

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
)	
Holtec Decommissioning)	Docket Nos. 50-255-LA-3
International, LLC and)	
Holtec Palisades, LLC)	ASLBP No. 24-986-01-LA-BD01
)	
(Palisades Nuclear Plant))	
)	

**APPLICANTS’ MOTION TO STRIKE PORTIONS OF
BEYOND NUCLEAR ET AL.’S COMBINED REPLY TO ANSWERS
FILED BY APPLICANTS AND NRC STAFF**

I. Introduction

In accordance with 10 CFR 2.323(a), Holtec Decommissioning International, LLC (“HDI”) and Holtec Palisades, LLC (“Holtec Palisades”) (collectively, “Applicants”) move to strike portions of the “Petitioning Organizations Combined Reply to Answers Filed by NRC Staff and Holtec to the Petition to Intervene” filed by Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (“Petitioners”) on November 12, 2024 in the above-captioned proceeding.¹ The Reply purports to respond to arguments advanced by Applicants and the Nuclear Regulatory Commission (“NRC”)

¹ Petitioning Organizations Combined Reply to Answers Filed by NRC Staff and Holtec to the Petition to Intervene (Nov. 12, 2024) (ML24317A201) (“Reply”).

staff in their respective answers² to Petitioners’ request for a hearing in this proceeding, which was filed on October 10, 2024.³

Because the “Supplemental Declaration” of Arnold Gundersen attached to the Reply⁴ and all portions of the Reply that reference that supplemental declaration introduce new arguments into the proceeding without satisfying (or even attempting to satisfy) the late-filing factors in 10 CFR 2.309(c), they must be stricken from the record.

II. Legal Standard on Scope of Replies

“It is well established in NRC proceedings that a reply cannot expand the scope of the arguments set forth in the original hearing request. Replies must focus narrowly on the legal or factual arguments first presented in the original petition or raised in the answers to it.”⁵ This rule is based on principles of judicial economy and fairness⁶ and reflects the diligence expected of petitioners who wish to participate in NRC adjudicatory proceedings.⁷ The Commission’s “contention admissibility and timeliness requirements ‘demand a level of discipline and preparedness on the part of petitioners,’ who must examine the publicly available material and set forth their claims and the support for their claims at the outset.”⁸ Commission rules “do not allow

² Applicants’ Answer Opposing Beyond Nuclear et al.s’ Petition for Hearing (Nov. 4, 2024) (ML2430A302) (“Applicants’ Answer”); NRC Staff Answer to Intervention Petition from Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service in Palisades Restart Amendments Proceeding (Nov. 4, 2024) (ML24309A277).

³ Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (Oct. 10, 2024) (ML24284A364) (“Petition”).

⁴ Reply, Ex. A, “Supplemental Declaration of Arnold Gundersen in Support of Petition to Intervene and Request for Adjudicatory Hearing by Michigan Safe Energy Future, Don’t Waste Michigan, Nuclear Information Service, Three Mile Island Alert, and Beyond Nuclear” (“Supplemental Gundersen Declaration”).

⁵ *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) (citation omitted).

⁶ *La. Energy Servs. L.P.* (Nat’l Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004) (“*LES I*”).

⁷ *Palisades*, CLI-06-17, 63 NRC at 732.

⁸ *LES I*, CLI-04-25, 60 NRC at 224–225 (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428-29 (2003)).

[use of] reply briefs to provide, for the first time, the necessary threshold support for contentions.”⁹ Reply briefs are not an opportunity to “‘reinvigorate’ and effectively amend what had been inadequately supported contentions in the [original] hearing petitions.”¹⁰ Ignoring these principles would render the Commission’s intentionally-restrictive pleading standard meaningless—“there would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements every time they ‘realize[d] . . . that maybe there was something after all to a challenge [they] originally opted not to make or which simply did not occur to [them] at the outset’” without the need to satisfy the late filing requirements of 10 CFR 2.309(c).¹¹

To meet the standards of 10 CFR 2.309(c), a petitioner must demonstrate good cause by showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

Accordingly, petitioners are required to include all their arguments and supporting materials in the initial petition and may not, via their reply, cure or recast unsupported or defective contentions.¹²

⁹ *La. Energy Servs. L.P.* (Nat’l Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004) (“*LES IP*”).

¹⁰ *Id.* at 621.

¹¹ *McGuire*, CLI-03-17, 58 NRC at 428-29. Petitioners’ Reply does not cite to 10 CFR 2.309(c) or provide any basis for why it satisfies the standard for late filings contained in that regulation.

¹² *LES II*, CLI-04-35, 60 NRC at 621; *McGuire*, CLI-03-17, 58 NRC at 428-29.

III. The Petition's Climate Change Arguments

As discussed more fully in Applicants' Answer, this proceeding involves an opportunity to request a hearing on four license amendment requests filed by the Applicants (the "LARs").¹³ But rather than directly challenge any portion of the LARs, the Petition presented scattershot arguments that attacked the NRC's statutory authority and regulatory framework, prior operations at the Palisades Nuclear Plant ("Palisades"), the current licensing bases for the plant, and future regulatory processes expected to be used in connection with the proposed resumption of power operations at Palisades.¹⁴ At bottom, Petitioners argue that the NRC does not have authority to authorize the restart of Palisades but must continue with decommissioning until Applicants apply for and receive a new operating license.¹⁵

Petitioners proffered seven contentions for inclusion in the proceeding in the Petition. Only Contention 4 is applicable to this motion. As presented in the Petition, Contention 4 asserted:

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

¹³ See Applicants' Answer at 2; HDI PNP 2023-030, Letter from Holtec Decommissioning International, LLC to NRC, "License Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations" (Dec. 14, 2023) (ML23348A148); HDI PNP 2024-001, Letter from Holtec Decommissioning International, LLC to NRC, "License Amendment Request to Revise Selected Permanently Defueled Technical Specifications Administrative Controls to Support Resumption of Power Operations" (Feb. 9, 2024) (ML24040A089); HDI PNP 2024-005, Letter from Holtec Decommissioning International, LLC to NRC, "License Amendment Request to Revise the Palisades Nuclear Plant Site Emergency Plan to Support Resumption of Power Operations" (May 1, 2024) (ML24122C666); HDI PNP 2024-003, Letter from Holtec Decommissioning International, LLC to NRC, "License Amendment Request to Approve the Biasi Critical Heat Flux (CHF) Correlation for Use with the Palisades Main Steam Line Break (MSLB) Analysis" (May 24, 2024) (ML24145A145).

¹⁴ See Applicants' Answer at 8.

¹⁵ See *id.* at 25.

Since there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by Holtec.¹⁶

In support of this contention, Petitioners alleged that it “is not possible” for Applicants to use 10 CFR 50.59 to update the Palisades Final Safety Analysis Report (“FSAR”) because the changes that Petitioners believe will be required to restart Palisades will “exceed the minimal change limitations” set forth in 10 CFR 50.59.¹⁷ Among other bases for this claim is Petitioners’ assertion that “changes in specifications and operating characteristics of components of Palisades will pronouncedly exceed the minimum change thresholds of 10 C.F.R. § 50.59(c)(2) as a result of climate change.”¹⁸

As support for this argument, Petitioners relied on the declaration of Mr. Arnold Gundersen provided with the Petition (the “Initial Gundersen Declaration”).¹⁹ In his initial declaration, Mr. Gundersen provided a generalized discussion of the potential effects of climate change on the plant.²⁰ He asserted that the “climate change impacts on the Palisades licensing basis include and are not limited to lake temperature, air temperature, wet bulb temperature, rainfall/flooding, wind velocity, frequency and intensity of storms, snow loads, ultimate heat sink parameters, and many others.”²¹ Mr. Gundersen did not provide any data that supported his conclusory assertions that climate change will materially affect the site or plant operations through 2031. Nor did he explain precisely how these generally-alleged changes would impact any particular aspect of the Palisades licensing or design bases beyond the “condenser heat exchanger,” which he opined “is not a safety-

¹⁶ Petition at 48.

¹⁷ *Id.* at 49-50.

¹⁸ *Id.* at 57.

¹⁹ *Id.* at 52 (citing Initial Gundersen Decl. at ¶ 54).

²⁰ Initial Gundersen Decl. at ¶ 131.

²¹ *Id.* at ¶ 131.2.

related system or component.”²² Mr. Gundersen also made no attempt to present or quantify local meteorological or temperature data, despite readily-available public information that enabled him to do so.²³ His argument was, 60 years ago, global climate conditions were entirely different from today’s conditions²⁴ and thus climate change will “trickle into dozens of systems and thousands of calculations,”²⁵ but he provided no data or detail in support.

As explained in Applicants’ Answer, Contention 4 and the sub-argument pertaining to alleged climate-driven impacts to the Palisades FSAR are out of scope and fail to raise a material dispute with the LARs, and Mr. Gundersen’s generalized assertions that climate change might affect the plant in the future do not provide the support required by the NRC’s contention admissibility rules.²⁶

²² *Id.* at ¶ 131.4.1.

²³ *E.g.*, National Oceanic and Atmospheric Administration, National Centers for Environmental Information, “Climate at a Glance County Time Series,” Van Buren County, Michigan, Average Temperature from 1983 to 2024, available at <https://www.ncei.noaa.gov/access/monitoring/climate-at-a-glance/county/time-series/MI-159/tavg/24/0/1983-2024> (last visited Nov. 22, 2024) (providing historical average temperature data for Van Buren County, Michigan (the county in which Palisades is located) from 1983 to 2024 with the ability to generate graphs showing average temperature over different scales (*e.g.*, monthly, bi-monthly, semi-annually, annually, biannually, etc.)); National Oceanic and Atmospheric Administration, National Centers for Environmental Information, “Climate at a Glance City Time Series: Grand Rapids, Michigan, Average Temperature from 1983 to 2024, available at <https://www.ncei.noaa.gov/access/monitoring/climate-at-a-glance/city/time-series/USW00094860/tavg/12/0/1983-2024> (last visited Nov. 22, 2024) (providing historical average temperature data for Grand Rapids, Michigan (the city closest to Palisades) from 1983 to 2024 and with the ability to generate graphs showing average temperature over different scales (*e.g.*, monthly, bi-monthly, semi-annually, annually, biannually, etc.)); National Oceanic and Atmospheric Administration, National Weather Service, “Climate Plots for Grand Rapids Michigan,” available at <https://www.weather.gov/grr/ClimatePlots> (last visited Nov. 22, 2024) (providing climate plots for Grand Rapids, Michigan area and other Michigan areas going back to 2000); National Oceanic and Atmospheric Administration, National Weather Service, “NOWData NOAA Online Weather Data” for Michigan, available at <https://www.weather.gov/wrh/climate?wfo=grr> (last visited Nov. 22, 2024) (providing historical temperature data, including daily maximum, daily minimum, average, and departure from normal, as well as precipitation data, for measurement locations in Michigan).

²⁴ Initial Gundersen Decl. at ¶ 131.2

²⁵ *See id.* at ¶ 131.4.3.

²⁶ *See* Applicants’ Answer at 59–60.

IV. Petitioner’s Reply and the Supplemental Gundersen Declaration Impermissibly Add New Evidence and Arguments That Must Be Stricken

Petitioners attached the Supplemental Gundersen Declaration to their Reply, using this new declaration to defend Contention 4.²⁷ The Supplemental Gundersen Declaration asserts new (and still out of scope and immaterial) climate-related arguments and analysis that were not presented in the Petition or Initial Gundersen Declaration. The new declaration principally consists of Mr. Gundersen’s discussion of average air temperature data from an HDI response to an NRC request for additional information.²⁸ From this information he presents the new argument that “climate-change data implies that the Chi over Q (X/Q) dispersion coefficients used in accident dose calculations are no longer valid at the Holtec Palisades Reactor Site” but without citing any portion of Palisades’s licensing basis or explaining why he believes this is the case.²⁹ He also claims that Applicants and NRC are “purposefully ignoring” the effects of climate change on Lake Michigan temperatures (which he does not present or analyze) that Mr. Gundersen claims create “a continuing threat” to the “Component Cooling Water (CCW) system” (again, without offering any details) and “the design of the Palisades Reactor” in general.³⁰

All of this new evidence and argument goes well beyond the generic claims set forth in the Initial Gundersen Declaration. Neither the Petitioners’ Reply nor the Supplemental Gundersen Declaration discusses or attempts to satisfy the criteria for late-filed contentions in 10 CFR

²⁷ See Reply at 27-29.

²⁸ Supplemental Gundersen Decl. at ¶¶ 14–22 (discussing air temperature data from Figure 2.17 of HDI’s Response to Requests for Additional Information Regarding the Proposed Reauthorization of Power Operations of Palisades Nuclear Plant under Renewed Facility Operating License Number DPR-20, Encl. 11 at 24 (Oct. 4, 2024) (ML24278A027)).

²⁹ *Id.* at ¶ 23.3.

³⁰ *Id.* at ¶¶ 12.4, 13.2, & 13.3.

2.309(c). The Supplemental Gundersen Declaration and portions of the Reply that rely on it should therefore be stricken from the record.

Even if they had tried, Petitioners cannot satisfy 10 CFR 2.309(c)(ii) because all the information Mr. Gundersen evaluates for the first time in his supplemental declaration was readily available to him well before the October 7, 2024 filing deadline for this proceeding. Several government agencies compile meteorological data for public use. Air temperature data from sources close to Palisades can easily be located with a Google search.³¹ Mr. Gundersen’s initial declaration claims that “climate change impacts on the Palisades licensing basis include . . . air temperature,”³² but he did not attempt to quantify those effects despite having access to readily-available public data that would have allowed him to do so. Nor did his Initial Declaration attempt to relate those alleged impacts to any specific portions of the Palisades licensing basis (including the “Chi over Q (X/Q) dispersion coefficients”³³). The opportunity to file a reply does not afford Petitioners or Mr. Gundersen the opportunity to offer up “new” analysis that easily could have been provided before October 7, 2024.³⁴ A reply is not an opportunity to “reinvigorate” and effectively amend” the original petition³⁵ or to make a new argument “which simply did not occur to [Petitioners] at the outset.”³⁶

³¹ See n.23 for examples of publicly available data sets maintained by the National Weather Service and the National Centers for Environmental Information, with are part of the National Oceanic and Atmospheric Administration (NOAA).

³² Initial Gundersen Declaration at ¶ 131.2.

³³ Supplemental Gundersen Decl. at ¶ 23.3.

³⁴ Reply at 14; *see also*, Petition at 58-61 (discussing Initial Gundersen Decl. at ¶¶ 131.1 to 131.5, including sub paragraphs).

³⁵ *LES II*, CLI-04-35, 60 NRC at 621.

³⁶ *McGuire*, CLI-03-17, 58 NRC at 428-29.

As explained above, Petitioners have not attempted to, and cannot, satisfy the requirements of 10 CFR 2.309(c)(ii) because there is no new or materially different information justifying a late-filed supplement to their original Petition. Accordingly, the following portions of Petitioners' Reply and the Supplemental Gundersen Declaration that present new arguments and materials exceeding the allowable scope of a reply brief should be stricken from the record:

- Reply, page 22, second full paragraph: "In conjunction with this material alteration [']synoptic meteorological changes that adversely affect its design basis.'"
- Reply, page 27 through page 29: "Petitioners offer below some additional expert information . . . must be completely reanalyzed."
- Supplemental Gundersen Declaration in its entirety.

V. Conclusion

For the foregoing reasons, the Supplemental Gundersen Declaration and all portions of the Reply that refer to it should be stricken from the record. Should the Board decline to strike these portions of Petitioners' filing, Applicants respectfully request the opportunity to respond to the new arguments and materials, including demonstrating that the information presented is outside the scope of the proceeding and fails to demonstrate a material dispute with the findings the NRC must make to issue the LARs.

Pursuant to 10 CFR 2.323(b), counsel for Applicants certifies that the movant made a sincere effort to contact Petitioners' representatives and the NRC Staff to resolve the issues raised in this Motion. On November 21, 2024, the undersigned counsel spoke with counsel for the Petitioners and explained that Applicants planned to file a motion to strike the Supplemental Gundersen Declaration and the portions of the Reply that rely on it. Petitioners' counsel opposed the filing of the motion but agreed that the parties have been unable to resolve the issue presented in this motion.

In an email exchange on November 22, 2024, the NRC Staff provided its position and requested that Applicants insert the below paragraphs into the motion:

The applicant proposes filing a motion to strike the following portions from the Reply filed on November 12, 2024 by the Petitioning Organizations:

- Reply, page 22, second full paragraph: “In conjunction with this material alteration . . . [‘]synoptic meteorological changes that adversely affect its design basis.”
- Reply, page 27 through 29: “Petitioners offer below some additional expert information . . . must be completely reanalyzed.”
- Supplemental Gundersen Declaration in its entirety.

The Staff does not oppose a motion to strike these portions of the Reply because they go beyond the permissible bounds of a reply by presenting new arguments, claims, and support rather than being narrowly focused on the legal or logical arguments presented in the Staff’s and Applicant’s answers. New arguments, claims, and support should be presented in a new or amended contention to provide the other parties an opportunity to address the contention admissibility criteria in their answers.

Finally, the Staff reserves the right at oral argument to argue that additional material in the Petitioners Organizations’ reply goes beyond the permissible scope of a Reply.

Respectfully submitted,

Signed (Electronically) by Grant W. Eskelsen

Grant W. Eskelsen
Balch & Bingham LLP
601 Pennsylvania Ave., NW
Suite 825 South
Washington, DC 20004
(202) 661-6344
geskelsen@balch.com

Executed in Accord with 10 CFR 2.304(d)

M. Stanford Blanton
Alan D. Lovett
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203
(205) 226-3417
(205) 226-8769
sblanton@balch.com
alovett@balch.com

*Counsel for Holtec Palisades, LLC and
Holtec Decommissioning International, LLC*

November 22, 2024

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CERTIFICATE OF SERVICE

Pursuant to 10 CFR 2.305, I certify that, on this date, a copy of the foregoing “Applicants’ Motion to Strike Portions of Beyond Nuclear et al.’s Combined Reply to Answers Filed by Applicants and NRC Staff” was served through the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned docket.

Signed (Electronically) by Grant W. Eskelsen
Grant W. Eskelsen
Balch & Bingham LLP
601 Pennsylvania Ave., NW
Suite 825 South
Washington, DC 20004
(202) 661-6344
geskelsen@balch.com

*Counsel for Holtec Palisades, LLC and
Holtec Decommissioning International, LLC*