

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Atomic Safety and Licensing Board**

In the Matter of)
)
HOLTEC DECOMMISSIONING) Docket No. 50-255-ER
INTERNATIONAL, LLC, AND HOLTEC)
PALISADES, LLC) February 19, 2025
)
(Palisades Nuclear Plant October 7, 2024)
Request for Exemption and License)
Amendments))

**PETITIONING ORGANIZATIONS' BRIEF ON EFFECTS OF ENVIRONMENTAL
ASSESSMENT/FINDING OF NO SIGNIFICANT IMPACT FOR PALISADES NUCLEAR
POWER PLANT**

Now come Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (hereinafter "Petitioning Organizations"), by and through counsel, and set forth their response to the request ordered by the Atomic Safety and Licensing Board (ASLB) in its Order dated February 3, 2025 for the parties to brief the effects of the NRC Staff's issuance of an Environmental Assessment/Finding of No Significant Impact on certain of Petitioning Organizations' proposed contentions.

I. Background

On February 3, 2025, the ASLB found and ordered as follows:

On January 31, 2025, the NRC Staff notified the Licensing Board and the participants in this proceeding that the Staff has issued a draft Environmental Assessment (EA) and a draft Finding of No Significant Impact (FONSI). The Staff asserts that the draft EA and draft FONSI relate to Petitioning Organizations' proposed environmental contentions. We therefore request written briefing on the impact of these documents, if any, on the proposed contentions currently pending before the Board. Participants also should be prepared to discuss the potential impact of these documents during the February 12, 2025 prehearing conference.

Initial briefs are due February 19, 2025, and responses are due February 26, 2025.

Memorandum and Order (Scheduling Briefing Concerning the Draft Environmental Assessment and Draft Finding of No Significant Impact) (February 3, 2025).

This is the Petitioning Organizations' initial brief.

The applicant, Holtec International, has submitted no environmental report as required by 10 C.F.R. § 51.53 for an amendment of an operating license. Instead, the NRC Staff is treating Holtec's September 28, 2023, "Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82", specifically its Enclosure 2, the oddly-titled "Environmental New and Significant Review Proposed Resumption of Power Operations Palisades Nuclear Plant," as Holtec's Environmental Report. The Petitioning Organizations objected in their original Petition for Leave to Intervene that Enclosure 2 does not comply with the requirements for an Environmental Report and should not be substituted for an ER.¹ Having preserved their objection, the Petitioning Organizations proceeded to file NEPA-based contentions in their Petition to Intervene. On January 31, 2025, 12 days before the February 12, 2025 prehearing conference, the NRC Staff published its Environmental Assessment/Finding of No Significant Impact (EA/FONSI) and has insisted ever since that Petitioning Organizations' Contentions 2, 5, 6, and 7 should be wholly or partially dismissed for mootness. But neither the Staff nor Holtec have moved for summary disposition on mootness.

As of the date of filing of this Brief, the Petitioning Organizations have not been accorded legal standing.

On February 10, 2025, two days before the prehearing conference, the SLB approved a stipulation by Holtec Palisades LLC and Holtec Decommissioning International LLC (Holtec); the NRC Staff; and the Petitioning Organizations whereby Petitioning Organizations have been

¹ 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, p. 43 (October 7, 2024).

assigned a deadline of March 3, 2025 to move to amend existing NEP contentions and/or to file new ones based on the EIS, with Holtec and the Staff having until March 28, 2025 to answer, and the Petitioning Organizations granted until April 4, 2025 to reply. Memorandum and Order (Adopting Proposed Schedule for New and Amended Contentions) (February 10, 2025).

II. Effect of EIS/FONSI Publication On Petitioning Organizations' Contentions

The Petitioning Organizations maintain that publication of the EIS assuages the omissions they alleged in their Contentions 5 and 6, and the omission of discussion of climate change effects claimed in Contention 7. They deny any effect on Contention 2 as to mootness resulting from publication of the EIS/FONSI. Petitioner Organizations further assert that the Environmental Assessment contains new facts and information warranting amendments of all four contentions and consequently they timely arranged a deadline for amending contentions, namely, the February 10, 2025 stipulation setting March 3, 2025 as the deadline to amend and/or file new contentions based on the EIS. The stipulation actualizes the Joint Petitioners' right, expressed at 10 C.F.R. § 2.309(f)(2), that "Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (*e.g.*, based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in paragraph (c) of this section."

Despite these arrangements and Petitioning Organizations' repeated intentions of amending current or filing new NEP contentions, the NRC Staff continues to press for immediate dismissal of the existing contentions, which the Petitioning Organizations oppose. The Staff claims that two NRC adjudicatory decisions mentioned in their Notice of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact (Jan. 31, 2025) warrant dismissals for mootness *instanter*. Those citations are inapposite.

In *USEC, Inc. (American Centrifuge Plant)*, 63 NRC 433 (2006), Geoffrey Sea filed a petition to intervene in a licensing case in August 2005, alleging with respect to the National Historic Preservation Act that “The USEC-DOE collaborative arrangement is out of compliance with the National Historic Preservation Act and related legislation.”² The applicant and NRC Staff there urged that the issue was beyond the scope of the proceeding, premature, not supported by material facts or expert opinion, and did not raise a genuine dispute with regard to the license application.³ At the time of the prehearing conference on contention admissibility in October 2005, the NRC Staff had not yet published a NEPA document on the underlying license application. The Licensing Board denied admission of Sea’s contention for hearing because “ At this time, however [October 7, 2005], this contention is not supported by any material fact or expert opinion and does not raise a genuine dispute with regard to USEC’s License. Accordingly, Sea Contention # 2.1 is not admitted.”⁴ The SLB assured Mr. Sea, however, that “[t]he NRC is required to complete the NHP process of consideration and consultation prior to the issuance of any license,” that “[o]nce the NRC completes the DEIS, potential intervenors will have a basis to evaluate whether historic and cultural resources have been adequately considered” and that “if an interested person concludes that the NRC has failed to meet its obligations, he may have a basis to submit a late-filed contention.”⁵

Although advised by the SLB of his right to file a new or amended contention on NHP noncompliance once the Draft EIS was published, Sea never cured Contention 2.1.⁶ He appealed the SLB’s dismissal of the contention to the full Commission, only to have the post-prehearing publication of the DEIS and his failure to seek amendment of the contention mentioned by the

² *USEC, Inc. (American Centrifuge Plant)*, 62 NRC 585, 626 (2005).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 627.

⁶ *USEC, Inc. (American Centrifuge Plant)*, 63 NRC 433, 444 (2006).

NRC Staff in its brief on appeal. Although Sea complained in response that he had not had an opportunity to review the DEIS, the Commission ruled that “where a contention based on an applicant's environmental report is ‘superseded by the subsequent issuance of licensing-related documents’ — whether an environmental impact statement or an applicant's response to a request for additional information — the contention must be ‘disposed of or modified.’”⁷ The Commission stated that resolution of the mooted contention can occur either by a finding by the SLB’s presiding officer, or via summary disposition.⁸ Since neither disposal nor modification had occurred, the Commission held Sea’s inaction to be an additional ground to reject his appeal.

In the instant matter, by contrast, the Petitioning Organizations expeditiously arranged to prospectively modify their contention pleadings, and SLB’s presiding officer foreclosed the Staff’s allegations of mootness – allegations that the Staff still has not reduced to a written motion – by approving the stipulation allowing leave for amendment or new contention filing.

The NRC Staff also alleges the pertinence of *Pacific Gas and Electric* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 83 NRC 524 (2016). There, intervenor Mothers for Peace intervened in 2009 in a twenty-year license extension proceeding, contending that the severe accident mitigation analysis (S M) failed to include and consider a geological feature called the Shoreline Fault, located very near the Diablo Canyon reactors. Over the ensuing 6 years, Pacific Gas and Electric repeatedly delayed the proceedings to complete parts of its application, such as a four-year pause to complete seismic studies required by the State of California.⁹ Finally in 2015, PG&E provided the hitherto omitted S M information and moved for summary disposition, despite not having yet published a Draft EIS. The Commission noted that “little remained for Mothers for Peace to do in response to the motion for summary disposition, aside

⁷ *Id.*

⁸ *Id.* at 445.

⁹ *Pacific Gas & Electric*, 83 NRC 539.

from filing a new or amended contention that challenged the adequacy of PG&E's S M analysis revisions...."¹⁰ Had PG&E not moved for summary disposition, the Commission said, the SLB possessed the discretion to order briefing on mootness in order to prohibit the transformation of a contention of omission "into a broad series of disparate new claims,' which 'effectively would circumvent NRC contention-pleading standards.'"¹¹

To summarize, in *USEC*, an intervenor with legal standing was advised by the SLB in its ruling following the prehearing conference that he prospectively might amend or file new contentions once the Staff published a Draft EIS. But that intervenor did not seek to amend or file a new contention, and that choice haunted him on appeal with the Staff suggesting that he had abandoned the contention. And in *Pacific Gas & Electric*, after the applicant had provided previously omitted information, the intervenor was left with no further means of challenging the substance of the S M , prompting the Commission to observe that absent PG&E's summary disposition motion, the SLB might have sought, *sua sponte*, briefing on the question of mootness. That observation is *dicta*. What the Commission stated in *PG&E* was that the SLB should take up the question of mootness only if the parties did not address it first.

In the instant matter, the parties have addressed the looming question of mootness, which should obviate any further Board involvement for the time being. The E /FONSI was published 12 days before the contention prehearing conference. The Petitioning Organizations, anticipating that they must now modify their contentions in order to continue to litigate them, timely communicated with the other parties and entered into a stipulation which still has more than a week to run as of this filing. In response to the SLB's request for briefing from the parties on the effects of the E /FONSI on the pending new or amended NEP -related contentions, then, the

¹⁰ *Id.*

¹¹ *Id.*

Petitioning Organizations say that they are potentially moot but have arranged to modify and prospectively litigate them further. That is where this supposed controversy should end; the matter of mootness has been routinely addressed on a standard, interim basis.

III. Legal argument

NRC regulations accord a right to the Joint Petitioners, at 10 C.F.R. § 2.309(f)(2), that “Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (*e.g.*, based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in paragraph (c) of this section.”

The NRC’s own internal SLB and Commission rulings call for giving every benefit of the doubt to prospective intervenors to avoid dismissal of their petitions because of inarticulate draftsmanship or procedural or pleading defects. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-8, 39 NRC 116 (1994). As such, petitioners will usually be permitted to amend petitions containing curable defects. *Virginia Electric & Power Co.* (North Anna Power Station, Units 1 & 2), LBP-73-146, 6 NRC 631 (1973). See *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-1, 33 NRC 15, 40 (1991); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 195 (1991); *Sequoyah Fuels Corp. & Generators* (Gore, Oklahoma Site), LBP-94-19, 40 NRC 9, 15 (1994).

But there are no pleading defects or inaccuracies here. The Petitioning Organizations clearly identified omissions. An EIS has been published which assuages concerns of raw material omission but simultaneously provides additional information that the Petitioners are analyzing to determine whether amendments or new contentions are appropriate.

WHEREFORE, the Petitioning Organizations pray the Atomic Safety and Licensing Board administratively notice the February 10, 2025 Order that addresses the tentative mootness of some or all of their Contentions 5, 6 and 7. Further, these Petitioners urge that the Board forbear from taking any further action respecting such alleged mootness of any of their Contentions pending Petitioning Organizations filing further pleadings pursuant to said Order.

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CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305, I hereby certify that a copy of the foregoing "PETITIONING ORGANIZATIONS' BRIEF ON EFFECTS OF ENVIRONMENTAL ASSESSMENT/FINDING OF NO SIGNIFICANT IMPACT UPON PUBLIC SUPPLY NUCLEAR POWER PLANT" was served upon the Electronic Information Exchange (NRC Filing System) in the captioned proceeding this 19th day of February, 2025 and that according to the protocols of the EIE they were served upon all parties registered with the system.

Respectfully submitted,

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