

November 4, 2024

**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’ ANSWER OPPOSING
BEYOND NUCLEAR ET AL.’S PETITION FOR HEARING**

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Legal Standards	4
A.	Contention Admissibility Standard.....	4
B.	Petitioners’ Challenge to the Contention Admissibility Standard is Outside the Scope of this Proceeding	6
C.	Standard Governing NRC’s Review of the LARs	7
III.	Background	8
A.	Changes to the Palisades Operating License at Shutdown.....	8
B.	The Four LARs at Issue in This Proceeding	10
C.	Other Regulatory Activity That is Not at Issue in This Proceeding	12
D.	Opportunity to Request a Hearing	24
E.	Summary of the Petition.....	25
IV.	Petitioners Have Not Submitted an Admissible Contention.....	29
A.	The Entire Petition is Out of Scope Because None of the Contentions Raise a Material Dispute with the LARs	29
B.	The Foundational Premise Underlying the Petition—that NRC Lacks Authority to Authorize a Plant Restart—is Incorrect and Out of Scope	32
C.	Each of the Seven Contentions is Inadmissible Under the 2.309 Standard	39
V.	The Petition is Untimely	72
VI.	Petitioners Have Not Established Standing	73
A.	Standing Requirements	73
B.	Petitioners Have Not Demonstrated Standing.....	75
VII.	Conclusion	78

November 4, 2024

**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’ ANSWER OPPOSING
BEYOND NUCLEAR ET AL.’S PETITION FOR HEARING**

I. Introduction

Pursuant to 10 CFR 2.309(i)(1) and the Atomic Safety and Licensing Board Panel’s (“Board”) Prehearing Orders,¹ Holtec Decommissioning International, LLC (“HDI”) and Holtec Palisades, LLC (collectively, “Applicants”) submit this answer to the Petition to Intervene and Request for Adjudicatory Hearing (“Petition”) filed by Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (“Petitioners”), filed October 10, 2024 in the above-captioned proceeding.² The Petition should

¹ Memorandum and Order (Initial Prehearing Order) (Sept. 19, 2024) (ML24263A018). On October 17, 2024, the ASLB amended the Initial Prehearing Order, setting the deadline for Applicants’ answer to November 4, 2024. Memorandum and Order (Amending Initial Prehearing Order) (Oct. 17, 2024) (ML24295A354).

² 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).

be dismissed because it is late, out of scope, unsupported, and Petitioners have failed to establish standing.

The Petition was filed in response the NRC’s Federal Register notice published August 7, 2024,³ which offered an opportunity to request a hearing on four license amendment requests filed by the Applicants (the “LARs”).⁴ The deadline to submit the Petition was October 7, 2024. Petitioners filed in the wrong docket and, despite the NRC Secretary’s prompt, did not refile until three days after the deadline, on October 10, 2024.⁵ Petitioners have not provided any justification for filing three days after the Federal Register deadline nor have they satisfied the requirements for late-filed contentions. The Petition should therefore be dismissed as untimely.

The Federal Register Notice provided an opportunity to request a hearing on four LARs. The contents of the LARs are addressed in more detail below, but in general they are part of the Applicants’ effort to reinstate the authority to operate the Palisades Nuclear Plant (“Palisades”)—the first time any licensee has attempted to do so for a plant that previously entered decommissioning—through the end of Palisades’s renewed operating license term expiring in March 2031. The four LARs are not the only regulatory actions required for the restart nor would

³ 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) (“Federal Register Notice”).

⁴ 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) (“Tech Spec LAR”); 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) (“Admin Controls LAR”); 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) (“Emergency Planning LAR”); 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) (“MSLB LAR”).

⁵ NRC Secretary Memorandum, Referral of Petition to Intervene and Request for Hearing (Oct. 16, 2024) (ML24290A145).

NRC's review of the LARs allow Applicants to load fuel into the reactor and recommence power operations. Rather than challenging the specific contents of any of the LARs, which they are required to do to be entitled to a hearing, Petitioners seek an omnibus hearing on wide-ranging objections to Palisades's operations in general—attacking existing Commission regulations and policy positions, NRC's statutory authority to license commercial reactors and grant exemptions from its regulations, the current Palisades operating license, NRC staff's environmental review (which is underway but not complete), Palisades's operational history, Applicants' technical qualifications, and many other things. But none of these topics are at issue in this proceeding. And none of Petitioners' arguments challenge the merits of the LARs. Instead, the entire Petition is based on the premise that NRC lacks the authority to grant an exemption from its regulations and it is impossible for Applicants to amend an operating license after a plant has shut down—a position that is directly contradicted by the Atomic Energy Act, NRC regulations, and Commission policy direction. The Petition does not raise any relevant issue of law or fact that is material to the findings NRC must make in reviewing these four LARs. It is therefore outside the scope of this adjudicatory proceeding and should be dismissed.

Even if Petitioners' out-of-scope arguments are examined, they lack the expert and documentary support required by the Commission's contention-admissibility rules. The Petition is accompanied by three declarations, but the vast majority of the content of those declarations is unrelated to the contentions in the Petition, much less the LARs, and the statements that do have some nexus to the Petition's arguments consist of conclusory and unsupported speculation. None of the declarants offer relevant citations or documentary bases for their claims that actually pertain to the LARs, nor do the declarants provide any expert analysis that they are qualified to provide regarding the findings the NRC must make to issue the LARs. Declarants must provide more than

bare assertions to meet the NRC's contention admissibility standards.⁶ Because Petitioners' declarants do not, the contentions are inadmissible.

Petitioners also have not demonstrated their standing to participate in this proceeding because they fail to attempt, much less sufficiently demonstrate, potential harm that is traceable to the LARs or that may be remedied in this proceeding. Instead, they base their standing on an exemption request that was not the subject of the applicable Federal Register Notice and is not the type of regulatory decision that gives rise to a hearing under Section 189a of the Atomic Energy Act. This is not sufficient to demonstrate standing in this proceeding.

For each of these reasons, the Petition should be dismissed.

II. Legal Standards

A. Contention Admissibility Standard

A petitioner must propose at least one contention that meets the admissibility requirements in 10 C.F.R. § 2.309(f)(1).⁷ Each contention must:

- (i) provide a specific statement of the legal or factual issue sought to be raised;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised is within the scope of the proceeding;
- (iv) demonstrate that the issue raised 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, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and
- (vi) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.⁸

⁶ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 674 (2008).

⁷ *See* 10 CFR 2.309(a).

⁸ *See* 10 CFR 2.309(f)(1)(i)-(vi).

Failure to comply with any one of the six admissibility requirements is grounds for rejecting a proposed contention.⁹

The Commission’s contention admissibility requirements are “strict by design.”¹⁰ To be admissible, a contention “must raise issues within the scope of the proceeding and material to the findings the Commission must make.”¹¹ The scope of a proceeding is determined by the requested licensing action and corresponding Federal Register notice providing an opportunity for hearing.¹² If an argument is outside the specified scope of the proceeding, it must be rejected.¹³

NRC’s contention admissibility rules also require proposed contentions to have “some reasonably specific factual or legal basis.”¹⁴ “To be admissible, a contention must provide support for its claims.”¹⁵ The proposed contention must refer to the “specific portions of the application . . . that the petitioner disputes,” along with the “supporting reasons for each dispute; or, if the petitioner believes that an application fails altogether to contain information required by law, the petitioner must identify each failure, and provide supporting reasons for the petitioner’s belief.”¹⁶

⁹ See, e.g., *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC 393, 395–96 (2012); *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); see also Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004).

¹⁰ *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504 (2015); *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

¹¹ *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-23-1, 97 NRC 81, 84 (2023).

¹² *Fansteel, Inc.* (Muskogee, Oklahoma Facility), LBP-03-13, 58 NRC 96, 100 (2003); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985).

¹³ *Portland Gen. Elec. Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979) (citing *Public Serv. Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)).

¹⁴ *Susquehanna*, CLI-15-8, 81 NRC at 504 (quoting *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-03-14, 58 NRC 207, 213 (2003)).

¹⁵ *Susquehanna*, CLI-23-1, 97 NRC at 86.

¹⁶ *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 & 2), CLI-17-4, 85 NRC 59, 74 (2017) (quoting 10 CR 2.309(f)(1)(vi)).

Under 10 CFR 2.390(f)(1), a petitioner must explain the basis for each proffered contention by stating alleged facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely in litigating the contention at the hearing.¹⁷ "Bare assertions and speculation, even by an expert, are insufficient to trigger a full adjudicatory proceeding."¹⁸

Any contention that collaterally attacks the NRC regulatory structure or processes likewise is outside the scope of the proceeding.¹⁹ Moreover, petitioners may not "attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies."²⁰ The petitioner has the burden of proof to meet the standards of contention admissibility.²¹

B. Petitioners' Challenge to the Contention Admissibility Standard is Outside the Scope of this Proceeding

As a prefatory matter, Petitioners assert that they may skip this Board's review of their contentions under the foregoing standard, and instead are entitled to a trial before a federal district court.²² This argument is not relevant to the LARs but is instead a general complaint aimed at the contention admissibility standard the Commission implemented in 1989.²³ Petitioners cite a

¹⁷ 10 CFR 2.390(f)(1)(ii), (v).

¹⁸ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-14, 75 NRC 704, 714 (2021) (quoting *Oyster Creek*, CLI-08-28, 68 NRC at 674).

¹⁹ *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 66 NRC 41, 57-58 (2007) (citing *Phila. Electric Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20 (1974)).

²⁰ *Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-15-9, 81 NRC 512, 527-28 n.98 (2015) (quoting *Duke Energy Co.* (Oconee Nuclear Station, Units 1, 2, and 3) CLI-99-11, 49 NRC 328, 334 (1999)).

²¹ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015); *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998). Applicants note that the Petition improperly relies on certain contention admissibility precedent that predates the agency's 1989 rulemaking that revised these rules and intentionally raised the bar for what constitutes an admissible contention under NRC rules. See Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168 (Aug. 11, 1989) ("1989 Final Rule"); *Oconee*, CLI-99-11, 49 NRC at 334 ("In 1989 the Commission toughened its contention rule in a conscious effort to raise the threshold bar for an admissible contention and ensure that only intervenors with genuine and particularized concerns participate in NRC hearings.").

²² Petition at 26.

²³ 1989 Final Rule, 54 Fed. Reg. 33,168.

concurring opinion to a 2024 U.S. Supreme Court decision involving SEC fines,²⁴ and from that, suggests that the NRC’s use of Atomic Safety and Licensing Boards to apply the contention admissibility standard in Section 2.309 violates “due process.”²⁵ But the Petition offers no authority as to why they should be allowed to skip the NRC’s adjudicatory process altogether, what arguments they should be allowed to litigate before a federal judge, and what standard a federal court should use to judge those arguments, if not the NRC’s. The Commission Secretary has already assigned the Petition to the Board, finding that “the petitioners have presented no authority suggesting that the Commission may assign incoming hearing petitions to federal judges in Article III courts.”²⁶ It is well established that challenges to NRC procedural rules are outside the scope of an adjudicatory proceeding under Section 189a of the Atomic Energy Act on a specific licensing action.²⁷ Accordingly, Petitioners’ assertion that the Board lacks jurisdiction over their claims must be rejected.

C. Standard Governing NRC’s Review of the LARs

The NRC reviews a license amendment request using the same legal standards that governed the initial issuance of the license.²⁸ The Petition only references one of the four LARs:

²⁴ Petitioners’ reliance on *SEC v. Jarkesy*, 144 S. Ct. 2117, 2124 (2024), is misplaced. Central to the Supreme Court’s holding in *Jarkesy*, which overturned a \$300,000 punitive civil penalty against a broker accused of securities fraud, was that “[t]he SEC’s antifraud provisions replicate common law fraud, and it is well established that common law claims must be heard by a jury [under the Seventh Amendment].” *Id.* at 2127. The Court contrasted common law claims like fraud with “public rights,” claims that “historically could have been determined exclusively by [the executive and legislative] branches” *Id.* at 2132. Petitioners’ challenges here fall squarely into that category. Further, it should be noted that the NRC has no authority to “assign[] a U.S. Constitution, Article III judge for the purposes of all pretrial and trial activity and attention,” as Petitioners request. Federal courts are a standalone branch of government that act independently of any other branch of government, including Article II regulatory agencies such as this one.

²⁵ Petition at 26–27.

²⁶ NRC Secretary Memorandum, Referral of Petition to Intervene and Request for Hearing (Oct. 16, 2024) (ML24290A145).

²⁷ *N. Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217 n.8 (1999) (“[A] petitioner in an individual adjudication cannot challenge generic decisions made by the Commission in rulemakings.”).

²⁸ 10 CFR 50.92(a).

the LAR to amend the operating license and technical specifications to reinstate the provisions that govern power operations (discussed more below). The requirements for technical specifications in a reactor operating license are defined in 10 CFR 50.36 and 50.36b. The Petitioners do not cite this standard or any other regulatory review bases for any of the LARs. Because they have failed to engage with this review standard, a more detailed discussion of the applicable regulatory standard for each LAR is unnecessary.

III. Background

The Petition mostly ignores the LARs in favor of a scattershot approach that attacks NRC’s statutory authority and regulatory framework, prior operations at Palisades, the current licensing bases for the plant, and future regulatory processes expected to be used in connection with the proposed resumption of operations at Palisades. Petitioners also repeatedly incorrectly claim that Palisades’s operating license has been terminated, and they mischaracterize the processes NRC is using to evaluate Palisades’s readiness to resume power operations—conflating NRC’s approval of the LARs with all the other regulatory activities and physical site work related to the restart. Therefore, in order to untangle the arguments in the Petition, it is helpful to provide licensing context for Palisades’s 2022 shutdown, explain what the LARs are (and are not) requesting NRC to approve, and describe the other regulatory processes involved in the restart project that, while, not at issue in this proceeding, figure prominently in the Petition.

A. Changes to the Palisades Operating License at Shutdown

Palisades shutdown in 2022 before the expiration of its renewed operating license term in March 2031. At the time, the expectation was that the shutdown would be permanent. Accordingly, Entergy Nuclear Operations, Inc. (“ENOI”) (the licensed operator at shutdown) filed the two certifications contemplated by 10 CFR 50.52(a)(1): the certification of permanent cessation of operations and the certification of permanent defueling (referred to herein as the “50.82(a)(1)

certifications” or the “certifications of shutdown and defueling”).²⁹ Following those certifications, ENOI implemented a series of license amendments, exemptions, and changes to modify the licensing basis to reflect the shutdown status.³⁰ The plant’s operating license—Renewed Facility Operating License DPR-20 (the “RFOL”)—remains in place; it has simply been modified, along with many other portions of the licensing basis, to reflect the lower risk of a defueled reactor.³¹

It bears noting that NRC regulations do not prescribe any of the steps ENOI took to modify the RFOL at shutdown. Rather, like all plants in decommissioning, ENOI and NRC relied on the standard suite of regulatory processes: exemptions (pursuant to 10 CFR 50.12), license amendments (pursuant to 10 CFR 50.90), and change processes under 10 CFR 50.54 and 50.59 to step down the Part 50 requirements (that still apply because the plant still holds a Part 50 operating license) to reflect the lower risk associated with a defueled reactor.³² Most of the processes

²⁹ ENOI, Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel (June 13, 2022) (ML22164A067).

³⁰ *E.g.*, ENOI, Request for Exemption from Physical Security (Severe Weather) Provisions in 10 CFR 73.55 (June 29, 2017) (ML17180A004) (issued Oct. 11, 2017 at ML17216A802); ENOI, Certified Fuel Handler Training and Retraining Program Approval Request (Mar. 28, 2017) (ML17087A016) (approved Aug. 21, 2017 at ML17151A350); ENOI, Technical Specifications Administrative Controls License Amendment Request (July 27, 2017) (ML17208A428) (approved June 4, 2018 at ML18114A410); ENOI, License Amendment Request to Reduce Emergency Response Organization Staffing Levels (Aug. 31, 2017) (ML17243A157) (approved Sept. 24, 2018 at ML18170A219); ENOI, License Amendment Request to Implement Permanently Defueled Technical Specifications and Revised License Conditions (June 1, 2021) (ML21152A108) (approved May 13, 2022 at ML22039A198); ENOI, Deferral of Post-Fukushima Beyond Design Basis Seismic Requirements (Mar. 20, 2019) (ML19079A022) (approved May 8, 2019 at ML19115A413); ENOI, Recordkeeping Exemption Request (June 15, 2021) (ML21167A108) (issued Nov. 23, 2021 at ML21195A367); ENOI, Partial Rescission of 9/11 Interim Compensatory Measures (July 21, 2021) (ML21202A211) (approved June 28, 2022 at ML22159A194).

³¹ 10 CFR 50.51(b); 10 CFR 50.82(a)(11); *see* Amendment No. 272 to Renewed Facility Operating License No. DPR-20 (May 13, 2022) (ML22039A198) (amendment effective following docketing of 50.82(a)(1) certifications and reflecting permanently defueled technical specifications); Amendment No. 273 to Renewed Facility Operating License No. DPR-20 (June 28, 2022) (ML22173A176) (reflecting transfer of the RFOL from Entergy to Holtec). Petitioners and their declarants base most, if not all, of their claims on the allegation that Palisades no longer holds a Part 50 operating license. That allegation is clearly contradicted by the license itself, NRC regulations, and readily-available public documents. *See* section IV.B *infra*; *see also* NRC, Regulatory Guide 1.184, Decommissioning of Nuclear Power Reactors, Rev. 1, at 7 (Oct. 2013) (ML13144A840) (“Following submission of the certification for permanent cessation of operations, the facility license continues in effect beyond the expiration date until the NRC notifies the licensee in writing that the license has been terminated (10 CFR 50.51(b)).”) (“Reg. Guide 1.184”).

³² In fact, the NRC has undertaken a decade-long rulemaking process to overhaul the decommissioning regulations, in part, to “reduce the need for license amendment requests and exemptions from existing regulations” during the

Applicants are using to resume power operations (which are briefly described below) are simply employing these same tools in reverse.

B. The Four LARs at Issue in This Proceeding

Among the changes ENOI implemented at shutdown, three are relevant to the LARs in this proceeding:

- (1) Amendment No. 266 to the RFOL, which amended the Administrative Controls section of the Technical Specifications to reflect post-shutdown staffing, training, and programmatic requirements (“Admin Controls Amendment”).³³
- (2) Amendment No. 267 to the RFOL, which modified the Emergency Plan to reflect a permanently defueled condition (“Emergency Planning Amendment”).³⁴
- (3) Amendment No. 272 to the RFOL, which removed license conditions applicable to power operations and implemented Technical Specifications for a permanently defueled condition (“Tech Spec Amendment”).³⁵

transition into decommissioning. NRC Proposed Rule, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, 87 Fed. Reg. 12,254, 12,254 (Mar. 3, 2022) (“Proposed Decommissioning Rule”). For now, though, NRC has recognized that the process is dependent on the use of license amendments, exemptions, and the 10 CFR 50.59 and 50.54 change processes:

Upon permanent cessation of reactor operations and removal of fuel from the reactor vessel, the licensee is likely to submit a significant number of licensing actions (license amendment and exemption requests) to the NRC for review and approval based primarily on the reduced radiological risk to public health and safety.

...

In addition to requesting license amendments and exemptions, nuclear power reactor licensees can make certain changes without prior NRC approval if the changes are permitted by an NRC regulation. Licensees primarily use an evaluation process with criteria in § 50.59 to make changes in a facility (or procedures) as described in the FSAR (as updated), including changes to the PSDAR, without prior NRC approval. The licensee’s updated FSAR should reflect changes to the decommissioning design-basis analyses, SSCs, and the licensee’s organizations, processes, and procedures. Licensees can also make changes without prior NRC approval as described in § 50.54(p) and § 50.54(q).

Id. at 12,264.

³³ Issuance of Amendment Re: Administrative Controls for Permanently Defueled Condition, Amendment No. 266 to Renewed Facility Operating License No. DPR-20 (June 4, 2018) (ML18114A410).

³⁴ Issuance of Amendment Re: Changes to the Emergency Plan for Permanently Defueled Condition, Amendment No. 267 to Renewed Facility Operating License No. DPR-20 (Sept. 24, 2018) (ML18170A219).

³⁵ Issuance of Amendment No. 272 Re: Permanently Defueled Technical Specifications, Amendment No. 272 to Renewed Facility Operating License No. DPR-20 (May 13, 2022) (ML22039A198).

Three of the four LARs noticed in the Federal Register are meant to functionally unwind these three amendments to reinstate the relevant portions of the RFOL in effect prior to shutdown:

- (1) The Admin Controls LAR requests NRC approval to reinstate the Administrative Controls sections of the Technical Specifications (Section 5.0) to reflect power operations staffing, training, and programmatic requirements, including to reflect the transition from certified fuel handlers back to licensed reactor operators, plant staff's responsibilities for operational functions rather than just safe storage and handling of spent nuclear fuel, and on-shift staffing requirements when fuel is in the reactor.³⁶ This LAR would functionally unwind the Admin Controls Amendment implemented at shutdown.
- (2) The Emergency Planning LAR requests NRC approval to reinstate the Emergency Plan and Emergency Action Levels for power operations, which would unwind the Emergency Planning Amendment and other changes to emergency planning requirements implemented post-shutdown,³⁷ including, for example, to reinstate power operations emergency action levels, operational-level on-shift staffing, support functions for offsite emergency response organizations, and all the other changes to emergency planning that were no longer required once the risk of offsite radiological release drastically lowered.³⁸
- (3) The Tech Spec LAR requests NRC approval to reinstate RFOL license conditions and Technical Specifications applicable to power operations,³⁹ functionally unwinding the Tech Spec Amendment. Among other changes, the Tech Spec LAR would reinstate license conditions governing receipt and use of reactor fuel, operation of the reactor itself, operational programs and exemptions, and all of the technical specifications

³⁶ Admin Controls LAR; Supplement to License Amendment Request to Revise Selected Permanently Defueled Technical Specifications Administrative Controls to Support Resumption of Power Operations (July 31, 2024) (ML24213A082).

³⁷ After shutdown, HDI submitted the standard “zirc-fire” emergency planning exemption and license amendments that allow further reduction to emergency planning requirements (below those implemented at reactor defueling) to reflect the further-reduced risk of offsite radiological consequences once the spent nuclear fuel in the spent fuel pool has cooled sufficiently to reduce the risk of zirconium cladding catching fire in a loss of coolant accident scenario. *See* Request for Exemptions from Certain Emergency Planning Requirements of 10 CFR 50.47(b); 10 CFR 50.47(c)(2); and 10 CFR Part 50, Appendix E (July 11, 2022) (ML22192A134) (issued Dec. 22, 2023 at ML23263A977); License Amendment Request: Proposed Permanently Defueled Emergency Plan and Permanently Defueled Emergency Action Level Scheme (July 12, 2022) (ML22193A090) (approved Dec. 27, 2023 at ML23236A004). These changes would also be reversed or superseded by implementation of the Emergency Planning LAR.

³⁸ Emergency Planning LAR; Response to Request for Additional Information - License Amendment Request to Revise the Palisades Nuclear Plant Site Emergency Plan to Support Resumption of Power Operations (July 24, 2024) (ML24206A187).

³⁹ Tech Spec LAR; HDI, Supplement to License Amendment Request to Revise Renewed Facility Operating License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations (July 9, 2024) (ML24191A422).

governing operation of the reactor itself. (Note that this is the only LAR referenced in the Petition.)

In other words, Applicants are using the same licensing tool ENOI and NRC used (amendments under 10 CFR 50.90) to modify the same Part 50 operating license (the Palisades RFOL) to reimplement the licensing provisions that governed Palisades's power operations prior to shutdown.

The fourth LAR, the MSLB LAR, is a "catch up" filing to allow use of a specific analytical method in Palisades's main steam line break analysis. The same methodology has been approved for use at other operating plants that use similar fuel to Palisades.⁴⁰ It was not applied to Palisades because the plant was shut down when Framatome (the fuel vendor) updated their methodology in an NRC-approved topical report.⁴¹

As noted above, the only LAR mentioned in the Petition is the Tech Spec LAR (referred to as the "Holtec LAR" by Petitioners), and even then, the Petition only references the background discussion of other regulatory processes involved in the overall restart process.

C. Other Regulatory Activity That is Not at Issue in This Proceeding

This section provides background on other approvals and processes being used in connection with the restart, which, although not the subject of the LARs, are nonetheless being undertaken by Applicants prior to resuming power operations at Palisades. Applicants provide this discussion for context only as Petitioners aim their arguments exclusively at these other processes in lieu of focusing on the LARs. However, as discussed more fully below in Section IV,

⁴⁰ See NRC, Final Safety Evaluation for Framatome Topical Report EMF-2310, Revision 1, Supplement 2P, Revision 0, "SRP Chapter 15 Non-LOCA Methodology for Pressurized Water Reactors" (Feb. 9, 2023) (ML23023A116); Framatome, Approved EMF-2310, Revision 1, Supplement 2P-A, Revision 0, SRP Chapter 15 Non-LOCA Methodology for Pressurized Water Reactors (April 10, 2023) (ML23109A086).

⁴¹ MSLB LAR, Encl. at 3–4.

Petitioners' challenges to these actions are outside the scope of this proceeding and therefore inadmissible as contentions.

Approval of the four LARs is necessary, but not sufficient, to return Palisades to power operations. Not surprisingly, Applicants are working through a series of other regulatory processes and NRC approvals and inspections that will need to be completed before Applicants are authorized to load fuel into the Palisades reactor and resume power operations, most of which are discussed below. Among those approvals is an exemption request Applicants filed in September 2023, requesting a one-time exemption from 10 CFR 50.82(a)(2) to allow Applicants to withdraw ENOI's certifications of permanent shutdown and defueling ("Exemption Request").⁴² Applicants are planning to utilize change processes under 10 CFR 50.54 and 50.59 to evaluate whether changes to reinstate certain other portions of the power operations licensing basis can be implemented without a license amendment. Applicants are also reinstating operational programs, regulatory commitments, and Commission orders applicable to operating reactors that were modified or deferred in connection with the 2022 shutdown. And Applicants filed a license transfer application to transfer operational authority from HDI to a new operating company (which Petitioners are challenging in the separate adjudicatory proceeding on that application).⁴³ From

⁴² HDI, Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82 (Sept. 28, 2023) (ML23271A140) ("Exemption Request").

⁴³ HDI, Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments (Dec. 6, 2023) (ML23340A161) ("LTA"). In response to NRC's separate federal register notice for the license transfer application, Petitioners filed a petition to intervene and requesting a hearing. *See* 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); Beyond Nuclear, Michigan Safe Energy Future, and Don't Waste Michigan, Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan and Michigan Safe Energy Future (Aug. 27, 2024) (ML24240A210). The Commission is serving as the presiding officer over that proceeding. 10 CFR 2.1319. It bears noting that a significant portion of the declaration of Mr. Arnold Gundersen is devoted to challenging Holtec's qualifications to restart and operate Palisades. *E.g.*, Petition, Ex. A, Declaration of Arnold Gundersen at 10–12, 18, 21–22 ("Gundersen Decl."). None of those arguments are within the scope of this proceeding on the LARs. The Commission will resolve Petitioners' separate challenge to the license transfer application in the separate adjudicatory proceeding devoted to that licensing action.

NRC's side, staff has formed a "Restart Panel" to oversee restart activities and developed an inspection plan to evaluate operational readiness, which must be completed before final approvals are issued.⁴⁴ And NRC is in the process of evaluating the environmental effects of the restart, which process is expected to result in staff's publication of an Environmental Assessment ("EA") in June 2025.⁴⁵

None of these other regulatory activities are the subject of the Federal Register Notice or are subject to litigation in this proceeding. The point of explaining these other activities is to (1) provide the Board with context for the broader restart process, which is ongoing, and (2) untangle Petitioners' mischaracterizations of the various licensing processes and embedded premise that NRC's approval of the four LARs is tantamount to approval of everything else involved in the restart.

1. Applicants' 50.82(a)(2) Exemption Request

Section 50.82(a)(2) provides that "the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel" after the licensee files the certifications of shutdown and defueling (required by 10 CFR 50.82(a)(1)).⁴⁶ In other words, in addition to the various amendments implemented by ENOI immediately after shutdown, NRC's docketing of ENOI's 50.82(a)(1) certifications also modified the RFOL, by operation of law, to reflect the defueled state. This change was not independently written into the RFOL in any of the shutdown license amendments because the Tech Spec Amendment ENOI

⁴⁴ NRR and Region III Memorandum, Palisades Nuclear Plant, Restart Panel Charter (Nov. 27, 2023) (ML23297A053); NRC, Palisades Nuclear Plant Restart Inspection Plan, Light-water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations, Inspection Manual Chapter 2562 (Aug 19, 2024) (ML24228A195) ("Palisades Restart Inspection Plan").

⁴⁵ NRC, Notice of Intent to Conduct Scoping Process and Prepare an Environmental Assessment, 89 Fed. Reg. 53,659 (June 27, 2024).

⁴⁶ 10 CFR 50.82(a)(2).

implemented at the same time achieved the same result by removing the RFOL provisions that allowed use of nuclear fuel in the reactor.⁴⁷

Section 50.82 does not expressly provide a process for “un-docketing” certifications of permanent shutdown and defueling or otherwise reinstating power operations authority after those certifications are filed. However, longstanding NRC guidance for decommissioning plants states:

Following submission of the certification of permanent cessation of operations, or at any time during the decommissioning process, if the licensee desires to operate the facility again, the licensee must notify the NRC of its intentions in writing. The NRC would handle approval to return the facility to operation on a case-by-case basis, and the approval would depend on the facility status at the time of the request to reauthorize operation.⁴⁸

More recently, in 2021, the Commission again explained that 50.82(a)(2) is not a permanent bar to resuming power operations. In denying a petition for rulemaking requesting that the agency amend 50.82 to provide a prescribed path for restarting a plant like Palisades, the Commission said:

While current regulations do not specify a particular mechanism for reauthorizing operation of a nuclear power plant after both [50.82(a)(1)] certifications are submitted, there is no statute or regulation prohibiting such action. Thus, the NRC may address such requests under the existing regulatory framework.⁴⁹

All of the Petitioners’ arguments rest on their mistaken assertion that the 50.82(a)(1) certifications are permanent, such that, once they are filed, a plant can never restart. There is no provision of law

⁴⁷ See ENOI, License Amendment Request to Implement Permanently Defueled Technical Specifications and Revised License Conditions, Encl. 1 at 2–3 (June 1, 2021) (ML21152A108) (approved May 13, 2022 at ML22039A198).

⁴⁸ Reg. Guide 1.184 at 7.

⁴⁹ NRC Denial of Petition for Rulemaking, Criteria to Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362, 24,363 (May 6, 2021) (“PRM Denial”).

or regulation to support Petitioners' claim, that is not what the Commission said in the PRM Denial, and that determination is not subject to challenge in this adjudicatory proceeding.⁵⁰

While the Reg. Guide 1.184 and the PRM Denial made it clear that a plant such as Palisades can attempt to restart after the 50.82(a)(1) certifications are docketed, neither supply a specific roadmap—because the details will inevitably vary based on a particular licensee's proposal for a particular plant, accounting for things like how long it has been shut down and what each plant's unique licensing basis says.⁵¹ The Commission did specify, however, that the “existing regulatory framework” provides adequate means of addressing such requests. The Commission determined that a case-by-case approach utilizing existing regulatory mechanisms was a more efficient regulatory tool than generic rulemaking, hence the Commission's decision to deny the rulemaking petition while preserving the ability to assess a plant-specific proposal if one ever emerged.⁵² It bears noting that plants transition *into* decommissioning using the same case-by-case application of exemptions, amendments, and change processes—so it is rational for licensees and staff to employ the same processes in order to restore a facility's authority to operate.

Based on the language of 50.82(a)(2) and direction from Reg. Guide 1.184 and the PRM Denial, Applicants (who are the first licensees to attempt a restart of this kind) submitted the Exemption Request to accomplish a few things. Most directly, Applicants asked the NRC “to allow

⁵⁰ *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-06, 91 NRC 225, 233 (2020) (“Petitioners may not use our hearing process to challenge NRC regulations or express generalized grievances with NRC policies.”).

⁵¹ PRM Denial, 86 Fed. Reg. at 23,363 (“If the NRC receives a request from the licensee for a decommissioning reactor to resume operations, the NRC would review the request consistent with applicable regulatory requirements.”); Reg. Guide 1.184 at 7 (“NRC would handle approval to return the facility to operation on a case-by-case basis, and the approval would depend on the facility status at the time of the request to reauthorize operation.”).

⁵² *See* 86 Fed. Reg. at 24,364 (“Any such rulemaking effort would likely address a wide variety of technical and regulatory topics including, but not limited to, decommissioning status, aging management, quality assurance, equipment maintenance, personnel, license expiration, hearing process, and appropriate licensing basis.”).

for a one-time rescission of the [Palisades] docketed 10 CFR 50.82(a)(1) certifications . . . to remove the restrictions that prohibit[] operation of the PNP reactor or emplacement or retention of fuel into the PNP reactor vessel.”⁵³ The Exemption Request (filed more than a year ago) was the first approval request Applicants filed in furtherance of the restart. Accordingly, the Exemption Request also previewed the other regulatory filings and license amendment requests anticipated at the time (that have now been filed) and proposed a process that envisioned implementation of the 50.82 exemption and rescission of the shutdown and defueling certifications as the final NRC stage gate for the restart, but only after Applicants obtain all other approvals and satisfy all applicable NRC conditions.⁵⁴

This process proposed in the Exemption Request has largely been superseded by NRC’s subsequent publication of the new Inspection Manual Chapter (“IMC”), IMC 2562, Light-Water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations, in May 2024.⁵⁵ IMC 2562 addresses the overall inspection and approval framework the agency will use to determine whether there is reasonable assurance of safe operations following the restart of Palisades and similarly situated plants.⁵⁶ The process culminates in a final recommendation from an empaneled group of cross-functional staff (a “Restart Panel”) to the Director of the Office of Nuclear Reactor Regulation (“NRR”) and the applicable Regional

⁵³ Exemption Request, Encl. 1 at 3.

⁵⁴ *Id.*, Encl. 1 at 6–7.

⁵⁵ IMC 2562, Light-Water Reactor Inspection Program for Restart of Reactor Facilities Following Permanent Cessation of Power Operations (May 8, 2024) (ML24033A299).

⁵⁶ IMC 2562 provides a framework similar to that contemplated by existing IMCs addressing a return to operations after an extended shutdown period (e.g., IMC-0375), which gives region staff flexibility to craft an inspection program based on the state of the plant, licensing basis, operational programs, and operational history to provide NRC with reasonable assurance of safe operations following the restart. IMC 2562 at 10–11; *see also* IMC-0375, Implementation of the Reactor Oversight Process at Reactor Facilities in an Extended Shutdown Condition for Reasons not Related to Performance (Aug. 12, 2020) (ML20218A563).

Administrator, who ultimately approve the licensee’s request to return to operational status and transition the facility back into the Reactor Oversight Process (“ROP”).⁵⁷

Now that NRC has published IMC 2562 (which does not rely on the Exemption Request as a final NRC stage gate),⁵⁸ the Exemption Request is principally a mechanism to trigger NRC’s approval to withdraw ENOI’s certifications of shutdown and defueling. In this respect, it is no different from any of the other standalone regulatory actions related to the restart—it is requesting NRC approval to remove one (of many) actions implemented at shutdown that prevent the resumption of power operations. The Exemption Request does not involve any changes to the RFOI, it contains no technical details that are relevant to NRC staff’s review of the LARs, and many of the process discussion in the Exemption Request have now been incorporated into or superseded by IMC 2562.

The Petition challenges the Exemption Request (which was not included in the Federal Register Notice and is not a licensing action giving rise to a hearing opportunity under the Atomic Energy Act⁵⁹) because the Petitioners mischaracterize the Exemption Request as a license

⁵⁷ IMC 2562 at 2–3. When inspection and licensing activities for the restart are complete, the IMC contemplates that the licensee will submit an operational readiness letter to NRC verifying completion of activities and readiness to implement the operational licensing bases. *Id.* at 9–10. The Restart Panel then provides an assessment of the plant’s readiness to return to power operations to the NRR Director and Region Administrator, who ultimately approve the return to operational status. *Id.* at 5.

⁵⁸ Applicants proposed the approval process in the Exemption Request because their expectation at the time was that NRC could use a conditional order approving the Exemption Request as a regulatory vehicle to impose all of the conditions precedent to the restart. *See* Exemption Request, Encl. 1 at 6–8. Of course, NRC staff has the discretion to structure its oversight authority over this first-of-a-kind process as staff deems appropriate. They exercised that discretion in publishing IMC 2562 to define the process for reviewing and issuing final approvals to resume power operations.

⁵⁹ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-00-05, 51 NRC 90, 96 (2000) (“Congress intentionally limited the opportunity for a hearing to certain designated agency actions—agency actions that do *not* include exemptions.”); Federal Register Notice, 89 Fed. Reg. at 64,487 (“Consistent with the Atomic Energy Act of 1954, as amended, and NRC regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption request.”).

amendment.⁶⁰ NRC has already issued an order rejecting that argument,⁶¹ but Applicants will address it again in Section IV.C.1 below.

2. Applicants' Other Regulatory Activities in Support of the Restart

The four LARs are not the only regulatory actions necessary to resume power operations. In February 2023, HDI submitted a regulatory roadmap to NRC, describing at a high level the full scope of activities HDI expected to undertake to restart Palisades.⁶² The purpose of the roadmap was to provide a concrete proposal for discussion with NRC staff and the public, which Applicants have done over the past eighteen months in dozens of meetings. While some of the granular details of HDI's original roadmap have changed, the main categories of regulatory activity have not. In addition to the LARs and Exemption Requests, those activities include:

- (1) HDI filed a license transfer application in December 2023 requesting approval to transfer licensed authority from HDI to Palisades Energy, LLC (a new operating company) contemporaneously with the reinstatement of the power operations licensing basis. That application is currently the subject of a separate adjudicatory proceeding before the Commissioners.⁶³
- (2) HDI is reinstating training and qualification programs, most prominently for licensed reactor operators.⁶⁴
- (3) HDI plans to evaluate the reinstatement of portions of the power operations licensing basis using the change processes in 10 CFR 50.54 and 50.59. Specifically, HDI plans to reinstate a power operations Physical Security Plan under the 10 CFR 50.54(p)

⁶⁰ Petition at 28 (“NRC’s consideration of Holtec’s Request for Exemption in [Petitioners’] estimation comprises a licensing-related act that comprises a proceeding pursuant to § 2.309.”).

⁶¹ Order of the Secretary, Docket No. 50-255-ER (Dec. 18, 2023) (ML23352A325) (“Order on Exemption Petition”).

⁶² HDI, Regulatory Path to Reauthorize Power Operations at the Palisades Nuclear Plant (Feb. 1, 2023) (ML23032A399) (resubmitted Mar. 13, 2023 at ML23072A404) (“Regulatory Path”).

⁶³ See note 43 *supra*.

⁶⁴ Regulatory Path, Encl. 1 at 4–5; see, e.g., HDI, Response to RIS 2024-01, Preparation and Scheduling of Operator Licensing Examinations (July 18, 2024) (ML24200A073); NRC, Notification of an NRC Biennial Licensed Operator Requalification Program Inspection and Request for Information (Feb. 28, 2024) (ML24058A485).

process, and HDI plans to reinstate a power operations Final Safety Analysis Report using the change process in 10 CFR 50.59.⁶⁵

- (4) HDI plans to rescind any remaining exemptions granted for decommissioning that are not applicable for an operating reactor and are not otherwise superseded by other restart regulatory actions.⁶⁶
- (5) HDI will reinstate plant regulatory programs for power operations.⁶⁷
- (6) HDI will docket plans to complete actions associated with NRC orders and industry initiative that were not completed prior to the 2022 shutdown.⁶⁸
- (7) HDI will evaluate closed regulatory commitments to determine which commitments require reinstatement in connection with the restart.⁶⁹

The roadmap and HDI's execution of everything in it are not subject to adjudication in this proceeding on the four LARs. Most of the activities described above do not give rise to a hearing opportunity under Section 189a of the Atomic Energy Act, they are certainly not within the scope of this proceeding on these four LARs, and indeed many of them are still in process such that there is no definitive action or docketed decision for Petitioners to dispute. It is of course entirely possible that during the course of this years-long process—which, beyond all the regulatory work also includes a significant capital project at the site involving refurbishment, inspection, and return

⁶⁵ Regulatory Path, Encl. 1 at 3–4. The Regulatory Path also envisioned that HDI would implement power operations quality assurance (“QA”) program documents using similar processes in 10 CFR 50.54(a). *See id.* at 3. HDI has since filed the power operations QA Program Manual (“QAPM”) as a supplement to the LTA. HDI, Supplement to Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments, Proposed Power Operations Quality Assurance Program Manual, Revision 0 (May 23, 2024) (ML24144A106). While that filing states that the revised QAPM does not represent a reduction in commitments under 10 CFR 50.54(a)(3), (*id.* at 2) it is Applicants’ understanding that NRC staff intends to review the submitted QAPM in connection with its review of the LTA. In the interim, Applicants have implemented a Transitioning Quality Assurance Plan (“TQAP”) to support the increase in needed commitments at Palisades in connection with restart activities and inspections. HDI, Update Report for Holtec Decommissioning International (HDI) Fleet Decommissioning Quality Assurance Program (DQAP) Revision 3 and Palisades Transitioning Quality Assurance Plan (TQAP) Rev 0 (Aug. 2, 2024) (ML24215A356).

⁶⁶ Regulatory Path, Encl. 1 at 4; *e.g.*, HDI, Palisades Nuclear Plant – Request for USNRC to Rescind Approved Exemption Requests for 140.11(a)(4) and 50.54(w)(1), Reduction of Insurances (Oct. 9, 2024) (ML24283A094).

⁶⁷ Regulatory Path, Encl. 1 at 3.

⁶⁸ *Id.*, Encl. 1 at 3–4.

⁶⁹ *Id.*, Encl. 1 at 4.

to service plans for the physical plant systems themselves—could result in changes to any of these activities or could prompt Applicants to file requests for additional NRC approvals that they did not anticipate at the outset.

3. NRC’s Ongoing Environmental Review

Prior to the filing of the 50.82(a)(1) certifications in 2022, the RFOI authorized power operations through March 2031. In connection with the renewal of Palisades’s operating license in 2007, NRC published a supplemental environmental impact statement addressing the environmental effects of plant operations through 2031 (“License Renewal SEIS”).⁷⁰ In the Exemption Request, Applicants took the position that the exemption is subject to the categorical exclusion set forth in 10 CFR 51.22(c)(25) because restarting Palisades would authorize no additional activities beyond those that have been previously considered in the License Renewal SEIS (i.e., operation of the plant through 2031).⁷¹ Applicants also included with the Exemption Request “an independent environmental review of potentially new and significant information, and environmental issues not addressed in the [License Renewal SEIS],” to determine if the License

⁷⁰ NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 27, Regarding Palisades Nuclear Plant (Oct. 31, 2006) (ML062710300) (“License Renewal SEIS”); *see also* NUREG-0343, Final Addendum to the Final Environmental Statement Related to Operation of Palisades Nuclear Generating Plant (Feb. 28, 1978) (ML19308B287); Final Environmental Statement Related to the Operation of Palisades Nuclear Generating Plant (June 1972).

⁷¹ Exemption Request, Encl. 1 at 15–19. Section 51.22(c)(25) defines the categorical exclusion as follows:

Granting of an exemption from the requirements of any regulation of this chapter, provided that—
(i) There is no significant hazards consideration; (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) There is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) There is no significant construction impact; (v) There is no significant increase in the potential for or consequences from radiological accidents; and (vi) The requirements from which an exemption is sought involve: (A) Recordkeeping requirements; (B) Reporting requirements; (C) Inspection or surveillance requirements; (D) Equipment servicing or maintenance scheduling requirements; (E) Education, training, experience, qualification, requalification or other employment suitability requirements; (F) Safeguard plans, and materials control and accounting inventory scheduling requirements; (G) Scheduling requirements; (H) Surety, insurance or indemnity requirements; or (I) Other requirements of an administrative, managerial, or organizational nature.

Renewal SEIS’s findings “are bounding for resumed operations.”⁷² That review concluded “that the proposed exemption and supporting licensing actions environmental impacts are consistent with the findings in the [License Renewal SEIS].”⁷³ Each of the LARs explained that the proposed amendment meets the criteria for a categorical exclusion for similar reasons.⁷⁴

Instead of invoking these categorical exclusions, NRC has determined to prepare an EA addressing all of its regulatory decisions necessary for reauthorization of power operations. In June 2024, in exercising staff’s discretion to carry out their NEPA obligations, NRC published a Notice of Intent in the Federal Register notifying stakeholders and members of the public that NRC intends to conduct a scoping process to gather information necessary to prepare an EA for the potential reauthorization of power operations at Palisades.⁷⁵ As part of this ongoing process, staff has invited interested parties to submit comments, staff is conducting an environmental regulatory audit, including site visits, document review, requests for confirmatory items, and requests for additional information,⁷⁶ and staff is consulting with federal and state agencies, Tribes, and local

⁷² Exemption Request, Encl. 2 at 9.

⁷³ *Id.*, Encl. 1 at 13; *see also id.*, Encl. 2.

⁷⁴ Admin Controls LAR at 21-22; Emergency Planning LAR at 29-31; Tech Spec LAR at 94-95; MSLB LAR at 9-10. Each LAR relied on the categorical exclusion in 10 CFR 51.22(c)(9), which covers the following:

Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes a requirement or issuance of an exemption from a requirement, with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter; or the issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes an inspection or a surveillance requirement; provided that: (i) The amendment or exemption involves no significant hazards consideration; (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and (iii) There is no significant increase in individual or cumulative occupational radiation exposure.

⁷⁵ NRC, Notice of Intent to Conduct Scoping Process and Prepare an Environmental Assessment, 89 Fed. Reg. 53,659 (June 27, 2024) (“Notice of Intent”). As explained in the Notice of Intent, “The NRC is publishing this notice and conducting scoping as a matter of discretion; this notice and the associated scoping process are not subject to the requirements of 10 CFR part 51.” *Id.* at 53,662. NRC’s Part 51 regulations only require a notice of intent and scoping process when NRC determines that an environmental impact statement will be prepared in connection with a proposed licensing action. 10 CFR 51.26(a).

⁷⁶ *E.g.*, NRC, Draft Environmental Regulatory Audit Plan and Draft Requests for Additional Information (June 27, 2024) (ML24248A056); NRC, Draft Requests for Confirmatory Information (Sept. 4, 2024) (ML24248A261);

government authorities—all of which will support staff’s preparation of an EA. In response to NRC requests for information, Applicants have supplemented the environmental information provided alongside the Exemption Request.⁷⁷

NRC staff’s preparation of the EA will lead to either a finding of no significant impact (“FONSI”) or a decision to prepare an environmental impact statement (“EIS”).⁷⁸ NRC staff is targeting issuance of a draft EA for public review and comment in January 2025,⁷⁹ and a final EA is due in June 2025.⁸⁰ Petitioners have availed themselves of the opportunity to participate in the EA scoping process, submitting comments that mirror several of the contentions set forth in the Petition.⁸¹

4. NRC Inspection Process and Final Restart Approval

As noted above, in May 2024, NRC published IMC 2562 to provide a framework for restart inspections and NRC’s final determination regarding PNP’s readiness to resume power operations. IMC 2562 gives staff flexibility to craft an inspection program based on the state of the plant, licensing bases, operational programs, and history during operations—to provide NRC with

NRC, Requests for Additional Information Regarding the Proposed Reauthorization of Power Operations of Palisades Nuclear Plant Under Renewed Facility Operating License No. DPR-20 (Sept. 20, 2024) (ML24263A171).

⁷⁷ HDI, Response to Request for Additional Information Regarding the Proposed Reauthorization of Power Operations at Palisades Nuclear Plant under Renewed Facility Operating License No. DPR-20 (Oct. 4, 2024) (ML24278A027); HDI, Response to Draft Requests for Confirmatory Information (Sept. 12, 2024) (ML24260A354).

⁷⁸ 10 CFR § 51.31(a). NRC has discretion to prepare a draft FONSI and make it available for public comment before the final decision regarding whether to prepare an EIS or FONSI for the proposed action. 10 CFR 51.33(a).

⁷⁹ NRC, Initiation of Scoping Process to Prepare an Environmental Assessment at 2 (June 27, 2024) (ML24155A026).

⁸⁰ NRC, Change in Estimated Hours and Review Schedule for Licensing Actions Submitted to Support Resumption of Power Operations, at 1 (Sept. 12, 2024) (ML24219A420).

⁸¹ Law Office of Terry Lodge, Scoping Comments for Environmental Assessment of Palisades Nuclear Plant (July 29, 2024) (ML24212A020).

reasonable assurance of safe operations following the restart.⁸² Staff has since published an inspection plan for the restart based on its evaluation of these plant-specific considerations discussed in IMC 2562.⁸³ When inspection and licensing activities for the restart are complete, IMC 2562 contemplates that the licensee will submit an operational readiness letter to NRC verifying completion of all activities and their readiness to implement the operational licensing bases.⁸⁴ In response, the Restart Panel will provide an assessment of the plant's readiness to return to power operations to the NRR Director and Region Administrator, who ultimately approve the return to operational status.⁸⁵

NRC will re-implement the ROP at Palisades and transition oversight responsibility from the Office of Nuclear Material Safety and Safeguards (the office that oversees plants in decommissioning) back to NRR (the office that oversees operating reactors).⁸⁶ Only after completing all of these inspection and verification activities will Applicants be authorized to load fuel and resume operation of the reactor.

D. Opportunity to Request a Hearing

The NRC published its notice of an opportunity to request a hearing in the Federal Register on August 7, 2024.⁸⁷ The Federal Register Notice acknowledged that Applicants had submitted “several requests for NRC approval to support allowing the resumption of power operations,” but made clear that “[t]he scope of this notice is limited to comments, requests for a hearing, and petitions for leave to intervene related to the four” LARs, which were listed in a table in the

⁸² IMC 2562 at 10.

⁸³ Palisades Restart Inspection Plan.

⁸⁴ IMC 2562 at 9–10.

⁸⁵ *Id.* at 5.

⁸⁶ *Id.* at 13.

⁸⁷ Federal Register Notice, 89 Fed. Reg. 64,486.

notice.⁸⁸ The Federal Register Notice also includes an order setting forth procedures that potential parties to the proceeding could follow to request access to sensitive unclassified non-safeguards information, which would include proprietary versions of the LARs, if the potential party found access to such information “necessary to respond to this notice.”⁸⁹ Such requests needed to be submitted within 10 days of publication, *i.e.*, by August 17, 2024.⁹⁰

E. Summary of the Petition

The Petition is styled as having seven contentions, although many of them are iterations of the same claim and some arguments found under the various contention headings are unrelated to the contention itself. Applicants will summarize the main arguments in this section. As addressed below in Section IV.B, Petitioner’s foundational premise is both wrong and out of scope. Section IV.C below explains why each of the seven contentions fails to meet the 2.309 standards.

1. HDI Must Apply for a New Operating License

All seven contentions rest on one argument—that NRC does not have authority to authorize the restart of a facility that has submitted the certifications of permanent shutdown and defueling, and, therefore, HDI is forced to continue with decommissioning the Palisades facility until HDI applies for and is issued a new operating license. This argument is the foundation for all seven contentions. Contention 1 claims the Exemption Request is illegal because the certifications of permanent shutdown and defueling cannot be reversed and HDI must apply for a new operating license instead of asking for an exemption from 10 CFR 50.82.⁹¹ Contention 2 argues that NRC must prepare an EIS, rather than an EA, because the restart requires Palisades to obtain a new

⁸⁸ *Id.* at 64,487–88.

⁸⁹ *Id.* at 64,490–91.

⁹⁰ *Id.* at 64,490.

⁹¹ Petition at 34–35, 37–38.

operating license.⁹² This argument is distilled into Contention 3, which asserts that, “Holtec must obtain a new operating license” because “there is no provision in the AEA or NRC regulations for reversing a permanent shutdown and restarting a nuclear reactor that has been placed in decommissioning status.”⁹³ Contention 4 likewise says, “[s]ince there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by Holtec.”⁹⁴ Contentions 5–7 are all the same argument, applying the NEPA requirements for issuance of a new operating licenses to Applicants’ filings and NRC’s ongoing environmental review.

2. The Exemption Request is Unlawful and Does Not Meet the Requirements of 10 CFR 50.12

Contention 1 challenges the Exemption Request, without connecting it to the LARs. The Petition acknowledges that the Atomic Energy Act does not afford them a hearing opportunity on any exemption request but nevertheless challenges Applicants’ Exemption Request “because the NRC’s consideration of Holtec’s Request for Exemption in their estimation comprises a licensing-related act that comprises a proceeding pursuant to § 2.309.”⁹⁵ This is the same theory (indeed, the same words) Petitioners previously relied on to request a hearing on the Exemption Request,⁹⁶ which NRC has already rejected.⁹⁷

⁹² *Id.* at 40–41.

⁹³ *Id.* at 45.

⁹⁴ *Id.* at 48.

⁹⁵ Petition at 28.

⁹⁶ Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don’t Waste Michigan, and Michigan Safe Energy Future at 19 (Dec. 5, 2023) (ML23339A192) (“Exemption Petition”).

⁹⁷ Order of the Secretary, Docket No. 50-255-ER (Dec. 18, 2023) (ML23352A325); *see* section IV.C.1 *infra*.

The substantive challenge to the Exemption Request is based on a list of claims that can be summed up as (1) exemptions must have affirmative Congressional authorization⁹⁸ or must already be allowed by NRC's regulations;⁹⁹ (2) restarting Palisades would be unsafe;¹⁰⁰ (3) ENOI's certifications of shutdown and defueling are irreversible,¹⁰¹ so HDI has to apply for a new operating license;¹⁰² and (4) NRC should consider competing economic and policy factors such as the effects on the electric transmission system and the economics of nuclear power compared to renewables.¹⁰³

As noted in Section IV.C.1 below, the challenge to the Exemption Request is out of scope and all of the claims for why it should be denied are unsupported or contradicted by readily-available public information.

3. NRC and Applicants Must Comply with NEPA Requirements for a New Operating License

Contentions 2, 5, 6, and 7 point to various requirements of 10 CFR Part 51 that would apply to a new operating license application, claiming that neither Applicants nor NRC have satisfied those requirements. As described in Section IV.B below, all of these claims are immaterial to the LARs because the LARs are not, and are not required to be, an application for a new operating license. Petitioners have identified no other deficiency in the LARs (or NRC's ongoing NEPA process).

⁹⁸ Petition at 33.

⁹⁹ *Id.* at 37.

¹⁰⁰ *Id.* at 33, 36.

¹⁰¹ *Id.* at 34–35.

¹⁰² *Id.* at 37–38.

¹⁰³ *Id.* at 39.

4. Applicants Cannot Use the Change Processes in 10 CFR 50.59

Under the heading of Contention 4, Petitioners argue that Applicants cannot use Section 50.59's change process to reinstate portions of the Final Safety Analysis Report ("FSAR") that was in effect during operations because (1) Applicants should start from scratch and compile a new FSAR,¹⁰⁴ (2) Applicants are amending the Technical Specifications¹⁰⁵ (via the Tech Spec LAR), and (3) climate change will require more changes to the FSAR.¹⁰⁶

Applicants' use of the 50.59 change processes to address other portions of the power operations licensing basis is beyond the scope of this proceeding, and all of Petitioners' claims that Applicants cannot satisfy 10 CFR 50.59 are just conclusory statements without any explanation or analysis.

5. Applicants Must Replace the Steam Generator

Also within Contention 4, Petitioners claim HDI should replace the Palisades steam generators.¹⁰⁷ While they warn of "unforeseen troubles,"¹⁰⁸ they make no attempt to connect this issue to the LARs or explain why this issue is relevant in this proceeding (or even to Contention 4).

6. Entergy Destroyed QA Records

The final argument under the Contention 4 heading is that Entergy destroyed QA records before selling Palisades to Holtec.¹⁰⁹ They provide no support for this claim and make no attempt to connect it to the LARs (or Contention 4).

¹⁰⁴ Petition at 50.

¹⁰⁵ *Id.* at 56–57.

¹⁰⁶ *Id.* at 57–61.

¹⁰⁷ Petition at 61–64.

¹⁰⁸ *Id.* at 62.

¹⁰⁹ *Id.* at 63.

IV. Petitioners Have Not Submitted an Admissible Contention

The Petition's foundational premise is wrong, Petitioners' sweeping objections to Palisades's operations and restart process are out of scope, and the arguments by Petitioners' declarants consist of a series of conclusory claims lacking any analysis or support.

A. The Entire Petition is Out of Scope Because None of the Contentions Raise a Material Dispute with the LARs

"The scope of a proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board."¹¹⁰ Here, the scope of the hearing opportunity was defined by the Federal Register Notice, which restricted the hearing opportunity to the four LARs.¹¹¹ The hearing opportunity does not give Petitioners the ability to challenge the existing Palisades license or NRC regulatory framework Applicants and NRC are using to evaluate and potentially authorize the Palisades restart nor does it authorize them to challenge the Exemption Request.¹¹²

Section 2.309(f)(1)(vi) requires that an admissible contention must be focused on the application at hand, and "must include references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute." The Petition references only two paragraphs of what Petitioners refer to as the "Holtec LAR," which, from context, is the Tech Spec LAR.¹¹³ The Petition neither mentions nor cites the other three LARs or any of the supplements Applicants have filed (which also were referenced in the Federal Register Notice¹¹⁴).

¹¹⁰ *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 555 (2004) (citing *Catawba*, ALAB-825, 22 NRC at 790).

¹¹¹ Federal Register Notice, 89 Fed. Reg. at 64,487.

¹¹² Federal Register Notice, 89 Fed. Reg. at 64,487 ("Consistent with the Atomic Energy Act of 1954, as amended, and NRC regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption request."); see section IV.C.1 *infra*.

¹¹³ Petition at 49, 50, 53, 55.

¹¹⁴ Federal Register Notice, 89 Fed. Reg. at 64,489–90.

The two sections of the Tech Spec LAR that are referenced in the Petition do not actually relate to the approval bases for the Tech Spec LAR, but merely provide context for other regulatory activities Applicants are undertaking in connection with the restart. Petitioners do not dispute any portions of the LAR that bear on whether Applicants' proposed amendment satisfies the applicable criteria in 10 CFR 50.36 and 50.36b. Petitioners only take issue with the Tech Spec LAR's background discussion of other regulatory processes—specifically, a paragraph on page 4 of the Tech Spec LAR that provides context for Applicants' plans to evaluate the reinstatement of certain portions of the FSAR under 10 CFR 50.59 to determine whether such changes can be implemented without the necessity of a LAR,¹¹⁵ and the "Precedent" section on page 91 that explains that there is no readily-applicable precedent for the Tech Spec LAR because no other licensee has requested to reinstate the power operations technical specifications after converting to defueled technical specifications.¹¹⁶

¹¹⁵ Tech Spec LAR, Encl. at 4 (referenced on pages 49, 50, and 55 of the Petition):

The Updated Final Safety Analysis Report (UFSAR), now titled the Defueled Safety Analysis Report (DSAR), will be updated, via the 10 CFR 50.59, Changes, tests and experiments, process to reflect the docketed version that was in effective prior to the 10 CFR 50.82(a)(1) certifications, PNP UFSAR Revision 35 (Reference 6). Any DSAR retained changes to UFSAR Revision 35 have been or will be evaluated via the 50.59 process against UFSAR Revision 35 to determine if NRC approval is required prior to exiting the period of decommissioning.

¹¹⁶ Tech Spec LAR, Encl. at 91 (referenced on page 53 of the Petition):

No nuclear power plant licensee to date has requested reauthorization of power operation after docketing the 10 CFR 50.82(a)(1) certifications and before reaching the renewed facility license expiration date. There have been instances in which a licensee submitted to the NRC, and then subsequently withdrew, a certification of an intent to cease operations under 10 CFR 50.82(a)(1)(i). In those cases, the licensee had not submitted on the docket the certification of permanent cessation of operation and permanent removal of fuel from the reactor vessel.

While current regulations do not specify a particular mechanism for reauthorizing operation of a nuclear power plant after both certifications are submitted on the docket and before operating license expiration, there is no statute or regulation prohibiting such action. Additionally, the NRC has considered the possibility of returning a plant to power operations as mentioned in Regulatory Guide 1.184, Decommissioning of Nuclear Power Reactors (Reference 13), and SECY-20-110, Denial of Petition for Rulemaking on Criteria to Return Retired Power Reactors to Operations (Reference 14). Thus, the NRC may address such requests under the existing regulatory framework—including granting exemptions, where needed—on a case-by-case basis. This proposed change to the RFOI, TS, and EPP supports the regulatory framework for reauthorization of power operations at PMP[.]

Nowhere does the Petition attempt to engage in any of the matters that are relevant to NRC staff's review of the LARs. "[A] contention that fails directly to controvert the license application at issue . . . is subject to dismissal."¹¹⁷ Applicants understand that the Petitioners have strongly-held philosophical and policy objections to the operation of Palisades. But the only licensing action at issue in this proceeding is the LARs. In reviewing these four LARs, NRC will not be approving every activity that may ultimately need to be resolved before Palisades resumes operations. This is a multi-year process that is still underway. To the extent Petitioners wish to challenge NRC policy determinations or comment on any of the other regulatory activities involved in the restart, they may exercise the procedural rights afforded to them by the Atomic Energy Act and NRC regulations.¹¹⁸ But, in this proceeding, all of Petitioners' arguments amount to the very kind of "generalized grievances" that the Commission has repeatedly held are not admissible as contentions in adjudicatory proceedings on discrete licensing actions.¹¹⁹ This adjudicatory proceeding is not a forum to relitigate Commission policy, nor is it a forum to contest Palisades's

¹¹⁷ *Oconee*, CLI-99-11, 49 NRC at 342 (quoting *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation) LBP-98-7, 47 NRC 142, 181 (1998)).

¹¹⁸ In fact, Petitioners have done so extensively. *See, e.g.*, Comment of Kevin Kamps on HDI Post-Shutdown Decommissioning Activities Report ("PSDAR") (Dec. 27, 2022) (ML23005A213); Comment of Terry Lodge on HDI PSDAR (Dec. 27, 2022) (ML23005A211); Petition for Declaratory Order (Feb. 2, 2023) (ML23052A209) (Beyond Nuclear's and Don't Waste Michigan's petition for declaratory order revoking prior exemption to recordkeeping requirements at Palisades); Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future (Dec. 5, 2023) (ML23339A192) (request for a hearing on the Exemption Request); Letter from Wallace Taylor to NRC Secretary, Holtec's Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments (Dec. 15, 2023) (ML24003A802); Transcript of 2.206 Petition Review Board Meeting with Joint Petitioners Regarding Holtec Palisades (Apr. 10, 2024) (ML24114A016); Transcript of Environmental Scoping Meeting (July 11, 2024) (ML24219A265); Scoping Comments for Environmental Assessment of Palisades Nuclear Plant of Terry Lodge (July 29, 2024) (ML24212A020); Comments of Kevin Kamps on Notice of Intent to Conduct Scoping Process and Prepare an Environmental Assessment (July 31, 2024) (ML24214A001). The Commission has also recently docketed a petition for rulemaking, requesting that the Commission reconsider the 2021 PRM Denial. NRC, Petition for Rulemaking; Notice of Docketing and Request for Comment, Returning a Decommissioning Plant to Operating Status 89 Fed. Reg. 76,750 (Sept. 19, 2024).

¹¹⁹ *Vogle*, CLI-20-06, 91 NRC at 233 ("Petitioners may not use our hearing process to challenge NRC regulations or express generalized grievances with NRC policies."); *Millstone*, CLI-01-24, 54 NRC at 364 ("Petitioners 'may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies.'").

operation in general. Because Petitioners have failed to raise any specific objections to the LARs that bear on NRC staff's review and approval of those LARs, the entire Petition is out of scope and fails to meet the criteria in 2.309(f)(1)(iii) and (vi).

B. The Foundational Premise Underlying the Petition—that NRC Lacks Authority to Authorize a Plant Restart—is Incorrect and Out of Scope

The Petition's seven contentions all rest on one underlying argument—that NRC does not have authority to authorize the restart of a facility that has submitted the certifications of permanent shutdown and defueling, and, therefore, HDI is forced to continue with decommissioning the Palisades facility until HDI applies for and is issued a new operating license. All of the Petition's arguments fail if Petitioners' starting premise is wrong. Which it is.

To accept Petitioners' premise would mean that the NRC does not have authority to grant exemptions from its own rules, including 10 CFR 50.82, or does not have authority to authorize a licensee to withdraw the certifications of permanent shutdown and defueling submitted pursuant to that regulation. The broad authority of the NRC to implement the Atomic Energy Act, to issue such rules, regulations and orders as are necessary to implement the provisions of the Act is explicitly recognized by every court interpreting the NRC's authority under the Act.¹²⁰ This broad authority extends to rulemaking and to the interpretation of NRC's own regulations and requirements:

Both the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 confer broad regulatory functions on the Commission and specifically authorize it to promulgate rules and regulations it deems necessary to fulfill its responsibilities under the Acts, 42 U.S.C. § 2201(p). In a regulatory scheme where substantial

¹²⁰ See, e.g., *Siegel v. Atomic Energy Commission*, 400 F. 2d 778, 783 (D.C. Cir. 1968) (the authority vested in the NRC under the Atomic Energy Act "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 statutory objectives.").

discretion is lodged with the administrative agency charged with its effectuation, it is to be expected that the agency will fill in the interstices left vacant by Congress.¹²¹

This authority extends to the power to grant exemptions from its regulations, as well as to undertake informal processes unless formal hearings are expressly required by the Act.¹²² As the Commission has explained “our authority under the Atomic Energy Act of 1954, as amended (AEA), and other statutes to adopt rules of general application ‘entails a concomitant authority to provide exemption procedures in order to allow for special circumstances.’”¹²³ The NRC has exercised this authority continuously since its creation by the Energy Reorganization Act in 1974 by granting thousands of exemptions from its rules.

Faced with arguments remarkably similar to those raised by Petitioners in this proceeding, the Commission has ruled that it has authority to reinstate a construction permit, for the Bellefonte site, that had been terminated for two years, despite no express statutory or regulatory provision

¹²¹ *Public Service Co. v. NRC*, 582 F.2d 77, 82-83 (1st Cir. 1978) (NRC had authority under the Act to interpret transmission lines as within its own definition of “utilization facility,” which expanded on the statutory definition).

¹²² *San Luis Obispo Mothers for Peace vs. NRC*, 100 F.4th 1039, 1056-57 (9th Cir. 2024) (exemption from timely renewal rule was within NRC’s authority and did not require a formal hearing). “[A]n agency’s authority to proceed in a complex area . . . by means of rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances.” *Brodsky v. NRC*, 507 Fed. Appx. 48, 50 (2d Cir. 2013) (quoting *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 755, 92 S. Ct. 1941, 32 L. Ed. 2d 453 (1972)). The Atomic Energy Act “establishes a comprehensive regulatory framework for the ongoing review of nuclear power plants located in the United States,” pursuant to which “the NRC is empowered to promulgate rules and regulations governing the construction and operation of nuclear power plants.” *Id.* (quoting *County of Rockland v. NRC*, 709 F.2d 766, 769 (2d Cir. 1983)). Of course, in its regulations, the NRC has specifically provided for an exemption procedure in 10 CFR 50.12. The creation of exemptions are inherent in the administrative process, and their unavailability under a statutory scheme should not be presumed, save in the face of the most unambiguous demonstration of congressional intent to foreclose them. *Ala. Power Co. v. Costle*, 636 F.2d 323, 357, 204 U.S. App. D.C. 51 (D.C. Cir. 1979).

¹²³ *Honeywell Int’l, Inc. (Metropolis Works Uranium Conversion Facility)*, CLI-13-1, 77 NRC 1, 9 (2013) (citing *Allegheny-Ludlum Steel Corp.*, 406 U.S. at 755; *Costle*, 636 F.2d at 357).

specifically authorizing such an action, and without forcing the former permit holder to go through the redundant process¹²⁴ of reapplying for the permit:

Contrary to petitioners' position, construing the AEA to authorize the Commission to reinstate a voluntarily-surrendered construction permit does not conflict with the AEA's statutory language or objectives. In addition to Section 185, which we have already considered, two other sections of the AEA, Sections 186 and 189, may arguably bear on our interpretation of our reinstatement authority. We find, however, that our exercise of reinstatement authority does not conflict with either of these provisions.

. . . .

Neither does Section 189, which calls for a mandatory hearing for the granting of a construction permit and a hearing upon request for the granting, revoking, or amending of any permit or license, undercut our authority to reinstate a surrendered construction permit. As in the Bellefonte case before us today, in any situation involving a request to reinstate a previously-issued construction permit, the required construction permit hearing process would necessarily have already taken place at the time of the initial grant of the permit. Petitioners' argument that Section 189 requires a new "prior" hearing begs the very "authority" question at issue here. Petitioners would be correct, of course, if fresh construction permits were required. But because we hold they are not, Section 189 does not prevent NRC's reinstating surrendered permits.¹²⁵

In the case of Palisades, the operating license has never been terminated, and the Palisades QA program, albeit for a defueled plant, has remained functional and subject to NRC inspection and oversight since the certifications of shutdown and defueling were submitted.¹²⁶ The case is even

¹²⁴ This notwithstanding that the construction permit for the Bellefonte Nuclear Plant had originally been issued over 30 years before it was reinstated. *Tenn. Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2) CLI-10-06, 71 NRC 113, 115 (2010).

¹²⁵ *Bellefonte*, CLI-10-06, 71 NRC at 122–123.

¹²⁶ *Cf.* HDI, Updated Report for Holtec Decommissioning International (HDI) Fleet Decommissioning Quality Assurance Program (DQAP) Revision 2 (Aug. 3, 2022) (ML22215A147); HDI, Update Report for Holtec Decommissioning International (HDI) Fleet Decommissioning Quality Assurance Program (DQAP) Revision 3 and Palisades Transitioning Quality Assurance Plan (TQAP) Rev 0 (Aug. 2, 2024) (ML24215A356); HDI, Supplement to Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments, Proposed Power Operations Quality Assurance Program Manual, Revision 0 (May 23, 2024) (ML24144A106).

clearer than for Bellefonte that the NRC has authority to reinstate Palisades's operating authority under its existing license.¹²⁷

Consistent with its broad authority under the Atomic Energy Act and prior decisions discussed above, in the 2021 PRM Denial, the Commission affirmatively stated its authority to consider requests to restart a reactor that had submitted the certificates of permanent shutdown and defueling:

While current regulations do not specify a particular mechanism for reauthorizing operation of a nuclear power plant after both certifications are submitted, there is no statute or regulation prohibiting such action. Thus, the NRC may address such requests under the existing regulatory framework.¹²⁸

Petitioners incorrectly claim that this “was not a Commission decision. It was a staff memo to the Commission by the Executive Director for Operations.”¹²⁹ That is wrong. The Petition cites SECY-20-0110, which was a staff memorandum,¹³⁰ but the Petition ignores the Commission's approval of that SECY paper and publication of the PRM Denial in the Federal Register.¹³¹

Even before the Commission's statement in the PRM Denial, NRC has previously addressed the issue of the reinstatement of operating authority for a reactor that has permanently

¹²⁷ As the Commission observed in CLI-10-06, reinstating the Bellefonte construction permit “promotes regulatory efficiency by allowing the agency to credit both the licensee and the NRC Staff for work already completed during the initial construction permit proceeding and subsequent construction. This avoids repeating unnecessary procedures or reviews that may be legally required were the agency to insist on a fresh construction permit application.” *Bellefonte*, CLI-10-06, 71 NRC at 124.

¹²⁸ PRM Denial, 86 Fed. Reg. at 24,363.

¹²⁹ Petition at 51.

¹³⁰ Petition at 51 (citing SECY-20-0110, Denial of Petition for Rulemaking on Criteria to Return Retired Nuclear Power Reactors to Operations (Dec. 7, 2020) (ML20205L305)).

¹³¹ SRM-SECY-20-0110, Staff Requirements – SECY-20-0110 – Denial of Petition for Rulemaking on Criteria to Return Retired Nuclear Power Reactors to Operations (Apr. 1, 2021) (ML21091A231); VR-SECY-20-0110, Commission Voting Record - Denial of Petition for Rulemaking on Criteria to Return Retired Nuclear Power Reactors to Operations (Apr. 1, 2021) (ML21088A154).

ceased operations in a letter, cited in the PRM Denial, responding to questions from a member of the public in 2016:

Question 4: Is there anything in the 10 CFRs or NRC regulations that would explicitly prohibit NRC from granting a reversal of license termination (or, put another way, a “reinstatement” of a terminated license) at a later date, provided a reactor was still able to meet all operational criteria for restart and operation at a later date? If yes, please cite the 10 CFR sections referenced.

Response: No. ***There is nothing in the NRC regulations that would explicitly prohibit the NRC from granting a reversal of license termination.*** As discussed above in the response to Q.1(b), the NRC shall terminate the license in accordance with 10 CFR 50.82(a)(11), once the NRC determines that the dismantlement has been performed according to the approved termination plan and will verify the licensee's final radiation surveys by reviewing and/or conducting separate surveys before considering termination of the license. ***With respect to the certification that fuel has been permanently removed from the reactor vessel, there are no regulations that would explicitly prohibit NRC from reauthorizing operation. The licensee would have to apply to the NRC to authorize operation and demonstrate that they meet all of the 10 CFR part 50 requirements. The NRC would have to determine whether there is reasonable assurance that all of the requirements have been met.***¹³²

Likewise staff guidance in Reg. Guide 1.184 says:

Following submission of the certification for permanent cessation of operations, the facility license continues in effect beyond the expiration date until the NRC notifies the licensee in writing that the license has been terminated (10 CFR 50.51(b)).

...

Following submission of the certification of permanent cessation of operations, or at any time during the decommissioning process, if the licensee desires to operate the facility again, the licensee must notify the NRC of its intentions in writing. The NRC would handle approval to return the facility to operation on a case-by-case basis, and the approval would depend on the facility status at the time of the request to reauthorize operation.¹³³

The Petition asserts that the certifications of permanent shutdown and defueling terminated or surrendered the Palisades RFOL, and that NRC lacks the statutory authority to “resurrect an

¹³² NRC Letter to Mr. David A. Kraft of Nuclear Energy Information Service at 4 (Aug. 4, 2016) (ML16218A266) (emphasis added) (“NRC Letter to NEIS”).

¹³³ Reg. Guide 1.184 at 7.

operating license” or approve “the proposed amendment of a terminated license.”¹³⁴ Mr. Gundersen accuses Applicants of making up the term “renewed facility operating license” in order to “obfuscate[] the truth by claiming restarting the defunct and unlicensed reactor is possible.”¹³⁵ All of this is wrong. The title at the top of the Palisades Part 50 operating license that is in effect today (and every other operating license that has been renewed under the process in 10 CFR Part 54) is “Renewed Facility Operating License.”¹³⁶ NRC regulations explain that once a facility permanently ceases operations, the Part 50 license remains in effect until the Commission terminates it.¹³⁷ And, even if the regulations themselves were not clear, NRC’s guidance clearly explains that “docketing the two certifications . . . will not result in an irreversible termination of the operating license,”¹³⁸ and “[f]ollowing submission of the certification for permanent cessation of operations, the facility license continues in effect beyond the expiration date.”¹³⁹ The Palisades operating license is still valid; it does not require reinstatement—only the reauthorization of

¹³⁴ Petition at 47; *see also id.* at 52 (“Nor is there identification of any specific provision of the Atomic Energy Act that would authorize the NRC to resurrect an operating license in order to allow a closed reactor to return to power operations”).

¹³⁵ Gundersen Decl. at 25–26.

¹³⁶ *E.g.*, Amendment No. 273 to Renewed Facility Operating License No. DPR-20 (June 28, 2022) (ML22173A176) (reflecting transfer of the RFOL from Entergy to Holtec).

¹³⁷ 10 CFR 50.51(b).

¹³⁸ NRC Letter to NEIS at 2.

¹³⁹ Reg. Guide 1.184 at 7. The Commission also succinctly summarized this issue in the 2022 Proposed Decommissioning Rule:

A nuclear power reactor licensee formally begins the decommissioning process when it certifies its permanent cessation of operations and permanent removal of fuel from the reactor vessel under §§ 50.82(a)(1) or 52.110(a). Once the NRC docket these certifications, under § 50.82(a)(2) or § 52.110(b), the 10 CFR part 50 or 10 CFR part 52 license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. Despite this withdrawal of authority to operate the reactor, a decommissioning nuclear power plant continues to retain a license under 10 CFR part 50 or 10 CFR part 52. For this reason, the decommissioning plant continues to be subject to many of the requirements that apply to plants authorized to operate under 10 CFR part 50 or 10 CFR Part 52.

Proposed Decommissioning Rule, 87 Fed. Reg. at 12,263.

operating authority under the same license. The NRC has broad authority under the Atomic Energy Act to license and oversee commercial nuclear facilities, including issuing amendments, imposing conditions on those licenses, and requiring inspections of activities conducted under those licenses.¹⁴⁰ In this case, NRC has chosen to exercise that authority via the process set out in IMC 2562 (which the Petition does not acknowledge or cite to).

All of the arguments in the Petition that rest upon a premise that, in effect, NRC does not have authority to consider the LARs because Applicants must file an application for a new operating license are inconsistent with abundant caselaw and with clear statements of NRC policy. “Petitioners ‘may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies.’”¹⁴¹ Petitioners have not articulated any argument to the contrary,¹⁴² and even if they had, the Commission’s statutory

¹⁴⁰ *Siegel v. Atomic Energy Commission*, 400 F.2d 778, 783 (D.C. Cir. 1968)

¹⁴¹ *Millstone*, CLI-01-24, 54 NRC at 364 (quoting *Oconee*, CLI-99-11, 49 NRC at 334); *New Jersey Dept. of Env. Protection vs NRC*, 561 F.3d 132, 143 (3d Cir. 2009) (“These arguments thus amount to collateral attacks on the licensing renewal regulations, and the proper way to raise them would have been in a petition for rulemaking or a petition for a waiver based on ‘special circumstances.’”).

¹⁴² Petitioners cite the recent U.S. Supreme Court decisions in *West Virginia v. EPA* and *Loper-Bright v. Raimondo* for the general proposition that “an agency cannot act in the absence of clear Congressional authority” (Petition at 53) and “an agency’s interpretation of its statutory authority may not be accorded deference” (Petition at 54). While those principles are sound enough, they are not implicated here, nor have the Petitioners explained why the Board has authority to override the Commission’s established judgment on these matters. *West Virginia* involved the EPA’s “unprecedented” actions and “‘fundamental revision of the statute, changing it from [one sort of] scheme of . . . regulation’ into an entirely different kind.” *West Virginia v. EPA*, 597 U.S. 697, 728 (2022). *Loper Bright* concerned the deference a court must give to an agency’s interpretation of a statute. But the Petition does not refer to any specific provision of the Atomic Energy Act regarding NRC’s rulemaking and licensing authority, much less one that NRC has purportedly “revised” or “interpreted.” The Petition does not acknowledge the decades of caselaw recognizing NRC’s “virtually unique” discretion to carry out its mandate under the Atomic Energy Act, *Siegel v. Atomic Energy Commission*, 400 F. 2d 778, 783 (D.C. Cir. 1968), nor does it suggest that *Loper* or *West Virginia* undermine the fundamental tenet of administrative law that an agency’s authority “to adopt rules of general application ‘entails a concomitant authority to provide exemption procedures in order to allow for special circumstances.’” *Honeywell*, CLI-13-1, 77 NRC at 9 (citations omitted). Moreover, the caselaw recognizing NRC’s substantial discretion to carry out its mandate under the Act was not founded on the *Chevron* deference abolished by *Loper Bright*, but instead the recognition that Congress entrusted very broad authority to the NRC. See *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2268 (2024) (“That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has.”).

authority to grant exemptions from its rules and to oversee the licensing of commercial nuclear power plants is not subject to adjudication in this proceeding and may not form the basis for an admissible contention.¹⁴³ “[A] licensing proceeding before this agency is plainly not the proper forum . . . for challenges to the basic structure of the Commission’s regulatory process.”¹⁴⁴

C. Each of the Seven Contentions is Inadmissible Under the 2.309 Standard

1. Contention 1 is Out of Scope and Unsupported.

The Petition sets forth Contention 1 as follows:

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

a. Challenges to the Exemption Request are Out of Scope

Petitioners do not establish why they should be allowed to litigate their challenge to the Exemption Request in this proceeding on the LARs. The Petition acknowledges that “the Commission has held that § 189(a) [of the Atomic Energy Act] does not apply to proceedings involving a request for an exemption.”¹⁴⁵ That is correct. As the Commission has explained, “Congress intentionally limited the opportunity for a hearing to certain designated agency actions—agency actions that do *not* include exemptions.”¹⁴⁶ But Petitioners claim (now for the second time) that “NRC’s consideration of Holtec’s Request for Exemption in [Petitioners’]

¹⁴³ *Vogtle*, CLI-20-06, 91 NRC at 233; *Shearon Harris*, LBP-07-11, 66 NRC at 57–58; *Shaw AREVA MOX Services*, CLI-15-9, 81 NRC at 527–28 n.98 (citing *Oconee*, CLI-99-11, 49 NRC at 334).

¹⁴⁴ *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 555 (2016) (quoting *Peach Bottom*, ALAB-216, 8 AEC at 20).

¹⁴⁵ Petition at 28 (citing *Zion*, CLI-00-05, 51 NRC 90).

¹⁴⁶ *Zion*, CLI-00-05, 51 NRC at 96.

estimation comprises a licensing-related act that comprises a proceeding pursuant to § 2.309.”¹⁴⁷

In other words, Petitioners assert they should be allowed to challenge the Exemption Request because it is a de-facto license amendment. Petitioners appear to believe that, because the Exemption Request would allow the plant to be restarted, that makes it a license amendment.¹⁴⁸ That is wrong. Petitioners have already argued this and been rejected.

In December 2023, Petitioners filed a petition to intervene and request for adjudicatory hearing on the Exemption Request.¹⁴⁹ In that petition, they asserted, verbatim, the same theory for why they should be allowed to litigate their objections to the Exemption Request,¹⁵⁰ arguing in support of their hearing rights under Section 189a that, “what Holtec seeks is not a bona fide exemption request, but is, instead, a license amendment,”¹⁵¹ and “the exemption sought by Holtec is indeed a ‘circumstance’ listed in § 189” of the Atomic Energy Act.¹⁵² In the order dismissing that petition, the NRC Secretary rejected that theory, in the process explaining the applicable NRC precedent: “As a general matter, exemption requests do not give rise to a hearing opportunity,” but “when an exemption request is inextricably intertwined with a licensing action,” a hearing under Section 189 “may encompass the exemption request as well.”¹⁵³ The Secretary dismissed the

¹⁴⁷ Petition at 28.

¹⁴⁸ Petition at 37 (“[N]or has [Holtec] made a good faith attempt to comply with § 50.82. Rather, Holtec is asking for a license amendment – i.e., permanent relief.”). Mr. Gundersen refers to it as a “license exemption,” without explaining what he means by that term. Gundersen Decl. at 11.

¹⁴⁹ Exemption Petition at 19.

¹⁵⁰ *Id.* at 19 (“[T]he Commission has held that § 189(a) does not apply to proceedings involving a request for an exemption. The Petitioners herein, so as not to waive any procedural requirement, are submitting this Petition pursuant to 10 C.F.R. § 2.309, because the NRC’s consideration of Holtec’s Request for Exemption in their estimation comprises a licensing-related act that comprises a proceeding pursuant to § 2.309.” (citations omitted)).

¹⁵¹ Petitioners’ Memorandum in Opposition to Holtec Motion for Secretary Order Denying Petition for a Hearing on Exemption at 4 (Dec. 13, 2023) (ML23347A210).

¹⁵² *Id.* at 6; *see also id.* at 7 (“What Holtec proposes here is not an exemption at all, but instead, an ill-concealed license amendment. . . . the site-specific ‘exemption’ sought by Holtec is evidence that the true nature of Holtec’s request is a license amendment.”).

¹⁵³ Order on Exemption Petition at 2.

petition on the Exemption Request because “[t]he current exemption request is separate from a licensing action that would provide an opportunity to request a hearing.”¹⁵⁴ In other words, the order rejected Petitioners’ theory that the Exemption Request is actually a license amendment, resolving the matter.

But that is not the only order on this topic. In September 2024, Petitioners filed a request for a declaratory order, asking the Commission to clarify “whether the NRC will allow the exemption request to be considered in a petition to intervene regarding the [LARs].”¹⁵⁵ In that petition, they cited the same NRC precedent (from the Secretary’s earlier order) that says an exemption may be challenged if it is “inextricably intertwined” with a licensing action,¹⁵⁶ but Petitioners never made any arguments as to how that precedent applies to the Exemption Request at issue here—they were simply asking for an advisory opinion. The Commission Secretary declined to issue that advisory opinion but explained to the Petitioners that NRC has not prejudged the admissibility of any contentions they might submit in the current proceeding on the LARs, including contentions related to the Exemption Request.¹⁵⁷ This Secretary order again referenced NRC precedent that says an exemption request may be challenged in proceedings on the licensing action if it “directly bears on whether [a licensing action] should be granted.”¹⁵⁸ In other words, the Secretary did not give Petitioners a declaratory order saying they could challenge the

¹⁵⁴ *Id.* at 2.

¹⁵⁵ Petition for Declaratory Order, Docket No. 50-255, at 12 (Sept. 5, 2024) (ML24250A100) (“Petition for Declaratory Order”).

¹⁵⁶ *Id.* at 12.

¹⁵⁷ Order of the Secretary Regarding Petition for Declaratory Order at 3 (Sept. 26, 2024) (ML24270A263) (“Order on Petition for Declaratory Order”).

¹⁵⁸ *Id.* at 3 n.12 (citing *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 14 (2022)).

Exemption Request in this proceeding but likewise did not foreclose them from making any argument they would like to make for this Board's consideration.

But, despite being told to make an argument grounded in Commission precedent, Petitioners did not. The Petition continues to rely on their already-rejected claim that the Exemption Request itself is a licensing action. Nowhere in the Petition do Petitioners try to apply the precedent the Secretary has pointed them to twice, by relating the Exemption Request to the LARs. Instead, they argue that they should be allowed to challenge the Exemption Request because it is (1) a licensing action within the meaning of Section 189a of the Atomic Energy Act,¹⁵⁹ and (2) "[t]he linchpin" to Applicants' ability to restart Palisades¹⁶⁰ (although, conflictingly, Petitioners also assert that Applicants can rescind the certifications of shutdown and defueling without the exemption¹⁶¹). But the overarching process to resume power operations at Palisades is not the subject of this proceeding nor is the question of whether the Palisades 50.82(a)(1) certificates can be rescinded; only the LARs are at issue. Nowhere does the Petition show that the Exemption Request is inextricably linked to the decision on the LARs, and so Petitioners have waived any right they might have had to challenge the Exemption Request in this proceeding. Petitioners have the obligation to support their claims with arguments based on relevant legal precedent.¹⁶² They did not do so. Just as the NRC Secretary did not issue them a declaratory order absolving them of that responsibility, this Board also may not construct Petitioners' arguments for them.¹⁶³

¹⁵⁹ Petition at 28, 37.

¹⁶⁰ *Id.* at 30.

¹⁶¹ *Id.* at 35.

¹⁶² *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

¹⁶³ "[I]t is Petitioners' responsibility, not the Board's, to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission." *Palisades*, CLI-15-23, 82 NRC at 329 (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC at 22).

Accordingly, Petitioners may not challenge the Exemption Request in this proceeding on the LARs.

Even if Petitioners had attempted to apply the NRC precedent that allows certain exemption requests to be challenged alongside a licensing action—which Petitioners have not done—that precedent does not allow them to challenge this Exemption Request in this proceeding on these four LARs. NRC has allowed hearings on exemption requests that make up the “required elements” of a parallel licensing action,¹⁶⁴ such that the proposed exemption “directly bears on whether the proposed action should be granted.”¹⁶⁵ Put another way, when NRC’s review of a licensing action necessarily involves consideration of the same subject matter as its review of an exemption request, Section 189a of the Atomic Energy Act does not *remove* the exemption request from scope of matters that may be adjudicated on the licensing action. This situation most often presents itself when an exemption request is bundled with a licensing action, such that the applicant cannot meet the criteria for approval of the licensing action without receiving approval of the related exemption.¹⁶⁶

That is not the case here. The Exemption Request was submitted separately, months before the LARs, and, as explained above, if granted would only allow withdrawal of the 50.82(a)(1) certifications from the docket; it does not bear on whether the amendments requested by the LARs should also be issued or whether those amendments satisfy the applicable regulatory criteria.¹⁶⁷

¹⁶⁴ *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001).

¹⁶⁵ *Palisades*, CLI-22-8, 96 NRC at 14.

¹⁶⁶ *See, e.g., Private Fuel Storage*, CLI-01-12, 53 NRC at 467 (“resolution of the exemption request directly affects the licensability of the proposed ISFSI”); *Palisades*, CLI-22-8, 96 NRC at 14 (“[Applicant] relies on the requested exemption . . . for its demonstration of financial qualifications; therefore the exemption request and license transfer application are intertwined.”).

¹⁶⁷ *Cf.* Tech Spec LAR at 89–91; Admin Controls LAR at 18; Emergency Planning LAR at 27; MSLB LAR at 6 (describing the applicable regulatory criteria for each LAR).

The Exemption Request was originally filed to help frame the overall restart process and to offer NRC a vehicle to issue final approval(s) of the restart once all of the relevant restart conditions have been satisfied, including approval of the LARs. But that part of the Exemption Request has largely been subsumed in or superseded by IMC 2562, which now provides the decisionmaking framework for NRC's final approval to restart Palisades. What is left is approval to rescind the certifications of shutdown and defueling. Petitioners themselves claim that Applicants could withdraw the certifications without an exemption.¹⁶⁸ They may be correct—certainly if NRC has authority to reinstate a terminated construction permit without an exemption, as it did in the case of Bellefonte,¹⁶⁹ it also has authority to authorize withdrawal of the 50.82(a)(1) certifications. Regardless, Applicants have requested the Exemption Request in part to remove any ambiguity (or legal challenges) created by the 50.82(a)(2) regulatory language. But the fact that the Exemption Request and the LARs are both aimed at the same ultimate objective—authorizing the restart—does not mean that NRC's approval of the LARs is dependent on its parallel review of the Exemption Request. Put differently, just because both the exemption and the amendments may ultimately be required to resume power operations does not mean that the two are co-dependent in a manner that scopes the Exemption Request into the Section 189a hearing process. They are separate approvals on parallel tracks, just like the license transfer application that is also not within the scope of this proceeding.¹⁷⁰ Whether NRC grants the exemption from 10 CFR 50.82(a)(2) to

¹⁶⁸ Petition at 35.

¹⁶⁹ *Bellefonte*, CLI-10-06, 71 NRC at 118.

¹⁷⁰ Federal Register Notice, 89 Fed. Reg. at 64,487:

HDI is seeking to return [Palisades] to power operations and has submitted several requests for NRC approval to support allowing the resumption of power operations through March 24, 2031, the end of the renewed facility operating license term under PNP RFOL No. DPR-20. These requests include four license amendment requests, *which are the subject of this notice*, a license transfer request, and an exemption request. The hearing opportunity for the license transfer request is being addressed by a separate notice published in today's issue of the Federal Register. Consistent with the Atomic

allow Applicants to rescind the certifications of shutdown and defueling will not affect the criteria against which the LARs are judged. In the case of the Tech Spec LAR, which is the only one Petitioners refer to, NRC’s review of the LARs is based on the criteria in 10 CFR 50.36 and 50.36b. None of the contents of the Exemption Request has any bearing on whether the LARs satisfy those requirements. NRC could accept *arguendo* all of Petitioners’ arguments on the Exemption Request, but doing so would not change anything about NRC staff’s review of the LARs.

Accordingly, even considering the NRC precedent that Petitioners themselves have ignored, the Exemption Request is not within the scope of this proceeding on the LARs.

b. Contention 1 is Unsupported and Fails to Raise a Material Dispute with the Exemption Request

Even if the Board considers Petitioners’ challenge to the Exemption Request in this proceeding, that challenge is based on a demonstrably incorrect understanding of NRC regulations and criteria for granting exemptions under 10 CFR 50.12. Section 50.12(a) requires a showing that (1) the exemption is “[a]uthorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security,” and (2) “special circumstances are present.”¹⁷¹ Petitioners claim that the Exemption Request does not satisfy this standard, but in doing so they apply their own preferred, policy-driven criteria rather than grounding their objections in the requirements of 10 CFR 50.12, what the Exemption Request actually says, or any relevant precedent or legal authority that would support their claims that Applicants have not satisfied the 10 CFR 50.12 criteria.

Energy Act of 1954, as amended, and NRC regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption request.

Id. (emphasis added); *see also* 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).

¹⁷¹ 10 CFR 50.12(a)(1) & (2).

Petitioners first suggest that in order for an exemption to be “[a]uthorized by law,” Applicants must identify affirmative Congressional authorization of the specific action underlying the exemption.¹⁷² That is not what is required for an exemption to be “[a]uthorized by law” under Section 50.12(a)(1). In meeting this criteria, applicants are required to show that, in granting the exemption, the NRC would not violate the Atomic Energy Act or other applicable laws.¹⁷³ The Commission, as described above, has already decided that it is within its authority under the Atomic Energy Act to reinstate a surrendered construction permit. The authority to allow recission of the 50.82(a)(1) certifications is certainly within the bounds of that same authority. Further, in the PRM Denial, the Commission determined that the Atomic Energy Act does not prohibit resumed operations for a plant like Palisades.¹⁷⁴ So even if the Exemption Request is subject to adjudication in this proceeding, arguments that simply dispute the bases for the PRM Denial and misstate the Commission’s standard for granting exemptions under Section 50.12 cannot form the basis for a valid contention.¹⁷⁵

Second, Petitioners argue that the Exemption Request would present an “undue risk to public health and safety” (and thus fail to satisfy 50.12(a)(1)) because “there were significant

¹⁷² Petition at 33.

¹⁷³ *Brodsky v. NRC*, 507 F. App’x 48, 51 (2d Cir. 2013) (“[W]e do not read 10 C.F.R. § 50.12, which mandates simply that the grant of an exemption be ‘authorized by law,’ to require the NRC to provide a detailed explanation as to why a grant is consistent with the provisions of the AEA, APA, or NEPA. . . . [I]nsofar as the NRC generally considered whether any law prohibited granting the exemption and concluded that none did, we hold that no more was required by § 50.12.”); NRC, Pacific Gas & Elec. Co., Diablo Canyon Power Plant, Units 1 and 2, Exemption from 10 CFR 2.109(b) at 4–6 (Mar. 3, 2023) (ML23026A109) (evaluating whether an exemption is “authorized by law” and concluding that it is because it “will not result in a violation of the Atomic Energy Act of 1954, as amended, the Administrative Procedure Act, or the NRC’s regulations”) (“Diablo Canyon Timely Renewal Exemption”) reviewed by *San Luis Obispo Mothers for Peace v. NRC*, 100 F.4th 1039, 1048 (9th Cir. 2024) (“NRC first found that the requested exemption was ‘authorized by law,’ noting that nothing in the Atomic Energy Act or the APA prohibited granting an exemption or required renewal applications be submitted in the five-year period specified in 10 CFR § 2.109(b).”).

¹⁷⁴ PRM Denial, 86 Fed. Reg. at 24,363 (“While current regulations do not specify a particular mechanism for reauthorizing operation of a nuclear power plant after both certifications are submitted, there is no statute or regulation prohibiting such action.”).

¹⁷⁵ *Vermont Yankee*, CLI-16-12, 83 NRC at 555; *Vogtle*, CLI-20-06, 91 NRC at 233.

safety problems with the plant” and “risks to the public health and safety prompted Palisades to be shut down” in the first place.¹⁷⁶ Petitioners rely on Mr. Gundersen’s declaration to support this point, although Mr. Gundersen claims throughout his declaration that Palisades shut down for economic reasons.¹⁷⁷ To be sure, he also makes a host of other conclusory and unsupported claims such as that Palisades is “one of the world’s most decrepit and flawed nuclear reactors,”¹⁷⁸ Holtec’s “nuclear mercenaries” are unqualified to operate the plant,¹⁷⁹ Entergy “drove Palisades into the ground,”¹⁸⁰ and the costs of refurbishment will be too expensive.¹⁸¹ He offers few specifics, no relevant citations, and neither he nor Petitioners offer any explanation as to why any of this has any bearing on whether the criteria under 10 CFR 50.12(a) have been satisfied in light of the inspection process contemplated by IMC 2562¹⁸² and NRC’s oversight framework that ensures an adequate level of safety for operating reactors,¹⁸³ the technical qualifications of Holtec subsidiaries (that are the subject of a separate adjudicatory proceeding before the Commission),¹⁸⁴ and the

¹⁷⁶ Petition at 33.

¹⁷⁷ *E.g.*, Gundersen Decl. at 11 (“Pilgrim, Vermont Yankee, Indian Point 2&3, and Fitzpatrick (as well as Palisades) were all abandoned by Entergy because the electricity they generated was too costly compared to renewable sources produced by wind and solar.”); *id.* at 12 (“[C]losing the costly Palisades nuclear generator in 2022 made economic sense to Entergy’s financial portfolio and stockholders.”); *id.* at 40 (“Entergy closed Palisades because it was uneconomical to operate . . .”).

¹⁷⁸ Gundersen Decl. at 8.

¹⁷⁹ *Id.* at 9–11.

¹⁸⁰ *Id.* at 13.

¹⁸¹ *Id.* at 15–20.

¹⁸² IMC 2562 at 1 (stating the purpose of the IMC 2562 process, “[t]o detail the requirements for the inspection activities and operational plant readiness to provide reasonable assurance for safe operations following reactivation of an operating license”).

¹⁸³ *See* NRC Letter to ENOI, Annual Assessment Letter for Palisades Nuclear Plant, Unit 1 (Mar. 2, 2022) (ML22055B137) (noting that Palisades was in the Licensee Response Column of the ROP Action Matrix); *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 9 (2001) (“The current licensing basis represents an ‘evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety.’ It is effectively addressed and maintained by ongoing agency oversight, review, and enforcement.” (citations omitted)).

¹⁸⁴ *See* note 43 *supra*.

qualifications of the licensed reactor operators that undergo extensive training and testing.¹⁸⁵ These general claims do not raise a material dispute with the Exemption Request. They amount to challenges to NRC’s oversight process in general, along with IMC 2562 and the Palisades Restart Inspection Plan, which are beyond the scope of this proceeding. Moreover, because Mr. Gundersen offers no relevant evidentiary or documentary support for his conclusory claims regarding the state of the plant in 2022, Mr. Gundersen’s declaration does not help the Petitioners satisfy 2.309(f)(1)(v). Broad-brush claims that Palisades is old and nuclear projects are expensive do not create issues for adjudicatory hearing.¹⁸⁶ Likewise, generic and unsupported accusations of corporate greed and incompetence, no matter how inflammatory, add nothing to this proceeding and provide no basis for anything to actually litigate in an evidentiary hearing on the LARs.¹⁸⁷

Third, Petitioners claim that no special circumstances are present based on wide ranging claims, again, mostly derived from their organizations’ policy preferences. Rather than reciting all of Petitioners’ arguments (many of which are not relevant to the special circumstances cited in the Exemption Request), Applicants will focus on the ones the Exemption Request relied on, which are:

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; [and] . . .

¹⁸⁵ 10 CFR Part 55.

¹⁸⁶ *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-12-15, 75 NRC 704, 716 (2012) (“broad-brushed references [to the underlying action] do not identify any deficiency in, or dispute with,” the applicable licensing action); *id.* at 717 (“generalized assertions . . . do not raise a genuine material dispute”).

¹⁸⁷ *Entergy Nuclear Operations, Inc., (Palisades Nuclear Plant & Big Rock Point Site)*, CLI-22-08, 96 NRC 1, 76–77 (2022).

(vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.¹⁸⁸

Applicants' point under 10 CFR 50.12(a)(2)(ii) (application of the regulation would not serve the underlying purpose of the rule) is that 10 CFR 50.82(a)(2) was created to provide a clear line of demarcation between operations and decommissioning, marked by the certifications of shutdown and defueling, but the rule was not created to ensure that decommissioning plants could never transition back to power operations, as confirmed by the Commission in the PRM Denial.¹⁸⁹ Petitioners contest this special circumstance by claiming that the purpose of 10 CFR 50.82(a)(1) is to ensure that plants in decommissioning never leave decommissioning,¹⁹⁰ thus, Applicants must apply for a new operating license.¹⁹¹ Petitioners offer no authority for their claim. They do not reference the 1996 rulemaking that explained that the 50.82(a)(1) certifications are a gating item: "[b]efore undertaking [decommissioning] activities, the licensee must provide certifications to the NRC that operations have permanently ceased and fuel has been permanently removed from the reactor vessel."¹⁹² Nor do they acknowledge the more recent discussion in rulemaking documents, which explains that "[a] nuclear power reactor licensee formally begins the decommissioning process when it certifies its permanent cessation of operations and permanent removal of fuel from the reactor vessel under §§ 50.82(a)(1)"¹⁹³ Nowhere does the NRC state that the purpose of 50.82(a)(2) is to ensure that licensees can never leave decommissioning. To the contrary, Reg.

¹⁸⁸ Exemption Request at 10–12; 10 CFR 50.82(a)(2)(i), (iii), (vi).

¹⁸⁹ Exemption Request at 10.

¹⁹⁰ Petition at 34–35.

¹⁹¹ *Id.* at 37–38.

¹⁹² NRC Final Rule, Decommissioning of Nuclear Power Reactors, 61 Fed. Reg. 39,278, 39,279 (July 29, 1996); 10 CFR 50.82(a)(5) (limiting the performance of any "major decommissioning activities" until after submittal of the 50.82(a)(1) certifications).

¹⁹³ Proposed Decommissioning Rule, 87 Fed. Reg. at 12,263.

Guide 1.184 specifically says the certifications are reversible,¹⁹⁴ and in the PRM Denial, the Commission explained that “there is no statute *or regulation* prohibiting such action.”¹⁹⁵ Both clearly contradict Petitioners’ unsupported claim that the purpose of 50.82(a)(2) was to ensure plants cannot exit decommissioning under any circumstances.

The Exemption Request also relies on 10 CFR 50.12(a)(2)(iii) (undue hardship) because applying 10 CFR 50.82(a)(2) to prevent Palisades from continuing to operate through its previously-authorized license term would deprive Applicants and other Michigan stakeholders of economic and other benefits from the power that could be generated from the plant during that period.¹⁹⁶ Petitioners contest this special circumstance because (1) Applicants knew the plant was shut down when they bought it from Entergy, and (2) “[r]egional grid planners, other utilities, business forecasters and their clients all have had to adjust” to the shutdown.¹⁹⁷ But, acknowledging their own organizations’ objections, Petitioners do not cite any economic stakeholders who have opposed the restart because it would disrupt their businesses, nor do they cite any legal authority that says NRC must conduct a holistic evaluation of economic costs and benefits in determining whether to grant an exemption under 10 CFR 50.12. Petitioners do not dispute that rote application of 10 CFR 50.82(a)(2) would deprive Applicants and Michigan stakeholders who favor the restart of the benefits they would enjoy if the restart is successful.¹⁹⁸ As for Petitioners’ argument that “Holtec merely finds itself in a difficult situation of its own making,”¹⁹⁹ the fact that economic and political circumstances have changed in a relatively short

¹⁹⁴ Reg. Guide 1.184 at 7.

¹⁹⁵ PRM Denial, 86 Fed. Reg. at 24,363 (emphasis added).

¹⁹⁶ Exemption Request at 11.

¹⁹⁷ Petition at 35–36.

¹⁹⁸ Petition at 35.

¹⁹⁹ *Id.* at 35.

period of time does not alter the fact that there are quantifiable benefits to restarting Palisades of the type that NRC has historically considered in granting exemptions from its regulations.²⁰⁰

Finally, the Exemption Request cites 10 CFR 50.12(a)(2)(vi) (material circumstances not considered when the regulation was adopted that are in the public interest) because “[t]he regulation was not written to address the unique [Palisades] circumstance,” and (despite Petitioners’ objections) restarting the plant enjoys strong support from the State of Michigan.²⁰¹ Indeed, even a few years ago, it was hard to foresee the possibility of decommissioning plants needing a process to resume operations. In the PRM Denial, which was issued in 2021, the Commission observed that there was minimal interest by nuclear licensees in restarting shutdown facilities.²⁰² Applicants do not dispute that Entergy shut down Palisades for economic reasons that have since been reversed by macroeconomic and political forces that were impossible to anticipate even a few years ago. Petitioners claim that Applicants (and every other licensee) cannot satisfy this special circumstance because “if the NRC had considered the possibility of restarting a decommissioning reactor, it would have provided for that possibility in the rules.”²⁰³ This argument is a non sequitur given that the express purpose of 10 CFR 50.12(a)(2)(vi) is to address

²⁰⁰ NRC Exemption Issuance, Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2 88 Fed. Reg. 32,253, 32,256 (May 19, 2023) (“The impact of changes in economic and legislative conditions on licensees’ decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is also present.”); NRC Exemption Issuance, Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3, 87 Fed. Reg. 16,246, 16,248 (Mar. 22, 2022) (“[The licensee] stated that the decision to continue power operation at Dresden Nuclear Power Station, Units 2 and 3, depended on economic and legislative factors that evolved in a way that did not permit [compliance with the regulation]. The licensee further stated that if the exemption is not granted . . . then the licensee would face the risk of being forced to shut down if the application is not approved before the current licenses expire. The impact of changes in economic and legislative conditions on licensees’ decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) also is present.”).

²⁰¹ Exemption Request at 11–12.

²⁰² PRM Denial, 86 Fed. Reg. at 24,364 (“Given this minimal interest from the nuclear industry, the NRC expects few, if any, requests for reauthorization.”).

²⁰³ Petition at 37.

circumstances that were “not considered” in the regulation,²⁰⁴ and an exemption would be unnecessary if the rules already provided a process. Petitioners also dispute that the restart is in the public interest by relying on a series of high-level policy arguments, the most relevant of which are: nuclear power is too expensive and contributes to global warming more than renewables due to the costs and carbon emissions during nuclear construction projects.²⁰⁵ But Palisades is already built, and Petitioners offer no legal authority that suggests NRC or licensees are required to conduct a comparative analysis of non-nuclear generation sources—akin to that that might be undertaken by state lawmakers and utility regulators—in order to find that an exemption to return Palisades to operations is in the public interest. Petitioners do not dispute that the restart enjoys wide public support from the State of Michigan and the Federal Government. Nor do they acknowledge (or dispute) that NRC has relied on strikingly similar circumstances in granting exemptions based on changes to legislative and economic factors similar to those presented here.²⁰⁶ Petitioners’ countervailing arguments for why the restart would not be in the public interest are either off topic²⁰⁷ or beyond the scope of matters within NRC’s jurisdiction.

For the foregoing reasons, even if the Board considers the Petitioners’ arguments on the Exemption Request, they do not present a material dispute with the Exemption Request that is relevant to NRC’s standard under 10 CFR 50.12, are not accompanied by the relevant evidentiary

²⁰⁴ 10 CFR 50.12(a)(2)(vi).

²⁰⁵ Petition at 39–40; Petition, Ex. C, Declaration of Mark Z. Jacobson.

²⁰⁶ Diablo Canyon Timely Renewal Exemption at 8–9 (discussing state policy and legislative changes that drove to the reversal of PG&E’s decision to shut down Diablo Canyon as satisfying the special circumstances required by 10 CFR 50.12(a)(2)(vi)).

²⁰⁷ The Petition also points to the attached Declaration of Kevin Kamps to assert that no special circumstances are present for the requested exemption. Petition at 36, 39; Petition, Ex. B, Declaration of Kevin Kamps. Mr. Kamps’ opines that NRC regulations governing reactor embrittlement are too lax (*id.* at 4) and criticizes the Palisades restart project because it has received state and federal support (*id.* at 5). Neither has any apparent relevance to the Exemption Request or any of the factors in 50.12(a)(2), and the Petition makes no attempt to connect these points into a cohesive argument.

or documentary support, and seek to litigate policy matters that are outside the scope of this proceeding (and NRC’s jurisdiction in general). For these reasons, the Board should dismiss Contention 1 for failure to demonstrate that their arguments present a material dispute with the LARs.

2. Contention 2 is Out of Scope and Does Not Raise a Material Dispute with the LARs.

Contention 2 is stated as follows:

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

Petitioners assert that an EIS is required by 10 CFR 51.20(b)(2), which applies to “[i]ssuance or renewal of a full power or design capacity license to operate a nuclear power reactor . . . under part 50 of this chapter” (emphasis in the Petition).²⁰⁸ NRC already prepared an EIS for the renewal of the Palisades operating license, which covers power operations at Palisades through 2031.²⁰⁹ And, if the plant successfully returns to power operations and Applicants request authority to operate past 2031,²¹⁰ NRC will prepare another EIS to cover operations at Palisades past 2031, as required by 10 CFR 51.20(b).

Petitioners do not acknowledge that the License Renewal SEIS, prepared in accordance with 10 CFR 51.20(b), covers Palisades operations through 2031. Contention 2 is really an outgrowth of Petitioners’ assertion that, in order for Palisades to restart and operate through 2031, Applicants must obtain a new operating license and, thus, NRC must prepare another EIS covering operations through 2031. Petitioners’ argument for this contention says this outright: “Petitioners’

²⁰⁸ 10 CFR 51.21(b)(2) (quote and emphasis on page 41 of the Petition).

²⁰⁹ License Renewal SEIS at 1-8.

²¹⁰ HDI has informed NRC that it intends to pursue subsequent license renewal for Palisades if the plant successfully restarts. *See* HDI, Notice of Intent to Pursue Subsequent License Renewal (Apr. 18, 2024) (ML24109A162).

position is that a new operating license is legally obligatory.”²¹¹ In fact, that is the entire argument; the rest of Contention 2 is just a straightforward application of the NEPA requirements that would apply to a new operating license.²¹² But neither the LARs nor any of the other restart processes will result in NRC’s “issuance or renewal of a full power . . . license to operate a nuclear power reactor.”²¹³ As explained in Section IV.A above, the starting premise of Contention 2—that Applicants must obtain a new operating license—is wrong, and the embedded challenge to NRC’s authority to issue exemptions from its regulations and oversee the licensing of nuclear reactors is not subject to adjudication here. Contention 2 thus fails to satisfy 2.309(f)(1)(iii) and (vi) because it does not raise an issue within the scope of this proceeding and does not present a material dispute with the LARs.

Petitioners also have not raised a material dispute with NRC’s decision to prepare an EA to address the LARs (and other regulatory actions in connection with the restart). Apart from claiming NRC should require Applicants to apply for a new operating license, Petitioners do not raise any other argument as to why NRC’s decisions to prepare an EA violates NEPA or NRC’s Part 51 regulations. As NRC’s Notice of Intent explained, the regulatory actions NRC is taking in connection with the restart “are not specifically covered by the criteria for preparing an EIS

²¹¹ Petition at 43.

²¹² Under the Contention 2 heading, Petitioners also assert that Applicants failed to submit an environmental report that meets the requirements of 10 CFR 51.45. Petition at 43. While the purpose of the contention (and Petition) is to assert that Applicants must apply for a new operating license, Petitioners do claim in a few places that “10 C.F.R. § 51.53 requires the preparation of an ER for an operating license *or for the amendment of an operating license*.” *Id.* at 43 (emphasis added). Section 51.53 does not actually say that, though. It requires an environmental report from applicants for operating licenses or license renewals, 10 CFR 51.53(b)–(c), and “[e]ach applicant for a license amendment authorizing decommissioning activities . . . approving a license termination plan or decommissioning plan . . . [or] to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor.” 10 CFR 51.53(d). The LARs do not request any of the amendments listed in 10 CFR 51.53(d). Petitioners’ arguments that Applicants failed to satisfy requirements of 51.45 are the central theme of Contentions 5–7 and are addressed more in sections IV.C.5 below.

²¹³ 10 CFR 51.21(b)(2).

because the NRC does not yet know the significance of potential impacts from the proposed actions.”²¹⁴ The NRC actions that require an EIS are set forth in 10 CFR 51.20(b) and include issuance of (1) limited work authorizations, construction permits, and early site permits for facilities under Part 50 or Part 52, (2) new or renewed Part 50 operating licenses or Part 52 combined licenses, (3) enrichment plant permits and licenses, (4) full term licenses converted from provisions operating licenses to, (5)–(6) [reserved], (7) licenses for fuel fabrication or conversion facilities under Part 70, (8) uranium milling licenses under Part 40, (9) standalone ISFSI or monitored retrievable storage licenses under Part 72, (10) uranium enrichment licenses, (11) new or renewed Part 61 waste disposal facility licenses, (12) license amendments to close a Part 61 disposal facility, (13) construction authorization or license for a high-level waste facility under Part 60 or Part 63, and (14) any other action the Commission determines in its discretion is a major action significantly affecting the quality of the human environment.²¹⁵ The LARs are not any of these. Because NRC did not rely on the categorical exclusion identified in the LARs,²¹⁶ staff determined to prepare an EA, which is how all NRC actions that fall between an EIS and categorical exclusion are treated by NRC, as set forth in 10 CFR 51.21:

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those identified in § 51.22(c) as categorical exclusions, and those identified in § 51.22(d) as other actions not requiring environmental review. As provided in § 51.22(b), the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.²¹⁷

²¹⁴ Notice of Intent, 89 Fed. Reg. at 53,660.

²¹⁵ 10 CFR 51.20(b)(1)–(14).

²¹⁶ 10 CFR 51.22(c)(9); *see* note 74 *supra*.

²¹⁷ 10 CFR 51.21.

In sum, because Part 50 license amendments are not covered by 51.20(b) and because staff did not rely on a categorical exclusion in 51.22(c) (and the LARs are clearly not subject to the criteria of 51.22(d) for high level waste repository guidelines), NRC is preparing an EA, which is exactly what 10 CFR 51.21 requires it to do in such circumstances. It bears noting that NRC made a similar determination to prepare an EA for the reinstatement of the Bellefonte construction permit.²¹⁸

Petitioners' claims that NRC is required to prepare an EIS because the LARs are an application for a new operating license is contrary to NRC's regulations and do not comprise an admissible contention for hearing.

3. Contention 3 is Out of Scope and Does Not Raise a Material Dispute with the LARs.

Contention 3 is styled as follows:

Presently, pursuant to 10 C.F.R. § 50.82(a)(2), the current Palisades operating license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. What Holtec obtained from Entergy when Holtec purchased Palisades, and what Holtec now has, is an operating license conditioned by the certification that nuclear fuel has permanently been removed from the core, and consequently no new fuel may be introduced into the Palisades reactor, nor may it be operated to produce electricity. In order to resume power operations at Palisades, Holtec must obtain a new operating license.²¹⁹

Contention 3 just distills Petitioners foundational premise, that a new operating license is required, into a standalone contention. As explained in Section IV.A above, Contention 3 is a challenge to NRC's statutory authority, regulatory processes, and the existing Palisades RFOL—none of which are subject to adjudication in this proceeding for reasons already discussed at length above. Contention 3 fails to satisfy the requirements of 10 CFR 2.309(f)(1)(iii) and (vi) because it

²¹⁸ *Bellefonte*, CLI-10-06, 71 NRC at 118.

²¹⁹ Petition at 45.

does not raise an issue within the scope of this proceeding and does not raise a material dispute with the LARs.

4. Contention 4 is Out of Scope, Fails to Raise a Material Dispute with the LARs, and is Unsupported.

Contention 4 is titled:

Holtec and the NRC admit that there is no provision in law or regulation for the NRC to authorize the restart of Palisades as a closed reactor. They are cobbling together a “pathway” to restart, using a “creative” procedure based on existing regulations that they believe allows Holtec to bypass the requirement of compiling a new Updated Final Safety Analysis Report (UFSAR) in favor of returning the UFSAR Revision 35, which was in place when the Palisades reactor was closed. Since there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by Holtec.²²⁰

This contention includes four subheadings, which are as follows:

- A. The reversal of the formal shutdown of operations is a major question lacking clear Congressional authority
- B. 10 C.F.R. § 50.59 cannot transform significant changes into minimal exchanges
- C. Plugging and Unplugging steam generator tubes is a major engineered change
- D. Mass destruction of Quality Assurance records undermines continuity of operating procedures

Because these subheadings present somewhat distinct arguments, some of which do not necessarily relate to the contention itself, Applicants will briefly address each in turn, referring them to Contentions 4A–4D.

a. Contention 4A is Out of Scope and Fails to Raise a Material Dispute with the LARs

The first subheading is just an extension of Contention 3, challenging NRC’s authority to grant exemptions from its regulations, which leads back to Petitioners’ preferred outcome that the

²²⁰ Petition at 48.

only way for Palisades to restart is by obtaining a new operating license.²²¹ Contention 4A seeks to litigate the same set of generalized policy issues, objections to NRC's regulatory scheme, and argument that NRC lacks authority under the Atomic Energy Act to grant exemptions from its regulations or authorize resumption of power operations under a Part 50 operating license after the 50.82(a)(1) certifications. Curiously, the Petition invokes NRC's reinstatement of the Bellefonte construction permit in support of Contention 4A. Mr. Gundersen even indirectly references the Commission order (discussed above) that rejected the same argument Petitioners are making.²²² While he asserts that Bellefonte was a failure because TVA did not ultimately operate the plant, neither Mr. Gundersen nor the Petition acknowledges that the Commission clearly rejected the virtually identical argument that NRC lacked statutory authority to reinstate the terminated construction permit. All of the criticisms leveled at the Bellefonte decision are policy arguments. For the same reasons Contention 3's generalized grievance with NRC policy fails to satisfy 10 CFR 2.309(f)(1)(iii) and (vi), so too does Contention 4A.

b. Contention 4B is Out of Scope and Fails to Raise a Material Dispute with the LARs

Contention 4B focuses on HDI's plan to evaluate portions of the power operations licensing basis for reimplementation using the change processes in 10 CFR 50.59.²²³ Section 50.59 allows a licensee to make certain changes to the facility and FSAR provisions, without prior NRC approval in the form of a license amendment, as long as the conditions set forth in 50.59(c) are met.²²⁴ Commission precedent on this topic is clear: "A member of the public may challenge an

²²¹ Petition at 51 ("Because there is no set procedure in the NRC regulations for restarting a closed reactor, NRC has no regulatory authority to grant the license amendments requested by Holtec.").

²²² See Gundersen Decl. at 30–31.

²²³ Petition at 49–50.

²²⁴ 10 CFR 50.59(c):

action taken under 10 C.F.R. § 50.59 only by means of a petition under 10 C.F.R. § 2.206.”²²⁵

Accordingly, Petitioners’ challenges to Applicants’ plans to evaluate changes under the 50.59 process are beyond the scope of this proceeding.

Even engaging with Petitioners’ argument, they mischaracterize the 10 CFR 50.59 process. Their argument appears to be that Applicants cannot use the 50.59 processes to reinstate portions of the FSAR because Applicants are amending the facility’s technical specifications.²²⁶ But the LARs do not say that Applicants are evaluating changes to the technical specifications under 50.59—quite the opposite, since that is the point of the Tech Spec LAR and Admin Controls LAR under consideration in this proceeding, both of which request NRC approval under 10 CFR 50.90 to amend the respective portions of the technical specifications.²²⁷ Petitioners also argue that Applicants’ are barred from using the 10 CFR 50.59 process because climate change will require

(c)(1) A licensee may make changes in the facility as described in the final safety analysis report (as updated), make changes in the procedures as described in the final safety analysis report (as updated), and conduct tests or experiments not described in the final safety analysis report (as updated) without obtaining a license amendment pursuant to Sec. 50.90 only if: (i) An amendment to the technical specifications incorporated in the license is not required, and (ii) The change, test, or experiment does not meet any of the criteria in paragraph (c)(2) of this section.

(2) A licensee shall obtain a license amendment pursuant to Sec. 50.90 prior to implementing a proposed change, test, or experiment if the change, test, or experiment would: (i) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the final safety analysis report (as updated); (ii) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the final safety analysis report (as updated); (iii) Result in more than a minimal increase in the consequences of an accident previously evaluated in the final safety analysis report (as updated); (iv) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the final safety analysis report (as updated); (v) Create a possibility for an accident of a different type than any previously evaluated in the final safety analysis report (as updated); (vi) Create a possibility for a malfunction of an SSC important to safety with a different result than any previously evaluated in the final safety analysis report (as updated); (vii) Result in a design basis limit for a fission product barrier as described in the FSAR (as updated) being exceeded or altered; or (viii) Result in a departure from a method of evaluation described in the FSAR (as updated) used in establishing the design bases or in the safety analyses.

²²⁵ *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994).

²²⁶ Petition at 56–57; *cf.* 10 CFR 50.59(c)(1)(i) (changes can be made without obtaining a license amendment only if “[a]n amendment to the technical specifications incorporated in the license is not required”).

²²⁷ Tech Spec LAR, Encl. at 3; Admin Controls LAR, Encl. at 3.

upgrades and modifications to the facility's physical equipment described in the FSAR.²²⁸ Petitioners provide no specific citation to any portion of the FSAR that will allegedly be affected, nor do they explain why any such changes would be required by NRC regulation, or even, if Applicants were to actually implement them, could not satisfy the criteria in 10 CFR 50.59(c). They cite a press release regarding upgrades to the plant heat exchanger, but then explain that "the heat exchanger is not a safety system or component that must be addressed within a Safety Analysis Report."²²⁹ The relevant portions of Mr. Gundersen's declaration likewise generically claim that climate change "impact dozens of safety-related systems, structures, and components," but offers no citations to any specific section of the FSAR that is supposedly affected, any NRC requirement that dictates these alleged changes to the facility, or any analysis as to why any of the changes to plant equipment that he believes will be required could not satisfy the criteria of 10 CFR 50.59(c).

Regardless, none of the LARs propose to make any of the alleged climate-change driven changes to plant systems and equipment or their related FSAR sections. Petitioners' speculation that plant equipment may require upgrades in the future does not raise a material dispute with any of the four LARs at issue. Contention 4B is outside the scope of this proceeding, fails to raise a material dispute with the LARs, and, to the extent the argument is considered, is unsupported because Petitioners and their declarant offer no citations to any section of the FSAR that is supposedly affected or any legal authority or technical analyses demonstrating that modifications to plant equipment will be required address the effects of climate change.

²²⁸ Petition at 58.

²²⁹ *Id.* at 58.

c. Contention 4C is Beyond the Scope of this Proceeding and Fails to Raise a Material Dispute with the LARs

Contention 4C also asserts that the restart will require physical modifications and refurbishment to plant equipment, specifically the steam generators. Petitioners allege that Applicants will be required to unplug 600 steam generator tubes and warns that doing so will “cause additional unforeseen troubles.”²³⁰ The Petition does not assert any particular regulatory consequence or claim that refurbishment of the steam generators would be inconsistent with NRC regulations or the Palisades licensing basis.²³¹ Instead, the point of Contention 4C appears to be Petitioners’ and Mr. Gundersen’s belief that, as part of the restart project, Applicants should replace the steam generators instead of repairing them.²³² Petitioners offer no explanation as to why this is relevant to the LARs, because it is not. None of the LARs involve any physical modifications to the steam generators or seek to modify any portion of the power operations licensing basis that governs steam generator tube plugging or repair.²³³ Contention 4C fails to raise a material dispute with the LARs and is beyond the scope of this proceeding.

If Applicants propose to perform any remediation activities that are not authorized by the plant’s licensing basis, Applicants will either need to satisfy the requirements for implementing those changes without a license amendment under 10 CFR 50.59(c) or they will submit a license

²³⁰ Petition at 61–62. Petitioners point to the preliminary inspection notice that explained that “Holtec, the owner of the Palisades Nuclear Plant, commenced steam generator (SG) tube inspections in their two SGs,” and that “preliminary results identified a large number of SG tubes with indications that require further analysis and/or repair. Further data analysis is in progress with additional tube inspections, testing, and repairs to be completed over the next few months.” NRC Region III, Preliminary Notification of Event or Unusual Occurrence (Sept. 18, 2024) (ML24262A092).

²³¹ Mr. Gundersen claims that refurbishment of the steam generator would result in an “unauthorized use of the Decommissioning Trust Fund.” Gundersen Decl. at 46. But Applicants have not proposed to use the decommissioning trust fund to fund any restart activities, and neither Mr. Gundersen nor the Petition offers any explanation as to why this point is relevant to the LARs.

²³² See Gundersen Decl. at 44–45.

²³³ Cf. Tech Spec LAR, Encl. at 55, 78, 84 (proposing to reinstate in their entirety the power operations technical specifications that govern steam generator tube integrity and related inspections).

amendment request for NRC approval. This could be true of any number of other technical issues.²³⁴ That is, in part, the point of the return to service plans and restart inspection process that is ongoing. Because none of the LARs propose any modifications to the relevant sections of the Palisades licensing basis that govern steam generator tube plugging, and because Petitioners offer no technical or legal analysis in support of this contention, Contention 4C is beyond the scope of this proceeding, fails to raise a material dispute with the LARs, and is unsupported.

d. Contention 4D is Out of Scope and Unsupported

Petitioners claim ENOI destroyed the plant's QA records before selling Palisades to Holtec.²³⁵ As support for this claim, Petitioners rely on Mr. Gundersen belief that "NRC and Entergy agreed that once the Palisades Operating License was terminated with the NRC, the Nuclear Regulatory Commission no longer had any regulatory control over safety systems."²³⁶ Neither Petitioners nor Mr. Gundersen supply any factual basis for their claim that ENOI destroyed

²³⁴ While the Petition does not relate Contention 4C back to Petitioners' challenge to Applicants' evaluations under 10 CFR 50.59, it bears noting that NRC has rejected similar arguments to those set forth in the Petition—in connection with a proposed steam generator replacement at Davis Besse. *See FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-13-11, 78 NRC 177, 180 (Aug. 12, 2013). In doing so, the licensing board in that proceeding explained:

[T]he contention plainly challenges FirstEnergy's analysis of its proposed steam generator replacement under 10 C.F.R. § 50.59. Such a challenge is not cognizable in this proceeding. As the Commission has stated, "[a] member of the public may challenge an action taken under 10 C.F.R. § 50.59 only by means of a petition under 10 C.F.R. § 2.206." Such a petition must be submitted to the Executive Director for Operations for consideration by the appropriate office director. Therefore, a challenge to FirstEnergy's analysis under 10 C.F.R. § 50.59 of its proposed steam generator replacement is not the proper subject of an adjudicatory hearing, much less a hearing in a proceeding that concerns only a request to amend FirstEnergy's license to modify four technical specifications. . . . It is those proposed changes to the technical specifications—and not the actual physical replacement of steam generators and associated section 50.59 analysis—that are potentially subject to a hearing before this Board.

Id. (citations and footnotes omitted).

²³⁵ Petition at 63; Gundersen Decl. at 48.

²³⁶ Petition at 63 (quoting Gundersen Decl. at 48).

QA documentation at Palisades, nor do they try to relate that claim to the LARs at issue in this proceeding—simply opining that this “will pose risks that are difficult to quantify.”²³⁷

Mr. Gundersen cites an exemption issued to ENOI in 2021 that exempted Palisades, after shutdown, from certain record retention requirements applicable to operating plants.²³⁸ This exemption was part of the standard suite of regulatory actions ENOI took during the transition to decommissioning, is consistent with exemptions granted to many other plants entering decommissioning,²³⁹ and HDI plans to rescind the exemption as part of the reinstatement of the power operations licensing basis.²⁴⁰ Mr. Gundersen does not offer any evidence that ENOI destroyed Palisades’s QA records prior to the sale of the plant to Holtec. Indeed, the license transfer application accompanying that transaction specifically states that Holtec received all “necessary books, records, safety and maintenance manuals, and engineering construction documents” from Entergy.²⁴¹ Moreover, Mr. Gundersen does not acknowledge or dispute Applicants’ statement in the more recent LTA submitted in connection with the restart that, “HDI has maintained IT infrastructure and records required to comply with NRC recordkeeping requirements that will apply upon reinstatement of the [power operations licensing basis]. OPCO [the proposed transferee] will have full access to all such assets and records following transfer of operational

²³⁷ Petition at 63.

²³⁸ See NRC, Palisades Nuclear Plant – Partial Exemption from Record Retention Requirements (Nov. 23, 2021) (ML21195A367).

²³⁹ E.g., NRC, Zion Nuclear Power Station, Units 1 and 2 – Exemption From Recordkeeping Requirements (July 7, 2011) (ML111260277), NRC, Vermont Yankee Nuclear Power Station – Partial Exemptions from Recordkeeping Requirements of (Dec. 22, 2015) (ML15344A243), NRC, San Onofre Nuclear Generating Station, Units 1, 2, and 3 – Exemption from Recordkeeping Requirements (July 18, 2016) (ML15355A055).

²⁴⁰ Regulatory Path, Encl. 1 at 4.

²⁴¹ ENOI, Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments, Encl. 1, at 14 (Dec. 23, 2020) (ML20358A075).

authority.”²⁴² The LTA is not at issue in this proceeding, nor do bare assertions without any factual basis formulate an admissible contention.

Because Petitioners have offered no factual or evidentiary basis for the claim that Entergy destroyed QA records, and because they have made no attempt to relate this argument to the LARs, Contention 4D is out of scope, fails to raise a material dispute with the LARs, and is unsupported.

5. Contentions 5–7 are Out of Scope and Fail to Raise a Material Dispute with the LARs

Contentions 5 through 7 are all essentially the same claim. They take issue with the environmental documentation Applicants submitted as an enclosure to the Exemption Request and assert that it does not meet the requirements for an environmental report under 10 CFR 51.45 or, in the case of Contention 7, Council on Environmental Quality (“CEQ”) regulations applicable to an EIS.

Contention 5:

There is no purpose and need statement appearing in the document the NRC considers to suffice for Holtec’s Environmental Report. Pursuant to 10 C.F.R. § 51.45, an Environmental Report must contain a statement of the purpose for the project.²⁴³

Contention 6:

There is no presentation of alternatives, nor discussion of the no-action alternative, found in the document the NRC and Holtec claim to suffice as an Environmental Report.²⁴⁴

Contention 7:

The proposed license amendments and supporting documents, including the document that the NRC and Holtec claim to suffice as an Environmental Report, contain no meaningful identification nor discussion of the effects of anthropocene climate change on the functioning and componentry of the plant, nor is there any

²⁴² LTA, Encl. 1 at 20.

²⁴³ Petition at 63–64.

²⁴⁴ *Id.* at 66.

identification or analysis of the effects that restored plant operations would have on anthropocene climate change, the physical environment and public health.²⁴⁵

Each of these contentions is based on Petitioners' underlying claim that Applicants and NRC are required to comply with the NEPA requirements applicable to a new operating license. As explained throughout this Answer, these arguments cannot form the basis for an admissible contention in this proceeding.

a. Applicants Are Not Required to File an Environmental Report under 10 CFR 51.45

The crux of Contentions 5–7 is the same as Contention 2: Petitioners believe Applicants are required to provide environmental documentation as if they were applying for a new operating license. Specifically, Petitioners claim that Applicants did not provide information required by 10 CFR 51.45 to be included in an environmental report. But Section 51.45 only applies, “[a]s required by §§ 51.50, 51.53, 51.54, 51.55, 51.60, 51.61, 51.62, or 51.68.”²⁴⁶ Applicants have not submitted any of the licensing actions set forth in those sections: 10 CFR 51.50 covers construction permits, early site permits, and combined licenses; 10 CFR 51.53 covers operating licenses, license renewals, and license amendments for decommissioning or license termination (as discussed in note 212 above, not all license amendments); 10 CFR 51.54 covers manufacturing licenses; 10 CFR 51.55 covers standard design certifications; 10 CFR 51.60 covers materials licenses; 10 CFR 51.61 covers ISFSI or monitored retrievable storage licenses; 10 CFR 51.62 covers Part 61 disposal facilities; and 10 CFR 51.68 covers petitions for rulemaking. The LARs are not any of these. Petitioners' NEPA contentions are all grounded in their belief that Applicants are required to apply for a new operating license and must therefore comply with the portions of Part 51 that

²⁴⁵ *Id.* at 68.

²⁴⁶ 10 CFR 51.45.

apply to an operating license application. As explained throughout this Answer, that argument is wrong, is beyond the scope of this proceeding, and does not raise a material dispute with the LARs.

NRC already prepared the License Renewal SEIS to address Palisades operations through 2031. The fact that NRC determined to prepare an EA to address its regulatory actions in connection with the proposed resumption of operations during that same period does not retroactively make the LARs deficient or turn them into any of the licensing actions covered by section 51.45. For these circumstances, section 51.**41** (not 51.45) provides the basis for the environmental information required of Applicants. Section 51.41 gives NRC the ability to require Applicants “to submit such information to the Commission as may be useful in aiding the Commission in complying with Section 102(2) of NEPA.”²⁴⁷ In this case, NRC relied on its section 51.41 authority to request additional information from Applicants in support of NRC’s ongoing compilation of information to support staff’s preparation of an EA.²⁴⁸ To be sure, some of the information staff has requested from Applicants aligns with the requirements of section 51.45, which is not surprising because both sections 51.41 and 51.45 are designed to support NRC’s compliance with its NEPA obligations, including the requirements for an EA set forth in Section 51.30 (which apply to NRC, not Applicants).²⁴⁹ Applicants have already responded to one such request under section 51.41, including submitting a purpose and need statement²⁵⁰ (the alleged

²⁴⁷ 10 CFR 51.41.

²⁴⁸ Request for Additional Information Regarding the Proposed Reauthorization of Power Operations of Palisades Nuclear Plant under Renewed Facility Operating License No. DPR-20, Encl. 2 (ML24263A171) (Sept. 20, 2024) (“Given that the NRC staff is preparing an environmental assessment (EA), the regulatory basis for each RAI is the following requirement in Title 10 of the Code of Federal Regulations (10 CFR) Part 51.41 . . .”).

²⁴⁹ 10 CFR 51.30. The Petition mixes references to the requirements for an environmental assessment under 10 CFR 51.30 and the requirements for an environmental report under 10 CFR 51.45. Only the latter applies to licensees, but even that does not apply to the LARs because the LARs are not any of the actions addressed covered by 10 CFR 51.45.

²⁵⁰ 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. 2 (ML24278A027) (Oct. 4, 2024) (“51.41 Response”).

deficiency in Contention 5), further discussion of alternatives²⁵¹ (the alleged deficiency in Contention 6), and additional climate and greenhouse gas emissions data beyond that already analyzed in the License Renewal SEIS²⁵² (the alleged deficiency in Contention 7). But none of this means that the LARs failed to comply with section 51.45,²⁵³ because section 51.45 does not apply to these LARs. The Petition does not acknowledge staff's 51.41 information requests to Applicants or Applicants' responses to those requests. Petitioners' arguments all rest on the same incorrect proposition that the only way to restart Palisades is with a new operating license and another EIS covering operations through 2031. Accordingly, Contentions 5–7 fail to raise a material dispute with the LARs.

b. Challenges to NRC Staff's Forthcoming Environmental Assessment are Beyond the Scope of this Proceeding

Contentions 5–7 vacillate between attacking Applicants' submittals and NRC's EA, which is not scheduled to be completed until June 2025.²⁵⁴ Throughout these contentions, Petitioners do not distinguish between the 10 CFR Part 51 requirements that apply to Applicants with those that apply to NRC.²⁵⁵ Understanding that Petitioners believe an EIS is mandated by 10 CFR 51.20(b) (which requires an EIS for a new operating license), it does not appear that Applicants understand that the EA NRC is currently working on can also result in the agency's decision to prepare an

²⁵¹ *Id.* at Encl. 5.

²⁵² *Id.* at Encl. 11.

²⁵³ *Ocone*, CLI-99-11, 49 NRC at 336 (“NRC’s issuance of RAIs does not alone establish deficiencies in the application, or that the NRC staff will go on to find any of the applicant’s clarifications, justifications, or other responses to be unsatisfactory.”).

²⁵⁴ Petitioners have raised these same concerns in their comments filed in response to the NRC’s Notice of Intent to conduct the scoping process for the EA. *See* Law Office of Terry Lodge, Scoping Comments for Environmental Assessment of Palisades Nuclear Plant (July 29, 2024) (ML24212A020). Petitioners will also have an opportunity to submit comments on the draft EA, once it is published. Notice of Intent, 89 Fed. Reg. at 53,660.

²⁵⁵ *E.g.*, Petition at 64 (“Neither Holtec nor the NRC Staff have produced a purpose and need statement for the Palisades restart”); *id.* at 66–67 (“Identification and discussion of alternatives to the project must appear in an Environmental Assessment for an NRC license. 10 CFR § 51.30(a)(1)(ii and iii).”); *id.* at 70, n.60 (“Petitioners maintain that an Environmental Impact Statement, and not merely an EA, is required.”).

EIS.²⁵⁶ But, regardless of any misunderstanding of NRC’s NEPA regulations, to the extent Contentions 5–7 challenge NRC staff’s ongoing review of the environmental impacts of the agency’s regulatory actions required to return Palisades to operations, those arguments are beyond the scope of matters that may currently be adjudicated in this proceeding on the LARs. “[I]t is the license application, not the NRC Staff review, that is at issue in [NRC] adjudications.”²⁵⁷ The contention-admissibility rules bar these kinds of “anticipatory” contentions that are based on future NRC staff activities or conclusions.²⁵⁸ The only deficiency Petitioners assert with respect to the LARs is the alleged failure to comply with section 10 CFR 51.45. But, on its face, section 51.45 does not apply to the LARs nor do the requirements of 10 CFR 51.30 that govern the NRC’s EA (or the CEQ regulations, which do not govern the NRC’s preparation of an EA, as addressed in the section immediately below). Accordingly, none of the Petitioners’ arguments aimed at NRC staff’s environmental review raise a material dispute with the LARs or present an issue for litigation in this proceeding.

c. Contention 7 Fails to Raise a Material Dispute with the LARs

Even if the Board considers Applicants’ NEPA contentions, Contention 7 makes no attempt to connect its claims with the present proceeding. Petitioners claim that Applicants did not comply with CEQ regulations at 40 CFR 1502.16(a)(6), which states that an EIS should discuss, “[w]here applicable, climate change-related effects, including, where feasible, quantification of greenhouse gas emissions, from the proposed action and alternatives and the effects of climate change on the proposed action and alternatives.” Petitioners do not connect this CEQ regulation governing the

²⁵⁶ 10 CFR 51.31(a). The fact that NRC intends to exercise its discretion under 10 CFR 51.33 to prepare a draft FONSI does not foreclose that outcome. 10 CFR 51.33(a).

²⁵⁷ *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 350 (1998).

²⁵⁸ *See Turkey Point*, CLI-01-17, 54 NRC at 25 (citing *Oconee*, CLI-99-11, 49 NRC at 338).

contents of an EIS to NRC’s completion of an EA for Palisades²⁵⁹—much less why this CEQ regulation requires any further information from Applicants or makes the LARs deficient. Petitioners’ general invocation of CEQ regulations applicable to an EIS does not present a material dispute with the contents of the LARs.

The latest policy direction to NRC staff regarding consideration of climate change in NRC’s NEPA process is set forth the Commission’s order CLI-09-21:

We expect the Staff to include consideration of carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under the National Environmental Policy Act. The Staff’s analysis for reactor applications should encompass emissions from the uranium fuel cycle as well as from construction and operation of the facility to be licensed. The Staff should ensure that these issues are addressed consistently in agency NEPA evaluations and, as appropriate, update Staff guidance documents to address greenhouse gas emissions.²⁶⁰

In recent NRC decisions and guidance, staff has evaluated the effects of greenhouse gas emissions from a facility during the license term, as well as impacts caused by climate change on the facility, using public climate data, bounding emissions assumptions, and meteorological, water temperature, and other data that licensees already collect to inform NRC’s review.²⁶¹

Petitioners cite none of this, and they have identified no requirement applicable to Applicants or the LARs that required Applicants to provide NRC staff with more information than staff already possesses, which includes meteorological and climate data for Palisades,²⁶² emissions

²⁵⁹ CEQ’s role is to oversee NEPA implementation by issuing guidance and regulations implementing NEPA’s procedural requirements. 42 USC 4344. Each federal agency is then responsible for promulgating regulations governing the agency’s procedure for NEPA review. 42 USC 4333. NRC NEPA regulations supplement the CEQ regulations with specific requirements applicable to NRC activities. See 10 CFR 51.1 (“This part contains environmental protection regulations applicable to NRC’s domestic licensing and related regulatory functions.”).

²⁶⁰ *Duke Energy Carolinas, LLC*, (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 931 (2009).

²⁶¹ *See, e.g.*, NRC Final Rule, Renewing Nuclear Power Plant Operating Licenses—Environmental Review, 89 Fed. Reg. 64,166, 64,180–81 (Aug. 6, 2024); NRC, Environmental Assessment and Finding of No Significant Impact for the Kairos Hermes 2 Test Reactors at 3-6 (Oct. 10, 2024) (ML24284A191).

²⁶² License Renewal SEIS at 2-24–2-26; 51.41 Response, Encl. 11.

data from the facility (including greenhouse gasses),²⁶³ a discussion of Palisades's expected impact on greenhouse gas emissions relative to alternative generation sources,²⁶⁴ and an estimate of annual avoided CO2 emissions if Palisades resumes operations.²⁶⁵

In short, Contention 7 is based on a generic reference to CEQ regulations without any attempt to explain how it is relevant to the LARs (or NRC's preparation of an EA). And, even if the Board is inclined to examine how NRC has addressed climate change in its NEPA reviews, such an inquiry reveals no deficiencies in or disputes with the LARs, and thus does not provide a basis for an admissible contention.

d. Contentions 5–7 Ignore Publicly Available Documents

The principal claims presented in each of Contentions 5–7 are directly contradicted by readily-available documents on the NRC docket. Petitioners never acknowledge that NRC has already prepared the License Renewal SEIS to address Palisades operations through 2031 and offer no argument as to why that License Renewal SEIS is insufficient to satisfy NRC's NEPA obligations. The Petition does not refer to any specific section of the License Renewal SEIS or the environmental report that preceded it, the environmental information enclosed with the Exemption Request, NRC's information requests under 10 CFR 51.41, or Applicants' responses those requests. Indeed, while Petitioners' attack is exclusively focused on Applicants' environmental review document enclosed with the Exemption Request, they do not reference any specific portion of that document—merely repeating the generic claim that it does not meet the requirements for an environmental report. When these documents are actually examined, it is readily apparent that

²⁶³ 51.41 Response, Encl. 13 Att. 1.

²⁶⁴ 51.41 Response, Encl. 5 at 1; Nuclear Management Company, Palisades Nuclear Plant Environmental Report – Operating License Renewal Stage at 7-20, 7-24–7-25, 7-29 (Mar. 2005) (ML050940449).

²⁶⁵ 51.41 Response, Encl. 18 Att. 1 at 19.

Petitioners' claims are simply incorrect and just ignore readily-available information on the NRC docket.

"Petitioners have an 'ironclad obligation' to examine the application and publicly available documents to uncover any information that could serve as a foundation for a contention."²⁶⁶ Petitioners cannot satisfy 2.309(f)(1)(vi) by simply ignoring the public record.

Contention 5 claims that "[n]either Holtec nor NRC Staff have produced a purpose and need statement for the Palisades restart."²⁶⁷ But Applicants filed a purpose and need statement in the 51.41 Response prior to the date Petitioners filed their Petition.²⁶⁸ Petitioners do not acknowledge or contest this information.

Contention 6 claims Applicants failed to discuss alternatives, including the "no-action" alternative. But, had Petitioners reviewed the documents filed by Applicants, they would have realized that the environmental review enclosed with the Exemption Request includes a section titled "No-Action Alternative,"²⁶⁹ and Applicants' 51.41 Response discusses other alternatives to the restart.²⁷⁰ Petitioners do not acknowledge or contest this information.

Contention 7 claims Applicants have provided no discussion or data regarding climate change in relation to Palisades. But the NRC staff's License Renewal SEIS includes a climate summary based on 2005 data,²⁷¹ which Applicants have supplemented with more recent meteorological and emissions data (including greenhouse gasses) in the 51.41 Response, along with the explanation that "[m]ore recent data is not expected to vary significantly from the

²⁶⁶ *Turkey Point*, CLI-01-17, 54 NRC at 24–25 (citation omitted).

²⁶⁷ Petition at 65.

²⁶⁸ 51.41 Response, Encl. 2.

²⁶⁹ Exemption Request, Encl. 2 at 22.

²⁷⁰ 51.41 Response, Encl. 5.

²⁷¹ License Renewal SEIS at 2-24–2-26.

historical data” used in the License Renewal SEIS.²⁷² Applicants’ 51.41 Response also includes a discussion of Palisades’s expected impact to greenhouse gas emissions relative to alternative generation sources and an estimate of annual avoided CO2 emissions if Palisades resumes operations.²⁷³ Petitioners do not acknowledge or contest any of this information.

Participants in the NRC adjudicatory process have an obligation to “diligently uncover and apply all publicly available information to the prompt formulation of contentions.”²⁷⁴ Arguments that simply misstate or ignore public information cannot form the basis for an admissible contention. For that reason, too, Contentions 5–7 should be dismissed.

V. The Petition is Untimely

As noted above, Petitioners filed their Petition in the wrong docket and waited until three days after the deadline to correct their mistake and properly serve the Petition.²⁷⁵ Petitioners offer no explanation for this delay, despite the fact that the Commission Secretary promptly pointed out their filing mistake.²⁷⁶ Petitioners also did not update the certificate of service required by 10 CFR 2.305(c)(4), which certifies, incorrectly, that Petitioners’ properly served the Petition on October 7, 2024.²⁷⁷ Under similar circumstances where parties have filed pleadings in the wrong docket, and subsequently made untimely corrective filings in the correct docket, federal courts have held

²⁷² 51.41 Response, Encl. 11, Encl. 13 Att. 1.

²⁷³ 51.41 Response, Encl. 5 at 1, Encl. 18 Att. 1 at 19.

²⁷⁴ *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1048 (1983)

²⁷⁵ NRC Secretary Memorandum, Referral of Petition to Intervene and Request for Hearing (Oct. 16, 2024) (ML24290A145). Petitioners filed in the adjudicatory docket established for the LTA. This is the second time in the past two months that Petitioners have incorrectly filed in the LTA docket. *See* Email from NRC Secretary to Participants in NRC Proceeding Palisades 50-255 &72-007 LT-3 (Sept. 6, 2024) (included in ML24269A016) (removing Petitioners’ September 5, 2024 Petition for Declaratory Order from the LTA adjudicatory docket).

²⁷⁶ Email from NRC Secretary to Participants in NRC Proceeding Palisades 50-255 &72-007 LT-3 (Oct. 8, 2024) (ML24289A194); Email from NRC Secretary to Wallace Taylor (Oct. 8, 2024) (ML24289A193); Follow-up Email from NRC Secretary to Wallace Taylor (Oct. 9, 2024) (ML24289A195); Reply Email from Wallace Taylor to NRC Secretary (Oct. 10, 2024) (ML24289A196).

²⁷⁷ Petition at 76.

that a late corrective filing does not “relate back” to the time of the original wrong one.²⁷⁸ Petitioners failure to promptly file in the proper docket and failed to promptly correct their filing mistake upon notice from the Secretary. The Petition is therefore late, without justification, and should be dismissed on those grounds.

VI. Petitioners Have Not Established Standing

A. Standing Requirements

Because Petitioners have not posed at least one admissible contention, the Board need not address the question of standing to intervene in this proceeding.²⁷⁹ All the same, Petitioners have not established standing to intervene in this proceeding as a matter of right under 10 CFR 2.309(d).²⁸⁰ Under Section 2.309(d)(1), the hearing request must state:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor’s/petitioner’s right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor’s/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 requestor’s/petitioner’s interest.

²⁷⁸ See *Davis v. Nicholson*, 190 F. App’x 951, 951–52 (Fed. Cir. 2006). (“Davis explains that she filed a timely notice of appeal in the wrong court, the United States Court of Appeals for the Eighth Circuit, on February 17, 2005. . . . Davis’s failure to file timely a notice of appeal may not be waived.”) (citing *Oja v. Army*, 405 F.3d 1349, 1358 (Fed. Cir. 2005) (time provisions of Fed. R. App. P. 4(a) are not subject to equitable tolling)).

²⁷⁹ See *Susquehanna*, CLI-15-8, 81 NRC at 503 n.19 (“Because [the petitioner’s] contentions all fall far short of our contention admissibility standards, we need not address his standing to intervene.”). And establishing standing does not constitute proffering a valid contention justifying intervention. *Conn. Coal. Against Millstone v. NRC*, 114 F. App’x 36, 39 (2d Cir. 2004) (“What the Coalition has failed to acknowledge, and failed to remedy in subsequent arguments before the Commission and this Court, is that satisfaction of standing requirements, alone, falls short of meriting intervention.”) (citing *Turkey Point*, CLI-01-17, 54 NRC at 26).

²⁸⁰ Petitioners apparently seek only intervention as of right, making no effort to address the six factors required for discretionary intervention under 10 CFR § 2.309(e). In any event, those factors counsel against discretionary intervention. See *In the Matter of Tenn. Valley Auth.* (Enforcement Action), LBP-21-03, 93 NRC 153, 159 (2021) (“The Commission considers discretionary intervention to be ‘an extraordinary procedure’ and, insofar as we are aware, it has never upheld a request for discretionary intervention in an enforcement proceeding.”).

In evaluating whether a petitioner has established standing, the Commission uses contemporaneous judicial concepts of standing.²⁸¹ Accordingly, the petitioner must demonstrate a “concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision, where the injury is to an interest arguably within the zone of interests protected by the governing statute.”²⁸² “The burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner.”²⁸³

In some cases, such as construction permit and operating license proceedings for power reactors, the Commission employs a “proximity presumption” in which the Commission “presume[s] that a petitioner has standing to intervene if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor.”²⁸⁴ Except in unusual circumstances, the radius of proximity to the plant that has typically been found to be sufficient for standing has been much less than 50 miles.²⁸⁵

An organization may show standing in its own right, based on its organizational purposes (organizational standing), or through representing the interests of its members (representational standing).²⁸⁶ To show organizational standing, the organization “must satisfy the same standing requirements as an individual seeking to intervene.”²⁸⁷ An organization may establish

²⁸¹ *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-15-25, 82 NRC 389, 394 (2015).

²⁸² *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009) (internal quotation marks omitted).

²⁸³ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 194 (1999).

²⁸⁴ *El Paso Elec. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-20-7, 92 NRC 225, 231 (2020).

²⁸⁵ *Consumers Energy Co.* (Big Rock Point ISFSI), CLI-07-21, 65 NRC 519, 522–23 (2007) (explaining that, subsequent to a 1993 decision finding 35-mile proximity to be sufficient in “*unusual circumstances*,” the “longest specific distance for which we have granted proximity-based standing ... is 6-6 1/2 miles”).

²⁸⁶ *FirstEnergy Nuclear Operating Co.* (Beaver Valley Power Station, Units 1 and 2), CLI-20-5, 91 NRC 214, 219-20 (2020).

²⁸⁷ *Id.* at 219.

representational standing by demonstrating, typically via affidavit, that “at least one of its members may be affected by the Commission’s approval of the transfer (such as by the member’s domicile, work, or activities on or near the site),” and that these members have authorized the organization to represent them and to request a hearing on their behalf.²⁸⁸ Further, the “member seeking representation must qualify for standing in his or her own right; the interests that the representative organization seeks to protect must be germane to its purpose; and neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal action.”²⁸⁹

B. Petitioners Have Not Demonstrated Standing

Each of the Petitioners seek representational standing by petitioning on behalf of one or more of their members, “all of whom herewith have submitted declarations.”²⁹⁰ Petitioners argue for proximity-based standing for the members who have submitted declarations, asserting that the 50-mile proximity presumption should apply because “restoration of Palisades to power generation is analogous to licensing a new nuclear power plant.”²⁹¹ However, as discussed below, the Petition’s arguments for standing are unavailing because they relate to the Exemption Request rather than the LARs, and further fail to explain how the Petitioners’ alleged harms are fairly traceable to granting of the LARs.

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

²⁸⁸ *Id.* at 220–21.

²⁸⁹ *Id.* at 220.

²⁹⁰ Petition at 23–24; *see also id.* at 16–17 (“TMIA herewith provides its declaration and agrees to represent one of its members, David Staiger, in this proceeding. Mr. Staiger has designated TMIA to intervene to protect his interests . . .”); *id.* at 19 (“NEIS herewith provides its declaration and agrees to represent one of its members, John Brenneman, in this proceeding.”).

²⁹¹ *Id.* at 24.

or order that may be issued *in the proceeding* on the requestor's/petitioner's interest."²⁹² This proceeding concerns the LARs, but beyond generalized statements of opposition to the LARs by TMIA and NEIS,²⁹³ Petitioners' standing arguments make no mention of them.²⁹⁴ Instead, the Petition's standing arguments repeatedly address the Exemption Request:

- “[William D. Reed]²⁹⁵ opposes the granting of an exemption by the NRC to Holtec Decommissioning International LLC and Holtec Palisades LLC...” because of several listed concerns.
- “[Caroline Ferry] opposes the granting of an exemption by the NRC to Holtec Decommissioning International LLC and Holtec Palisades LLC...” because of several listed concerns.
- “[James Scott] opposes granting an exemption by the NRC to Holtec Decommissioning International LLC and Holtec Palisades LLC...” because of several listed concerns.
- “[Ann Scott] opposes the granting of an exemption by the NRC to Holtec Decommissioning International LLC and Holtec Palisades LLC...” because of several listed concerns.
- “[Alice Hirt] opposes the granting of an exemption by the NRC to Holtec Decommissioning International LLC and Holtec Palisades LLC...” because of several listed concerns.
- “[Joseph Kirk] opposes the granting of an exemption by the NRC to Holtec Decommissioning International LLC and Holtec Palisades LLC...” because of several listed concerns.
- “As each of the member declarants explains, they will suffer (or will be under threat of suffering) concrete and particularized injuries from the restored operations of Palisades if the exemption sought by Holtec is granted. If the exemption is denied, the potential threats or actual harms from Palisades will not occur.”²⁹⁶

²⁹² 10 CFR 2.309(d)(1)(iii)-(iv) (emphases added).

²⁹³ Petition at 16–17, 19–20.

²⁹⁴ *Id.* at 4–25 (the standing arguments appear under the headers “Petitioning Parties and the Basis for Legal Standing” and “Legal Basis for Standing”).

²⁹⁵ The Petition itself refers to “W. Dillon Reed,” Petition at 2, but the signed, individual member declaration refers to “William D. Reed.” Applicants are using “William D. Reed” for consistency and in deference to the individual’s apparent preference.

²⁹⁶ Petition at 5, 7, 9, 11, 13, 14.

As discussed more fully herein, the Atomic Energy Act affords no right to a hearing on an exemption request. And, because the above standing arguments never articulate the Petitioners' interest in the LARs or how their approval would affect Petitioners' interests, the Petition's standing arguments do not satisfy 10 CFR 2.309(d)(1)(iii)–(iv). As the Petition itself summarizes it, “[a]s each of the member declarants explains, they will suffer (or will be under threat of suffering) concrete and particularized injuries from the restored operations of Palisades *if the exemption sought by Holtec is granted*.”²⁹⁷ For much the same reasons, Petitioners' standing arguments do not demonstrate a “concrete and particularized injury that is *fairly traceable to the challenged action and is likely to be redressed by a favorable decision*[.]”²⁹⁸

Furthermore, the LARs alone are necessary—but insufficient in and of themselves—preconditions to restarting Palisades, meaning the alleged injuries connected with the general operations of Palisades aren't redressable by a decision in this proceeding. Tellingly, the declarations from Petitioners' individual members occasionally reference the LARs, and the Petition itself even states generally that David Staiger, and John Brenneman oppose the LARs.²⁹⁹ But the Petition stops short of explaining how Petitioners' alleged harms are traceable to granting of the LARs, or how the declarations included with the Petition provide a basis for standing.³⁰⁰ That's insufficient for standing purposes. For example, the Commission concluded in one proceeding that the petitioner did not establish standing because it “does not address standing in its Petition”; in its assessment of standing, the Commission did not consider a member declaration

²⁹⁷ Petition at 17 (emphasis added).

²⁹⁸ *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 (internal quotation marks omitted).

²⁹⁹ Petition at 16–17, 19–20.

³⁰⁰ *See Beaver Valley*, CLI-20-5, 91 NRC at 223 n.45 (stating that the petitioner had an “affirmative obligation to explain how the information in its supporting documents provides a basis for its claim to organizational standing”).

submitted with the Petition.³⁰¹ The Applicants and Commission should not be tasked with inferring standing arguments on behalf of the Petitioner; the Petition should be considered as it was pled.³⁰² Accordingly, the Petitioners have failed to demonstrate standing.

VII. Conclusion

For the reasons more fully stated above, the Petition must be dismissed as the Petition is untimely, Petitioners have failed to proffer an admissible contention, and Petitioners have failed to demonstrate that their members have standing.

³⁰¹ *Vogtle*, CLI-20-6, 91 NRC at 228 n.15, 238 (emphasis added). The member's declaration in *Vogtle* provided the member's name and address, affirmed she was a member of the petitioning organization, stated her safety concerns, and authorized the petitioner to represent her and protect her interests in the proceeding. Declaration of Susan Bloomfield (ML20111C451) (Apr. 10, 2020).

³⁰² *See Zion*, CLI-99-4, 49 NRC at 194 (internal quotation marks omitted) ("We do not expect our adjudicatory Boards, unaided by the parties, to sift through the parties' pleadings to uncover and resolve arguments not advanced by litigants themselves. The burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner. It should not be necessary to speculate about what a pleading is supposed to mean.").

Respectfully submitted,

Signed (Electronically) by Alan D. Lovett

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

Executed in Accord with 10 CFR 2.304(d)

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

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*

**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))	
)	

CERTIFICATE OF SERVICE

Pursuant to 10 CFR 2.305, I certify that, on this date, a copy of the foregoing “Applicants’ Answer Opposing Beyond Nuclear et al.’s Petition for Hearing” was served through the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned docket.

Signed (Electronically) by Alan D. Lovett

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

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

[certificate of service]