

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 HEARING REQUEST FROM INDIVIDUAL
PETITIONERS IN PALISADES RESTART AMENDMENT PROCEEDING**

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1) and the licensing board's (Board's) orders dated October 17 and 21, 2024, the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) herein answers a petition requesting a public hearing (Petition) prepared and filed by Alan Blind on behalf of individual petitioners Jody Flynn, Thomas Flynn, Bruce Davis, Karen Davis, Christian Moevs, Mary Huffman, Chuck Huffman, and Dianne Ebert (collectively, Petitioners) on September 9, 2024. The Petition challenges the first-submitted license amendment request (Primary Amendment Request), dated December 14, 2023, which is associated with the potential restart of reactor operation at the Palisades Nuclear Plant (Palisades). The Petition identifies Alan Blind as the Petitioners' point of contact (Petitioners' Contact). Subsequently, the Petitioners' Contact filed twelve supplements to the original Petition (Blind Supplements).

As explained below, the Petition should be denied because, while the Petitioners demonstrate standing, none of their contentions are admissible. The Petitioners, through their Petition as originally filed, do not contest the specific technical content of the amendment requests or explain how the standards for granting license amendments are not satisfied.

Instead, the Petitioners alternately raise immaterial matters that are outside the scope of the proceeding, including challenging NRC regulations and regulatory processes, disputing licensee actions undertaken outside the license amendment process, contesting the Staff's safety review and inspection activities, and demanding action from the NRC General Counsel. The Petitioners also do not include adequate support for their claims. In addition, the twelve Blind Supplements do not individually or cumulatively support the admissibility of the originally filed contentions. Similarly, the more recently filed Contention 5 is not admissible because, although the exemption request dated September 28, 2023 (Exemption Request) is subject to challenge in this adjudicatory proceeding, the contention raises arguments that are out of scope, unsupported, immaterial, and do not demonstrate that a genuine dispute exists with the Exemption Request on a material issue of fact or law. Finally, the Petitioners' requests to suspend ongoing licensee activities and NRC license amendment reviews and the other requests made in the twelve Blind Supplements are without merit and should be denied. Therefore, the Board should deny the Petition.¹

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

¹ As discussed below, the Petitioners' Contact asserts in the twelve supplements that he represents the Petitioners, but he is not legally eligible to serve as a representative of the Petitioners in accordance with 10 C.F.R. § 2.314(b). While the original Petition was signed by the individual petitioners, none of the twelve supplements were, nor is there any indication that the individual petitioners had direct involvement with the supplements. Thus, the Staff does not currently consider the twelve supplements to be legally part of the Petition. However, as discussed below, defects in representation may be cured, and the Petitioners may appropriately address the matter.

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).

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 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

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).

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”).

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 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

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).

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).

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 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

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.

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.

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 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

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

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).

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

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.

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

²⁶ Emergency Plan Amendment Request at 2.

III. Petitioners' Hearing Request on Amendment 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 hearing requests, while the Amendments Notice established an October 7, 2024, deadline for hearing requests.²⁹

The Petitioners did not file a hearing request in response to the Transfer Notice, but on September 9, 2024, Alan Blind filed the Petition regarding the Primary Amendment Request.³⁰ Specifically, the Petition states, "The subject of this public request for a hearing applies to ML23348A148 and ML24191A422, 'Request to Revise Operating License and Technical Specifications to Support Resumption of Power Operations.'"³¹ The referenced title and ADAMS accession numbers correspond to the entry in the Amendments Notice for the Primary Amendment Request.³²

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).

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

³⁰ *Public Hearing Petition Regarding Palisades Nuclear Plant* (Sept. 9, 2024) (Petition). The title of the Petition is given on page 72, under the heading "Preparer Declaration and Certifications."

³¹ *Id.* at 20.

³² Amendments Notice, 89 Fed. Reg. at 64,489.

Although the Petition was filed by Alan Blind, the Petition does not identify him as one of the Petitioners. The Petition states that the Petitioners are listed in Appendix A,³³ and Alan Blind is not listed therein.³⁴ Instead, the Petition states that Alan Blind prepared the Petition, although he is not an attorney.³⁵ Also, the Petition states, “Petitioners request that the single point of contact” be Alan Blind.³⁶ The Petition includes declarations signed by each of the individual petitioners.³⁷

Subsequently, the Petitioners’ Contact made twelve additional filings, the Blind Supplements, which included declarations asserting that Alan Blind was the Petitioners’ representative. Unlike the Petition, the Blind Supplements were not signed by the individual petitioners. The Blind Supplements are:

- *Supplemental Filing to Strengthen Standing of Petitioners in NRC Docket No. 50-255-LA-3*, dated September 19, 2024 but filed September 20, 2024 (Blind First Standing Supplement)
- *Supplemental Submission to the Petition Regarding the Safety Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant*, dated September 19, 2024 but filed September 20, 2024 (Blind First Steam Generator Supplement)
- *Supplemental Filing to Strengthen That Holtec’s Proposed Use of § 50.59 is Within the Scope of the FRN For Requesting a Public Hearing*, dated and filed September 22, 2024 (Blind First 50.59 Supplement)
- *Part Two, Supplemental Submission to the Petition Regarding the Safety Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant*, dated and filed September 22, 2024 (Blind Second Steam Generator Supplement)

³³ Petition at 15.

³⁴ *Id.* at 73-74. Additionally, the Petition states that the Petitioners live “in close proximity to the Palisades Nuclear Plant” and “within the Plume Exposure Pathway [Emergency Planning Zone (EPZ)].” *Id.* at 15-16. By regulation, the Plume Exposure Pathway EPZ generally extends to about 10 miles from the plant. 10 C.F.R. § 50.33(g)(1). Using the address for Alan Blind on page 72 of the Petition, the Staff verified, using the straight-line measurement tool in Google Maps, that Mr. Blind lives approximately 27.5 miles from the Palisades containment building.

³⁵ Petition at 13.

³⁶ *Id.* at 19.

³⁷ *Id.* at 73-81 (petitioners’ declarations in Appendix A of the Petition).

- *Part Three, Supplemental Submission to the Petition Regarding the Safety Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant: The Need for NRC to Review the Palisades Design Basis of SSCs to Next Approve Accident Safety Analysis and Evaluate Steam Generator Tube Plugging Limits*, dated and filed September 22, 2024 (Blind Third Steam Generator Supplement)
- *Supplemental Filing to Emphasize the Importance of Transparency in NRC and Holtec's Processes: The Need For a Public Hearing Docket No. 50-255; NRC-2024-0130*, dated September 23, 2024 but filed September 24, 2024 (Blind Transparency Supplement)
- *Supplemental, Part Two, Filing to Strengthen Standing of Petitioners in NRC Docket No. 50-255-LA-3*, dated and filed September 25, 2024 (Blind Second Standing Supplement)
- *Supplemental Filing to Strengthen That Holtec's Proposed Use of § 50.59 is Within the Scope of the FRN For Requesting a Public Hearing*, dated September 26/27, 2024, but filed September 27, 2024 (Blind Second 50.59 Supplement)
- *Third Supplemental Filing to Highlight the Critical Need to Use a FSAR Based on Current General Design Criteria, Unlike Holtec's Proposed Use of 50.59 to Build a FSAR: Before Analysis of the Significant Stress Corrosion Cracking (SCC) in Steam Generator Tubing Findings*, dated October 2/3, 2024, but filed October 3, 2024 (Blind Third Steam Generator Supplement (Part 2))³⁸
- *Contention Five: Holtec's Exemption Request Fails to Meet Requirements For Acceptance Review, as per 10 CFR 50.12, "Specific exemptions,"* dated and filed October 4, 2024 (Contention 5 Filing)
- *Supplemental Filing: Further Basis for Contention Five, Holtec's Proposed Sequence, Without NRC approval, Predicate for Specific Exception Request NRC Staff Review*, dated and filed October 5, 2024 (Contention 5 Supplement).
- *Request to Add Correspondence to Docket No. 50-255-LA-3*, dated October 19, 2024, but filed October 20, 2024 (Challenge to NRC Email).³⁹

By orders dated October 17 and 21, 2024, the Board established a November 4, 2024, deadline for answers to the Petition and the Challenge to NRC Email.⁴⁰

³⁸ The Staff is referring to this supplement as "Blind Third Steam Generator Supplement (Part 2)" because this document has "Third Supplemental Filing" in its title, but Petitioners' Contact previously filed the third supplement on steam generator issues on September 22, 2024.

³⁹ It is not clear whether the Challenge to NRC Email was filed as a motion or as a supplement to the Petition, but the Staff is treating it as a supplement.

⁴⁰ *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), LBP Memorandum and Order (Amending Initial Prehearing Order) (Oct. 17, 2024) (unpublished) (ML24291A105); *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), LBP Memorandum and Order (Establishing Schedule for Responses to Joint Petitioners' October 20 Request) (Oct. 21, 2024) (unpublished) (ML24263A018).

DISCUSSION

The Petition should be denied because, while the Petitioners have demonstrated standing, they have not submitted an admissible contention. As explained below, this proceeding is limited to whether the amendment requests satisfy NRC requirements, but the Petitioners, through their originally filed Petition, avoid grappling with the specific technical content of the amendment requests or explaining why these requests fail to satisfy NRC requirements for amendments. Instead, they raise immaterial matters that are outside the scope of the proceeding, such as challenges to the Staff's safety review and inspection activities, demands for action from the NRC General Counsel, and disputes regarding actions the licensee has or may take outside the license amendment process. The Petitioners otherwise contest the sufficiency of the existing regulatory framework. The Blind Supplements offer more of the same regarding the originally proposed contentions and do not bolster their admissibility. Further, the Blind Supplements propose a new Contention 5, but this contention is likewise inadmissible because, although it demonstrates that the Exemption Request is subject to challenge in this proceeding, the contention raises arguments that are out of scope, unsupported, immaterial, and do not demonstrate that a genuine dispute exists with the Exemption Request on a material issue of fact or law. Finally, the Petitioners' requests to suspend ongoing licensee activities and NRC license amendment reviews are without merit and should be denied. Therefore, the Petition should be denied.

I. Representation of Petitioners

The Petition and its supplements were prepared and filed on behalf of Petitioners by Alan Blind, who asserts that he is Petitioners' representative.⁴¹ A person may appear in an NRC

⁴¹ See, e.g., Blind First Standing Supplement, at 8 ("I am the representative of Joint Petitioners"). For their part, Petitioners have not directly stated in their pleadings or declarations that Alan Blind represents them, requesting only that Alan Blind be the "single point of contact." See Petition at 19 ("Petitioners request that the single point of contact be[] Alan Blind"); see *also id.* at 75-81 (agreeing that Alan Blind is "to be the petition point of contact").

adjudicatory proceeding on their own behalf or be represented by an attorney.⁴² A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer or by an attorney.⁴³ To represent a party, an attorney must be in good standing and admitted to practice law before any federal or state court or before a court of the District of Columbia, a U.S. territory, or a U.S. possession.⁴⁴ Any person appearing on behalf of a party must file a written notice of appearance stating certain identifying information and the basis for their eligibility to act as a representative.⁴⁵ Representatives may, among other things, file and receive pleadings and make representations on behalf of those they are representing.⁴⁶ But Alan Blind is not himself a petitioner or an attorney representing Petitioners. Also, the Petitioners are filing as individuals and not as a partnership, corporation, or unincorporated association, of which Alan Blind is a member or officer.⁴⁷ As a result, Alan Blind is not eligible to represent Petitioners in accordance with 10 C.F.R. § 2.314(b).

At this time, Alan Blind's ineligibility to represent the Petitioners has implications primarily for the supplements to the Petition.⁴⁸ The original Petition was signed by the individual petitioners,⁴⁹ but they did not sign the twelve Blind Supplements, nor is there any indication that

⁴² 10 C.F.R. § 2.314(b).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2), LBP-10-7, 71 NRC 391, 412 (2010) (noting that counsel representing an organization in the proceeding "entered an appearance on [the organization's] behalf so as to be identified as available to file and receive pleadings and make representations for the organization").

⁴⁷ The Staff notes that the Commission concluded that even representation of an organization by a member or officer originated as a species of self-representation. See *Lincoln County, Nevada; Denial of Petition for Rulemaking*, 72 Fed. Reg. 73,676, 73,678-79 & n.18 (Dec. 28, 2007). No aspect of self-representation is present in this situation.

⁴⁸ There may be implications for oral argument, as well, if held.

⁴⁹ Petition at 73-81 (petitioners' declarations in Appendix A of the Petition). Although the individual petitioners did not formally sign the entire Petition, their signed declarations asserted that they read and

they were directly involved with the supplements. Thus, the Staff does not currently consider the twelve supplements to be legally part of the Petition; hence, these supplements should not at this time be considered under 10 C.F.R. § 2.309. However, the Staff did address whether these supplements support contention admissibility, as discussed below. Also, because defective representation can be cured,⁵⁰ the Blind Supplements may be further considered under 10 C.F.R. § 2.309 if the Petitioners appropriately address the matter.

II. **The Petitioners Demonstrate 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.”⁵¹ 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.⁵²

were knowledgeable of the Petition, indicated that they wished it to be filed as a Petition, and stated that they were signing in accordance with 10 C.F.R. § 2.304(d).

⁵⁰ See *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-13, 73 NRC 534, 549 (noting that a petitioner may cure procedural defects in representation), *vacated in part on other grounds*, CLI-12-8, 75 NRC 393 (2012).

⁵¹ 42 U.S.C. § 2239(a)(1)(A).

⁵² 10 C.F.R. § 2.309(d)(1).

The burden of demonstrating standing is on the petitioner,⁵³ though the Commission does not hold *pro se* petitioners “to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere.”⁵⁴ In addition, for the purposes of determining standing, the petition will be construed in the petitioner’s favor⁵⁵ and its material allegations will be accepted as true.⁵⁶

The Commission uses contemporaneous judicial concepts of standing when evaluating whether a petitioner has established standing.⁵⁷ 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.⁵⁸ In addition, the alleged injury must arguably fall within the “zone of interests” protected by the AEA.⁵⁹

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

⁵³ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 194 (1999).

⁵⁴ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015) (internal quotations and citations omitted).

⁵⁵ *Turkey Point*, CLI-15-25, 82 NRC at 394.

⁵⁶ *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).

⁵⁷ *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).

⁵⁸ *Turkey Point*, CLI-15-25, 82 NRC at 394.

⁵⁹ *Entergy Nuclear Operations, Inc., and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 258 (2008).

such as the expansion of the capacity of a spent fuel pool,”⁶⁰ 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.⁶¹ The determination of how proximate a petitioner must be to a source of radioactivity “depends on the danger posed by the source at issue.”⁶² 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.⁶³ The Commission has also found standing under the proximity presumption where the petitioner has a property interest near the facility.⁶⁴ In license amendment proceedings, however, the proximity presumption applies where the license amendment presents an “‘obvious’ potential of offsite radiological consequences.”⁶⁵ 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.”⁶⁶

⁶⁰ *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

⁶¹ *Calvert Cliffs*, CLI-09-20, 70 NRC at 915.

⁶² *Florida Power and Light Co.* (Turkey Point, Units 3 and 4), LBP-01-6, 53 NRC 138, 148 (2001).

⁶³ See *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 n.15.

⁶⁴ 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).

⁶⁵ *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 (explaining rationale of proximity presumption). In one license amendment proceeding, the Commission found a petitioner who lived within 15 miles of a nuclear power plant had standing because the proposed amendment involved an obvious potential for offsite consequences. See *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95 (1993).

⁶⁶ *Exelon Generation Co., LLC & PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 580-81 (2005).

B. The Petitioners Demonstrate Standing

Petitioners state that they own homes and are “either full or part time” residents of Palisades Park Residential Park, located “directly adjacent” to the Palisades Owner Controlled Area and within the Palisades Plume Exposure Pathway Emergency Planning Zone.⁶⁷ As such, Petitioners assert that they have a “direct and tangible interest in the safety, regulatory oversight, and long-term implications of the plant’s operations.”⁶⁸ Petitioners state that they are “directly vulnerable to any nuclear incidents” at Palisades and that, in the event of a radiological release, they “would be among the first to experience potential health hazards, including inhalation of radioactive particles, contamination of our homes, and forced evacuation.”⁶⁹ Petitioners contend that “they have already been adversely affected” by “NRC’s allowance of Holtec’s use of regulations ... not yet approved by NRC staff” and that “ongoing restoration activities by Holtec may lead to long-term and potentially irreversible consequences.”⁷⁰ The Petitioners also tie their concerns to the license amendment requests related to potential restart of Palisades,⁷¹ one of which they are challenging in the Petition.

The Primary Amendment Request that Petitioners challenge would, if granted, support restart of the Palisades reactor and resumption of power operations at the facility.⁷² Although

⁶⁷ Petition at 15-16. The Staff verified, using the straight-line measurement tool in Google Maps, that each of Petitioners’ addresses listed in Appendix A is located between approximately 0.5 and 3.3 miles from the Palisades containment building. See Petition at 73-74. While two petitioners, Mary Huffman and Chuck Huffman, identified an Indianapolis, IN, address in their joint declaration, see Petition at 81, they elsewhere identify an address in Covert, MI, approximately one-half mile from the Palisades containment building. See Petition at 74. The Staff considered their Covert, MI, address when evaluating Mary and Chuck Huffman’s standing in this proceeding.

⁶⁸ Petition at 16.

⁶⁹ *Id.* at 16.

⁷⁰ *Id.* at 19.

⁷¹ See *id.* at 17.

⁷² 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.

the license amendment and operating license processes are different, granting the amendment request along with Holtec'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 request presents an "obvious" potential of offsite radiological consequences."⁷³ 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 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.⁷⁴

The same logic applies here. The amendment request Petitioners contest proposes 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 Petitioners' standing, the 50-mile proximity presumption used in operating license proceedings. Because Petitioners all live fewer than four miles from the facility, the Staff agrees that Petitioners have standing.

Alan Blind filed two supplements to bolster Petitioners' standing arguments.⁷⁵ These supplements were not signed by Petitioners or by a person legally authorized to represent

⁷³ *Zion*, CLI-99-4, 49 NRC at 191 (quoting *St. Lucie*, CLI-89-21, 30 NRC at 330).

⁷⁴ *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)).

⁷⁵ Blind First Standing Supplement One; Blind Second Standing Supplement.

Petitioners. Regardless, because the Petition on its face demonstrates standing, the Staff is not further addressing these supplements.

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

Before addressing the proposed contention, the Staff will first 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."⁷⁶ 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

⁷⁶ 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.”⁷⁷ 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.⁷⁸
- Commission precedent has applied requirements for operating licenses to plants in decommissioning.⁷⁹

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

⁷⁸ 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).

⁷⁹ 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 licenses⁸⁰ 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.”⁸¹
- 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.⁸²

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:

⁸⁰ 10 C.F.R. § 50.54 (introductory paragraph).

⁸¹ 10 C.F.R. § 50.54(y)

⁸² 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,⁸³ 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.

IV. The Petition Does Not Proffer an Admissible Contention

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 include references to specific portions of the application (including the applicant's

⁸³ See, e.g., Defueled Administrative Controls Amendment; Defueled TS Amendment.

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[.]⁸⁴

Failure to satisfy any of the six pleading requirements renders a contention inadmissible.⁸⁵

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.”⁸⁶

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.”⁸⁷ 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.”⁸⁸ 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.”⁸⁹ Further, “a proposed contention must be rejected if it raises issues beyond the scope of the proceeding as established by the Commission’s hearing

⁸⁴ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

⁸⁵ *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2) CLI-16-5, 83 NRC 131, 136 (2016).

⁸⁶ 10 C.F.R. § 2.309(f)(2).

⁸⁷ Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) (final rule).

⁸⁸ *Id.*

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

notice.”⁹⁰ 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.”⁹¹

Presiding officers are expected “to examine cited materials to verify that they do, in fact, support a contention.”⁹² 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.”⁹³ A presiding officer may view a petitioner’s supporting information in a light favorable to the petitioner,⁹⁴ but the presiding officer is not to “search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves.”⁹⁵

B. Proposed Contention 1 Is Inadmissible Because It Raises Matters Outside the Scope of the Proceeding that Are Not Material to the Amendment Requests

Proposed Contention 1 is stated as follows:

NRC staff are proceeding with the review of license amendments based on a denial of a rulemaking petition without approval from NRC General Counsel of staff’s interpretation of SECY-20-0110 for Holtec’s proposed license amendments, specifically regarding which NRC rules constitute the “existing regulatory framework.” Although NRC staff are moving forward with licensing actions, there is no public visibility regarding whether NRC General Counsel agrees with the use of SECY-20-0110 as a justification for NRC staff actions.

⁹⁰ *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)).

⁹¹ 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)).

⁹² *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006).

⁹³ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 107 & n.131 (2018).

⁹⁴ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

⁹⁵ *American Centrifuge Plant*, CLI-06-10, 63 NRC at 457 (2006).

Furthermore, there is no public visibility of the direct connection between the existing NRC rules to be used for a plant that has submitted its §50.82 shutdown certifications through the “return to service” period and the return to a known set of NRC rules for power reactor operations and SOP oversight. NRC staff must propose, and General Counsel must approve, the specific “return to service” NRC rules to be used, drawn from within the SECY-20-0110 denial basis. Holtec and staff are proceeding using the proposed Holtec NRC rules, which petitioners assert are outside the current regulatory framework for the Holtec proposed licensing actions. For example:

- 10 CFR 50.59, “Changes, tests, and experiments without prior NRC approval”
- Appendix B to Part 50, “Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants”⁹⁶

The Petitioners offer several bases in support of this proposed contention. In Basis 1, the Petitioners assert that the “NRC staff are proceeding with using SECY-20-0110 as a justification for their actions, despite differing wording used from the same reference and no apparent NRC General Counsel approval of the correct interpretation[.]”⁹⁷ They further assert that, in accordance with 10 C.F.R. § 50.3, the NRC General Counsel needs to determine the “correct meaning of the denial language in PRM-50-117” and “[a]pprove the final NRC staff[f]’s interpretation on what specific rules are to be used for staff review of Holtec submittals and Holtec return to service period activities[.]”⁹⁸ In Basis 2, the Petitioners claim that “Holtec has proposed the use of regulations that are outside the ‘Existing Regulatory Framework’” and give as examples Holtec proposals regarding (a) updating the final safety analysis report (FSAR) as discussed in proposed Contention 2 and (b) updating the QA program as discussed in proposed Contention 3.⁹⁹ In Basis 3, the Petitioners argue that the AEA requires nuclear regulations to be

⁹⁶ Petition at 39-40.

⁹⁷ *Id.* at 40.

⁹⁸ *Id.* at 41-42.

⁹⁹ *Id.* at 43-46. Because the FSAR and QAP claims are the subject of proposed Contentions 2 and 3, the Staff will not specifically address those claims here but will address them below in response to proposed Contentions 2 and 3.

“objective, measurable, and uniformly applied” and “underscores the NRC's obligation to uphold safety standards through rigorous oversight and prevent conflicts of interest.”¹⁰⁰

Staff Response: In proposed Contention 1, the Petitioners challenge the Staff's decision to proceed with the review of the restart-related amendment requests without approval by the NRC General Counsel as to which rules apply to the review,¹⁰¹ but this challenge is inadmissible because it is outside the scope of the proceeding and immaterial to whether the amendment requests should be granted. This proceeding is limited to whether the amendment requests satisfy NRC requirements and is not a forum to challenge the Staff's safety review or demand action from the NRC General Counsel.¹⁰² Therefore, proposed Contention 1 does not meet 10 C.F.R. § 2.309(f)(1)(iii), (iv), or (vi).¹⁰³

The proffered bases also do not support contention admissibility. Basis 1 simply reiterates the arguments about the Staff's review and the demand for a General Counsel interpretation that are addressed in the previous paragraph. Basis 2 claims that Holtec proposes to use regulations outside the existing regulatory framework but provides no specific support or explanation for that other than to reference the arguments made in proposed Contentions 2 and 3, which are inadmissible as explained below. And elsewhere in the Petition, the Petitioners

¹⁰⁰ *Id.* at 46 (emphasis removed).

¹⁰¹ Petition at 39.

¹⁰² *Pa'ina Hawaii, LLC* (Materials License Application), CLI-08-3, 67 NRC 151, 168 n.73 (2008) (reminding the parties that “the issue in this proceeding is the adequacy of the Pa'ina application, not the adequacy of the Staff's Safety Review”); *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-08-17, 68 NRC 231, 242 (2008) (stating that “generic NRC policies and standards and the nature of the NRC Staff's licensing review are not subject to challenge in an adjudicatory hearing”).

¹⁰³ The Petitioners appear to believe that 10 C.F.R. § 50.3 *requires* the NRC General Counsel to interpret the regulations in this instance, but the regulation nowhere says or implies that. In fact, Atomic Energy Commission (AEC) and NRC General Counsels rarely issued official interpretations of regulations and not since 1977. See Interpretations; Removal of Part 8, 77 Fed. Reg. 21,625 (Apr. 11, 2012) (final rule). The usual regulatory processes provide better means to clarify, or resolve disputes over, the interpretation of regulations. For example, the adjudicatory process allows public engagement and the development of a factual record to address how rules should apply to concrete cases, while generic issues are better addressed through rulemaking processes, which also provide for public involvement.

appear to challenge the existing regulatory framework.¹⁰⁴ Moreover, in the later-filed Blind Transparency Supplement, the Petitioners' Contact concedes that "Holtec may have a legally sound restart plan, and the NRC may have valid interpretations of regulatory guidelines" and that "Petitioner's recognize the Holtec proposals are 'within the existing regulatory framework.'"¹⁰⁵ Therefore, Basis 2 does not satisfy § 2.309(f)(1)(v) or (vi) because it is not adequately supported and does not demonstrate a genuine, material dispute with the application.

The various concerns expressed in Basis 3 regarding the nature of NRC regulations, NRC oversight, and conflicts of interest likewise do not make proposed Contention 1 admissible. As best as the Staff can understand it, the Petitioners appear to argue that the AEA's overall safety objective implies a requirement for NRC regulations to be "clear, objective, and uniformly applied," which the Petitioners do not believe is satisfied here because NRC regulations are not specifically written for restart of a plant in decommissioning; therefore, an interpretation of these regulations by the NRC General Counsel is necessary to fill the gap.¹⁰⁶ However, as explained above, an interpretation by the General Counsel is not required for submission or review of license amendment and exemption requests that seek approval for restart, and the Petitioners can use this proceeding to contest the interpretation of regulations material to issues within the proceeding's scope. Further, the Petitioners point to no provision of the AEA that requires NRC regulations to specifically address licensing scenarios such as restart of reactors in decommissioning, and there is no such provision. Instead, "[t]he Act's regulatory scheme 'is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the

¹⁰⁴ See Petition at 4 (stating, "The Petition challenges the reliance on the 'existing regulatory framework' as described in SECY-20-0110").

¹⁰⁵ Blind Transparency Supplement, at 2, 8.

¹⁰⁶ Petition at 46-49.

statutory objective.’ *Siegel v. AEC*, 400 F.2d 778, 783 (1968).”¹⁰⁷ Similarly, the NRC retains the flexibility to establish what “reasonable assurance” and “adequate protection” mean through case-by-case application rather than by establishing a “set of objective standards.”¹⁰⁸

In addition, the Basis 3 concerns regarding NRC oversight and “conflict of interest” are unsupported, immaterial, and outside the scope of this proceeding. Proposed Contention 1 includes no support, or even explanation, for the assertions that NRC oversight will somehow be compromised or that the NRC has or will make decisions that “favor[] a licensee’s economic or operational convenience over safety.”¹⁰⁹ Although not included within the contention itself, the Petitioners elsewhere contend that a conflict of interest could arise “[i]f the NRC were to allow licensees to influence the selection or interpretation of applicable regulations.”¹¹⁰ While the basis of the Petitioners’ argument is not clear to the Staff, the Petitioners appear to argue that allowing licensees to submit amendment requests that explain how they propose to comply with what they believe to be the applicable NRC requirements could somehow lead to a conflict of interest. This argument has no merit. What Petitioners call a conflict is how the licensing process is designed to work, including providing the Petitioners the opportunity to submit contentions challenging the license amendments, provide their own interpretations of the requirements, and argue that these requirements are not met. Finally, the Petitioners’ assertions regarding NRC oversight and supposed conflicts are not directed at material matters within the

¹⁰⁷ *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2), CLI-10-6, 71 NRC 113, 122 (2010).

¹⁰⁸ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 465-66 (2010) (stating, “Like the Atomic Energy Act’s standard of ‘adequate protection,’ the ‘reasonable assurance’ determination need not be reduced to a mechanical verbal formula or set of objective standards, but may be given content through case-by-case applications of [the Commission’s] technical judgment, in light of all relevant information”) (internal quotation marks omitted, alteration in original).

¹⁰⁹ Petition at 48-49.

¹¹⁰ *Id.* at 29.

scope of this proceeding, which is confined to whether the amendment requests meet NRC requirements.¹¹¹ Therefore, Basis 3 does not satisfy § 2.309(f)(1)(iii), (iv), (v), or (vi).

For the reasons given above, proposed Contention 1 is inadmissible because the claims therein do not satisfy § 2.309(f)(1)(iii), (iv), (v), or (vi).

C. Proposed Contention 2 Is Inadmissible Because It Is Not Adequately Supported and Raises Matters that Are Immaterial and Outside the Scope of the Proceeding

Proposed Contention 2 is stated as follows:

Holtec's proposal to update the Final Safety Analysis Report (UFSAR), now titled the Defueled Safety Analysis Report (DSAR), via the 10 CFR 50.59 process (Changes, tests, and experiments) to reflect the docketed version that was in effect prior to the 10 CFR 50.82(a)(1) certifications, [Palisades] UFSAR Revision 35 (Reference 6) is flawed because the previous FSAR is no longer the licensing basis for the plant. The previous licensing basis, including the results of the Systematic Evaluation Process (SEP), NUREG-0820, was terminated when the §50.82 certifications were submitted by the previous owner.

It is understood that no specific regulation governs the writing of a new Design Basis/PSAR[i.e., preliminary safety analysis report]/FSAR for a plant in decommissioning and return to operations via a period of system restoration. Contention Two points out that the application of the "existing regulatory framework" from SECY-20-0110 is highly subjective and must be carefully reviewed by staff, with the interpretation approved by General Counsel as per Contention One.¹¹²

In their original Petition, the Petitioners supported proposed Contention 2 with two Bases.

Subsequently, Petitioners' Contact filed six supplements that were directed at further supporting proposed Contention 2. The claims in these six supplements may be placed in three categories:

(1) general arguments regarding use of 10 C.F.R. § 50.59, (2) arguments related to Palisades' licensing and regulatory history and the supposed need to develop a new licensing basis using processes different from those proposed by HDI, and (3) arguments specifically related to the Palisades steam generators. The Staff will address these supplements after first addressing the contention as presented in the originally filed Petition because the supplements were not made by Petitioners or by a person legally authorized to represent the Petitioners.

¹¹¹ *Pa'ina*, CLI-08-3, 67 NRC at 168 n.73; *Millstone*, CLI-08-17, 68 NRC at 242.

¹¹² Petition at 51.

1. *Contention 2 Arguments in the Original Petition*

The originally filed Petition includes two bases in support of proposed Contention 2. Basis 1 asserts that Holtec's proposed use of § 50.59 is "flawed," and even "not possible," because "there is no current FSAR submitted in accordance with Sec. 50.34, as amended and supplemented, and as updated per the requirements of Sec. 50.71(e) or Sec. 50.71(f), as applicable, to perform the required evaluation of whether the changes can be made without prior NRC approval."¹¹³ Basis 2 claims that "the Entergy FSAR and design basis no longer exist" because Entergy submitted the certifications under 10 C.F.R. § 50.82(a)(1).¹¹⁴ Although the Petitioners offer separate Bases, the two Bases are so closely related that the Staff will treat them collectively.

Staff Response: As discussed below, proposed Contention 2 is inadmissible as originally pled because it challenges the use of processes outside the scope of this proceeding rather than the specific UFSAR content that the Primary Amendment Request discusses. Further, the Petitioners do not sufficiently support their Contention 2 arguments, which reflect a misunderstanding of the current state of the UFSAR, how changes to the UFSAR may be approved via license amendment, and how current regulations ensure that the UFSAR will be updated to reflect the outcome of approved license amendments. Finally, proposed Contention 2 challenges the existing regulations rather than explaining how the regulatory requirements for a license amendment are not satisfied. For these reasons, proposed Contention 2 is inadmissible.¹¹⁵

¹¹³ *Id.* at 51-52.

¹¹⁴ *Id.* at 53.

¹¹⁵ Proposed Contention 2 also replicates the claim made in proposed Contention One regarding an "interpretation approved by General Counsel." Petition at 51. That claim is fully considered above and that discussion is not repeated here.

While the arguments raised in proposed Contention 2 are not entirely clear, the Staff will address what it understands as the Petitioners' contention: that HDI must develop "a new Design Basis/PSAR/FSAR" for NRC approval because the "proposed use of 10CFR50.59 is not possible because there is no current FSAR ... to perform the required evaluation of whether the changes can be made without prior NRC approval."¹¹⁶ However, the FSAR does currently exist and may be updated in accordance with applicable regulatory processes to support the restart of reactor operation. As explained above in Discussion Section III, the Palisades renewed facility operating license continues in effect under 10 C.F.R. § 50.51(b), and the FSAR requirements in § 50.59 continue to apply in decommissioning. Also, the Palisades license continues to reference the FSAR even after the Defueled TS Amendment modified the license to reflect the requirements for a plant in decommissioning.¹¹⁷ Thus, to the extent the Petitioners contend that there is no FSAR in existence that may be changed to support plant restart, that assertion is not supported as required by 10 C.F.R. § 2.309(f)(1)(v), is inconsistent with NRC regulations, and thereby does not establish a genuine, material dispute with the application as required by § 2.309(f)(1)(vi).

The Petitioners also focus on HDI's reference to using the 10 C.F.R. § 50.59 process to update the FSAR, but this focus 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.¹¹⁸ In other words, § 50.59 is procedural in nature and implemented to determine *whether* to submit a

¹¹⁶ Petition at 51, 52.

¹¹⁷ Defueled TS Amendment, Enclosure 1, Attach. (retaining references to "Final Safety Analysis Report," FSAR, or UFSAR on license change pages 2, 3, 4.0-1, 4.0-4, and 5.0-9).

¹¹⁸ 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)).

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 Amendment Request describes HDI's plan to "implement[]" the § 50.59 process "coincident with the associated license amendments."¹¹⁹ 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."¹²⁰ Consequently, the Petitioners' challenge to HDI's planned, future 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 Primary Amendment Request. And to the extent the Petitioners are challenging 10 C.F.R. § 50.59 itself, that challenge falls afoul of 10 C.F.R. § 2.335.

The instant proceeding provides the opportunity to challenge the proposed content of the FSAR 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. Proposed Contention 2 acknowledges that the Primary Amendment Request proposes to update the FSAR "to reflect the docketed version that was in effect prior to the 10 CFR 50.82(a)(1) certifications, [Palisades] UFSAR Revision 35 (Reference 6)[.]"¹²¹ The Primary Amendment Request has numerous

¹¹⁹ Primary Amendment Request, Enclosure at 4.

¹²⁰ *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-16-9, 83 NRC 472, 474-75 (2016).

¹²¹ Petition at 51.

references to UFSAR Revision 35 throughout, both as a general matter and as support for specific proposed license changes.¹²² The Primary Amendment Request also includes the ADAMS accession number for this revision of the UFSAR.¹²³ 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 proposed changes to the license, but the Petitioners neglected to do so. 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). To the extent the Petitioners may be challenging the NRC's authority to approve updated FSAR content via license amendment, that challenge is inconsistent with NRC regulations (e.g., §§ 50.59, 50.90, and 50.92) and is therefore prohibited by 10 C.F.R. § 2.335.

Moreover, even though implementation of § 50.59 is outside the scope of the proceeding, the Staff will, in the interest 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

¹²² See, e.g., Primary Amendment Request, Enclosure at 4, 80.

¹²³ Primary Amendment Request, Enclosure at 96.

amendment requests.¹²⁴ 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.¹²⁵ 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,¹²⁶ and any amendment request would be subject to a hearing opportunity.

The Petitioners appear to advocate for “a *new* Design Basis/PSAR/FSAR” that must be approved by the NRC, but they provide no legal support for their argument that this is required.¹²⁷ The Petitioners acknowledge that “no specific regulation governs” their proposal,¹²⁸ which means they have not demonstrated the materiality of this claim as required by § 2.309(f)(1)(iv) and (vi). As discussed above, the license amendment and other NRC processes may be used to effectuate the restart of a plant in decommissioning, and the Petitioners do not point to any failure to meet the specific requirements for a license amendment request, which

¹²⁴ 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”).

¹²⁵ 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”).

¹²⁶ 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).

¹²⁷ Petition at 51 (emphasis added).

¹²⁸ *Id.*

are the only issues relevant to this proceeding. The Petitioners also tie their claims regarding a “new Design Basis/PSAR/FSAR” to the “period of system restoration,”¹²⁹ which Petitioners define as “the time period between the submittal of §50.82 certifications, decommission status, and returning to NRC Reactor Oversight Process (ROP).”¹³⁰ To the extent the Petitioners argue that NRC approval of a new operating reactor FSAR is required before the licensee may conduct activities supporting potential restart under its *current license*, that argument is inadmissible because it is outside the scope of the proceeding and immaterial to the findings necessary to issue the Primary Amendment Request.¹³¹ Assertions that current licensee activities require NRC approval in the form of a license amendment are not cognizable in this proceeding and are properly brought under 10 C.F.R. § 2.206.¹³² The Staff notes that Appendix B of the Petition replicates a § 2.206 petition from Petitioners’ Contact arguing that NRC approval of a new FSAR is required for activities during the “period of system restoration.”¹³³

In addition, the assertion that a PSAR is necessary to support restart of Palisades is legally and factually unsupported and inconsistent with Commission precedent. A PSAR is required for construction permit applications,¹³⁴ but Palisades has already been constructed and HDI is not seeking a construction permit. Once an operating license is issued, a construction permit is not required unless the licensee seeks an alteration to the facility that would “involve substantial changes that, in effect, transform the facility into something it previously was not or

¹²⁹ Petition at 51.

¹³⁰ *Id.* at 12.

¹³¹ See 10 C.F.R. § 2.309(f)(1)(iii), (iv), (vi).

¹³² *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), CLI-12-20, 76 NRC 437, 439-40 (2012) (concluding that the § 2.206 process should be used to address the petitioner’s claim that the licensee violated 10 C.F.R. § 50.59 when replacing the steam generators and that a license amendment was required).

¹³³ Petition at 82-83 (App. B).

¹³⁴ See 10 C.F.R. § 50.34(a).

that introduce significant new issues relating to the nature and function of the facility.”¹³⁵ Here, HDI seeks restart by restoring the FSAR to substantially what it was before the plant entered decommissioning. Thus, no construction permit or PSAR is required.¹³⁶

Fundamentally, the Petitioners appear to be taking issue with the current regulatory framework. This proceeding, however, is limited to whether the restart-related amendment requests satisfy NRC regulations for amendment requests. Challenges to the existing regulatory framework are prohibited by 10 C.F.R. § 2.335 and otherwise do not satisfy § 2.309(f)(1)(iii), (iv), and (vi) because they are immaterial and outside the scope of the proceeding.

For the reasons given above, proposed Contention 2 as presented in the original Petition does not satisfy § 2.309(f)(1)(iii), (iv), (v), and (vi), and is consequently inadmissible.

2. *Blind Supplements – General Arguments on Use of 10 C.F.R. § 50.59*

In support of proposed Contention 2, the Blind Supplements include several general claims regarding the use of § 50.59. The Petitioners’ Contact asserts that Holtec’s proposed use of § 50.59 is discussed in the Primary Amendment Request and therefore is within the scope of the amendment proceeding.¹³⁷ He also maintains that if Holtec “perform[s] the reviews in accordance with widely accepted guidance, such as NEI-96-07, then, Holtec will face many

¹³⁵ *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 392 (2001). The Commission further explained that “[t]o trigger the need for a construction permit, the change must essentially [render] major portions of the original safety analysis for the facility inapplicable to the modified facility.” *Id.* (internal quotation marks omitted).

¹³⁶ The Staff further notes that a PSAR is preliminary in nature, with § 50.34(a)(3) requiring only a preliminary design. The Petitioners do not explain how a preliminary design would address their concerns as opposed to the final design information in the previous operating reactor FSAR that HDI intends to restore if the amendment requests are granted.

¹³⁷ Blind First 50.59 Supplement.

unreviewed safety questions that will require NRC approval.”¹³⁸ Finally, the Petitioners’ Contact faults the NRC for not making NEI 96-07 a “mandatory requirement.”¹³⁹

Staff Response: The Petitioners’ Contact’s general arguments concerning the use of the § 50.59 process do not support the admissibility of proposed Contention 2. As explained in detail above, Holtec’s future use of § 50.59 is outside the scope of the proceeding and not material to the required NRC findings to issue the amendment. The Staff acknowledges that HDI discusses the use of § 50.59 in the Primary Amendment Request, but the Staff understands that this discussion was provided for information and is not part of the scope of the requested amendments. In any event, the presence or absence of such discussion does not alter the scope of the license amendment process or change the regulatory standards for license amendments, which are in § 50.92(a), not § 50.59. Similarly unavailing is his assertion that Holtec’s implementation of § 50.59 would entail many issues requiring NRC approval. This argument is likewise immaterial and outside the scope of the proceeding as it pertains to how the § 50.59 process would be implemented after approval of the amendment requests, if they are approved. Further, the argument appears to be based on a misunderstanding of how the § 50.59 process would apply: as explained above, operation of § 50.59(c)(3) means that the updated FSAR used in the § 50.59 process would include the UFSAR Revision 35 information referenced in the Primary Amendment Request. This UFSAR, rather than the Defueled Safety Analysis Report (DSAR), would be the baseline for evaluating additional, future changes against the criteria in § 50.59. Moreover, if future implementation of § 50.59 does necessitate NRC approval of certain licensee changes, then the Petitioners and Petitioners’ Contact would have

¹³⁸ Blind Second 50.59 Supplement, at 2. See *also id.* at 5-8. Although no specific revision of NEI 96-07 is referenced, the Staff assumes that the Petitioners’ Contact is referring to Nuclear Energy Institute (NEI) 96-07, Revision 1, “Guidelines for 10 CFR 50.59 Implementation,” dated November 2000 (ML003771157), which is endorsed with clarifications “as generally acceptable for use as a means for complying with the requirements in 10 CFR 50.59” by NRC Regulatory Guide 1.187, Revision 3, “Guidance for Implementation of 10 CFR 50.59, ‘Changes, Tests, and Experiments,’” issued June 2021 (ML21109A002).

¹³⁹ Blind Second 50.59 Supplement, at 3.

an opportunity to contest those changes. Finally, the Petitioners' Contact's argument that NEI 96-07 should be a mandatory requirement does not bolster contention admissibility because this proceeding concerns whether the amendment requests meet NRC regulations, not whether the NRC should undertake rulemaking to make NEI 96-07 a mandatory requirement. Therefore, for the reasons given above, the Petitioners' Contact's general arguments concerning the use of the § 50.59 process do not satisfy § 2.309(f)(1)(iii), (iv), or (vi).

3. *Blind Supplements – Arguments Related to Palisades' Licensing and Regulatory History and Supposed Need for New Licensing Basis Under Different Processes*

The Petitioners' Contact raises several concerns regarding Palisades' licensing and regulatory history and suggests that a new licensing basis should be developed based on current requirements and guidance and reviewed under processes different from those HDI proposes. He maintains that Palisades "operates with less defense-in-depth than newer, GDC-compliant plants," because it "was designed and licensed before the NRC's General Design Criteria (GDC) and Standard Review Plans (SRP) were established."¹⁴⁰ He also claims that "[t]he Systematic Evaluation Program (SEP) was introduced in 1985 to address the safety gaps caused by the plant's pre-GDC design," but, nonetheless, "Palisades' safety margins remain less th[a]n GDC plants."¹⁴¹ "[G]iven the unique history and licensing evolution of Palisades," Petitioners' Contact is concerned "about whether the current licensing basis is adequately preserved, and whether 10 CFR 50.59 can be appropriately applied."¹⁴² He further contends that "Holtec's proposal to use the 50.59 process without first updating the FSAR is flawed, as it will base the plant's defense-in-depth and safety margins on outdated 1969 safety

¹⁴⁰ Blind Third Steam Generator Supplement, at 2.

¹⁴¹ *Id.*

¹⁴² Blind Second 50.59 Supplement, at 9.

assumptions,” which “do not account for the modern safety requirements established by the GDC and SRP frameworks[.]”¹⁴³

The Petitioners’ Contact further argues that the NRC may “reconsider Palisades’ design basis using modern GDC and SRP standards” because “the NRC is no longer bound by the backfit rule” following the submission of the 10 C.F.R. § 50.82 certifications.¹⁴⁴ Therefore, he opposes Holtec’s use of § 50.59 “until a comprehensive FSAR is first established, reflecting the current regulatory framework and safety standards.”¹⁴⁵ Given “Palisades’ extended period outside the NRC Regulatory Oversight Program (ROP) since 2022,” he offers “that the FSAR regulations for new plant construction are more applicable.”¹⁴⁶ Finally, he contends that “Holtec must instead be required by the NRC staff to follow the PSAR/FSAR update process as outlined in § 52.157[.]”¹⁴⁷

Staff Response: The arguments that Petitioners’ Contact makes regarding Palisades’ licensing and regulatory history and the supposed need to develop a new licensing basis do not support the admissibility of proposed Contention 2. Contrary to § 2.309(f)(1)(v), he does not provide a factual basis for his conclusory assertions regarding the safety implications of Palisades being a pre-GDC, pre-SRP plant subject to the SEP. Conclusory assertions, even by an expert, do not support contention admissibility.¹⁴⁸ He also does not identify any specific content in the referenced UFSAR Revision 35 as being deficient (or even the specific GDC and SRP provisions of concern to him), much less explain why the UFSAR content is deficient and

¹⁴³ Blind Third Steam Generator Supplement (Part Two), at 6.

¹⁴⁴ Blind Third Steam Generator Supplement, at 2.

¹⁴⁵ Blind Third Steam Generator Supplement (Part 2), at 2.

¹⁴⁶ Blind Second Steam Generator Supplement, at 2.

¹⁴⁷ Blind Second 50.59 Supplement, at 2.

¹⁴⁸ See *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006).

contrary to NRC requirements for license amendments.¹⁴⁹ Therefore, similar to the originally proposed Contention 2, the Petitioners' Contact has not identified the specific portions of the application he disputes and has not demonstrated a genuine, material dispute with the application as required by 10 C.F.R. § 2.309(f)(1)(vi).

The Petitioners' Contact also does not demonstrate the materiality of his argument that the NRC should impose the GDC and current SRP as requirements for restart of Palisades. The Commission, itself, determined in 1992 that the GDC do not apply to plants like Palisades, stating:

At the time of promulgation of Appendix A to 10 CFR Part 50, the Commission stressed that the GDC were not new requirements and were promulgated to more clearly articulate the licensing requirements and practice in effect at that time. While compliance with the intent of the GDC is important, each plant licensed before the GDC were formally adopted was evaluated on a plant specific basis, determined to be safe, and licensed by the Commission. Furthermore, current regulatory processes are sufficient to ensure that plants continue to be safe and comply with the intent of the GDC. Backfitting the GDC would provide little or no safety benefit while requiring an extensive commitment of resources. Plants with construction permits issued prior to May 21, 1971 do not need exemptions from the GDC.¹⁵⁰

Consistent with SRM-SECY-92-223, Palisades is not subject to the GDC because its construction permit was issued in March 1967.¹⁵¹ Likewise, the SRP is also not a requirement for Palisades as it constitutes non-binding guidance to the Staff on how to conduct its reviews.¹⁵²

¹⁴⁹ Section 1.8.1 of UFSAR Revision 35, for example, discusses Palisades' experience under the SEP and Table 1-3 briefly addresses how the SEP issues were dispositioned and identifies sections of the UFSAR where these issues are discussed, as applicable. UFSAR Revision 35, § 1.8.1 & Table 1-3 (Apr. 14, 2021) (ML21125A344 (package)) (Section 1.8.1 is at ML21125A332 and Table 1-3 is at ML21125A330). Also, Section 5.1 of UFSAR Revision 35 discusses how Palisades aligns with the intent of the GDC. *Id.* at § 5.1 (Section 5.1 is at ML21125A291).

¹⁵⁰ Staff Requirements—SECY-92-223—Resolution of Deviations Identified During the Systematic Evaluation Program (Sept. 18, 1992) (ML003763736) (SRM-SECY-92-223). *See also Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 75 (2008) (stating that "[t]he Commission has stated that the GDC are not applicable to nuclear power plants with construction permits issued prior to May 21, 1971").

¹⁵¹ Letter from Peter A. Morris, AEC, to R. D. Morris, Consumers Power Co. (Mar. 15, 1967) (ML020790211).

¹⁵² 10 C.F.R. § 50.34(h)(3).

Therefore, the Petitioners' Contact's assertions regarding Palisades' conformance with the GDC and SRP do not meet the materiality requirements of § 2.309(f)(1)(iv), (vi). And to the extent he contends that the regulatory requirements applicable to Palisades are insufficient, that is a challenge to the existing regulations, contrary to 10 C.F.R. § 2.335.¹⁵³

The other claims the Petitioners' Contact makes regarding Palisades' licensing and regulatory history are also unavailing. Contrary to § 2.309(f)(1)(v), he provides no support for his concerns that Palisades' licensing history raises questions about adequate preservation of the current licensing basis or whether § 50.59 can be applied to it. These challenges also do not meet § 2.309(f)(1)(vi) because he does not specify the portions of the application he is disputing or explain why they are deficient. And as explained above, implementation of § 50.59 is outside the scope of the proceeding and immaterial to the NRC findings required to issue the amendment. Therefore, these challenges do not satisfy § 2.309(f)(1)(iii), (iv), (v), (vi).

Finally, the Petitioners' Contact's arguments to apply alternative licensing processes to restart of Palisades are inadmissible. He does not support his assertion that a PSAR is required, and as explained previously, a PSAR is only applicable to a construction permit application, which is not required in this instance. Further, his claim that HDI must file a license application under 10 C.F.R. § 52.157 is both unsupported and incorrect—§ 52.157 articulates requirements for manufacturing license applications, and HDI is not proposing in the restart-related amendment requests to manufacture a nuclear reactor. Therefore, these arguments are immaterial, unsupported, and outside the scope of the proceeding; hence, they do not satisfy § 2.309(f)(1)(iii), (iv), (v), and (vi).

¹⁵³ *Palisades*, CLI-22-8, 96 NRC at 59-60. Challenges to existing regulations in adjudicatory proceedings must satisfy the special circumstances and affidavit provisions in § 2.335(b), which Petitioners' Contact does not attempt to do. The argument that the NRC may impose the GDC and SRP as requirements because the Backfit Rule does not apply after submission of the § 50.82(a)(1) certifications is not a way around § 2.335. Without addressing how the Backfit Rule might apply to restart of plants in decommissioning, the Staff notes that Commission policy is to apply the Backfit Rule to plants in decommissioning. Staff Requirements—SECY-98-253—Applicability of Plant-Specific Backfit Requirements to Plants Undergoing Decommissioning (Feb. 12, 1999) (ML003753746).

For the reasons given above, arguments the Petitioners' Contact makes regarding Palisades' licensing and regulatory history and the supposed need for a new licensing basis under alternative requirements and processes do not support the admissibility of proposed Contention 2 as they do not satisfy § 2.309(f)(1)(iii), (iv), (v), and (vi).

4. *Blind Supplements – Arguments Regarding Steam Generators*

The final category of Contention 2 arguments in the Blind Supplements relate specifically to information from an NRC preliminary notice regarding “a large number of [steam generator] tubes with indications that require further analysis and/or repair.”¹⁵⁴ The Petitioners' Contact asserts that “[w]ithout an NRC-approved FSAR, it is impossible for either the NRC or Holtec to accurately assess the safety risks associated with these failures.”¹⁵⁵ He specifically argues that “an NRC-approved FSAR is indispensable for analyzing the impact of steam generator tube plugging limits” on the plant's accident analyses.¹⁵⁶ According to the Petitioners' Contact:

As more tubes are plugged over time, the plant's heat removal capacity decreases, and the accident scenarios outlined in the FSAR must account for this reduction. This is done by the analysis specifying a maximum number of plugged tubes. Licensees may submit new analyses, for NRC approval, if they elect to operate at higher levels of [steam generator] tube plugging.¹⁵⁷

He further contends that the § 50.59 process “is inadequate” to address steam generator tube plugging¹⁵⁸ and “cannot replace the comprehensive safety analyses required by 10 CFR 50.34 and Appendix A to 10 CFR Part 50, which are documented in the FSAR.”¹⁵⁹ The Petitioners'

¹⁵⁴ Preliminary Notification of Event or Unusual Occurrence - PNO-III-24-002 (Sept. 18, 2024) (ML24262A092).

¹⁵⁵ Blind First Steam Generator Supplement, at 2.

¹⁵⁶ Blind Second Steam Generator Supplement, at 2.

¹⁵⁷ *Id.* at 4.

¹⁵⁸ *Id.* at 6.

¹⁵⁹ *Id.* at 7 (emphasis removed).

Contact elaborates on these concerns in the Blind Third Steam Generator Supplement. He also describes Holtec's repair strategy as discussed in a news article and states:

While Holtec's public statement addresses the immediate repair strategy, it underscores the necessity of a modern, updated FSAR to properly evaluate the long-term impacts of these repairs on plant safety margins. Only after updating the FSAR in line with current GDC and SRP standards can the full implications of the SCC [Stress Corrosion Cracking] findings, and the proposed repairs, be thoroughly analyzed.¹⁶⁰

Staff Response: For several reasons, the Petitioners' Contact's claims regarding the Palisades' steam generators do not support contention admissibility. First, the Petitioners' Contact 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."¹⁶¹ 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.¹⁶² Further, the UFSAR Revision 35 referenced in the application addresses steam generator tube plugging in the Chapter 14 accident analysis, which the Petitioners' Contact never addresses.¹⁶³ Therefore, contrary to 10 C.F.R. § 2.309(f)(1)(vi), the Petitioners' Contact does not specifically identify the portions of the application information on steam generators that he disputes and the reasons for each dispute, or demonstrate a genuine, material dispute with the application.

In addition, as explained in detail above, the Petitioners' Contact's challenge to the licensee's implementation of § 50.59 is outside the scope of the proceeding and immaterial to the Primary Amendment Request, thereby not meeting § 2.309(f)(1)(iii), (iv), and (vi). Also, his

¹⁶⁰ Blind Third Steam Generator Supplement (Part Two), at 3.

¹⁶¹ See, generally, Primary Amendment Request.

¹⁶² *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, 5.0-25, 5.0-26. 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.*

¹⁶³ See, e.g., UFSAR Revision 35, § 14.3, 14.12, 14.17 (ML21125A341).

assertion that § 50.59 itself is inadequate to address steam generator tube plugging is a challenge to the NRC's regulations, contrary to § 2.335. Moreover, as discussed above, his arguments regarding applying the GDC and the SRP to restart of Palisades do not satisfy § 2.309(f)(1)(iv), (v), or (vi).

Ultimately, if the restart-related requests are approved, restart would be subject to NRC requirements in the technical specifications and the regulations (including the requirements in § 50.59). The licensee's compliance with these requirements (including those related to steam generator tube integrity and updating the UFSAR) would be subject to NRC inspection and oversight. 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 a 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.¹⁶⁴

As explained above, the additional arguments regarding steam generator issues at Palisades do not support admissibility of proposed Contention 2. More broadly, proposed Contention 2 as originally submitted and the additional supporting claims in the Blind Supplements do not satisfy the requirements for contention admissibility in § 2.309(f)(1)(iii), (iv), (v), and (vi).

D. Proposed Contention 3 Is Inadmissible Because It Raises Arguments that Are Out of Scope, Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Application

Proposed Contention 3 states the following:

¹⁶⁴ 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.

Holtec's proposal to update the HDI decommissioning [quality assurance program description] QAPD currently in effect, with appropriate quality assurance controls to cover the activities being performed at the plant during the restoration period, without prior NRC approval, is flawed. Consistent with the "existing regulatory framework" from SECY-20-0110, petitioner's review of "Appendix B to Part 50—Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants" is the current framework and requires that the period of system restoration QAPD be more similar to a "Design and Construction" QAPD review as defined in NUREG-800, "Standard Review Plans."

It is understood that no specific regulation governs the writing of a new Quality Assurance Plan for a plant in decommissioning and return to operations via a period of system restoration. Contention Three points out that the application of the "existing regulatory framework" from SECY-20-0110 is highly subjective and must be carefully reviewed by staff, with the interpretation approved by General Counsel as per Contention One.¹⁶⁵

The Petitioners provide six bases (Bases 1-6), including one legal basis, in support of proposed Contention 3. Subsequently, the Petitioners' Contact filed a supplement emphasizing the importance of transparency in NRC and Holtec's processes, which provides further support for proposed Contention 3.¹⁶⁶ The Staff will separately address this supplement because it was not made by Petitioners or by a person legally authorized to represent the Petitioners.

1. *Proposed Contention 3 in the Original Petition Is Inadmissible Because It Raises Arguments that are Out of Scope, Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Application*

In Basis 1, the Petitioners state that Entergy submitted the certifications required by 10 C.F.R. § 50.82(a)(1) to permanently cease power operations at Palisades, "and therefore, the Entergy operating [quality assurance program description] QAPD no longer exists."¹⁶⁷ Basis 1 further notes that "Holtec assumed ownership of a plant in decommissioning status," and that at the time of the transfer, "HDI was given operating authority by the NRC for the purpose of decommissioning the [Palisades] site."¹⁶⁸ Bases 2 and 4 generally assert that Holtec does not

¹⁶⁵ Petition at 55.

¹⁶⁶ See Blind Transparency Supplement, at 6-7.

¹⁶⁷ Petition at 56.

¹⁶⁸ Petition at 56-57.

have an NRC-approved QA program description for the period of system restoration, and the NRC does not have a regulatory basis or review plan for approving Holtec's request to update the HDI decommissioning QA program description currently in effect.¹⁶⁹ Basis 5 references Appendix B to 10 C.F.R. Part 50 and asserts that "Holtec's activities in progress may contain Quality Control points that are not observable after the fact and can only be completed under an NRC-approved QAPD."¹⁷⁰

In Bases 2, 3 and 6, the Petitioners challenge Holtec's reliance on the NRC's purported "implicit approval" of Holtec's proposal to update the HDI decommissioning QA program description currently in effect, with the appropriate quality assurance controls to cover the activities being performed at the plant during the period of system restoration, without explicit approval and assert that the NRC has not publicly stated whether it approves Holtec's QA program description proposal.¹⁷¹ Basis 6 further argues that NRC regulations in 10 C.F.R. Part 50 and 10 C.F.R. Part 52 require explicit review and approval of any proposed changes to plant operations, including restart procedures, and that Holtec's reliance on implicit approval and its selective application of regulatory rules contradicts the NRC's regulatory requirements that necessitate formal approval to ensure all safety concerns are addressed comprehensively.¹⁷² The Staff notes that these six bases are interrelated; accordingly, the Staff will address them together below.

¹⁶⁹ Petition at 57, 59-60.

¹⁷⁰ Petition at 60.

¹⁷¹ Petition 57-59. See *also* Petition at 5-6, 9-11 (challenging Holtec's reliance on NRC staff's "implicit approval").

¹⁷² Petition at 61-65. See *also* Petition at 6 (stating that the lack of an NRC-approved QAPD for the restoration period is seen as a safety risk).

Staff Response: Proposed Contention 3 challenges HDI's recent changes to its quality assurance program description currently in place at Palisades.¹⁷³ To provide context for these arguments, the Staff's response below begins with a brief overview of the NRC's QA regulatory framework followed by a summary of recent Palisades QA program description changes. Next, the Staff responds to proposed Contention 3 and concludes it is inadmissible because it raises issues that fall outside the scope of this license amendment proceeding, are immaterial to the findings the staff must make to approve the Primary Amendment Request, lack factual support, and do not demonstrate that a genuine dispute exists with the application on a material issue of law or fact, in contravention of 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (v) and (vi).

a. Overview of the NRC's Quality Assurance Regulatory Framework

Appendix B to 10 C.F.R. Part 50 (Appendix B), establishes QA requirements for the design, manufacture, construction, and operation of those structures, systems, and components (SSCs) that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.¹⁷⁴ As the Commission has stated, these QA requirements constitute "a cornerstone of the Commission's 'defense-in-depth' concept for ensuring safe operation of nuclear power plants"¹⁷⁵ The NRC's regulatory framework for licensees and applicants to establish a QA program in accordance with Appendix B to 10 C.F.R. Part 50 serves as an important management tool for the NRC to attain objectives important to nuclear safety; therefore, the Staff conducts extensive reviews during the licensing process to ensure that the applicant's QA program description satisfies the requirements of Appendix B.¹⁷⁶ Once the NRC staff has accepted an applicant's QA program description, it becomes a principal

¹⁷³ Petition at 55-65.

¹⁷⁴ 10 C.F.R. Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants."

¹⁷⁵ Reporting of Changes to the Quality Assurance Program, 48 Fed. Reg. 1026 (Jan. 10, 1983) (final rule).

¹⁷⁶ *Id.*

inspection and enforcement tool for the NRC to ensure that licensees are in compliance with all NRC QA requirements for protecting public health and safety.¹⁷⁷

The Staff typically reviews an applicant's QA program description submitted as part of a licensing application for a construction permit, operating license, or license transfer, as applicable. Specifically, in an application for a construction permit, the applicant's Preliminary Safety Analysis Report (PSAR) must include, among other things, "[a] description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the [SSCs] of the facility."¹⁷⁸ Similarly, in its operating license or license transfer application,¹⁷⁹ as applicable, the applicant's Final Safety Analysis Report (FSAR) must describe, among other things, "managerial and administrative controls to be used to assure safe operation" and "include a discussion of how the applicable requirements of Appendix B will be satisfied."¹⁸⁰

Thereafter, any changes to a licensee's QA program description are governed by the change process outlined in 10 C.F.R. § 50.54(a). In accordance with 10 C.F.R. § 50.54(a)(3), a licensee "may make a change to a previously accepted quality assurance program description included or referenced in the Safety Analysis Report without prior NRC approval, provided the change does not reduce the commitments in the program description as accepted by the NRC."¹⁸¹ Licensees must submit to the NRC any changes to the QA program description that do not reduce the commitments in the program description accepted by the NRC in accordance

¹⁷⁷ *Id.*

¹⁷⁸ 10 C.F.R. § 50.34(a)(7).

¹⁷⁹ 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 . . . qualifications of the proposed transferee as would be required by those sections if the application were for an initial license").

¹⁸⁰ 10 C.F.R. § 50.34(b)(6).

¹⁸¹ 10 C.F.R. § 50.54(a)(3).

with 10 C.F.R. § 50.71(e).¹⁸² Further, section 50.54(a)(4) provides that “changes to the quality assurance program that do reduce the commitments must be submitted to the NRC and receive NRC approval prior to implementation,” and outlines the process for submitting any such changes.¹⁸³

b. Summary of Recent Palisades QA Program Description Changes

HDI has implemented several changes to the Palisades quality assurance program since the previous licensee, Entergy, operated Palisades. Prior to shutdown of Palisades, Revision 42 of Entergy’s fleet operating quality assurance program was in effect at the Palisades site.¹⁸⁴ Upon consummation of the Palisades license transfer from Entergy to HDI and Holtec Palisades, HDI implemented its decommissioning QA program for the Palisades site.¹⁸⁵ On May 23, 2024, HDI submitted for NRC review, a supplement to its Restart Transfer Request, which includes its proposed power operations QA program that the proposed reactor operator, Palisades Energy, LLC (OPCO), intends to implement at Palisades upon transfer of operating authority from HDI to OPCO if the license transfer application is approved.¹⁸⁶ Proposed

¹⁸² *Id.*

¹⁸³ 10 C.F.R. § 50.54(a)(4)(i)-(iv).

¹⁸⁴ See 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,” at 1 (May 23, 2024) (ML24144A106) (citing Letter John Dinelli, Entergy, to NRC Document Control Desk, “Annual Report for Entergy Quality Assurance Program Manual changes under 10 CFR 50.54(a)(3), 10 CFR 71.106, and 10 CFR 72.150(d). Notification of Application of Approved Appendix B to 10 CFR 72 subpart G,” (April 14, 2022) (ML22104A078)).

¹⁸⁵ See Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “Update Report for Holtec Decommissioning International (HDI) Fleet Decommissioning Quality Assurance Program (DQAP) Revision 2,” Enclosure 1 at 7 (Aug. 3, 2022) (ML22215A147) (noting that HDI’s Decommissioning QA Program applies to structures, systems, and components (SSCs) designated as safety significant, applicable regulatory programs, and for other applicable activities and SSCs identified in a facility’s Decommissioning Safety Analysis Report (DSAR)).

¹⁸⁶ HDI states that the power operations QA program is based on Revision 42 of the Entergy fleet QA program in effect prior to the Palisades shutdown, with certain changes. See 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

Contention 3 does not mention or challenge the proposed power operations QA program submitted as part of the Restart Transfer Request.¹⁸⁷

On August 2, 2024, HDI submitted its transitioning quality assurance program, which revised HDI's decommissioning QA program and is currently being implemented at the Palisades site.¹⁸⁸ The Palisades transitioning QA program incorporates the most recent HDI decommissioning QA program adopted at Palisades, as well as the power operations QA program submitted as part of the Restart Transfer Request.¹⁸⁹ The transitioning QA program states that it will continue to implement the quality requirements from the most recent HDI decommissioning QA program for those activities specific decommissioning, while using the operating QA program for those quality related activities and functions that are applicable to reclassification of SSCs at Palisades to support restart of Palisades.¹⁹⁰

c. Proposed Contention 3 Is Inadmissible Because It Raises Issues That Are Out of Scope, Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Application

In proposed Contention 3, the Petitioners primarily challenge HDI's update of its decommissioning QA program with quality assurance controls to cover the activities being

Operations Quality Assurance Program Manual, Revision 0," at 1-2 (May 23, 2024) (ML24144A106) (noting that the QAPM reflects changes to Revision 42 to reflect the differences between Entergy's fleet organization and OPCO's proposed organization).

¹⁸⁷ The Staff notes while any challenges to the operating QA program would fall outside the scope of this proceeding, they could be considered within the scope of the Restart Transfer Request proceeding. The Petitioners have not, however, filed a hearing request in the Restart Transfer Request proceeding.

¹⁸⁸ See Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, "Update Report for Holtec Decommissioning International (HDI) Fleet Decommissioning Quality Assurance Program (DQAP) Revision 3 and Palisades Transitioning Quality Assurance Plan (TQAP) Rev 0," Enclosure 3 (Aug. 2, 2024) (ML24215A356) (Transitioning QA program). The Transitioning QA program is located in Enclosure 3 of HDI's August 2, 2024 submittal.

¹⁸⁹ Transitioning QA program, at 6.

¹⁹⁰ Transitioning QA program, at 6. The transitioning QA program also notes that once Palisades transitions from a decommissioning licensing basis to a power operations licensing basis, quality related activities will be performed in accordance with the power operations QA program submitted as part of the Restart Transfer Request. *Id.*

performed at the plant during the restoration period. As described above, revisions to a licensee's QA program are governed by the change process described in the NRC's regulations at 10 C.F.R. § 50.54(a). The licensee has implemented this process and updated its QA program to address system restoration activities as discussed in its letter dated August 2, 2024.¹⁹¹ Therefore, Petitioners are challenging activities conducted under the current license, not the content of the restart-related amendment requests. This represents an enforcement-related challenge that should be brought under 10 C.F.R. § 2.206.¹⁹² Also, the QA program change process in § 50.54(a) does not require or contemplate submission of a license amendment request under 10 C.F.R. § 50.90 in connection with changes to a licensee's QA program, regardless of whether NRC approval is required for any QA program changes.¹⁹³ Therefore, HDI's QA program description revisions fall outside the license amendment process and outside the scope of this license amendment proceeding in accordance with 10 C.F.R. § 2.309(f)(1)(iii).

The Petitioners assert that HDI's update of its decommissioning QA program without explicit NRC approval is flawed and NRC's regulatory framework mandates explicit approval.¹⁹⁴ However, the Petitioners do not explain how HDI's revisions to its quality assurance program (revising the decommissioning QA program to the transitioning QA program) would amount to a decrease in commitments necessitating explicit NRC approval under 10 C.F.R. § 50.54(a)(4). Indeed, the NRC's regulations in 10 C.F.R. § 50.54(a)(3) permit licensees to make the type of changes HDI has implemented in the transitioning QA program without NRC approval because

¹⁹¹ Transitioning QA program, at 6.

¹⁹² As noted in Appendix B of the Petition, the Petitioners' Contact has already filed a § 2.206 petition that raises substantially similar QA issues as those raised here in proposed Contention 3. Petition at 83-84.

¹⁹³ See 10 C.F.R. § 50.54(a)(4)(i)-(iv) (describing the process for submitting to the NRC for prior approval changes to a quality assurance program description that do reduce commitments).

¹⁹⁴ Petition at 55-65.

the revisions do not reduce the commitments in their accepted QA program description.¹⁹⁵ Here, HDI states that the transitioning QA program addresses “the *increase in needed commitments* particular to Palisades as [the] site transitions back to an operating status.”¹⁹⁶ Moreover, the transitioning QA program includes not only the commitments needed to implement the most recent Palisades HDI decommissioning QA program for activities specific to decommissioning, but additional commitments from the operating QA program for those quality related activities and functions that are applicable to reclassification of SSCs at Palisades to support potential restart of Palisades.¹⁹⁷ The Petitioners do not address or dispute these statements in the transitioning QA program describing an increase in commitments in HDI’s QA program nor do they otherwise explain why HDI’s transitioning QA program amounts to a reduction in commitment that would require NRC-approval of the transitioning QA program under 10 C.F.R. § 50.54(a)(4). Moreover, the Petitioners do not explain how HDI’s transitioning QA program revisions relate to any of the findings the Staff must make to issue the Primary Amendment Request or raise any specific challenges to the Primary Amendment Request. Accordingly, the Petitioners’ arguments are inadmissible because they are immaterial to the findings the NRC must make to issue the Primary Amendment Request and fail to present a genuine dispute with the Primary Amendment Request on a material issue of fact or law under 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

The Petitioners also argue that the NRC does not have a regulatory basis for approving HDI’s transitioning QA program, that 10 C.F.R. Part 50 and 10 C.F.R. Part 52 require explicit

¹⁹⁵ 10 C.F.R. § 50.54(a)(3).

¹⁹⁶ See Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, “Update Report for Holtec Decommissioning International (HDI) Fleet Decommissioning Quality Assurance Program (DQAP) Revision 3 and Palisades Transitioning Quality Assurance Plan (TQAP) Rev 0,” Cover letter, at 2 (Aug. 2, 2024) (ML24215A356) (emphasis added). As previously noted, the August 2, 2024 submittal provides HDI’s Transitioning QA program in Enclosure 3.

¹⁹⁷ Transitioning QA program, at 6.

review and approval of any proposed changes to plant operations, including restart procedures, and that “[i]t is understood that no specific regulation governs the writing of a new Quality Assurance Plan for a plant in decommissioning and return to operations via a period of system restoration.”¹⁹⁸ The Petitioners seem to be asserting here that the QA change process outlined in 10 C.F.R. § 50.54(a) does not apply to HDI because it is in decommissioning and is seeking to restart power operations. However, the Petitioners provide no explanation for why the specific requirements in 10 C.F.R. § 50.54(a) would not apply to HDI at this stage and point to no other NRC regulation that would require such explicit NRC review and approval of HDI’s QA program changes at this stage. Moreover, as explained above in Discussion Section III, the Palisades renewed facility operating license continues in effect under 10 C.F.R. § 50.51(b), and the Quality Assurance requirements in 10 C.F.R. Part 50, Appendix B, and § 50.54(a) continue to apply to Palisades during decommissioning. Thus, to the extent that the Petitioners assert that a new Quality Assurance plan is needed and that HDI cannot make revisions to its decommissioning quality assurance program under the change process outlined in 10 C.F.R. § 50.54(a), the Petitioners’ assertions are unsupported and are inconsistent with NRC regulations, and therefore, fail to raise a genuine dispute with the applicant on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi). To the extent the Petitioners are challenging the change process outlined in NRC regulations at 10 C.F.R. § 50.54(a) or suggesting that the NRC’s existing regulatory framework is insufficient to address HDI’s changes in its transitioning QA program to support potential restart of power operations at Palisades, the Petitioners’ challenges are barred by 10 C.F.R. § 2.335, and are more appropriately addressed under the NRC’s petition for rulemaking process in 10 C.F.R. § 2.802.¹⁹⁹

¹⁹⁸ Petition at 55-62.

¹⁹⁹ The Staff notes that the Petitioners’ Contact has filed a Petition for Rulemaking (PRM) that raises similar quality assurance issues as those raised here in proposed Contention 3, and the NRC has docketed that PRM. See *Returning a Decommissioning Plant to Operating Status*, 89 Fed. Reg. 76,750 (Sept. 19, 2024) (notice of docketing and request for comment on a petition for rulemaking).

The Petitioners' related arguments challenging Holtec's plan to revise its quality assurance program based on purported "implicit approval" from the NRC,²⁰⁰ are similarly inadmissible. The Petitioners assert Holtec's reliance on implicit approval is legally inadequate and contradicts the regulatory requirements that necessitate formal approval to ensure all safety concerns are addressed comprehensively.²⁰¹ The Petitioners' assertions, however, lack any legal basis. As noted above, the change process described in NRC regulations at 10 C.F.R. § 50.54(a)(3)-(4) governs HDI's changes to its decommissioning QA program. As such, the NRC staff has not somehow implicitly approved HDI's plan – the regulations in 10 C.F.R. § 50.54(a)(3) simply do not require NRC approval for the type of changes HDI has implemented in its transitioning QA program. Moreover, as discussed previously, the Petitioners do not explain why the change process described in 10 C.F.R. § 50.54(a) would not apply to the transitioning QA program or how HDI's actions are not in compliance with such requirements.

The Petitioners also speculate that lack of NRC approval of the transitioning QA program and NRC's "implicit approval" introduces significant risks to plant safety,²⁰² and that "Holtec's activities in progress may contain Quality Control points that are not observable after the fact and can only be completed under an NRC-approved QAPD,"²⁰³ but the Petitioners do not provide any support for these assertions. Also, as explained above, the transitioning QA program content related to reactor operation is the same as the power operations QA program submitted as part of the Restart Transfer Request, and the Petitioners did not contest the power operations QA program in the transfer proceeding. Accordingly, the Petitioners assertions

²⁰⁰ Petition 57-59. The Staff notes that while Petitioners appear to rely on background information in the Exemption Request to support their position that the NRC has provided "implicit approval" of Holtec's plan, the Petitioners do not specifically challenge the Exemption Request itself in proposed Contention 3. See *id.* at 59 (citing Exemption Request, Enclosure 1, at 5-6).

²⁰¹ Petition at 55-65.

²⁰² Petition at 6, 61-65.

²⁰³ Petition at 60.

regarding “implicit approval” are inadmissible because they are unsupported and fail to raise a genuine dispute with the application on a material issue of fact or law under 10 C.F.R.

§ 2.309(f)(1)(iv)-(vi). In addition, to the extent that the Petitioners are challenging HDI’s current activities at the Palisades site, asserting that Holtec is somehow not in compliance with the regulatory requirements in 10 C.F.R. § 50.54(a), or suggesting that HDI’s implementation of its transitioning QA program has introduced significant risks to plant safety, such assertions are not subject to challenge in this adjudicatory proceeding and should instead be raised under a request for enforcement action under 10 C.F.R. § 2.206.²⁰⁴

Further, the Petitioners’ assertions that Part 50, Appendix B requires “that the period of system restoration QA program description be more similar to a ‘Design and Construction’ QA program description review as defined in NUREG-800, ‘Standard Review Plans,’”²⁰⁵ are also inadmissible because these arguments lack sufficient factual support and are otherwise immaterial to the findings the NRC must make to issue the Primary Amendment Request. Specifically, the Petitioners provide no support for their assertions either from 10 C.F.R. Part 50, Appendix B; the Standard Review Plan; or any other source to demonstrate that only design and construction quality assurance controls are needed here, nor do they point to any deficiencies in the transitioning QA program for failure to include design and construction quality controls. As described in the Staff’s response to Contention 2, no construction permit or PSAR is required for the potential restart of Palisades. Moreover, the revisions in the transitioning QA program involve activities related to potential restart of the reactor²⁰⁶ – not specifically the

²⁰⁴ As noted in Appendix B of the Petition, Petitioners’ Contact has already filed a § 2.206 petition that raises substantially similar issues as those raised here in proposed Contention 3.

²⁰⁵ Petition at 55.

²⁰⁶ Transitioning QA program, at 6 (noting that the transitioning QA program will be the overarching document that assigns major functional responsibilities for quality related activities applicable to the current licensing bases, (decommissioning), at Palisades, as well as those restart project quality related activities applicable to the reclassification of the SSCs necessary to support the safe restart of Palisades).

design or construction activities addressed by Chapter 17.1 of NUREG-0800, which is not intended for the review of QA programs for operating licenses.²⁰⁷ For these reasons, Petitioners' assertions are inadmissible in accordance with 10 C.F.R. §§ 2.309(f)(1)(iv)-(v) because they are unsupported and are otherwise immaterial.

Finally, to the extent the Petitioners assert in proposed Contention 3 that "application of the 'existing regulatory framework' from SECY-20-0110 is highly subjective and must be carefully reviewed by staff, with the interpretation approved by General Counsel,"²⁰⁸ these arguments are inadmissible for the reasons discussed above in the Staff's response to proposed Contention 1.

For the reasons discussed above, proposed Contention 3, as originally pled, is not admissible under 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (v), and (vi).

2. Proposed Contention 3 Arguments in the Blind Transparency Supplement

In his Transparency Supplement, the Petitioners' Contact points to a public meeting summary where in response to a question from NRC regarding whether Holtec planned to submit its revised QAPD for formal review, Holtec responded that "it would make changes under 10 CFR 50.54(a)(3), which allows change without prior NRC approval."²⁰⁹ The Petitioners' Contact states that because the NRC "did not insist on formal submission," the Petitioners and public are left "unable to verify whether Holtec's proposed QA program description update meets NRC approved regulations."²¹⁰ The Petitioners' Contact further asserts that the absence

²⁰⁷ Compare NUREG-0800, "Standard Review Plan," Chapter 17.1, "Quality Assurance During the Design and Construction Phases," Rev. 2), at 1 (July 1981) (ML052350349) (noting that applicable areas of review include applications for construction permits, manufacturing licenses, or standard design approvals), with NUREG-0800, "Standard Review Plan," Chapter 17.2, "Quality Assurance During the Operations Phase," Rev. 2), at 1 (July 1981) (ML052350361) (describing QA program reviews at the operating license stage).

²⁰⁸ Petition at 55, 63-64.

²⁰⁹ Blind Transparency Supplement, at 6 (quoting "Summary of May 24, 2023, Meeting with Holtec Decommissioning International, LLC Regarding Regulatory Path for Potentially Requesting Reauthorization of Power Operations at Palisades Nuclear Plant," at 2 (June 22, 2023) (ML23171B122)).

²¹⁰ Blind Transparency Supplement, at 6-7.

of formal NRC review of Holtec's proposed transitioning QA program "raises serious concerns about transparency and safety in the restart process."²¹¹

Staff Response: The Petitioners' Contact's arguments relating to proposed Contention 3 in the Transparency Supplement do not support admissibility of the contention. Specifically, the Petitioners' Contact's assertions regarding safety concerns are vague and he provides no factual basis for any purported safety concerns. To the extent that the Petitioners' Contact challenges HDI's lack of formal submission of its transitioning QA program, he does not explain why the change process described in 10 C.F.R. § 50.54(a) would not apply to this program. To the extent the Petitioners' Contact is suggesting that the NRC's existing regulatory framework is insufficient, his arguments are precluded by 10 C.F.R. § 2.335, and should be addressed under the NRC's petition for rulemaking process in 10 C.F.R § 2.802.²¹² Finally, to the extent that the Petitioners' Contact is asserting that HDI is somehow not in compliance with the requirements in 10 C.F.R. § 50.54(a) or is raising concerns about plant safety, such assertions are not subject to challenge in this adjudicatory proceeding and should instead be considered through the 10 C.F.R. § 2.206 process.²¹³ For these reasons, and for the reasons further described above in the Staff's response to the Petitioners' proposed Contention 3, the Petitioners' Contact's arguments are inadmissible because they are out of scope and immaterial, lack factual support, and fail to raise a genuine dispute with the application on a material issue of fact or law under 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (v), and (vi).

²¹¹ Blind Transparency Supplement, at 7.

²¹² The Staff notes that the Petitioners' Contact has filed a Petition for Rulemaking (PRM) that raises similar quality assurance issues as those raised here in proposed Contention 3, and the NRC has docketed that PRM. See Returning a Decommissioning Plant to Operating Status, 89 Fed. Reg. 76,750 (Sept. 19, 2024) (notice of docketing and request for comment on a petition for rulemaking).

²¹³ As noted in Appendix B of the Petition, the Petitioners' Contact has already filed a § 2.206 petition that raises substantially similar issues as those raised here in proposed Contention 3.

For the reasons discussed above, proposed Contention 3, as supplemented, is not admissible under 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (v), and (vi).

E. Proposed Contention 4 Is Inadmissible Because It Is Out of Scope, Immaterial, Unsupported, and Does Not Raise a Genuine Dispute with the Application

In proposed Contention 4, the Petitioners state as follows:

The NRC is allowing Holtec to take “other actions” within the “existing regulatory framework,” as referenced in SECY-20-0110, to complete the *period of system restoration activities*. In its “in scope” License Amendment Requests, Holtec proposed rules for the QAPD and FSAR (see contentions one, two, and three) that are now being used, without NRC approval, to support the period of system restoration activities.

According to publicly available documents, the NRC staff has not formally responded to Holtec’s proposed regulations, which are the subject of this petition. Despite the absence of implicit* approval, Holtec is proceeding with system restoration activities at the Palisades site based on implicit approval, because NRC has not responded. This presents an immediate harm to the petitioners, who have filed §2.206 petitions requesting the NRC staff to take action to halt these activities. The petitioners urge the adjudicatory authority to consider the urgency of conducting a concurrent review.

Petitioner concern is lack of NRC approved licensing basis and QAPD does not give NRC inspections staff adequate guidance in evaluating design basis (no NRC approved FSAR) and no quality guidance for activities such as special processes, documentation, quality control inspections, etc (no NRC approved QAPD).²¹⁴

In support of proposed Contention 4, the Petitioners provide four Bases (Bases 1-4), including one legal basis. Basis 1 and 3 are similar in that they purport to provide support for the Petitioners’ assertion that “[t]he NRC is allowing Holtec to take ‘other actions’” to complete the period of system restoration activities. Basis 1 quotes a portion of NRC Inspection Manual Chapter (IMC) 2562,²¹⁵ while Basis 3 quotes a portion of an NRC inspection report related to the

²¹⁴ Petition at 66-67.

²¹⁵ Petition at 67 (citing NRC Inspection Manual Chapter 2562, “Light-Water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations” (July 29, 2024) (ML24150A239) (IMC 2562)).

proposed restart of Palisades.²¹⁶ Basis 2 challenges Holtec's reliance on NRC's supposed "implicit" approval to complete the period of system restoration activities at Palisades.²¹⁷

Basis 4, entitled "Ripeness Doctrine and Lack of NRC Oversight of Design Basis Tools," is described in the original Petition as a "Basis in Law." Basis 4 asserts that the Staff "may be allowing Holtec to implement significant actions under the 'existing regulatory framework' without proper authorization, adequate oversight, or public review,"²¹⁸ and these actions have effectively ripened and matured into significant regulatory and safety concerns that must be addressed now.²¹⁹ Basis 4 further asserts that "[t]he lack of transparency and sufficient regulatory oversight could result in inadequate inspection standards and increase the risk of non-compliance with critical safety regulations."²²⁰

The Petitioners appear to make additional assertions related to proposed Contention 4 and NRC's purported implicit approval under the "Requested Actions" section. Specifically, the Petitioners assert that "Holtec actions requiring quality inspections may not be recoverable, in that the ability to gain access to the inspection conditions cannot be replicated after the fact."²²¹ Therefore, the Petitioners request that "any work completed under these conditions should not be considered valid evidence for the NRC's decision to reauthorize Holtec's operating license and must be excluded from the record."²²² The Staff notes that these arguments and the four bases discussed above are interrelated; accordingly, the Staff will address them together below.

²¹⁶ Petition at 69 (quoting Letter from April M. Nguyen, NRC, to Mike Mlynarek, HDI, "Palisades Nuclear Plant – Restart Inspection Report 05000255/2024011 (July 15, 2024) (ML24197A185) (Restart Inspection Report)).

²¹⁷ Petition at 68; *see also* Petition at 5-6.

²¹⁸ Petition at 70.

²¹⁹ Petition at 70-71.

²²⁰ Petition at 70.

²²¹ Petition at 9.

²²² Petition at 10.

Staff Response: As discussed below, proposed Contention 4 is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii) because it raises issues outside the scope of this license amendment proceeding that are related to HDI's current actions at the Palisades site, the NRC's inspection and oversight process at Palisades, and the NRC's existing regulatory framework. As noted in Appendix B of the Petition, the Petitioners' Contact has already filed a § 2.206 petition and a Petition for Rulemaking raising substantially similar issues,²²³ which are the appropriate processes to raise such challenges. Further, proposed Contention 4 is also inadmissible because it is unsupported, immaterial to the findings the staff must make to issue the Primary Amendment Request, and does not raise a genuine dispute with the Primary Amendment Request on a material issue of law or fact under 10 C.F.R. §§ 2.309(f)(1)(iv), (v), and (vi).

In proposed Contention 4, the Petitioners argue that Holtec is currently proceeding with system restoration activities based on NRC's "implicit approval" of "Holtec[s] proposed rules for the QAPD and FSAR."²²⁴ In support of their position, the Petitioners appear to rely on the Exemption Request to the extent it states that "the NRC provided no comments opposing the reasonableness of the approach."²²⁵ The Petitioners' arguments regarding implicit approval, however, lack any specific legal basis and appear to stem from a misunderstanding of the NRC's current regulatory framework. As explained above in Discussion Section III, the Palisades renewed facility operating license continues in effect under 10 C.F.R. § 50.51(b), and

²²³ Petition at 82-85; *see also* Returning a Decommissioning Plant to Operating Status, 89 Fed. Reg. 76,750 (Sept. 19, 2024) (notice of docketing and request for comment on a petition for rulemaking).

²²⁴ Petition at 66-68. *See also* Petition at 5-7 (providing additional arguments against "implicit approval" and asserting that "allowing licensees to choose from among existing regulations introduces a level of subjectivity into the regulatory process, potentially leading to inconsistent application of safety standards.").

²²⁵ Petition at 68 (quoting Exemption Request, Enclosure 1, at 5). The Staff notes that although the Petitioners quote some background information HDI provided in its Exemption Request, the Petitioners do not specifically dispute any portion of the Exemption Request itself in proposed Contention 4.

the regulatory requirements in 10 C.F.R. § 50.59 for FSARs and in 10 C.F.R. § 50.54(a) for QA program descriptions still apply to Palisades.

Moreover, as explained in the Staff's responses to proposed Contentions 2 and 3, both the § 50.59 process for the FSAR and the § 50.54(a) QA program description change process contain provisions that allow HDI to make certain changes under its current license without explicit NRC approval. Thus, a licensee's implementation of changes in accordance with the §§ 50.59 and 50.54(a) change processes does not mean that the Staff has implicitly approved these changes – the regulations simply do not require NRC approval in certain circumstances specified in these regulations.²²⁶ Fundamentally, the Petitioners are challenging HDI's use of the regulatory processes available in 10 C.F.R. §§ 50.59 and 50.54(a) and the sufficiency of NRC's current regulatory framework to address restart-related activities. However, such challenges are barred under 10 C.F.R. § 2.335 and are more appropriately addressed under the NRC's petition for rulemaking process in 10 C.F.R. § 2.802.²²⁷

Moreover, the Petitioners do not explain how HDI's current activities at the Palisades site are in any way related to the specific changes proposed in the Primary Amendment Request, and thus do not raise a genuine dispute with the Primary Amendment Request. The Petitioners assert that "[i]n its 'in scope' License Amendment Reviews, Holtec proposed rules for the QAPD and FSAR . . . that are now being used, without NRC approval, to support the period of system restoration activities."²²⁸ However, the Petitioners do not provide any specific references to the

²²⁶ Such changes, however, are subject to NRC inspection and oversight.

²²⁷ The Staff notes that Petitioners' Contact has filed a petition for rulemaking that raises similar issues as those raised here in proposed Contention 4, and the NRC has docketed that petition. See *Returning a Decommissioning Plant to Operating Status*, 89 Fed. Reg. 76,750 (Sept. 19, 2024) (notice of docketing and request for comment on a petition for rulemaking).

²²⁸ Petition at 66. The Staff notes that a different part of the Petition states that "issues related to the [LARs] are not yet ripe for final adjudication due to reliance on unvetted regulatory changes," which further suggests that the Petitioners' arguments are not material to the Primary Amendment Request. See Petition at 7.

portions of the Primary Amendment Request that discuss the purported QA program description and FSAR “rules” they are disputing. Moreover, as previously discussed, both the FSAR and QA program descriptions change processes occur outside the license amendment process. The Primary Amendment Request describes HDI’s plan to “implement[]” the § 50.59 process “coincident with the associated license amendments.”²²⁹ Thus, HDI’s planned use of the § 50.59 process would occur outside the license amendment process, upon implementation of the restart-related amendments, if they are approved. Similarly, the QA change process in § 50.54(a) that HDI used for the transitioning QA program also falls outside the license amendment process.

The Petitioners also appear to argue that HDI’s current actions at the site are within the scope of this proceeding because “they reference the ‘in scope’ License Amendment Reviews.”²³⁰ While the Petitioners arguments are not entirely clear here, to the extent that the Petitioners are suggesting that IMC 2562 and the NRC restart inspection report, somehow bring HDI’s current activities at the site or NRC inspections of these activities within the scope of the proceeding,²³¹ their arguments lack any legal basis. IMC 2562 is not specific to Palisades and does not reference the Primary Amendment Request or the Exemption Request,²³² and the inspection report simply references the Exemption Request as background information.²³³

²²⁹ Primary Amendment Request, Enclosure at 4.

²³⁰ Petition at 70 (“These actions, which rely on regulatory interpretations or changes that have not been fully vetted or approved, have effectively ripened into matters requiring immediate NRC scrutiny and because they reference the “in scope” License Amendment Reviews, are subject to this petition request for a public hearing.”). See *also* Petition at 21-22, 66.

²³¹ Petition at 26; 67-69.

²³² See *generally* IMC 2562. Also, the Petitioners do not appear to challenge the contents of IMC 2562 itself and only seem to rely on the IMC to demonstrate that inspections are occurring concurrently with the NRC’s licensing reviews. See Petition at 67-68 (citing IMC 2562, at 9).

²³³ The Petitioners do not challenge the substance of the inspection report here, and only seem to quote background information regarding submission and NRC acceptance of the Exemption Request for review from the inspection report. See Petition at 69 (citing Restart Inspection Report, at 1).

Moreover, the Amendments Notice establishes the proper scope of this proceeding²³⁴ and includes the Primary Amendment Request within the scope of this proceeding.²³⁵ The Petitioners do not explain how the inspection manual chapter and inspection report are relevant to the findings the staff must make to approve the Primary Amendment Request. Accordingly, for the reasons discussed above, the Petitioners arguments are inadmissible under 10 C.F.R. § 2.309(f)(1)(iii) and (iv) because they are out of scope and immaterial to the findings the Staff must make to issue the Primary Amendment Request.

In addition, the Petitioners' assertions that the lack of an NRC-approved FSAR and lack of an NRC-approved QA program description does not give NRC inspection staff adequate guidance in evaluating design basis and quality control activities are unsupported. The Petitioners merely speculate, without any support, that "lack of sufficient regulatory oversight, could result in inadequate inspection standards and increase the risk of non-compliance with critical safety regulations."²³⁶ Based on these purported inadequacies, the Petitioners argue that any work completed by HDI to support restart activities "should not be considered valid evidence in the NRC's decision to reauthorize Holtec's operating license."²³⁷ However, the Petitioners do not demonstrate the materiality of HDI's current actions at the site or the staff's inspections related to Holtec's restart activities to the findings the Staff must make to issue the Primary Amendment Request. As noted in IMC 2562, the licensing review process and the

²³⁴ While the Petitioners argue in a different part of their Petition that additional documents should be allowed "into the scope of the proceeding" to provide context for Petitioners' contentions based on § 2.309 and other legal authorities, Petition at 23-24, those arguments do not appear to be referenced here, nor do they support a theory that such documents can substantively expand the scope of the proceeding, as noticed, to include issues that are immaterial to the Primary Amendment Request. See *Vogtle*, 92 NRC at 46 (citing *Marble Hill*, ALAB-316, 3 NRC 167, 170-71).

²³⁵ Amendments Notice, 89 Fed. Reg. at 64,488-90.

²³⁶ Petition at 70.

²³⁷ Petition at 10.

restart inspection processes are separate, concurrent processes.²³⁸ Moreover, the Petitioners do not point to any specific deficiencies in the contents of the Primary Amendment Request or the Updated FSAR Revision 35 that is referenced in the Primary Amendment Request.

Accordingly, the Petitioners arguments are inadmissible under 10 C.F.R. § 2.309(f)(1)(iv), (v) and (vi) because they are unsupported, immaterial, and do not demonstrate a genuine material dispute with the Primary Amendment Request. Further, to the extent that the Petitioners suggest that safety concerns currently exist at the Palisades site, or assert that explicit approval of current licensee activities is necessary here, these arguments are inadmissible because they are outside the scope of this license amendment proceeding under 10 C.F.R. § 2.309(f)(1)(iii), and should be raised under 10 C.F.R. § 2.206.²³⁹ Finally, to the extent the Petitioners challenge the adequacy of the NRC's inspection process at Palisades, that is also outside the scope of the proceeding under § 2.309(f)(1)(iii).²⁴⁰

For the reasons discussed above, proposed Contention 4 is not admissible under 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi).

F. Proposed Contention 5 Is Inadmissible Because It Raises Issues That Are Out of Scope, Immaterial, Unsupported, and Do Not Raise a Genuine Dispute with the Application

Proposed Contention 5, not included in the original Petition but filed thereafter by the Petitioners' Contact, is stated as follows:

²³⁸ See IMC 2562 at 9 ("The Licensing action reviews will address whether to reauthorize operation and the license requirements for operation, including any implementation conditions for restart. The licensee's compliance with the requirements of the license is subject to NRC inspections.").

²³⁹ See *San Onofre*, CLI-12-20, 76 NRC at 439-40 (concluding that the § 2.206 process should be used to address the petitioner's claim that the licensee violated 10 C.F.R. § 50.59 when replacing the steam generators and that a license amendment was required). The Staff notes that Appendix B of the Petition replicates a § 2.206 petition filed by the Petitioners' Contact raising substantially similar issues.

²⁴⁰ See *Pa'ina*, CLI-08-3, 67 NRC at 168 n.73; *Millstone*, CLI-08-17, 68 NRC at 242. These cases explain that the adequacy of the licensee's application is subject to challenge in an adjudicatory proceeding, not the adequacy of the Staff's safety and licensing reviews. Similarly, the adequacy of the Staff's restart-related inspection and oversight activities, which occur outside of the licensing process, are even further removed from the sufficiency of the licensee's amendment applications and are not subject to challenge in this adjudicatory proceeding.

Holtec Decommissioning International, LLC's (Holtec) Specific Exemption Request, submitted on September 28, 2023, should be denied as it fails to meet the regulatory requirements of **10 C.F.R. § 50.12**. The request does not demonstrate that the exemption will not pose an undue risk to public health and safety and relies on circular logic and misapplication of proposed regulatory guidance. Holtec defers safety assurances to future NRC licensing actions and inspections without providing an independent and detailed plan for the safe restart of the Palisades Nuclear Plant. Additionally, Holtec misuses the proposed rule **NRC-2015-0070** to justify its exemption request, further undermining its validity and failed to show special circumstances.

This contention is inextricably linked to the overall petition for a hearing filed on September 9, 2024, and should be added as **Contention Five** in that petition. Holtec's and NRC staff's own admission that the exemption is essential to the success of its licensing efforts ties the exemption to the broader licensing actions, making it subject to public hearing rights under the Atomic Energy Act and relevant NRC precedent. Petitioners, therefore, have standing to challenge the exemption as part of the License Amendment Request (LAR) process and other licensing actions mentioned in the full petition.²⁴¹

In proposed Contention 5, the Petitioners' Contact asserts that the Exemption Request is "inextricably linked" to the Primary Amendment Request and provides three main arguments in support of the proposed contention that the Staff will address as Bases A, B, and C.²⁴² The Petitioners' Contact also filed a Supplementing Filing to Contention 5 providing four additional bases that challenge Holtec's reliance on "tacit NRC approval and flawed regulatory framework sequencing assumptions."²⁴³ As described below, proposed Contention 5, as supplemented, is inadmissible because it raises arguments that are out of scope, immaterial, unsupported, and do not raise a genuine dispute with the application on a material issue of fact or law under 10 C.F.R. § 2.309(f)(1)(iii)-(vi). Additionally, the arguments in these filings were not made by Petitioners or by a person legally authorized to represent the Petitioners. Below, the Staff addresses the arguments in the original Contention 5 Filing followed by the arguments in the Contention 5 Supplemental Filing.

²⁴¹ Contention 5 Filing, at 2-3.

²⁴² These three bases correspond to Subsections A through C under the header "Contention Details." Contention 5 Filing, at 8-12.

²⁴³ See *generally* Contention 5 Supplement.

1. *The Proposed Contention 5 Filing Is Not Admissible Because It Raises Issues That Are Out of Scope, Unsupported, and Do Not Raise a Genuine, Material Dispute with the Exemption Request*

In proposed Contention 5, the Petitioners' Contact asserts that the Exemption Request is "inextricably linked" to the Primary Amendment Request,²⁴⁴ and requests the following three actions: 1) a public hearing on the exemption request; 2) revision of NRC's acceptance review letter to reject the submission for failure to meet 10 C.F.R. § 50.12; and 3) denial of the exemption request.²⁴⁵ Proposed Contention 5 provides three bases in support of proposed Contention 5. Basis A argues that Holtec's special circumstances justification based on unexpected governmental support for continued operations is flawed.²⁴⁶ Basis B argues that "the NRC should require Holtec to submit a comprehensive and integrated restart plan for review to demonstrate how it will ensure public health and safety."²⁴⁷ Basis C asserts that Holtec's argument that the § 50.82(a)(2) prohibition on operation does not serve the underlying purpose of the rule is flawed because Holtec relies on a proposed rulemaking.²⁴⁸

Staff Response: In proposed Contention 5, the Petitioners' Contact challenges the Exemption Request and asserts that it fails to meet certain requirements in 10 C.F.R. § 50.12 for granting of an exemption. As described more fully below, although the Petitioners' Contact demonstrates that the Exemption Request is subject to challenge in this license amendment proceeding, proposed Contention 5 is inadmissible because it raises arguments that are out of scope and do not raise a genuine, material dispute with the application under 10 C.F.R. § 2.309(f)(1)(iii) and (vi). Below, the Staff addresses the Petitioners' Contact's arguments that

²⁴⁴ Contention 5 Filing, at 1-4, 6-7.

²⁴⁵ Contention 5 Filing, at 5.

²⁴⁶ Contention 5 Filing, at 8-9.

²⁴⁷ Contention 5 Filing, at 10.

²⁴⁸ Contention 5 Filing, at 10-11.

the Exemption Request is subject to challenge in this proceeding followed by the three bases presented in the Contention 5 Filing. Because Bases A and C challenge HDI's justification in the Exemption Request that special circumstances under 10 C.F.R. § 50.12(a)(2) are present, the Staff will address these bases first, followed by Basis B.

a. The Exemption Request is Inextricably Intertwined with the Primary Amendment Request

The Petitioners' Contact argues, and the Staff agrees, that the Exemption Request is "inextricably linked" to the Primary Amendment Request, and therefore, can be challenged through the filing of contentions in this license amendment proceeding.²⁴⁹ 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."²⁵⁰ Here, proposed Contention 5 references the Primary Amendment Request and NRC's acceptance of that amendment and asserts that the Exemption Request "is integral to the licensing actions aimed at reauthorizing power operations at Palisades."²⁵¹ In the Staff's view, the Exemption Request is inextricably intertwined with the Primary Amendment Request because the NRC may not make the findings to issue the Primary Amendment

²⁴⁹ Contention 5 Filing, at 1, 3-4, 6-7.

²⁵⁰ See *Palisades*, CLI-22-8, 96 NRC at 14.

²⁵¹ See Contention 5 Filing, at 4 (citing Primary Amendment Request and Letter from Justin C. Poole, NRC, to Jean A Fleming, Holtec International, "Palisades Nuclear Plant – Acceptance of Requested Licensing Action re: Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations," (Jan. 23, 2024) (ML24022A117) (NRC Acceptance Letter for Primary Amendment Request)); see also Contention 5 Filing, at 6-7.

Request without the Exemption Request being granted.²⁵² Accordingly, the Exemption Request is subject to challenge in this license amendment proceeding.²⁵³

Although the Exemption Request is subject to challenge in this adjudicatory proceeding, as described below, proposed Contention 5 is inadmissible because it is unsupported and does not demonstrate that a genuine dispute exists with the Exemption Request on a material issue of fact or law in accordance with 10 C.F.R. § 2.309(f)(1)(vi).

b. Basis A Is Inadmissible Because It Does Not Present a Genuine, Material Dispute With the Application

In Basis A, the Petitioners' Contact challenges Holtec's arguments in the Exemption Request that "unexpected governmental support for continued operations' serves as a special circumstance justifying reversal of the 50.82(a)(1) shutdown certification restrictions."²⁵⁴ The Petitioners' Contact asserts that this argument is flawed and that Holtec's timeline in the Exemption Request demonstrates that government support for continued operations was present under Entergy's prior ownership, and Entergy could have sought a buyer for continued operations without submitting the certifications.²⁵⁵ However, the Petitioners' Contact seems to

²⁵² NRC approval of the Primary Amendment Request would, among other things, amend the license to authorize power operations at Palisades. Primary Amendment Request, at 1. To grant the Primary Amendment Request, 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 this finding, the prohibition on operation found in 10 C.F.R. § 50.82(a)(2) must be removed for Palisades through the exemption process.

²⁵³ *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).

²⁵⁴ Contention 5 Filing, at 8. Although Petitioners' Contact uses quotation marks to purportedly quote from the Exemption Request, the quoted language in the Contention 5 Filing "unexpected governmental support for continued operations" does not seem to appear in the Exemption Request. *See generally* Exemption Request.

²⁵⁵ Contention 5 Filing, at 8-10.

misunderstand the applicable special circumstances criteria in 10 C.F.R. § 50.12(a)(2)(vi), as well as HDI's argument in support of that criteria.

Under § 50.12(a)(2)(vi), special circumstances exist when “[t]here 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.”²⁵⁶ The regulations governing the § 50.82(a) certifications were adopted by the NRC in 1996.²⁵⁷ HDI's argument in the Exemption Request is 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.²⁵⁸ HDI also argues that it is in the public interest to grant the exemption and points to the Michigan governor's support to demonstrate “the urgency and necessity to reauthorize power operations” at Palisades.²⁵⁹ However, the Petitioners' Contact, through Basis A, does not challenge HDI's public interest justification or argument regarding the circumstances considered when the rule was adopted. Through Basis A, the Petitioners' Contact simply asserts that the circumstances regarding the Michigan governor's support were present when Entergy submitted the certifications in 2022.²⁶⁰ Accordingly, Basis A is inadmissible because it does not present a genuine dispute with the application under 10 C.F.R. § 2.309(f)(1)(vi) on a material issue of fact or law.

²⁵⁶ See 10 C.F.R. § 50.12(a)(2)(vi) (emphasis added).

²⁵⁷ Decommissioning of Nuclear Power Reactors, 61 Fed. Reg. 39,278 (July 29, 1996) (final rule).

²⁵⁸ Exemption Request, Enclosure 1, at 11-12.

²⁵⁹ *Id.*

²⁶⁰ See Contention 5 Filing, at 8-9 (noting that Entergy submitted the § 50.82(a)(1) certifications in June 2022).

c. *Basis C Is Inadmissible Because It Is Unsupported and Does Not Present a Genuine, Material Dispute with the Application*

In Basis C, the Petitioners' Contact challenges whether the Exemption Request meets 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.²⁶¹ In describing the purpose of the rule, the Exemption Request states that the § 50.82(a)(2) "certification docketing is intended to be a key means of communicating to the NRC and the public the licensee's plans for decommissioning the reactor as stated in, NRC-2015-0070, *Regulatory Improvements for Power Reactors Transitioning to Decommissioning, Regulatory Basis Document*."²⁶² In Basis C, the Petitioners' Contact challenges Holtec's reliance on the NRC regulatory basis document developed in support of the 2017 proposed decommissioning rule and asserts that "NRC-2015-0070 was never finalized . . . making it inapplicable as regulatory justification for Holtec's interpretation."²⁶³ The Petitioners' Contact, however, provides no legal basis or other support for his assertion that the regulatory basis document is somehow inapplicable here. Just because a rule has not been finalized does not mean that the proposed rule, or the regulatory documents used to support the proposed rule, are somehow incorrect. Indeed, based on a plain language reading of the regulations in § 50.82(a), it is clear that the § 50.82(a) certifications serve as a key means of communicating the licensee's decommissioning plans.²⁶⁴

²⁶¹ Contention 5 Filing, at 10-12.

²⁶² Exemption Request, Enclosure 1, at 10.

²⁶³ Contention 5 Filing, at 10-12; *see also* Exemption Request, Enclosure 1, at 10 (citing *Regulatory Improvements for Power Reactors Transitioning to Decommissioning, Regulatory Basis Document* (Nov. 20, 2017) (ML17215A010) (2017 Regulatory Basis Document)). The Staff notes that Basis C repeatedly refers to "NRC-2015-0070," and it is not clear whether the Petitioners' Contact is referring to the proposed rule itself or to the regulatory basis document and appears to refer to them interchangeably.

²⁶⁴ *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

In Basis C, the Petitioners' Contact also argues that "Holtec failed to provide any specific language from **NRC-2015-0070** supporting its argument that 10 C.F.R. § 50.82(a)(1) was for communication of rescission of decommissioning certifications,"²⁶⁵ but he misstates HDI's stated purpose. The Exemption Request states that the purpose of the rule "was for communication and formal entering into the decommissioning process and not to prohibit rescission, by a licensee..."²⁶⁶; it does not state that the purpose was to "communicate rescission of decommissioning certifications." Accordingly, these arguments in Basis C are inadmissible because they do not raise a genuine dispute with the application under 10 C.F.R. § 2.309(f)(1)(vi).

Additionally, in Basis C, the Petitioners' Contact asserts that "Holtec's selective use of the document misrepresents the comprehensive nature of the draft rule, which emphasizes the certification of permanent cessation as a critical regulatory safeguard, and not merely an administrative communication tool" and that the proposed rule "emphasizes the importance of the certification process as a permanent step, ensuring a safe transition to decommissioning."²⁶⁷ The Petitioners' Contact provides no support from the regulatory basis document or proposed rule to support these assertions or interpretations of the draft rule. Nevertheless, while neither the 2017 proposed rule nor the 1996 rule which promulgated the § 50.82(a) certification process appear to have contemplated that a licensee would seek to restart power operations after docketing of the § 50.82(a) certifications, the NRC's decommissioning rules in § 50.82 do not somehow preclude a licensee from seeking an exemption from § 50.82(a)(2) in accordance with the requirements in § 50.12. Moreover, the use of "permanent" in 10 C.F.R. § 50.82(a)(1), taken

fuel has been permanently removed from the reactor vessel, the licensee shall submit a written certification to the NRC....).

²⁶⁵ Contention 5 Filing, at 11-12.

²⁶⁶ Exemption Request, Enclosure 1, at 10.

²⁶⁷ Contention 5 Filing, at 11-12.

in context, refers to the licensee's intent at the time the certifications are made, but a licensee's intent may change, or (as is the case here) a later license holder may seek restart of reactor operation. And while this scenario was not contemplated when § 50.82(a)(1) was promulgated, the exemption process exists to address matters not contemplated during rulemakings.²⁶⁸ Ultimately, these arguments in Basis C are inadmissible because they are unsupported and do not raise a genuine, material dispute with the application under 10 C.F.R. § 2.309(f)(1)(v)-(vi).

The Staff also notes that 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.”²⁶⁹ Through Basis C, the Petitioners' Contact appears to mistakenly assert that the Exemption Request is flawed because it relies on the proposed decommissioning rule for the additional purpose of identifying the specific time for entering the decommissioning process.²⁷⁰ The Exemption Request, however, references the regulatory basis document to support the aforementioned purpose of being a “key means of communication,” and does not rely on the regulatory basis document to support the purpose of identifying a point in time that the decommissioning process will begin. Further, the statement that the “certifications also identify the point in time when a reactor formally enters the decommissioning process” is an accurate summary of the plain language of § 50.82(a)(1)-(2). Thus, to the extent that the Petitioners' Contact challenges this other stated purpose, Basis C fails to raise a genuine dispute with the application under § 2.309(f)(1)(vi).

Finally, while the Petitioners' Contact proposes Contention 5 to challenge HDI's arguments that special circumstances are present under the criteria in § 50.12(a)(2)(ii) and (vi),

²⁶⁸ See Specific Exemptions; Clarification of Standards, 50 Fed. Reg. 50,764, 50,764 (Dec. 12, 1985) (final rule) (“The Commission believes that it is not possible for its regulations to predict and accommodate every conceivable circumstance.”).

²⁶⁹ Exemption Request, Enclosure 1 at 10.

²⁷⁰ Contention 5 Filing, at 10-11.

the contention contains no information that challenges HDI's argument in the Exemption Request that special circumstances exist under 10 C.F.R. § 50.12(a)(2)(iii), which provides that compliance with the rule would result in undue hardship.²⁷¹ The regulations in 10 C.F.R. § 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 his assertion that the Exemption Request should be denied, the Petitioners' Contact must demonstrate that no special circumstances exist that warrant approval of the exemption. Because the Petitioners' Contact does not challenge HDI's arguments that special circumstances exist under 10 C.F.R. § 50.12(a)(2)(iii), proposed Contention 5 does not present a genuine, material dispute with the application under 10 C.F.R. § 2.309(f)(1)(vi), and is, therefore, inadmissible.

d. Basis B Is Inadmissible Because It Raises Out of Scope Issues and Does Not Present a Genuine Dispute with the Application

In Proposed Contention 5, the Petitioners' Contact asserts that the Exemption Request does not adequately demonstrate that public health and safety will be maintained without undue risk if the plant is authorized to restart operation.²⁷² Additionally, the Petitioners' Contact argues that the Exemption Request "failed to provide substantive details on system return-to-service plans," and that "the NRC should require Holtec to submit a comprehensive and integrated restart plan for review to demonstrate how it will ensure public health and safety."²⁷³ Additionally, the Petitioners' Contact asserts that Holtec defers safety assurances to future NRC

²⁷¹ Exemption Request, Enclosure 1, at 10-11.

²⁷² Contention 5 Filing, at 12.

²⁷³ Contention 5 Filing, at 10. While Basis B specifically challenges the special circumstances criteria in § 50.12(a)(2), the arguments related to Basis B in this contention appear to challenge whether the Exemption Request meets the criteria in § 50.12(a)(1) that granting the exemption will not present an undue risk to the public health and safety. Contention 5 Filing, at 2-3, 10, and 12.

licensing actions and inspections without providing an independent and detailed plan for the safe restart of Palisades.²⁷⁴

Through Basis B, the Petitioners' Contact essentially argues that the Exemption Request does not demonstrate that it will not present an undue risk to the public health and safety, and therefore, NRC approval of a comprehensive restart plan is necessary. However, the Petitioners' Contact provides no factual or legal basis in proposed Contention 5 to support these assertions. Moreover, the Petitioners' Contact does not dispute HDI's primary argument that the Exemption Request will not present an undue risk based on restoration of Palisades licensing basis through NRC review and approval of the Restart Transfer Request, Primary Amendment Request, and the other restart-related amendments, which, if approved, will ensure compliance with NRC safety regulations.²⁷⁵

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 is 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.²⁷⁶ 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 AEA § 182a. (42 U.S.C. § 2232(a)) governing approval of licensing actions.²⁷⁷ Thus, any challenge to whether the plant will safely operate should address the safety regulations

²⁷⁴ Contention 5 Filing, at 3; see also *id.* at 12.

²⁷⁵ Exemption Request, Enclosure 1, at 9.

²⁷⁶ See, e.g., *AmerGen 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)).

²⁷⁷ Revision of Backfitting Process for Power Reactors, 53 Fed. Reg. 20,603, 20,606 (June 6, 1988) (Final Rule).

pertinent to these requests. However, the Petitioners' Contact does not assert that any safety regulations are unmet, nor does he argue that review of a comprehensive restart plan or the return-to-service plans are necessary to meet any specific NRC safety regulation. 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, proposed Contention 5 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 prohibited under § 2.335.

Moreover, 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.²⁷⁸ The "no undue risk" standard in § 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' Contact does 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 arguments challenging whether the Exemption Request has met the "no undue risk" standard are inadmissible because they 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).

Additionally, to the extent that the Petitioners' Contact may be challenging the sufficiency of current NRC inspection activities related to the return-to-service plans in Basis B, such arguments are inadmissible because they fall outside the scope of this license amendment

²⁷⁸ See generally Palisades 50.82(a)(1) Certifications.

proceeding.²⁷⁹ Finally, to the extent that the Petitioners' Contact proposes Contention 5 to challenge the Staff's acceptance review of the Exemption Request and request that the Staff's acceptance letter be revised to reject the submission,²⁸⁰ these challenges are not admissible because the Staff's docketing decision is not subject to review in an adjudicatory proceeding.²⁸¹ Therefore, the Petitioners' Contact's arguments in Contention 5 challenging the Staff's docketing decision are also outside the scope of this proceeding.

For the reasons discussed above, proposed Contention 5 is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).

2. *The Contention 5 Supplement Is Inadmissible Because It Is Out of Scope, Immaterial, Unsupported and Does Not Raise a Genuine Dispute with the Exemption Request*

The Petitioners' Contact provides four additional bases in the Contention 5 Supplement to support proposed Contention 5. In Basis 1, he challenges Holtec's reliance on NRC's "tacit approval," and argues that Holtec can take no legitimate action toward resuming power operations until "the NRC formally reviews and approves Holtec's sequencing and interpretations."²⁸² In Basis 2, he describes the interconnected nature of Holtec's "proposed regulatory framework sequencing" and asserts that explicit NRC approval of the sequencing of events is required as a predicate to approving the Exemption Request.²⁸³ In Basis 3, he asserts that the Exemption Request introduces significant risks to public health and safety by deferring critical safety assurances to future inspections and licensing actions.²⁸⁴ And, in Basis 4, he

²⁷⁹ As explained previously, the NRC's inspection activities are outside the scope of the proceeding. See *Pa'ina*, CLI-08-3, 67 NRC at 168 n.73; *Millstone*, CLI-08-17, 68 NRC at 242.

²⁸⁰ Contention 5 Filing, at 5.

²⁸¹ *Oklo Power, LLC* (Aurora Reactor), CLI-20-17, 92 NRC 521, 524 (citing *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3 n.2 (2008)).

²⁸² Contention 5 Supplement, at 2-4.

²⁸³ Contention 5 Supplement, at 5-6.

²⁸⁴ Contention 5 Supplement, at 6-7.

asserts that while Holtec's decommissioning license grants "certain flexibilities in managing non-operational activities, it does not provide them the authority to move toward reloading fuel or resuming operations without explicit regulatory approval of their proposed regulatory framework."²⁸⁵ Because these four bases are interrelated, the Staff will address them together below.

Staff Response: The Petitioners' Contact's arguments in the Contention 5 Supplement are inadmissible because they are out of scope, 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. Specifically, the Petitioners' Contact provides no factual or legal basis for his assertions that HDI's reliance on purported NRC "tacit approval" is procedurally and legally flawed or that explicit formal approval of HDI's "sequencing and interpretations" is necessary to approve the Exemption Request.²⁸⁶ The Staff has docketed the Exemption Request, the Restart Transfer Request, the restart-related license amendment requests, and the NRC's detailed technical review of these requests is ongoing. No approval, tacit or otherwise, has yet been given on any of these requests. The Petitioners' Contact has not identified any specific regulatory requirement that requires the explicit NRC approval of HDI's proposed framework or proposed sequence of events prior to docketing the restart-related requests and reviewing them for technical sufficiency, and he does not demonstrate why any such approval would be necessary to meet the exemption criteria outlined in § 50.12.

Moreover, as described in Discussion Section III, the Staff has concluded that the amendment, transfer, and exemption processes may be used, in concept, to seek the restart of Palisades consistent with Commission-established policy. Additionally, the Staff has completed

²⁸⁵ Contention 5 Supplement, at 8.

²⁸⁶ The Staff notes that while the Petitioners' Contact quotes portions of the Exemption Request, the quoted portion pertains to background information on HDI's meetings with the NRC. Contention 5 Supplement, at 2-3 (quoting Exemption Request, Enclosure 1, at 5-6). Thus, the Petitioners' Contact's arguments here do not actually challenge any of HDI's conclusions in the Exemption Request.

its acceptance review of all these restart-related requests and has docketed these requests for detailed technical review.²⁸⁷ The Petitioners' Contact's argument that some additional approval was necessary prior to the Staff docketing the Exemption Request is effectively a challenge to the NRC's docketing decision, but such challenges are prohibited in this proceeding.²⁸⁸ More fundamentally, the Petitioners' Contact appears to be challenging the sufficiency of NRC's current regulatory framework to address restart-related activities. However, such challenges are barred under 10 C.F.R. § 2.335 and are more appropriately addressed under the NRC's petition for rulemaking process in 10 C.F.R. § 2.802.²⁸⁹

The Petitioners' Contact is also mistaken that the Staff has not publicly discussed HDI's proposed sequencing. The Staff notes that it recently publicly discussed proposed sequencing of the restart-related actions at an ACRS meeting on October 3, 2024, and noted that if all NRC requirements are met, the Staff intends to issue all restart-related licensing actions (amendments, transfer, exemption) on the same day.²⁹⁰

Additionally, to the extent Petitioners are challenging Holtec's "decommissioning license" and its current restart-related activities at the Palisades site, these arguments are substantially similar to the arguments raised in proposed Contentions 2, 3, and 4, and are inadmissible for

²⁸⁷ See e.g., Letter from Justin C. Poole, NRC, to Jean A. Fleming, Holtec International, "Palisades Nuclear Plant – Acceptance of Requested Licensing Action re: Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations," (Jan. 23, 2024) (ML24022A117); Letter from Justin C. Poole, NRC, to Jean A. Fleming, Holtec International, "Palisades Nuclear Plant – Acceptance of Requested Licensing Action Re: Request for Exemption from 10 CFR 50.82a)(2) to Support Reauthorization of Power Operations," (Nov. 3, 2023) (ML23291A440).

²⁸⁸ *Oklo Power, LLC* (Aurora Reactor), CLI-20-17, 92 NRC 521, 524 (citing *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3 n.2 (2008)).

²⁸⁹ The Staff notes that Mr. Blind has filed a PRM that raises similar issues as those raised here in proposed Contention 4, and the NRC has docketed that PRM. See *Returning a Decommissioning Plant to Operating Status*, 89 Fed. Reg. 76,750 (Sept. 19, 2024) (notice of docketing and request for comment on a petition for rulemaking).

²⁹⁰ See Attachment A, at 7. The ACRS has not yet published the transcript or Staff's slides from the October 3, 2024, meeting. Therefore, the Staff has included a copy of the slides it presented at the ACRS meeting as an attachment to this pleading.

the reasons previously discussed in the Staff's responses to these contentions. The Petitioners' Contact also raises the same arguments as in the original Contention 5 Filing regarding the need for approval of a detailed restart plan and that the Exemption Request defers critical safety assurances to future NRC inspections and licensing actions. These arguments, however, are inadmissible for the reasons discussed above in the Staff's response to the Contention 5 Filing. Moreover, to the extent the Petitioners' contact is challenging HDI's current activities at the site, such challenges are inadmissible because they fall outside the scope of this license amendment proceeding and should, instead, be raised under 10 C.F.R. § 2.206.

For the reasons discussed above, these arguments are inadmissible because they are out of scope, immaterial, and do not raise a genuine dispute with the application on a material issue of fact or law under 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

Accordingly, proposed Contention 5, as supplemented, is inadmissible because it does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

V. Additional Arguments and Requests in the Petition and Blind Supplements

The Petition and some of the Blind Supplements include additional arguments and requests that do not pertain to standing or contention admissibility. These include suspension requests, arguments concerning transparency, and requests to respond in the hearing process to an NRC email to the Petitioners' Contact. As discussed below, these additional arguments do not support granting the Petition, and the additional requests should be denied.

A. The Petitioners' Suspension Requests Should Be Denied

The Petitioners ask the Board to suspend both (1) "Holtec's ongoing system restoration activities" and (2) the "license amendment reviews" until "the appropriate regulations are evaluated, approved, and aligned with NRC-approved design and quality assurance standards."²⁹¹ In addition, one of the Blind Supplements requests that the NRC "[s]uspend any

²⁹¹ Petition at 8.

further evaluations of the plant's restart until the FSAR has been fully updated and approved by the NRC, ensuring that safety margins and defense-in-depth are accurately quantified before the SCC degradation is addressed."²⁹² As discussed below, these requests should be denied because they concern matters outside the scope of this adjudicatory proceeding that are beyond the authority of the Board. To the extent that Petitioners are asking that the adjudicatory proceeding be suspended, they have not addressed, much less satisfied, the stringent requirements for such a request.

The Petitioners' request to suspend "Holtec's ongoing system restoration activities" concerns activities Holtec is performing under its current license. This constitutes a request for enforcement action, which is subject to the process established by 10 C.F.R. § 2.206, not this license amendment proceeding. In addition, this aspect of the suspension request appears to overlap with the requested actions in the § 2.206 petitions included in Appendix B of the Petition.²⁹³ Therefore, the request to suspend "Holtec's ongoing system restoration activities" should be denied.

The Staff understands that the Petitioners' request to suspend the NRC's "license amendment reviews" and the Petitioners' Contact's request to suspend "any further evaluations of the plant's restart" concern activities of the Staff because the Staff is responsible for performing review and evaluation activities for the NRC. However, the Staff's review and evaluation activities are outside the scope of the proceeding, as explained previously.²⁹⁴ Moreover, the Commission has long held that Boards do not have authority to direct the Staff in

²⁹² Blind Third Steam Generator Supplement (Part Two), at 8 (emphasis removed).

²⁹³ Petition at 82, 83 (requesting that "the NRC require Holtec to submit a new Final Safety Analysis Report (FSAR) and obtain NRC approval before NRC conducting any inspections during the Palisades system restoration period that necessitate reference to the Palisades licensing basis" and requesting that "the NRC order Holtec to stop work on safety-related SSCs intended to be part of the 'Operating' Quality Assurance Program").

²⁹⁴ *Pa'ina*, CLI-08-3, 67 NRC at 168 n.73; *Millstone*, CLI-08-17, 68 NRC at 242.

its review or regulatory activities.²⁹⁵ Therefore, the request to suspend the Staff's review and evaluation activities should also be denied.

To the extent that the Petitioners and their contact are requesting suspension of the licensing proceeding, they do not address or satisfy the stringent requirements for such requests. The Commission considers "the suspension of licensing proceedings to be a drastic action that is not warranted absent immediate threats to public health and safety."²⁹⁶ The two sentences that Petitioners and their contact devote to the suspension requests reference issues raised in the proposed contentions but do not establish that the licensing proceeding itself involves an immediate threat to public health and safety. Also, reactor operation at Palisades may not begin until the NRC grants all of the amendment requests, which would not occur until after the Staff completes its detailed technical review of each of the amendment, transfer, and exemption requests, and the completion of the Staff's review is not expected until well after anticipated Board action on the Petition.²⁹⁷

Moreover, the Petitioners' and Petitioners' Contact's request to stay the licensing decision is effectively a challenge to the NRC's process for deciding whether to issue license amendments during pending adjudicatory proceedings, which, without a waiver from the Commission to do so, violates 10 C.F.R. § 2.335. NRC regulations provide that amendments

²⁹⁵ See, e.g., *Holtec International* (Hi-Store Consolidated Interim Storage Facility), CLI-21-7, 93 NRC 215, 228-29 (2021) (stating that "the Board does not supervise the Staff's review"); *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 & 2), CLI-04-6, 59 NRC 62, 74 (2004) (stating, "We long have held that licensing boards do not sit to correct NRC Staff misdeeds or to supervise or direct NRC Staff regulatory reviews").

²⁹⁶ *Oklo Power, LLC* (Aurora Reactor), CLI-20-17, 92 NRC 521, 524 (2020) (internal quotation marks omitted). Some earlier Commission decisions reference additional factors, but those would not appear to be pertinent here. See, e.g., *Tennessee Valley Authority* (Browns Ferry Nuclear Plant Units 1, 2, & 3), CLI-17-5, 85 NRC 87, 93 (2017).

²⁹⁷ Currently, the Staff expects to issue final decisions on the licensing actions by July 31, 2025. Letter from Justin C. Poole, NRC, to Jean A. Fleming, Holtec International, LLC, "Palisades Nuclear Plant - Change in Estimated Hours and Review Schedule for Licensing Actions Submitted to Support Resumption of Power Operations (EPIDS L-2023-LLE-0025, L-2023-LLM-0005, L-2023-LLA-0174, L-2024-LLA-0013, L-2024-LLA-0060, L-2024-LLA-0071, AND L-2024-LNE-0003)" (ML24219A420) (Sept. 12, 2024).

may be issued even if a proceeding is ongoing if the Staff makes a final no significant hazards consideration (NSHC) determination in accordance with the standards in 10 C.F.R. § 50.92.²⁹⁸ The regulations further provide that such determinations may not be challenged in NRC adjudicatory proceedings.²⁹⁹ Thus, if Petitioners are requesting a stay of the licensing decision on the amendments, this is both a challenge to the NSHC regulations (because the request does not address the NSHC criteria in § 50.92(a)) and effectively a challenge to the regulatory prohibition on contesting NSHC determinations in adjudicatory proceedings (because the request seeks an adjudicatory stay of the proposed amendment, whereas the NSHC determination is the only legally established avenue for deciding whether issuance of the amendment must await completion of the adjudication).³⁰⁰ Finally, Commission precedent indicates that it is the Commission itself that would make decisions to suspend proceedings given their “inherent supervisory authority over agency proceedings.”³⁰¹ Therefore, to the extent the Petitioners’ Contact requests suspension of the licensing proceeding, the Board should deny it.

B. The Blind Transparency Supplement Warrants No Action by the Licensing Board

The Blind Transparency Supplement requests action from the Board regarding concerns that the Petitioners’ Contact has regarding what he views as a lack of complete responses by Holtec and the Staff to his questions. Although not relevant to and beyond the scope of this adjudication, the Staff notes that it has held numerous public meetings on matters related to the

²⁹⁸ 10 C.F.R. § 50.58(b)(5).

²⁹⁹ 10 C.F.R. § 50.58(b)(6).

³⁰⁰ 10 C.F.R. § 50.58(b)(5)-(6). *See also NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-19-7, 90 NRC 1, 8-9 (2019) (holding that a request to stay a licensing decision pending Commission review of the Staff’s NSHC determination is barred by § 50.58(b)(6) and 10 C.F.R. § 2.1213(f)).

³⁰¹ *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 476 (2008). *See also Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 158 n.65 (2011); *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237 (2002).

potential restart of Palisades, including an environmental scoping meeting and two widely attended Palisades Restart Panel public meetings near the plant site, where the Staff has listened to comments and concerns from many members of the public and has responded to numerous questions. The Staff will also continue to hold Palisades Restart Panel public meetings near the plant site on a periodic basis. The Staff additionally notes that Petitioners' Contact is raising concerns about the proposed restart of Palisades in the 10 C.F.R. § 2.206 enforcement process also. The Staff is endeavoring to be responsive to questions and address the submitted petitions in adherence to established procedures. Because the Board has no supervisory authority over the Staff's actions outside the adjudicatory proceeding³⁰² and discovery is not permitted for the purpose of assisting a petitioner with developing contentions,³⁰³ the Board should deny the Petitioners' Contact's requests.

The Petitioners' Contact also raises concerns in the Blind Transparency Supplement about proprietary information redacted from a Holtec submission to the NRC from March 2023 that predates the restart-related amendment requests.³⁰⁴ But the Amendments Notice provided an opportunity to seek access to proprietary and other sensitive unclassified information in the possession of the NRC for the purpose of contention preparation.³⁰⁵ The document of concern became available long before the Amendments Notice was published, the deadline for requesting access to sensitive unclassified information expired on August 19, 2024,³⁰⁶ and the Petitioners have not submitted a request under the required process.

³⁰² *Holtec*, CLI-21-7, 93 NRC at 228-29; *Catawba*, CLI-04-6, 59 NRC at 74.

³⁰³ *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), LBP-08-12, 68 NRC 5, 27 n.23 (2008) (citing *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 351 (1998)).

³⁰⁴ See Blind Transparency Supplement at 3-6 (citing redactions in the Letter to Bo Pham, NRC, from Jean A. Fleming, Holtec International, "Regulatory Path to Reauthorize Power Operations at the Palisades Nuclear Plant" (March 13, 2023) (ML23072A404)).

³⁰⁵ Amendments Notice, 89 Fed. Reg. at 64,490.

³⁰⁶ *Id.* at 64,487.

Finally, the Petitioners' Contact argues that the Petition should be granted in the interests of transparency,³⁰⁷ but to be granted, hearing requests must satisfy § 2.309. The Petition does not do this, as explained above; therefore, the request to grant the Petition should be denied.

For the reasons given above, the arguments in the Blind Transparency Supplement are not meritorious, and the requests therein should be denied.

C. The Requests Made in the Challenge to NRC Email Should Be Denied

In the Challenge to NRC Email, the Petitioners' Contact requests that (1) correspondence between the NRC and him reflected in a September 18, 2024 NRC email (NRC Email) be added to the adjudicatory docket, (2) that the NRC's reply to his questions "be treated as if the NRC staff response had been submitted in reply to my petition," and (3) that he be given an opportunity to respond to the NRC Email as part of the Petitioners' reply to the answers to the Petition.³⁰⁸ These requests lack merit and should be denied. The NRC Email was not filed as part of the hearing process and the questions the Staff responded to in the email were not filed in the hearing process; in fact, the NRC Email expressly disclaims any intention of responding to matters raised in the Petition.³⁰⁹ Moreover, the NRC Email is not the proper subject of contentions under § 2.309, which must challenge the license amendment requests (or the intertwined Exemption Request), not the Staff's technical review of these requests or the Staff's work in other NRC processes. Therefore, the NRC Email should not be added to the adjudicatory docket, and Petitioners' Contact should not be given an opportunity to

³⁰⁷ Blind Transparency Supplement, at 9.

³⁰⁸ Challenge to NRC Email, at 2, 3-4, (citing Email from Viktoria Mytling, NRC, to Alan Blind (Sept. 18, 2024) (ML24291A244) (NRC Email)).

³⁰⁹ NRC Email, at 1.

respond to it in the hearing process.³¹⁰ Therefore, the requests made in the Challenge to NRC Email should be denied.

CONCLUSION

As explained above, the Petition should be denied. The Petitioners have shown standing but none of their contentions are admissible because, as explained above, the originally-filed Petition does not challenge the technical content of the application or explain why NRC requirements for license amendments are not met. Rather, the Petitioners raise arguments that are unsupported, immaterial, and outside the scope of the proceeding. The Blind Supplements do not support admissibility of the originally proposed contentions, and the additional Contention 5 is inadmissible because it raises issues that are out of scope, unsupported, immaterial, and do not demonstrate that a genuine dispute exists with the application on a material issue of fact or law. Therefore, the Petition should be denied. As also explained above, the Petitioners' requests to suspend ongoing licensee activities and NRC license amendment reviews and the additional requests made by Petitioners' Contact in the Blind Supplements lack merit. Thus, these requests should also be denied.

Respectfully submitted,

/Signed (electronically) by/

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³¹⁰ The Petitioners' Contact supports his request by citing a letter to him from the Secretary of the Commission that the Secretary served on the adjudicatory docket. Challenge to NRC Email, at 1-2. However, the two situations are not comparable. The Secretary's letter merely explained that "it would be inappropriate for the Chair to discuss or comment on your e-mail message at this time" given the ongoing adjudicatory proceeding and the overlap between his email message to the Chair and the matters raised in the Petition. Letter from Carrie M. Safford, NRC, to Alan Blind (Oct. 7, 2024) (ML24281A147). It was appropriate to serve this letter on the adjudicatory docket because Alan Blind's email was sent to a Commission adjudicatory employee. See 10 C.F.R. § 2.348(c).

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

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Dated November 4, 2024

Attachment A

**NRC Staff Slide
Presentation for
October 3, 2024,
Meeting of the Advisory
Committee on Reactor
Safeguards**

Advisory Committee on Reactor Safeguards October 3, 2024 Full Committee Meeting

Palisades Potential Restart Informational Briefing

Agenda

- Project History
- Palisades Restart Panel
- Review Strategy and Licensing Process
- Licensing Actions and Other Activities
- NRC Inspection and Oversight Process
- Palisades Restart Inspections
- Public Engagement

Project History

- Palisades shut down in May 2022 and in June 2022, fully transitioned to a decommissioning licensing basis
- In February 2023, Holtec provided a proposed regulatory path to reauthorize power operations, with a transition date of August 2025
- Holtec's licensing strategy seeks to return the Palisades licensing basis to what it was just prior to shutdown, with only very minor changes, using the existing NRC regulatory processes and procedures
- The NRC staff is engaged in the technical, regulatory, and oversight reviews and activities necessary to support potential restart of Palisades
- Licensing and regulatory requests were submitted from September 2023 to May 2024 and NRC inspection activities are ongoing

Palisades Restart Panel

- Established by charter
- Oversees regulatory activities
- Provides management direction for licensing and inspection activities
- Proactively identifies and promptly resolves any challenges regarding restart
- Focus on outreach and communication

Restart Panel Co-Chairs and Project Leads

Licensing

Office of Nuclear Reactor
Regulation

Jamie Pelton

Deputy Director, Division of
Operating Reactor Licensing
(DORL)

Office of Nuclear Reactor
Regulation

Justin Poole

Lead Project Manager
DORL

Inspections

Region III

Jason Kozal

Director, Division of
Operating Reactor Safety
(DORS)

Region III

April Nguyen

Palisades Team Leader
DORS

Oversight

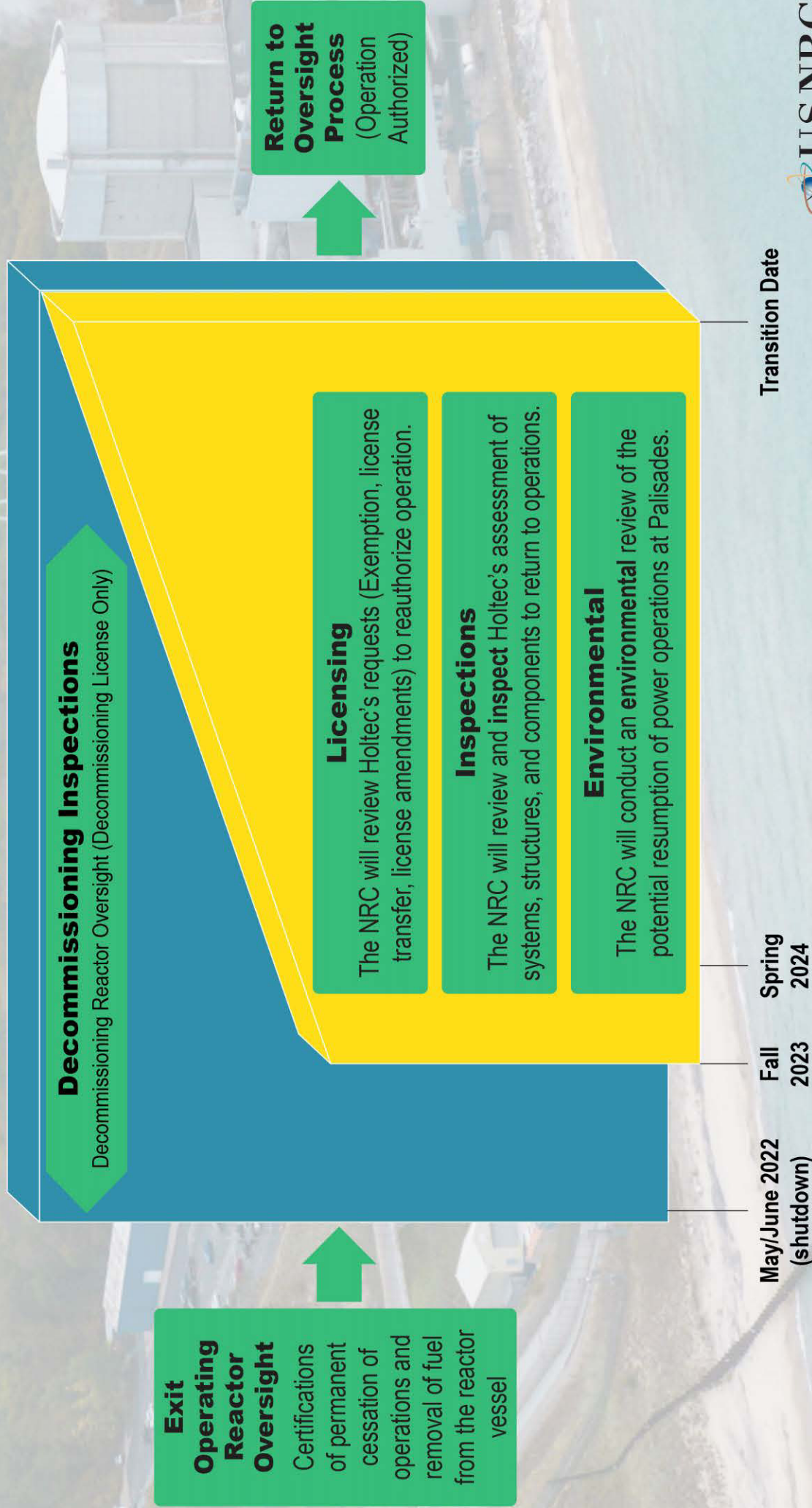
Office of Nuclear Reactor
Regulation

Phil McKenna

Deputy Director, Division of
Reactor Oversight
(DRO)

NRC OVERSIGHT

The NRC will independently review Holtec's readiness assessment to decide if Palisades is safe to restart.



Review Strategy and Licensing Process

- NRC strategy for ensuring safe resumption of power operations at Palisades includes licensing safety reviews and inspection oversight
- NRC staff believes Holtec’s plan to use an exemption, a license transfer and license amendments to restore the authority to operate is within the “existing regulatory framework” that the Commission referred to in its 2021 denial of Petition for Rulemaking PRM-50-117 (86 FR 24362), “Criteria To Return Retired Nuclear Power Reactors to Operations”
- If all NRC requirements are met, all licensing actions will be issued on the same day; when these actions are implemented, Palisades will exit decommissioning and be considered an operational plant

Safety Review Timeline

<u>Submittal</u>	<u>Licensing Action</u>	<u>Planned Completion*</u>
Sept. 28, 2023	Exemption from 10 CFR 50.82(a)(2)	Dec. 31, 2024
Dec. 6, 2023	License Transfer	Dec. 31, 2024
Dec. 14, 2023	Operating License Technical Specifications	Jan. 31, 2025
Feb. 9, 2024	Operating License Administrative Technical Specifications	Mar. 14, 2025
May 1, 2024	Emergency Plan	May 30, 2025
May 23, 2024	Quality Assurance Plan (supplement to license transfer)	Dec. 31, 2024
May 24, 2024	Update to MSLB Analysis Methodology	Jun. 30, 2025

* Refers to the date the safety evaluations for each action will be complete, but not the issuance date. Issuance would only occur once all safety and environmental reviews are complete.

Exemption from 50.82(a)(2)

- On Sept. 28, 2023, Holtec Decommissioning International (HDI, Holtec) submitted a request for exemption from the requirements of 10 CFR 50.82(a)(2) to support restart
- The NRC staff is currently reviewing the exemption request, which would remove the prohibition to operate the reactor
- Specifically, the exemption would rescind the June 2022 certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, thereby allowing Palisades to exit decommissioning

Technical Specifications

- On December 14, 2023, and February 9, 2024, Holtec submitted license amendment requests (LARs) to revise the operating license and permanently defueled technical specifications (TS) to reflect resumption of power operations
 - The application references Revision 35 of Palisades Final Safety Analysis Report (FSAR) as the basis for the design of the plant, which was the last revision in effect before permanent shutdown
- On July 9, 2024, Holtec submitted a supplement to the Operating TS LAR to revert the Palisades Physical Security Plan (PSP) to the last revision in effect before permanent cessation of operations
 - Any PSP changes made during decommissioning that will be retained in the reinstated PSP have been or will be evaluated in accordance with 50.54(p)

Emergency Plan

- On May 1, 2024, Holtec submitted an LAR to revise the Palisades Power Operations Site Emergency Plan (EP) Plan to support resumption of power operations
- Proposed emergency plan and emergency action level (EAL) scheme for the resumption of power operations:
 - Re-baseline the Palisades emergency plan to the latest NRC guidance regarding EP strategies
 - Restore the EAL scheme to the last NRC-approved scheme for plant power operations
 - Reestablish the offsite EP agreements that were removed as part of transition to decommissioning

Main Steam Line Break Analysis

- On May 24, 2024, Holtec submitted a LAR for approval of the Biasi Critical Heat Flux (CHF) correlation for use with the Palisades Main Steam Line Break (MSLB) Analysis
- Specifically, Holtec is adopting Framatome Topical Report No. EMF-2310, Revision 1, Supplement 2, to incorporate a new Biasi CHF correlation from Supplement 2 that was approved by the NRC in 2023
- This change is to resolve a previous site-specific topic at PNP and not part of the standard actions to resume operations

License Transfer

- On December 6, 2023, Holtec submitted a request to transfer the operating authority for the Palisades plant from HDI to Palisades Energy, LLC (OPCO)
- OPCO is a subsidiary of Holtec International
- The request does not change the ownership of the plant or site, which remains with Holtec Palisades, LLC
- The NRC staff's review is ongoing and focuses on both financial and technical qualifications, as well as a review of the operational quality assurance program

Quality Assurance Plan

- On May 23, 2024, Holtec submitted a proposed power operations Quality Assurance Program (QAP) Manual, Revision 0, as a supplement to the license transfer request
- The QAP will apply to activities affecting the quality of structures, systems, and components (SSCs) as part of restart that must be conducted in accordance with a QAP and the requirements of Appendix B to 10 CFR Part 50
- Holtec upgraded the existing decommissioning QAP to address quality activities conducted during the transition to potential restart of the plant per 10 CFR 50.54(a)(3)
 - Submitted and implemented the Transition QAP on August 2, 2024

Oversight Process – IMC 2562

- Establishes policies, requirements, and guidance for inspection and oversight of a decommissioning reactor facility seeking to transition to an operational power reactor facility that would be subject to the Reactor Oversight Process (ROP)
- Derived from Inspection Manual Chapter (IMC) 0350 (Facilities in a Shutdown Condition) and IMC 0375 (Implementation of the ROP at Facilities in Extended Shutdown)
- Describes the restart panel, transition between oversight processes, and the development of an inspection plan
- Based on Panel recommendation, the Director of the Office of Nuclear Reactor Regulation (NRR) and the applicable Regional Administrator will agree on transition to ROP after recommendation from regional inspectors

Oversight Process – Inspection Plan

- Region III has developed a high-level inspection plan, using the guidance in IMC 2562, that describes the process for conducting inspections and the types of activities that will be inspected as they relate to the key attributes of the cornerstones of safety
- The region has developed a more detailed, risk-informed inspection schedule, based on the licensee's planned restart activities, to ensure assessment of all key areas of operational readiness prior to potential restart
- Inspectors and technical experts from across the agency will be used to staff individual and team inspections
- These inspections will be bolstered by restaffing the Resident Inspector Office in late 2024

Inspection Process

- Inspections will be conducted utilizing existing Inspection Procedures for operating reactors, decommissioning activities, and construction/new reactors
- Inspections will ensure decommissioning program requirements are met, while efficiently using resources for restart activities
- New inspection procedures will be created, as needed, to cover specific areas of interest
- Programs that were fully implemented prior to shutdown will be smart sampled to verify proper re-implementation
- Inspections will be documented in quarterly or standalone reports as completed, and made publicly available

Inspection Sample Selection

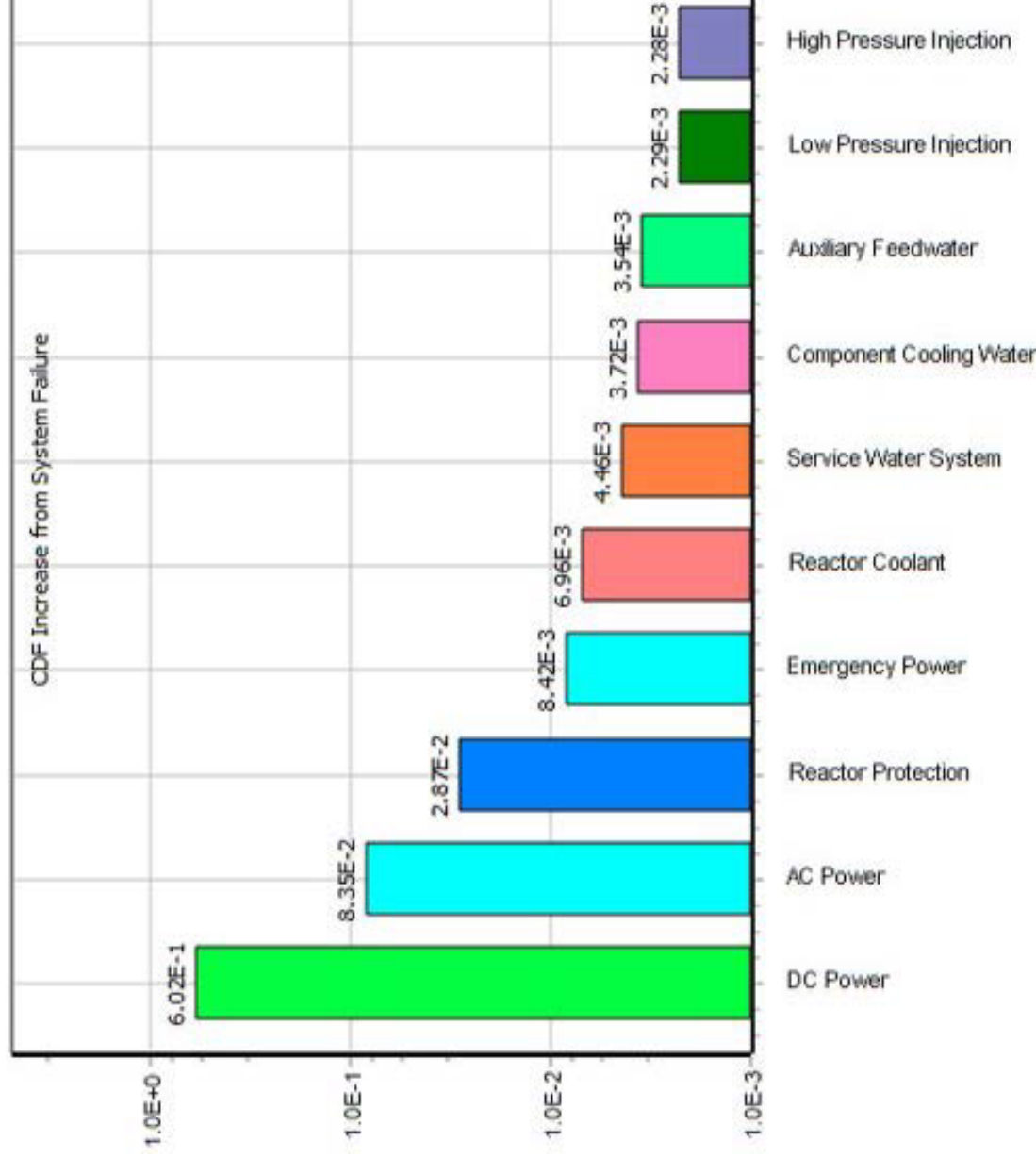
- Increased focus on return-to-service of high-risk systems that can impact the Initiating Events, Mitigating Systems, or Barrier Integrity cornerstones
- Review system modifications that can impact operational risk
- Address historic equipment, design, and regulatory issues, which includes open or deferred items prior to shutdown
- All inspectors will provide insights to the Palisades Restart Team on the licensee's overall corrective action program and safety culture effectiveness
- It is estimated that inspectors will spend **~6000 – 7000 hours** conducting team and “baseline” inspections

Risk-Informing Inspections



United States Nuclear Regulatory Commission

Protecting People and the Environment



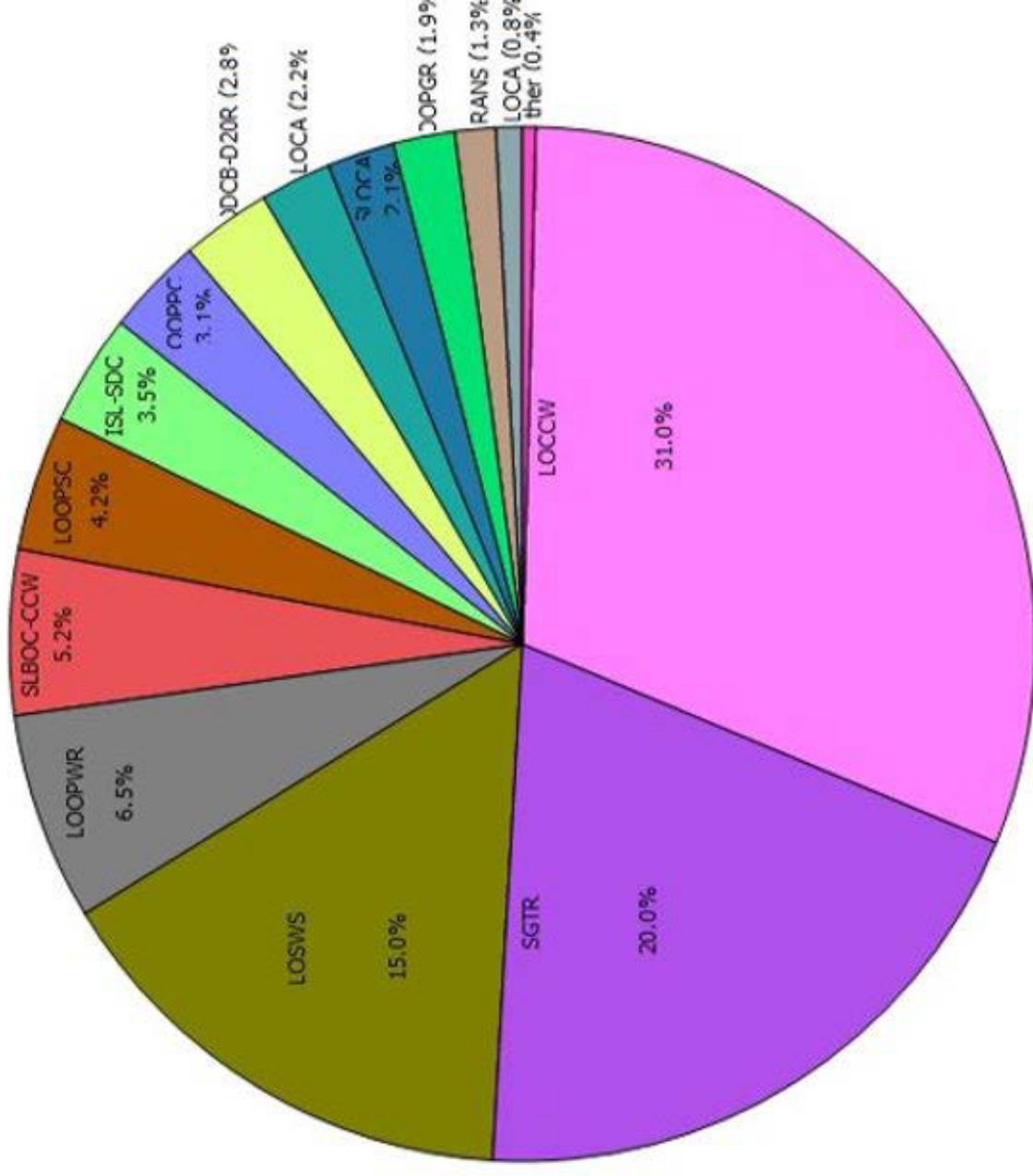
- Station Battery
replacement – improve reliability and address previous operating experience for design issue
- Control Rod Drive Mechanisms seal replacements – address prior equipment reliability issue

Risk-Informing Inspections



United States Nuclear Regulatory Commission

Protecting People and the Environment



TOTAL INTERNAL EVENTS CDF = 1.20E-5/year

- Component Cooling Water Heat Exchanger improvements – increase capacity and defense in depth
- Service Water Buried Piping inspections and repairs – determine condition of system, address identified deficiencies to ensure reliable and safe future operation

Inspection Topics of Interest

- Reactor Vessel Inspections: ASME Section XI code inspections of vessel welds; Materials Reliability Program: Pressurized Water Reactor Internals Inspection and Evaluation Guidelines (MRP-227) related inspections (i.e., core shroud bolts, clevis bolts, etc.)
- Alloy 600 Mitigation: full weld mitigation for dissimilar metals (notably on reactor vessel head nozzles, hot and cold legs, pressurizer surge line, and branch connections)
- NFPA -805: complete installation of modifications for full transition to a risk-based fire protection program
- Closure of Open Regulatory Issues: GSI-191 (verify containment modifications and mitigating actions implemented); open phase (NRC Bulletin 2012-01); seismic hazards re-evaluation

Special Topic: Steam Generator Inspections

- The licensee conducted full tube eddy current inspections, secondary side visual inspections, and sludge lancing, along with other activities, in both the steam generators (SGs)
- Potential actions to address the indications include tube plugging, tube sleeving, and/or a combination of both to ensure the heat transfer capability is maintained to operate the Palisades SGs efficiently at full power
- The NRC released a Preliminary Notification on September 18, 2024

Public Engagement

- Palisades public interest from local/county/state/tribal groups, non-governmental organizations, and Congress
- Stakeholder interest covers historical equipment/safety culture, facility age, environmental impacts, and decommissioning activity/funding
- Staff pre-submittal meetings on licensing actions had ~50 to 200 attendees
- PRP public meetings near the site in April and August
 - ~100 in person and ~250 online attendees for the April meeting
 - ~50 in person and ~75 online attendees for the August meeting
 - Next is tentatively planned for November 2024 as part of the NRC commitment to host ~quarterly public meetings on restart
- NRC scoping meeting in July discussed environmental review of potential restart activities

Questions

Additional information on all the Palisades licensing and oversight activities is available on the NRC [public website](#).



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 Hearing Request from Individual Petitioners in Palisades Restart Amendment 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