurred in 2022,²⁹⁷ but the Gundersen Declaration does not support the assertion that QA records were, in fact, destroyed. The Gundersen Declaration cites a partial exemption from the QA record retention requirements,²⁹⁸ and Petitioners assume that QA records were actually destroyed on a massive scale. But this is a factually unsupported leap in logic. And as stated in the Restart Transfer Request, “HDI has maintained IT infrastructure and records required to comply with NRC recordkeeping requirements that will apply upon reinstatement of the POLB.”²⁹⁹ The Petitioners do not address, much less provide a sufficiently supported dispute contesting, this statement.³⁰⁰ Therefore, Basis D does not satisfy § 2.309(f)(1)(v), (vi).

For the reasons given above, proposed Contention 4 should not be admitted because it does not satisfy the contention admissibility requirements of § 2.309(f)(1)(ii)-(vi).

F. Proposed Contention 5 Is Inadmissible Because It Is Moot

Proposed Contention 5 is stated as follows:

There is no purpose and need statement appearing in the document the NRC considers to suffice for Holtec’s Environmental Report. Pursuant to 10 C.F.R. § 51.45, an Environmental Report must contain a statement of the purpose for the project.³⁰¹

²⁹⁷ Petition at 63 (citing Gundersen Declaration).

²⁹⁸ Gundersen Declaration at ¶¶ 114-15.

²⁹⁹ Restart Transfer Request, Enclosure 1 at 19-20.

³⁰⁰ By noting that this HDI statement is uncontroverted does not mean that the Staff is claiming that there has been no destruction of any QA records. As noted in an NRC inspection report, some records associated with simulator scenario based testing were lost, but the licensee addressed the issue by reperforming the affected testing, and “simulator fidelity was determined to not be impacted.” Letter to Mike Mlynarek, HDI, from April M. Nguyen, NRC, “Palisades Nuclear Plant – Plant Reference Simulator Inspection Report 05000255/2024010,” Enclosure at 6 (Mar. 20, 2024) (ML24078A315).

³⁰¹ Petition at 63-64 (internal footnote omitted).

The Basis for proposed Contention 5 includes the Petitioners' arguments for why a purpose and need statement is required.³⁰²

Staff Response: Proposed Contention 5 is inadmissible because HDI submitted a response to a request for additional information (RAI) that moots the contention. Proposed Contention 5 is framed as a contention of omission, and such contentions become moot when the applicant supplies the omitted information.³⁰³ On October 4, 2024, HDI supplied a purpose and need statement in an RAI response, which serves to supplement the amendment request and cure the omission.³⁰⁴ Since the asserted omission has been cured, proposed Contention 5 does not establish a genuine dispute with the licensee on a material issue of law or fact as required by § 2.309(f)(1)(vi). Therefore, proposed Contention 5 is inadmissible.³⁰⁵

G. Proposed Contention 6 Is Inadmissible Because It Does Not Demonstrate a Genuine, Material Dispute with the Licensee

Proposed Contention 6 is stated as follows:

There is no presentation of alternatives, nor discussion of the no-action alternative, found in the document the NRC and Holtec claim to suffice as an Environmental Report.³⁰⁶

³⁰² *Id.* at 64-65.

³⁰³ Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 & 4), LBP-19-6, 90 NRC 17, 21 (2019).

³⁰⁴ Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, "Response to Requests for Additional Information Regarding the Proposed Reauthorization of Power Operations of Palisades Nuclear Plant under Renewed Facility Operating License Number DPR-20," Enclosure 2 (Oct. 4, 2024) (ML24278A027) (This RAI response became publicly available in ADAMS on October 14, 2024) (Environmental RAI Response).

³⁰⁵ The Staff notes that there are other arguments made in the proposed contention with which the Staff disagrees. For example, the Petitioners state without support that the Environmental Report submitted by Holtec is not an environmental report. However, as explained previously, the Environmental Report submitted with the Exemption Request and referenced in three of the four amendment requests falls within the definition of "Environmental Report" in 10 C.F.R. § 51.14. Also, the Petitioners claim that the Environmental Report is subject to the requirements of § 51.45, but as discussed above, this regulation does not apply to the restart-related amendment requests. See § 51.45(a) (referring to environmental reports "required by §§ 51.50, 51.53, 51.54, 51.55, 51.60, 51.61, 51.62, or 51.68," where none of the cited regulations apply to reactor license amendments in this context).

³⁰⁶ Petition at 66.

In the Basis for proposed Contention 6, the Petitioners argue that the Environmental Report is required to include a discussion of alternatives, particularly the no-action alternative.³⁰⁷

Staff Response: Proposed Contention 6, formulated as a contention of omission, does not satisfy the contention admissibility requirements in § 2.309(f)(1)(vi) because it does not identify a failure of the application to contain information on a relevant matter as required by law or establish a genuine dispute with the licensee on a material issue of law or fact. The Petitioners assert that the Environmental Report does not present alternatives or discuss the no-action alternative, but both of these claims are untrue. The Environmental Report discusses the no-action alternative in Section 2.2 of the report and references a separate HDI document for the environmental effects associated with this alternative.³⁰⁸ Thus, the Environmental Report presents alternatives by discussing the no-action alternative. Consequently, proposed Contention 6 has no factual basis, does not identify an omission of information required by law, and does not establish a genuine, material dispute with the licensee. The proposed contention also does not specify any other alternative that the Environmental Report must address. For the Petitioners to have satisfied the contention admissibility requirements for some other alternative, the Petitioners would have had to specifically identify the missing alternative and supplied sufficient factual and legal support to establish that this particular alternative must be described in the Environmental Report. The Petitioners did not do this. Regardless, the Environmental RAI Response does discuss energy and system alternatives.³⁰⁹ Therefore, as discussed above, proposed Contention 6 is inadmissible because it does not satisfy § 2.309(f)(1)(vi).

H. Proposed Contention 7 Is Admissible, in Part

Proposed Contention 7 is stated as follows:

³⁰⁷ *Id.* at 66-67.

³⁰⁸ Exemption Request, Enclosure 2 at 22 (Environmental Report).

³⁰⁹ Environmental RAI Response, Enclosure 5.

The proposed license amendments and supporting documents, including the document that the NRC and Holtec claim to suffice as an Environmental Report, contain no meaningful identification nor discussion of the effects of anthropocene climate change on the functioning and componentry of the plant, nor is there any identification or analysis of the effects that restored plant operations would have on anthropocene climate change, the physical environment and public health.³¹⁰

The proposed contention's Basis argues that Holtec's Environmental Report omits the relevant discussions of climate change, which Petitioner asserts are required by Council on Environmental Quality (CEQ) regulations and the NRC's NEPA implementing regulations in 10 C.F.R. Part 51.³¹¹ Petitioners also argue that the Environmental Report must contain a discussion of 1) climate change impacts on "the functioning and componentry of the plant" (i.e., safe operation of the plant and routine operational challenges), 2) an analysis of the effects that "restored plant operations would have on anthropocene climate change," (i.e., greenhouse gas emissions) and 3) an analysis of the effects that "restored plant operations would have on ... the physical environment and public health" (i.e., proposed action impacts considered with climate change).³¹²

Staff Response: Proposed Contention 7 is admissible, in part. Proposed Contention 7 states that the Environmental Report does not contain "any identification or analysis of the effects that restored plant operations would have on Anthropocene climate change, the physical environment and public health." As discussed below, the NRC considers the impacts of the proposed action as they relate to climate change by considering and analyzing the 1) greenhouse gas emissions of the proposed action and 2) a description of how the baseline environment in the environmental review might change as a result of climate change and a discussion of how proposed action impacts would either increase, decrease, or remain the same in this new baseline environment. As the Environmental Report does not contain these

³¹⁰ Petition at 68 (internal footnote omitted).

³¹¹ Petition at 68-70.

³¹² See Petition at 68.

climate change discussions, the Staff agrees that proposed Contention 7 is admissible to the extent that it identifies that the Environmental Report omits these climate change discussions. However, the portion of the contention that raises operational issues is inadmissible for failing to meet 10 C.F.R. § 2.309(f)(1)(iii), (iv) and (vi). Finally, the portion of the contention that raises safety concerns is inadmissible for failing to meet 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

The Commission has stated, “We expect the Staff to include consideration of carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions.”³¹³ Based on this decision, the Staff considers climate change to be within the scope of the NEPA environmental review for “major licensing actions,” a term that the Staff concludes would apply to the restart and resumption of operations at Palisades.

Although the licensee’s requests for approval of the licensing actions and exemption required for restart do not constitute an application for a new construction permit or license, the Staff’s guidance for conducting environmental reviews for other major licensing actions is instructive here. In the Staff’s guidance for implementing CLI-09-21 in new reactor environmental reviews, the Staff determined that the environmental reviews for these major licensing actions will include 1) greenhouse gas emissions of the proposed action and 2) a description of how the baseline environment in the environmental review might change as a result of climate change and a discussion of how proposed action impacts would either increase, decrease, or remain the same in this new baseline environment.³¹⁴ The NRC

³¹³ *Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 930-31 (2009).

³¹⁴ See Regulatory Guide 4.2, Revision 3 “Preparation of Environmental Reports for Nuclear Power Stations” Section 7.1, at 141 (Sept. 2018) (ML18071A400). See also Interim staff guidance; issuance; “Environmental Issues Associated with New Reactors,” 79 Fed. Reg. 52,373 (Sept. 3, 2014).

determined in the 2013 and 2024 LR GEISs that these same climate change issues are to be evaluated during license renewal environmental reviews.³¹⁵

The Environmental Report HDI submitted in connection with the proposed restart and resumption of operation of Palisades does not contain these discussions of climate change, as discussed below.³¹⁶ While HDI was not required to submit an Environmental Report for the restart-related amendment requests,³¹⁷ HDI voluntarily developed the Environmental Report, which describes its scope in broad terms:

Holtec Decommissioning International LLC (Holtec) has prepared an environmental review of the proposed resumption of power operations at Palisades Nuclear Plant (PNP) specifically to (1) provide updated status of the plant's permits, licenses, and authorizations, (2) provide updated information on the Palisades Nuclear Plant's (PNP) site and environs, (3) provide a review of potentially new and significant information since the Nuclear Regulatory Commission's (NRC) findings in its October 2006 *Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 27, Regarding Palisades Nuclear Plant* [herein called SEIS] to determine if the SEIS findings remain bounding, and (4) provide an assessment of Category 1 and 2 environmental issues not addressed in Supplement 27. (NMC 2005; NRC 2006).³¹⁸

As stated in Discussion Section II.B, above, Holtec referenced the Environmental Report in three of the four amendment requests. Also, 10 C.F.R. § 2.309(f)(2) and Commission precedent establish that petitioners are obligated to address environmental information in the application

³¹⁵ See "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," NUREG-1437, Rev. 1, Vol. 1, Section 4.12.3 (June 2013) (ML13106A241) (2013 LR GEIS); "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," NUREG-1437, Rev. 2, Vol. 1, Section 4.12 (Aug. 2024) (ML24086A526) (2024 LR GEIS).

³¹⁶ The Environmental Report assessed the Category 1 and 2 environmental issues from the 2013 LR GEIS that were not addressed in the License Renewal EIS Supplement. The License Renewal EIS Supplement does not contain the relevant discussions of climate change.

³¹⁷ See 10 C.F.R. § 51.45(a) (referring to environmental reports "required by §§ 51.50, 51.53, 51.54, 51.55, 51.60, 51.61, 51.62, or 51.68," where none of the cited regulations apply to reactor license amendments in this context). There is no other provision of 10 C.F.R. Part 51 that requires an environmental report in this context.

³¹⁸ Exemption Request, Enclosure 2, at 9 (Environmental Report).

even if the applicant was not required to submit it.³¹⁹ Given the stated breadth of the Environmental Report and Commission requirements regarding the filing of contentions thereon, the Staff concludes that proposed Contention 7 is admissible to the extent it identifies the omissions of 1) a discussion of greenhouse gas emissions of the proposed action and 2) a description of how the baseline environment for the proposed action might change as a result of climate change and a discussion of how impacts of the proposed action would either increase, decrease or remain the same in this new baseline environment.

As explained below, the remainder of proposed Contention 7 is inadmissible as it raises safety and operational issues that are outside the scope of the NEPA environmental review, are not material to the findings the NRC must make, and do not demonstrate a genuine dispute with HDI on an issue of material fact or law. Therefore, proposed Contention 7 should be admitted in a narrowed form, as discussed below.

1. *The Portions of Proposed Contention 7 that Identify the Omissions of 1) a Discussion of Greenhouse Gas Emissions of the Proposed Action and 2) a Description of How the Baseline Environment in the Environmental Review Might Change as a Result of Climate Change and a Discussion of How Proposed Action Impacts Would Either Increase, Decrease, or Remain the Same in this New Baseline Environment.*

Proposed Contention 7 identifies omissions in the Environmental Report that are within the scope of the environmental review. The Petitioners assert that the Environmental Report does not contain any “identification or analysis of the effects that restored plant operations would have on anthropocene climate change, the physical environment and public health.” The Staff agrees, with some exceptions.

³¹⁹ See 10 C.F.R. § 2.309(f)(2) (stating that contentions must be “based on documents or other information available at the time the petition is to be filed,” including (as relevant here) the “application, ... environmental report or other supporting document filed by an applicant or licensee”); *Palisades*, CLI-22-8, 96 NRC at 69 (explaining that petitioners were obligated to file contentions challenging the statements in the license transfer application regarding the applicability of the proposed categorical exclusion); 10 C.F.R. Part 51 (which does not require an applicant to address the applicability of categorical exclusions).

As to the first omission, the Environmental Report does not discuss the greenhouse gas emissions that would be caused by the restart and resumption of operations at Palisades. In table 4.0-3 of the Environmental Report, Holtec provided an assessment of Category 1 and 2 environmental issues from the 2013 LR GEIS that were not addressed in the License Renewal EIS Supplement, but did not include a discussion of greenhouse gas emissions enumerated in section 4.12.3.1 of the 2013 LR GEIS, which implemented the Commission's direction in CLI-09-21.³²⁰ Holtec, in response to the Staff's RAI, RAI-MET-6, provided the 2023 emissions Inventory Report for Palisades.³²¹ However, this emission data does not represent operational conditions, as the fuel was permanently removed from the Palisades reactor vessel in 2022.³²² Therefore, the Petitioners have identified that this Environmental Report omits the required discussion of greenhouse gas emissions from the proposed restart and resumed operation of Palisades.

As to the second omission, the Environmental Report does not contain a description of how the baseline environment in the environmental review might change as a result of climate change and a discussion of how proposed action impacts would either increase, decrease, or remain the same in this new baseline environment. In table 4.0-3 of the Environmental Report, Holtec did not include a discussion of climate change impacts enumerated in Sections 4.12.3.2 and 4.13.12 of the 2013 LR GEIS, which implemented the Commission's direction in CLI-09-21. An omission in an applicant's environmental report of the impact on water availability and aquatic resources in light of reasonably foreseeable climate changes considered together with

³²⁰ While this action is not a license renewal, the Environmental Report uses the categories of the 2013 LR GEIS to identify any information that may be new and significant. The 2013 LR GEIS identified greenhouse gas emissions and climate change as an issue to be analyzed to implement the Commission's direction for major licensing actions in CLI-09-21.

³²¹ Environmental RAI Response, Enclosure 13.

³²² Palisades 50.82(a)(1) Certifications, at 1.

the proposed action has previously been admitted by a Board for a hearing.³²³ Therefore, the Petitioners have identified that this Environmental Report omits the required description of how the baseline environment in the environmental review might change as a result of climate change and a discussion of how impacts discussed in the environmental review would either increase, decrease, or remain the same in this new baseline environment.

The NRC staff notes that this portion of proposed Contention 7 is admissible only as a contention of omission based on the absence of a discussion of greenhouse gas emissions and the climate change impacts to the environmental resources that are incrementally affected by the proposed action, *generally*. The NRC Staff would like to provide clarification regarding HDI's replacement of the Component Cooling Water (CCW) heat exchangers. Petitioners' expert, Mr. Gundersen, uses a press release issued by Holtec about the replacement of the heat exchangers to form his factual basis for specific environmental impacts from the proposed action that climate change will intensify.³²⁴ However, the CCW heat exchangers are a part of the auxiliary support systems that provide cooling to reactor components, not a part of the primary steam cycle as understood by Mr. Gundersen.³²⁵ These CCW heat exchangers cool the CCW loop using service water that is drawn from Lake Michigan and is returned either to the Makeup

³²³ *Exelon Nuclear Texas Holdings, LLC*, (Victoria County Station Site), LBP-11-16, 73 NRC 645, 691-93 (2011).

³²⁴ Gundersen Declaration at ¶¶ 79-80, 82-87.6 ("The basis for the claim by Holtec Palisades that a new [heat exchanger] ... was needed is undoubtedly questionable. Simply put, the water from Lake Michigan does not cool Holtec Palisades; instead it is cooled by water circulating through two banks of cooling towers. Water from the cooling towers cools the condenser, NOT water from Lake Michigan.... However, Holtec Palisades' assertion that the increasing lake temperature is the cause for installing a new condenser is false because atmospheric heat transfer from the cooling towers is what cools the condenser.").

³²⁵ Environmental RAI Response at Enclosure 7. See also UFSAR Revision 35, at §§ 9.3 and 9.3.2.1 (ML21125A331). See also NRC Technical Training Center, Reactor Concepts Manual, Pressurized Water Reactor (PWR) Systems, at 4-23 (Sept. 9, 2015) (ML15252A444) (showing a simplified figure of a typical PWR CCW system for illustrative purposes only).

Basin or discharged to Lake Michigan via the Mixing Basin.³²⁶ While Holtec has acknowledged that climate change, in part, was a motivating reason for the installation of the new CCW heat exchangers to provide operational capacity for the heat exchangers,³²⁷ Holtec has also explained that the replacement of these CCW heat exchangers provides operational flexibility unrelated to climate change.³²⁸ Therefore, Mr. Gundersen's declaration is premised on a misunderstanding. Based on this misunderstanding, Mr. Gundersen discusses six purported environmental impacts, but the CCW heat exchanger replacement is unrelated to these impacts.³²⁹ And Mr. Gundersen's discussion of these six purported impacts consists of unsupported speculation. As a result, Mr. Gundersen offers only speculative assertions without any factual support. Bare assertions and speculation, even by an expert, are insufficient to demonstrate an inadequacy in an Environmental Report.³³⁰ Therefore, while proposed Contention 7 identifies an omission in the Environmental Report as a general matter, the Petitioners' arguments regarding the CCW heat exchangers and specific environmental impacts are unsupported and do not establish a genuine dispute with the licensee on a material issue of law or fact, as required by § 2.309(f)(1)(v), and (vi).

³²⁶ Environmental RAI Response, Enclosure 7. ("The [Service Water] System is the open loop system that serves as the ultimate heat sink for [Palisades] and draws water from Lake Michigan and returns water to the Circulating Water System at the Makeup Basin (the source of water to the cooling towers (when in service) or discharge to Lake Michigan via the Mixing Basin (the interface with the surface water environment).")

³²⁷ Petition at 59. ("To meet the project rising lake water temperature...").

³²⁸ Environmental RAI Response at Enclosure 7 ("The proposed replacement CCWHXs will be two 100 percent capacity shell and tube horizontal single-pass heat exchangers. The installation of 100 percent capacity heat exchangers will allow the operational flexibility to remove one of them from service by isolating both the CCW (Shell side) and SW (tube side) and allowing maintenance on one heat exchanger at a time.")

³²⁹ Gundersen Declaration at ¶¶ 87.1-87.6

³³⁰ *Entergy Nuclear Generation Company* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012).

Also, to the extent that the Petition is challenging Holtec's press release on the CCW heat exchangers, the staff notes that § 2.309(f)(1)(vi) requires contentions to challenge the application and to identify the specific portions of the application that are being challenged. A challenge to the press release, without more, does not challenge the application and therefore does not support contention admissibility.

In sum, proposed Contention 7 identifies two omissions on issues material to the findings the NRC must make to support the action that is involved in this proceeding and satisfies the admissibility criteria in 10 C.F.R. § 2.309(f)(1)(i)-(vi) as a contention of omission. However, the Petitioners' arguments regarding the CCW heat exchangers and specific environmental impacts do not support contention admissibility. Therefore, proposed Contention 7 should be admitted based on the omission, in general, of a discussion of 1) greenhouse gas emissions of the proposed action and 2) a description of how the baseline environment in the environmental review might change as a result of climate change and a discussion of how proposed action impacts would either increase, decrease, or remain the same in this new baseline environment.

2. The Remainder of Proposed Contention 7, Which Raises Safety and Operational Issues, Is Not Admissible as it Fails to Meet the Admissibility Criteria of 10 C.F.R. § 2.309(iii), (iv), and (vi).

Proposed Contention 7, an environmental contention,³³¹ asserts that the Environmental Report "contain[s] no meaningful identification nor discussion of the effects of anthropocene climate change on the functioning and componentry of the plant...."³³² Petitioners raise operational and safety concerns due to climate change, such as speculation that the plant may

³³¹ Petitioners have framed this contention as a challenge to the Environmental Report based on NEPA, CEQ regulations, and 10 C.F.R. Part 51.

³³² Petition at 68. See *a/so* Gundersen Declaration at ¶¶ 78, 81, 88.

face operational constraints that could cause the plant to derate³³³ or may increase the intensity of an external hazard.³³⁴

Petitioners do not provide any legal authority requiring the Environmental Report to discuss either safety or operational impacts of the environment on the plant and do not point to any specific portions of the Environmental Report that they dispute, and therefore this portion of the contention does not satisfy 10 C.F.R. § 2.309(f)(1)(iv), and (vi). Also, the operational concerns regarding derating are not within the scope of this proceeding, and therefore this portion of the contention does not satisfy 10 C.F.R. § 2.309(f)(1)(iii).

Under NEPA, the environmental review is limited to the plant's impact on the environment, not of the environment's impact on the plant.³³⁵ NRC regulations for environmental assessments similarly focus on "[t]he environmental impacts of the proposed action," not impacts *on* the proposed action.³³⁶ Consistent with this, in the 2024 LR GEIS, the NRC stated, "The implications of long-term climate change on plant operations and adjustments or preparations by licensees to a new or changing environment are outside the scope of the NRC's license renewal environmental review, *which documents the potential environmental impacts of continued reactor operations.*"³³⁷ Also, in an adjudicatory context, the Commission has rejected

³³³ Petition at 68, 70, and 73. See also Gundersen Declaration at ¶¶ 81, 88. ("[S]o back pressure on the turbine increases, and electric power output is reduced.")

³³⁴ Gundersen Declaration at ¶ 78 ("For example, ultimate heat sink temperatures, wind forces, snow loads, and rain accumulation are some climate related changes that could adversely affect *the safe operation* of Holtec Palisades.") (emphasis added).

³³⁵ 42 U.S.C. § 4332(2)(C) (NEPA § 102(2)(C)). See also *Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87 (1983) ("NEPA has twin aims. First, it places upon an agency the obligation to consider every significant aspect of the *environmental impact of a proposed action*. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process... The role of the courts is simply to ensure that the agency has adequately considered and disclosed the *environmental impacts of its actions* and that its decision is not arbitrary or capricious.") (emphasis added) (internal quotes and citations omitted).

³³⁶ 10 C.F.R. § 51.30(a)(1)(iii).

³³⁷ 2024 LR GEIS, Vol 2, App. A, at A-222 (ML24086A527) (emphasis added).

an attempt to bring safety issues within the scope of the environmental review.³³⁸ Therefore, the Petitioners' efforts to raise safety and operational concerns regarding the effects of climate change on the facility are not material to the NRC's environmental findings and do not satisfy § 2.309(f)(1)(iv), and (vi).

Petitioners cite to CEQ regulations and NRC NEPA implementing regulations in 10 C.F.R. § 51.45 as binding authority for proposed Contention 7,³³⁹ but neither of these regulations require this environmental report to include any discussion of the effects of climate change on the plant. As an independent regulatory agency, the NRC "is not bound by those portions of the CEQ's NEPA regulations" that ... "have a substantive impact on the way in which the Commission performs its regulatory functions."³⁴⁰ Based on the NRC's status as an independent regulatory agency, Petitioners' citations to non-binding CEQ regulations do not provide any legal authority that supports the admission of this aspect of the contention. As to § 51.45, the content requirements of § 51.45 do not apply to the Environment Report, but, regardless, § 51.45 requires a discussion of the environmental impacts of the proposed action, not the impact of the environment on the plant.³⁴¹

Furthermore, Petitioners have not demonstrated that these safety and operational concerns, if realized, would have any effect on the environment such that these issues would be material to the environmental findings the NRC must make to support the action involved in this

³³⁸ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-6, 81 NRC 340, 377-78 (2015) (finding that the environmental review may not serve as a "back door" to litigate the effectiveness of site emergency plans which, much like a plant's ability to withstand natural phenomena, are reviewed and updated throughout the life of an operating plant.)

³³⁹ Petition at 68-70.

³⁴⁰ *Pacific Gas and Electric Co.*, (Diablo Canyon Nuclear Power Plant, Units 1 and 2) CLI-11-11, 74 NRC 427, 443-44 (2011) (citing Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments, 49 Fed. Reg. 9352, 9352 (Mar. 12, 1984) (final rule)). See also 10 C.F.R. § 51.10(a).

³⁴¹ See 10 C.F.R. § 51.45(b)(1).

proceeding.³⁴² Even more so, these safety concerns are not within the scope of the NEPA environmental review, and Petitioners provide no binding legal authority that would allow the environmental review to operate as a backdoor to litigate safety topics.³⁴³ Therefore, the section of proposed Contention 7 that raises safety and operational issues is inadmissible for failing to meet 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

As for the operational concern that the plant's output may be reduced, this issue is not within the NRC's statutory authority, which is for radiological health and safety and common defense and security issues.³⁴⁴ As explained by the Commission, "Under NEPA, an agency has no obligation to gather or consider environmental information if it has no statutory authority to act on that information."³⁴⁵ As operational impacts related to energy resilience are outside of the NRC's statutory mandate, these effects are not relevant to the NEPA environmental review. Therefore, the portion of proposed Contention 7 that raises operational issues is inadmissible for failing to meet 10 C.F.R. § 2.309(f)(1)(iii), (iv) and (vi).

Even evaluated as a safety contention, which Petitioners have not pled proposed Contention 7 as, Petitioners have not provided sufficient information to show that a climate

³⁴² While Petitioners advance that climate change external events could adversely affect the safe operations at Palisades, at no point do Petitioners connect the dots that this could result in an environmental impact. See *Florida Power and Light Co.*, (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-3, 99 NRC 39, 61 (2024).

³⁴³ *Indian Point*, 81 NRC at 377.

³⁴⁴ See e.g., 42 U.S.C. § 2232(a), AEA § 182a. See also Letter from Chair Hansen, NRC, to Frank Rusco, GAO, Enclosure 1 (Sept. 27, 2024) (ML24274A003) ("The NRC's review will focus on impacts related to its safety mission and will not address impacts related to energy resilience, such as avoiding more frequent disruptions and other operational issues that are under the control of licensees and outside of the NRC's mandate.") (Enclosure to NRC Response to GAO Report); 16 U.S.C. § 824o (granting jurisdiction to the Federal Energy Regulatory Commission to set electric reliability standards for owners and operators of bulk-power systems.).

³⁴⁵ *Nextera Energy Point Beach, LLC* (Point Beach Nuclear Plant, Units 1 and 2), CLI-22-5, 95 NRC 97, 104 (2022).

related change to an external hazard will adversely affect the safe operation of Palisades,³⁴⁶ and Petitioners' expert's incorporation of the GAO report does not provide any support for Petitioners' assertions.³⁴⁷ The structures, systems, and components important to safety in nuclear power plants are required to be able to withstand the effects of natural phenomena without loss of capability to perform their safety functions.³⁴⁸ Petitioners do not engage with the design bases of the plant described in UFSAR Revision 35, which the licensee plans to reinstate if these proposed actions are approved. Even though climate change could theoretically result in a change to these analyses, Petitioners do not even attempt to demonstrate that these analyses may no longer be bounding.³⁴⁹ Therefore, even as a safety contention, Petitioners do not provide sufficient information to show that a genuine dispute exists on a material issue of law or fact. In addition to being inadmissible for failing to meet 10 C.F.R. § 2.309(f)(1)(iv) as previously discussed, the climate change safety concerns raised in proposed Contention 7 are also inadmissible for failing to satisfy 10 C.F.R. § 2.309(f)(1)(vi).

Based on the foregoing, the Staff agrees that Proposed Contention 7, may be admitted, but only as narrowed in the following form:

The Environmental Report submitted by Holtec for the proposed action of restart and resumption of operations at Palisades omits the required discussions of 1) greenhouse gas emissions and 2) a description of how the baseline environment in the environmental review might change as a result of climate change and a

³⁴⁶ *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4) CLI-01-17, 54 NRC 3, 20 (2001) ("[The] Amended Petition ... offers no evidence that a problem may exist at Turkey Point. The short of the matter is that Contention 1, even if we were somehow to find it within the scope of our license renewal inquiry (which it is not ...), it is so thinly supported and rationalized that it could not possibly justify a full hearing under our contention-pleading rule.")

³⁴⁷ See Letter from Chair Hansen, NRC, to Frank Rusco, GAO (Sept. 27, 2024) (ML24274A001 and ML24274A003).

³⁴⁸ 10 C.F.R. Part 50, Appendix A, General Design Criterion 2. While Palisades was licensed prior to the implementation of the General Design Criteria (GDC) and is not bound by the GDC, the licensee's most recent UFSAR discusses how the Palisades design basis meets GDC 2. See Palisades UFSAR, Revision 35, § 5.1.2.2 (ML21125A359).

³⁴⁹ *Virginia Electric and Power Co.*, (North Anna Power Station, Units 1 and 2) LBP-24-07, 99 NRC __, __ (July 10, 2024) (slip op. at 22-23).

discussion of how proposed action impacts would either increase, decrease, or remain the same in this new baseline environment.

IV. There is No Merit to the Petitioners' Request for a Trial Before an Article III Judge

In the Petition, Petitioners included a request that this matter not be addressed under the 10 C.F.R. § 2.309 procedures by an NRC Atomic Safety and Licensing Board, and requested instead that Petitioners be assigned a federal judge, authorized under Article III of the U.S. Constitution, for pretrial and trial activity.³⁵⁰ On October 16, 2024, the Secretary of the Commission referred this petition to the Atomic Safety and Licensing Board Panel (ASLBP) for disposition.³⁵¹ In referring this petition to the ASLBP, the Secretary of the Commission noted that “[P]etitioners have presented no authority suggesting that the Commission may assign incoming hearing petitions to federal judges in Article III courts....”³⁵² The Secretary of the Commission’s referral of the instant Petition for disposition by the ASLBP is consistent with the Atomic Energy Act, the Hobbs Act, and NRC regulations, as discussed below. In addition, the Petitioners’ arguments under the Seventh Amendment of the U.S. Constitution lack merit. Therefore, this Petition should be heard by this Board in accordance with the Secretary’s referral of this Petition to the ASLBP for disposition.

Pursuant to the Hobbs Act, “the court of appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of ... (4) all final orders of the [Nuclear Regulatory Commission] made reviewable by Section 2239 of Title 42.”³⁵³ Petitioners submitted the Petition in response to the Amendments Notice that was published pursuant to 42

³⁵⁰ Petition at 25-27.

³⁵¹ Memorandum from Carrie M. Safford, NRC, to E. Roy Hawken, NRC, “Referral of Petition to Intervene and Request for Hearing from Wallace Taylor on behalf of Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service” (Oct. 16, 2024) (ML24290A145) (Referral Memorandum).

³⁵² Referral Memorandum.

³⁵³ 28 U.S.C. § 2342(4).

U.S.C. § 2239(a) (AEA § 189a.).³⁵⁴ Pursuant to the AEA, “the Commission is authorized to establish one or more atomic safety and licensing boards... [and] may appoint a panel of qualified persons from which board members may be selected.”³⁵⁵ The decisions and actions of the licensing boards are reviewable by the Commission.³⁵⁶ The Commission’s regulations in 10 C.F.R. Part 2 implement the hearing provision of 42 U.S.C. § 2239(a) and the licensing board provisions in 42 U.S.C. § 2241.

Petitioners included a demand “that this matter must not be addressed under the 10 C.F.R. § 2.309 procedure, and that the Petitioners be assigned a U.S. Constitution, Article III judge for all pretrial and trial activity and attention.”³⁵⁷ However, because § 2.309 and the other regulations in 10 C.F.R. Part 2 apply on their face, the Petitioners are challenging the NRC’s regulations in 10 C.F.R. Part 2. Challenges to NRC regulations in NRC adjudications are prohibited by 10 C.F.R. § 2.335(a), except that participants in adjudicatory proceedings may request a waiver of the regulation or exception thereto under § 2.335(b) upon a showing of special circumstances as documented in the petition and accompanying affidavit. But Petitioners did not include a request for a waiver to challenge the rules and regulations of the Commission, as required by 10 C.F.R. § 2.335, to request that this matter not be addressed pursuant to 10 C.F.R. Part 2. Therefore, the Petitioners’ challenge is procedurally barred by § 2.335 and may be denied on that ground alone.

The Petitioners cite *Securities and Exchange Commission v. Jarkesy* as support for their arguments, but this case is not relevant to this proceeding and does not call the structure and

³⁵⁴ See also Petition at 27-28 (recognizing that this proceeding is under 42 U.S.C. § 2239(a), AEA § 189a).

³⁵⁵ 42 U.S.C. § 2241(a), AEA § 191a.

³⁵⁶ See 10 C.F.R. §§ 2.311, 2.341.

³⁵⁷ Petition at 27.

procedure of the AEA or 10 C.F.R. Part 2 into question.³⁵⁸ The Court's holding in *Jarkesy* concerned the government's ability to *enforce* common law claims through in-house administrative proceedings for common law claims subject to the Seventh Amendment's guarantee of the right to a jury trial.³⁵⁹ Petitioners advance an out of context quote, in the concurring opinion of Justice Gorsuch, to support a challenge to Administrative Law Judges (ALJs) and Administrative Judges across the whole U.S. government.³⁶⁰ Such a challenge misses the mark.

The actions being challenged in this proceeding are licensing actions and an exemption requested by Holtec to authorize restart of operation at Palisades. This administrative proceeding does not involve an administrative enforcement of a common law claim against an individual that could conceivably implicate the Seventh Amendment to the U.S. Constitution.³⁶¹ The quote advanced by Petitioners is similarly limited in scope to enforcement matters, not

³⁵⁸ *Securities and Exchange Commission v. Jarkesy*, 603 U.S. ____ (2024).

³⁵⁹ *Id.* at ____ (slip op. at 6).

³⁶⁰ *Id.* at ____ (slip op. at 2-3) (Gorsuch and Thomas, JJ., concurring). Justice Gorsuch stated:

In 2010, however, all that changed. With the passage of the Dodd Frank Act, Congress gave the SEC an alternative to court proceedings. Now, the agency could funnel cases like Mr. Jarkesy's through its own "adjudicatory" system. See 124 Stat. 1376, 1862–1865. That is the route the SEC chose when it filed charges against Mr. Jarkesy.

There is little mystery why. The new law gave the SEC's Commissioners—the same officials who authorized the suit against Mr. Jarkesy—the power to preside over his case themselves and issue judgment. To be sure, the Commissioners opted, as they often do, to send Mr. Jarkesy's case in the first instance to an "administrative law judge" (ALJ). See 17 CFR §201.110 (2023). But the title "judge" in this context is not quite what it might seem. Yes, ALJs enjoy some measure of independence as a matter of regulation and statute from the lawyers who pursue charges on behalf of the agency. But they remain servants of the same master—the very agency tasked with prosecuting individuals like Mr. Jarkesy. This close relationship, as others have long recognized, can make it "extremely difficult, if not impossible, for th[e ALJ] to convey the image of being an impartial fact finder." B. Segal, *The Administrative Law Judge*, 62 A. B. A. J. 1424, 1426 (1976).

Id.

³⁶¹ *Id.* at ____ (slip op. at 7-8).

licensing actions.³⁶² Furthermore, both additional cases cited by Petitioners, *In re Murchison* and *Caperton v. A.T. Massey Coal Co.*, respectively concern documented cases of judicial bias from state court judges in a criminal proceeding³⁶³ and in a common law contract claim.³⁶⁴ In these cases, the individual's Fifth and Fourteenth Amendment rights to not be deprived of life, liberty, or property without due process of law were violated.³⁶⁵ Here, there is no threat to Petitioners' right to constitutional due process, because Petitioners are not subject to an enforcement action that may deprive them of life, liberty, or property without due process of law. Petitioners voluntarily submitted a petition to intervene and requested a hearing on amendment requests seeking the authorization to restart and resume operations at Palisades.

Nevertheless, Petitioners advance a broad challenge to the independence of all Administrative Judges who are part of the ASLBP, based on personal experience and anecdotal evidence from often failing to meet the Commissions contention admissibility criteria, which the Petitioners themselves acknowledge are "strict by design."³⁶⁶ Petitioners may file a petition for rulemaking if they believe that the contention admissibility requirements in 10 C.F.R. § 2.309 should be revisited.³⁶⁷

To ensure the independence of ASLBP Administrative Judges, the policy of the Commission is to voluntarily follow the Office of Personal and Management's requirements for

³⁶² Petition at 26 (quoting *Jarkesy*, 603 U.S. at ____ (2024) (slip op. at 2 -3) (Gorsuch, J., concurring) ("ALJs enjoy some measure of independence as a matter of regulation and statute from the lawyers who *pursue charges* on behalf of the agency ... the very agency tasked with *prosecuting* individuals like Mr. Jarkesy.") (emphasis added)).

³⁶³ *In re Murchison*, 349 U.S. 133, 138-39 (1955).

³⁶⁴ *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 873 (2009).

³⁶⁵ 349 U.S. at 137-38; 556 U.S. at 884-87.

³⁶⁶ Petition at 25, 27.

³⁶⁷ 10 C.F.R. § 2.802.

ALJs in 5 C.F.R. § 930.206, which prohibit an Agency from rating an ALJ's job performance.³⁶⁸

Petitioners' speculation that ASLBP members are biased is without basis.

For the reasons given above, there is no merit to Petitioners' request for a trial before an Article III judge.

CONCLUSION

As explained above, the Petition should be granted, in part, because two of the Petitioners, Three Mile Island Alert and Nuclear Energy Information Service, establish standing, and portions of proposed Contention 7 are admissible. However, Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future do not establish standing. Also, the remainder of the proposed contentions are inadmissible because they raise immaterial, out of scope, and inadequately supported arguments that do not establish a genuine dispute with the licensee and in many cases challenge NRC regulations and processes. Therefore, the Petition should only be granted in part. Finally, the Petitioners' request for a trial before an Article III judge is without merit.

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/Signed (electronically) by/

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/Executed in Accord with 10 CFR 2.304(d)/

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³⁶⁸ Management Directive 9.5, Directive Handbook, Section I.D.1. (July 25, 2019) (ML102220048).

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Dated November 4, 2024

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOLTEC DECOMMISSIONING
INTERNATIONAL, LLC, AND HOLTEC
PALISADES, LLC

(Palisades Nuclear Plant)

Docket No. 50-255-LA-3

Certificate of Service

Pursuant to 10 C.F.R. § 2.305, I hereby certify that the “NRC Staff Answer to Intervention Petition from Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service in Palisades Restart Amendments Proceeding,” has been filed through the NRC’s E-Filing System this 4th day of November 2024.

/Signed (electronically) by/

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Dated November 4, 2024