

**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 26, 2025
)	
(Palisades Nuclear Plant October 7, 2024)	
Request for Exemption and License)	
amendments))	

**PETITIONING ORGANIZATIONS' RESPONSE 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 reply brief as ordered by the Atomic Safety and Licensing Board (ASLB) in its Order dated February 3, 2025. The Board directed 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 by February 19, 2025, and to reply by February 26, 2025.

I. Background

Predictably, the arguments raised by Holtec International and the NRC Staff offer nothing new to the lengthy litigation over this minor and preliminary matter, but simply repeat, yet again, that Contentions 5, 6 and 7 are moot and should be dismissed.

By contrast, the Petitioning Organizations have:

- 1) exposed the shaky legal basis for the Staff’s publication of an Environmental assessment instead of an Environmental Impact Statement via the transmutation of Holtec’s “Environmental New and Significant Review Proposed Resumption of Power Operations Palisades Nuclear Plant,” into an “Environmental Report” notwithstanding its demonstrable noncompliance with 10 C.F.R. § 51.53;
- 2) Undermined the dubious precedential value of the cases cited by the NRC Staff to support the notion of *sua sponte* dismissal of Contentions 5, 6 and 7; and
- 3) Reminded the Board of mootness of Holtec’s and the Staff’s rhetoric for dismissal in light of the Memorandum and Order (Adopting Proposed Schedule for New and Amended Contentions) (February 10, 2025), confirming stipulated deadlines for motions for amendment of existing contentions and actualizing Joint Petitioners’ right in 10 C.F.R. § 2.309(f)(2) to “file new or amended environmental contentions . . . (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.”

II. Sudden Demise of CEQ Implementing Regulations Erodes Basis for Use of E

But there’s more news, and it may have implications for the claimed mootness of Petitioning Organizations’ Contention 2 (EIS, not EIS, required), and Contention 6 (no alternative discussion). After the February 19, 2025 briefs were filed, the Council on Environmental Quality issued an “interim final rule”¹ repealing the core, 1978, NEP implementing regulations which provided bellwether interpretive guidance and legal backing in hundreds of lawsuits over the

<https://www.federalregister.gov/documents/2025/02/25/2025-03014/removal-of-national-environmental-policy-act-implementing-regulations> , 90 FR 10610 (February 25, 2025).

reach of NEP obligations in regulatory decision making. CEQ states that it has no authority to issue binding rules absent the now-rescinded Executive Order 11191. CEQ cited E.O. 11991 as authority in 1978 when it first issued its NEP regulations, but its rescission has become legal authority to revoke the implementing regulations.

There is an additional reason for the deletion of the 1978 regulations. Two court decisions since November have held that the CEQ may never have had rulemaking authority.²

Stripped of its implementing regulations, Section 102 of NEP dictates that proposals for major Federal actions significantly affecting the quality of the human environment must be accompanied by a “detailed statement” – an Environmental Impact Statement – which addresses the environmental impact of the proposed action; any adverse effects that cannot be avoided; alternatives to the proposed action; the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and any irreversible and irretrievable commitments of resources that would be involved in the proposed action. 42 U.S.C. § 4332(2)(C). There is no provision for an Environmental assessment in the original NEP statute. Although the 2023 amendment mentions “environmental assessment” as an alternative NEP document for compilation in some circumstances, the NEP statute does not recognize environmental assessments nor define them. Hence either an “environmental assessment” must be a “detailed statement” mandated by 42 U.S.C. § 4332(2)(C), or it is a legal nullity. This comprises another obstacle to use of an EIS instead of an EIS to discharge the responsibility for preparing an environmental document to accompany NRC’s deliberations over whether to allow the restart of Palisades Nuclear Plant.

² *Marin Audubon Society v. Federal Aviation Administration*, 121 F.4th 902 (D.C. Cir. 2024), *reh’g en banc denied*, 2025 WL 374897 (Jan. 31, 2025); *State of Iowa v. Council on Env’t Quality*, No 1:24cv00089 (D.N.D. Feb. 3, 2025), ECF No.145.

WHEREFORE, the Petitioning Organizations pray the Atomic Safety and Licensing Board eschew dismissal of their Contentions 5, 6 and 7 for mootness and allow Petitioning Organizations to proceed under the stipulation allowing contention amendment.

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CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305, I hereby certify that a copy of the foregoing "PETITIONING ORGANIZATIONS' REPLY BRIEF ON EFFECTS OF ENVIRONMENTAL ASSESSMENT/FINDING OF NO SIGNIFICANT IMPACT UPON PUBLIC INTERESTS IN NUCLEAR POWER PLANT" was served upon the Electronic Information Exchange (NRC Filing System) in the captioned proceeding this 26th 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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