

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Emily I. Krause, Chair
Dr. Gary S. Arnold
Dr. Arielle J. Miller

In the Matter of

HOLTEC DECOMMISSIONING
INTERNATIONAL, LLC, AND HOLTEC
PALISADES, LLC

(Palisades Nuclear Plant)

Docket No. 50-255-LA-3

ASLBP No. 24-986-01-LA-BD01

June 20, 2025

MEMORANDUM AND ORDER

(Ruling on Motion for Leave to File New and Amended Contentions)

This proceeding concerns four license amendment requests filed by Holtec Decommissioning International, LLC, on behalf of Holtec Palisades, LLC (collectively, Applicants), in view of potentially restarting power operations at Palisades Nuclear Plant. Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (collectively, Petitioning Organizations) have filed a motion with five proposed new and amended contentions challenging the NRC Staff's Draft Environmental Assessment (Draft EA) and Draft Finding of No Significant Impact (Draft FONSI) for the restart project.¹ For the reasons set forth below, we deny Petitioning Organizations' motion and terminate the proceeding.

¹ Petitioning Organizations' Motion to File Amended and New Contentions (Mar. 3, 2025) (Motion); Petitioning Organizations' Amended and New Contentions Based on Draft

I. BACKGROUND

Earlier this year, in LBP-25-4, we addressed Petitioning Organizations' petition to intervene in this license amendment proceeding.² We denied the petition because we concluded that although Petitioning Organizations had established standing to intervene, their seven initially proffered contentions did not meet the Commission's strict standards for admissibility.³ We did not terminate the proceeding at that time, however, because Petitioning Organizations' proposed new and amended contentions were pending before us.

Petitioning Organizations filed their proposed new and amended contentions on March 3, 2025, thirty days after the Staff issued the Draft EA and Draft FONSI, consistent with the deadline in our order approving the participants' joint proposed schedule for new and amended contentions.⁴ The Staff and Applicants oppose the admission of the new and amended

Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant (Mar. 3, 2025) (New and Amended Contentions).

² LBP-25-4, 101 NRC __, __ (Mar. 31, 2025) (slip op. at 2, 64) (appeal pending). Our decision in LBP-25-4 provides a more detailed background on Applicants' restart project and the four license amendment requests at issue in this proceeding; therefore, we do not repeat it here. Id. at __ (slip op. at 3–12).

³ In that decision, we also denied a petition to intervene filed by nine individual petitioners (collectively, Joint Petitioners), who, although they had established standing, had not proffered an admissible contention. Id. at __ (slip op. at 2, 64).

⁴ See Notification of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact (Jan. 31, 2025) at 2; Licensing Board Order (Adopting Proposed Schedule for New and Amended Contentions) (Feb. 10, 2025) at 2 (unpublished); "Draft Environmental Assessment and Draft Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project" (Draft for Comment) (Jan. 2025) (ADAMS Accession No. ML24353A157) (Draft EA). The Staff issued the Final Environmental Assessment and Final Finding of No Significant Impact on May 30, 2025. See Notification (May 30, 2025) at 1; "Environmental Assessment and Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project" (May 2025) (ML25111A031) (Final EA). We reviewed the Final EA and found no material differences between the Final and Draft EA with regard to Petitioning Organizations' proposed contentions. Consistent with the participants' pleadings, however, we refer to the Draft EA in our analysis of the proposed contentions, rather than the Final EA.

contentions on timeliness and admissibility grounds.⁵ We held a prehearing conference on May 15, 2025, to provide an opportunity for Petitioning Organizations, the Staff, and Applicants to address our questions on their written filings.⁶

II. ANALYSIS

A. Legal Standards for New and Amended Contentions

As we explained in LBP-25-4, contentions must meet a multi-factor test to be admitted for hearing.⁷ For each of their proposed contentions, Petitioning Organizations must provide a specific statement of the issue of law or fact they seek to raise and a brief explanation of the contention's basis.⁸ Petitioning Organizations also must demonstrate that the issues raised are within the scope of the proceeding and material to the findings the NRC must make to support the underlying licensing action.⁹ Adjudicatory proceedings are not a forum for challenges to agency policies or regulations.¹⁰

Petitioning Organizations' claims also must be supported with "a concise statement of . . . alleged facts or expert opinions" with references to specific sources and documents.¹¹

⁵ NRC Staff Answer to Petitioning Organizations' Motion to File Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact in the Palisades Restart Amendment Proceeding (Mar. 28, 2025) at 2 (Staff Answer); Applicants' Answer Opposing Beyond Nuclear et al.'s New and Amended Contentions (Mar. 28, 2025) at 1–2 (Applicants Answer). Petitioning Organizations replied in support of their motion on April 4, 2025. Petitioning Organizations' Reply in Support of Amended and New Contentions (Apr. 4, 2025) (Reply).

⁶ Tr. at 95–168.

⁷ LBP-25-4, 101 NRC at __ (slip op. at 23–24).

⁸ 10 C.F.R. § 2.309(f)(1)(i)–(ii).

⁹ Id. § 2.309(f)(1)(iii)–(iv).

¹⁰ See id. § 2.335(a); Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20–21 & n.33 (1974).

¹¹ 10 C.F.R. § 2.309(f)(1)(v).

Conclusory statements and speculation are not enough:¹² Petitioning Organizations must identify specific portions of the application in dispute or information that should have been included as a matter of law, with factual support sufficient to show that a “genuine dispute exists with the applicant . . . on a material issue of law or fact.”¹³ With regard to contentions challenging the agency’s compliance with the National Environmental Policy Act of 1969, as amended (NEPA), Petitioning Organizations must demonstrate that the agency’s NEPA analysis fails to include required information or that the analysis is otherwise unreasonable.¹⁴

Petitioning Organizations also must meet the agency’s timeliness requirements—i.e., establish “good cause”—because their new and amended contentions were filed after the initial hearing petition deadline.¹⁵ Petitioning Organizations must demonstrate that the information that forms the basis for their contentions was not previously available and is materially different from information previously available.¹⁶ Additionally, Petitioning Organizations must show that

¹² GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000).

¹³ 10 C.F.R. § 2.309(f)(1)(vi).

¹⁴ See NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012) (“[T]he proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA.”); see also Seven Cty. Infrastructure Coal. v. Eagle County, No. 23-975, 605 U.S. ___, slip op. at 12 (2025) (“As the Court has emphasized on several occasions, and we doubly underscore again today, ‘inherent in NEPA . . . is a “rule of reason,” which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.’” (quoting U.S. Dep’t of Transp. v. Pub. Citizen, 541 U.S. 752, 767 (2004))).

¹⁵ 10 C.F.R. § 2.309(c)(1), (4).

¹⁶ Id. § 2.309(c)(1)(i)–(ii).

their contentions were “submitted in a timely fashion based on the availability of the . . . information.”¹⁷

B. Petitioning Organizations’ New and Amended Contentions

Applicants assert that all five of Petitioning Organizations’ new and amended contentions—Amended Contentions 2, 4, 5, 6, and New Contention 8—should be dismissed for failure to meet the agency’s timeliness requirements.¹⁸ The Staff asserts that Amended Contentions 2, 4, 5, and 6 should be dismissed on timeliness grounds, but the Staff does not object to the timeliness of New Contention 8.¹⁹ The Staff and Applicants both argue, however, that all five new and amended contentions should be dismissed for failure to satisfy the admissibility requirements.²⁰ We need not decide whether Petitioning Organizations’ new and amended contentions were timely submitted because we conclude, as discussed below, that the contentions do not satisfy the agency’s admissibility requirements.²¹

¹⁷ Id. § 2.309(c)(1)(iii). Because we already determined that Petitioning Organizations established standing, we need not address it here. LBP-25-4, 101 NRC at ___ (slip op. at 23); 10 C.F.R. § 2.309(c)(4).

¹⁸ See Applicants Answer at 1, 71–72.

¹⁹ See Staff Answer at 2, 60.

²⁰ See id. at 2; Applicants Answer at 1.

²¹ Petitioning Organizations argue that the Draft EA was the first time the information underpinning their new and amended contentions became available. See Motion at 10–12. The Staff and Applicants assert that Petitioning Organizations’ claims could have been made earlier, before the issuance of the Draft EA. For example, the Staff and Applicants argue that Applicants’ response to a request for additional information (RAI) that was made publicly available on October 14, 2024, should be considered the trigger point for portions of Amended Contentions 2, 5, and 6, and that these arguments are now impermissibly late. Staff Answer at 12, 15, 22, 46, 54; Applicants Answer at 28–29, 49, 61. Although we need not address the timeliness issue, we nevertheless observe that the Commission’s rules provide that new or amended environmental contentions may be filed in response to “a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents,” 10 C.F.R. § 2.309(f)(2), and the Draft EA is one of the options on this list. We also acknowledge that the good-cause standard in 10 C.F.R. § 2.309(c) that Petitioning Organizations must meet is tied to the availability of the information on which the new and amended contentions are based. See 10 C.F.R. § 2.309(c)(1); Pacific Gas and Electric Co.

1. Amended Contention 2: The decision to prepare an [EA and FONSI] is not supported by the facts and is arbitrary, capricious, unreasonable, and an abuse of discretion. An Environmental Impact Statement (EIS) is required. The NRC admits in the EA that the proposal to restart Palisades is a major licensing action. There are significant environmental impacts, such as the impacts of climate change, earthquake hazards, and the production of hundreds of tons of radioactive waste. Significant technical and structural repairs and replacements to the Palisades reactor complex will be necessary before Palisades could restart. Significant new physical facilities will be constructed as part of the restart. The restart is analogous in many respects to a subsequent license renewal, for which an EIS is required. The attempt to return a nuclear reactor to operational status from decommissioning status is an unprecedented action at least as significant, and clearly more so, than a license renewal.²²

Like their original Contention 2, Petitioning Organizations argue in their amended contention that Applicants must obtain a new operating license to restart Palisades, and thus

(Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 686 (2012). But in the circumstances presented here, we question the application of a standard that would start the clock for new and amended environmental contentions from the date of an RAI response (or other correspondence), rather than the issuance of the Draft EA. Although the NRC's intervention requirements "demand a level of discipline and preparedness on the part of petitioners," Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428 (2003), that expectation, in our view, presupposes a process that follows the ordinary course. Here, RAIs were necessary to supplement information missing from a document that was not submitted as an environmental report, but rather as support for a categorical exclusion from the agency's NEPA review. In our view, requiring Petitioning Organizations to update their proposed contentions while the Staff obtained information that in other proceedings would have been included in an environmental report in the first instance strikes us as akin to moving the goal posts and as neither fair nor efficient. Moreover, because Applicants' restart request is divided across different licensing actions and thus different proceedings (per Commission policy to use the existing regulatory framework), this case presents the unusual circumstance where the scope of the Staff's environmental review is not coextensive with the scope of the proceeding. The Draft EA covers additional, and future, licensing actions, not only the four license amendments at issue here. See Draft EA at 1-3 (describing the "proposed actions" as the "decisions on whether to grant or deny [Applicants'] interdependent, connected licensing and regulatory requests[,] . . . including any revisions or supplements thereto or other regulatory or licensing requests submitted to the NRC that are necessary to reauthorize power operations of Palisades . . ."). In other words, there is no one adjudicatory proceeding where environmental contentions might be raised challenging the Staff's review of the Palisades restart project. In this context, we question the practicality and fairness of imposing such a narrow window on the timing of the environmental contentions filed in this proceeding.

²² New and Amended Contentions at 1.

the Staff must prepare an EIS, rather than an EA.²³ They also argue that the restart of Palisades is a “major” federal action given the public funding involved.²⁴ And they assert that “[a] review of the [Draft] EA and [Draft] FONSI clearly shows that there are significant environmental impacts that require the preparation of an EIS.”²⁵

Petitioning Organizations present several challenges to the Draft EA that, in their view, support a finding of significant impacts that would need to be addressed in an EIS. Based on their reading of the Draft EA, they argue that the Staff determined that the environmental impacts from restarting Palisades would be identical to the impacts discussed in the supplemental environmental impact statement (SEIS) that was prepared in 2006 for the Palisades license renewal proceeding, which “alone should suffice to force an EIS.”²⁶

Petitioning Organizations also object to the Staff’s reliance on the license renewal SEIS because, they assert, the license renewal SEIS did not adequately address radioactive waste storage or the impacts of earthquakes on the plant and the independent spent fuel storage installation.²⁷ Petitioning Organizations argue that, for restart, the Staff should analyze “the issue of radioactive waste” by using the baseline of Palisades’ status when the plant went offline, rather than when it was in operation, and by analyzing the direct and cumulative impacts of the production of waste for the six years remaining on the current license and an additional

²³ Compare 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 (dated Oct. 7, 2024; filed Oct. 10, 2024) at 40–45 (Petitioning Organizations Hearing Petition), with New and Amended Contentions at 2–4.

²⁴ See New and Amended Contentions at 3–4; Motion at 3.

²⁵ New and Amended Contentions at 4.

²⁶ Id.

²⁷ Id. at 4–6.

twenty-year license renewal.²⁸ Regarding the impacts from earthquakes, which Petitioning Organizations assert would be significant, Petitioning Organizations argue that 10 C.F.R. Part 50, Appendix S, and 10 C.F.R. § 72.103 require an analysis of earthquake impacts.²⁹

In addition, Petitioning Organizations argue that the Draft EA lacks a detailed discussion of “significant construction planned at the Palisades” site, including a Digital Staging Testing Building, a radioactive material storage building, two “Diverse and Flexible Coping Strategies” storage buildings, and the replacement of the component cooling-water heat exchangers and other equipment.³⁰ Finally, Petitioning Organizations object to the Staff’s decision to prepare an EA rather than an EIS given the Staff’s discussion of possible future climate change impacts.³¹ Taken together, Petitioning Organizations argue, the Staff’s decision not to prepare an EIS is “arbitrary, capricious, unreasonable, and an abuse of discretion.”³²

As an initial matter, we conclude that Petitioning Organizations’ claim that Applicants must obtain a new operating license to restart Palisades fails for the reasons provided in our analysis of original Contention 2.³³ As we explained in LBP-25-4, the Commission has determined that restart requests will be evaluated using the existing regulatory framework.³⁴ Petitioning Organizations’ argument that a new operating license is required therefore amounts to an improper, out-of-scope challenge to Commission policy and to the regulations that allow

²⁸ Id. at 5.

²⁹ Id. at 5–6; see also Reply at 9.

³⁰ New and Amended Contentions at 6. Petitioning Organizations also assert that “these engineered alterations must be subjected to some form of licensing action, such as an amendment, although there is no public intention of doing so stated in the EA.” Id. at 7.

³¹ Id. at 7–8.

³² Id. at 8.

³³ See LBP-25-4, 101 NRC at __ (slip. op at 53–54).

³⁴ See id.

for the licensing actions necessary for the restart of Palisades to proceed under its renewed facility operating license (e.g., license amendments and exemptions).³⁵

The remaining arguments in Amended Contention 2 fare no better. Contrary to Petitioning Organizations' view, the Staff did not conclude that the impacts from restarting Palisades would be the same as those discussed in the license renewal SEIS. Rather, the Staff separately analyzed the impacts of restart and concluded that the impacts would be "not significant" for "each potentially affected environmental resource area."³⁶ In any event, Petitioning Organizations' bald assertion that the Staff's reference to the 2006 SEIS means that an EIS is required for restart is insufficient to support a challenge to the Draft EA.³⁷

Regarding their challenges to the Draft EA's purported lack of discussion of radioactive waste and earthquakes, Petitioning Organizations merely assert, without more, that including such a discussion will lead to a finding of significant impacts.³⁸ Further, they overlook analyses in the Draft EA that appear to be directly relevant to their arguments. In particular, the Draft EA includes a discussion of impacts from the uranium fuel cycle, as well as the Staff's consideration of impacts from the six years remaining on the renewed facility operating license and the

³⁵ See id. at ___ (slip. op. at 53–54); 10 C.F.R. §§ 2.309(f)(1)(iii), 2.335; see also Holtec Decommissioning International, LLC, Holtec Palisades, LLC, and Palisades Energy, LLC (Palisades Nuclear Plant), CLI-25-3, 101 NRC ___, ___ (Apr. 29, 2025) (slip op. at 16–17) (concluding that petitioners in the Palisades license transfer proceeding did not address or "provide any substantive reason why [the Commission] should reconsider" its determination to apply the existing regulatory framework for restart requests). Petitioning Organizations' argument that the restart project is "major" is likewise inadmissible, as we explained in LBP-25-4, because it fails to raise a material dispute. See LBP-25-4, 101 NRC at ___ (slip op. at 54) (citing 10 C.F.R. § 2.309(f)(1)(vi)).

³⁶ Draft EA at 4-1.

³⁷ See 10 C.F.R. § 2.309(f)(1)(v). To the extent Petitioning Organizations seek to litigate the contents of the 2006 SEIS, including their objections to the SEIS's discussion of radioactive waste and earthquakes, their claims are outside the scope of this proceeding. See id. § 2.309(f)(1)(iii).

³⁸ See New and Amended Contentions at 5–7.

cumulative impacts from a twenty-year subsequent license renewal.³⁹ Moreover, there appears to be no difference between the Staff's position in the Draft EA and Petitioning Organizations' claim that "the baseline for determining the environmental impact of restarting Palisades should be the status of Palisades when it went into decommissioning mode."⁴⁰ The Draft EA provides that the baseline is "the current decommissioning state at Palisades prior to implementing any of the activities related to the preparation for the resumption of power operations."⁴¹

The Draft EA also contains a discussion of postulated accidents.⁴² Petitioning Organizations do not explain how the consideration of earthquakes would alter that discussion.⁴³ They point to NRC safety regulations governing seismic analyses for nuclear plants and independent spent fuel storage installations, but they do not explain the relevance of these regulations to the Staff's NEPA analysis.⁴⁴ Similarly, Petitioning Organizations make no effort to explain why additional analysis of planned construction on the Palisades site would be material to the Staff's fulfillment of its NEPA obligations.⁴⁵

Finally, Petitioning Organizations suggest that, by deciding not to prepare an EIS, the Staff ignored its climate change analysis,⁴⁶ but the Draft EA analyzes the potential effects of

³⁹ Draft EA at 3-63, G-1.

⁴⁰ New and Amended Contentions at 5.

⁴¹ Draft EA at 1-6.

⁴² Id. at 3-64 to -65.

⁴³ See New and Amended Contentions at 5–6.

⁴⁴ See id.

⁴⁵ See id. at 6–7. Similarly unavailing is Petitioning Organizations' concern that the Draft EA does not discuss whether Applicants intend to request license amendments for future changes to the plant. See id. at 7; supra note 30. As we explained in LBP-25-4, an NRC regulation, 10 C.F.R. § 50.59, governs which changes require a license amendment. See LBP-25-4, 101 NRC at __ (slip op. at 59–60). Challenges regarding a licensee's compliance with this provision may be filed in accordance with 10 C.F.R. § 2.206.

⁴⁶ See New and Amended Contentions at 7–8.

climate change for all resource areas.⁴⁷ Petitioning Organizations do not provide any specific, substantive challenge to this discussion that would call into question the Staff's "not significant" finding. Consequently, they fail to demonstrate a genuine dispute with the Staff's analysis.⁴⁸

We therefore do not admit Amended Contention 2.

2. Amended Contention 4: [Applicants] 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 [Applicants] to bypass the requirement of compiling a new Updated Final Safety Analysis Report (UFSAR) in favor of returning [to] 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 [Applicants].⁴⁹

Amended Contention 4 is substantively, and substantially, similar to Petitioning Organizations' original contention 4.⁵⁰ As Petitioning Organizations explain, their amended contention retains "the overarching statements and arguments in . . . original Contention 4."⁵¹ For the first time in Amended Contention 4, however, Petitioning Organizations argue that the Draft EA's discussion of climate change "provides further confirmation of the statements and opinions of [their] expert, Arnold Gundersen, that the effects of climate change on the environment will affect the components and operational procedures of Palisades if it is allowed to restart."⁵² Petitioning Organizations focus on the Staff's analysis of potential changes in Lake Michigan's seasonal surface water temperatures, as well as its finding that the region is likely to

⁴⁷ Draft EA at F-3.

⁴⁸ See 10 C.F.R. § 2.309(f)(1)(vi).

⁴⁹ New and Amended Contentions at 8.

⁵⁰ Compare Petitioning Organizations Hearing Petition at 48–63, with New and Amended Contentions at 8–27. The statement of the contention itself is identical, along with the majority of its supporting content.

⁵¹ Reply at 10.

⁵² Motion at 3.

experience changes in precipitation and annual climatic water deficit.⁵³ Petitioning Organizations assert that the “Staff’s climate change conclusions . . . implicate AEA considerations: that there might be ‘changed impacts from the ongoing operations’ or the imposition of ‘operational restrictions on the site’s safety and performance.’”⁵⁴

The overarching statements and arguments in original Contention 4 were all made in support of Petitioning Organizations’ view that the NRC lacks the authority to allow Applicants to restart Palisades.⁵⁵ And the statements by their expert, Mr. Gundersen, were made in support of Petitioning Organizations’ view that the change process in 10 C.F.R. § 50.59 may not be used to update the UFSAR.⁵⁶ In essence, Petitioning Organizations had argued that the types of changes that would be sought by Applicants were too significant to be approved by license amendment.⁵⁷ In LBP-25-4, we concluded that these claims were inadmissible because they amounted to improper challenges to Commission policy and regulations.⁵⁸

Petitioning Organizations have not provided anything in Amended Contention 4 that would alter that conclusion. Although Petitioning Organizations assert that the Staff’s climate change analysis “confirms” the claims made in Contention 4 and “comprises evidence favorable to [its] admissibility,”⁵⁹ the deficiencies in their original contention remain. We incorporate our

⁵³ See New and Amended Contentions at 21–23.

⁵⁴ Id. at 24 (quoting Draft EA at F-1).

⁵⁵ See Petitioning Organizations Hearing Petition at 51.

⁵⁶ See id. at 58–63.

⁵⁷ See id. at 50, 55–63.

⁵⁸ LBP-25-4, 101 NRC at __ (slip op. at 58–61).

⁵⁹ Motion at 4.

discussion and analysis of Contention 4 in LBP-25-4 in full, and for the same reasons, we do not admit Amended Contention 4.⁶⁰

3. Amended Contention 5: The purpose and need statement in the EA does not comply with the intent of NEPA. It is a self-serving statement accepting [Applicants'] unverified assertions of demand for baseload "clean" power within an undefined grid. As such, it unjustifiably limits the range of reasonable alternatives to the proposed restart of Palisades. The purpose and need statement also creates insufficient justifications for the restart of Palisades.⁶¹

In Amended Contention 5, Petitioning Organizations assert that the purpose and need statement in the Draft EA is "arbitrary, capricious, unreasonable, and an abuse of discretion."⁶² First, they argue that the Staff "accept[ed] out of hand" Applicants' goals because the purpose and need statement is "virtually identical" to the purpose and need statement provided in Applicants' response to a Staff request for additional information.⁶³ Second, Petitioning Organizations argue that the purpose and need statement is impermissibly narrow and "leaves no possibility of reasonably examining" any alternative other than restarting Palisades.⁶⁴

⁶⁰ LBP-25-4, 101 NRC at __ (slip op. at 55–61); see also Palisades, CLI-25-3, 101 NRC at __ (slip op. at 17) (finding no reason to reconsider the determination that the existing regulatory framework may be used for restart requests and that "no statute or regulation prohibits reauthorizing operation after the section 50.82(a)(1) certificates [certifying cessation of operations and removal of fuel] have been issued"). Petitioning Organizations also appear to assert a challenge to the NRC's climate-change discussion in the Draft EA, see New and Amended Contentions at 23–24, but their specific challenges to the Draft EA's climate-change discussion are neither clear nor well supported. See 10 C.F.R. § 2.309(f)(1)(v), (vi). Similarly, Petitioning Organizations' claim that the draft EA's climate change discussion "implicate[s] AEA considerations" is vague, and they do not explain what these considerations are or how they relate to the overall contention. See New and Amended Contentions at 24; 10 C.F.R. § 2.309(f)(1)(v), (vi).

⁶¹ New and Amended Contentions at 27.

⁶² Id. at 30.

⁶³ Id. at 28–29.

⁶⁴ Id. at 29.

Third, Petitioning Organizations argue that the Staff has not produced a data-based assessment of the need for the power that would be generated from the restart of Palisades.⁶⁵ To that end, Petitioning Organizations assert that the Draft EA lacks “projections of regional demand load growth” and “forecasts of new sources of power generation.”⁶⁶ Petitioning Organizations also claim that the Staff should have considered “incremental construction of alternative energy sources and implementation of industrial-scale conservation measures,” rather than assuming that all “of the energy generated by Palisades would be immediately needed.”⁶⁷ Additionally, Petitioning Organizations rely on a news report about a Chinese artificial intelligence firm to argue that any assumptions involving power demand for data centers supporting artificial intelligence in the United States might be overstated.⁶⁸

Finally, Petitioning Organizations take issue with a recently passed Michigan law that includes nuclear power among named sources of clean energy, and they challenge the Department of Energy’s purpose and need statement, both of which are discussed in the Draft EA.⁶⁹ They argue that Michigan’s decision was “political, not . . . science-based,” and that nuclear power is not clean.⁷⁰ And they challenge the legal basis for the Department of Energy’s approval of a loan guarantee for the restart of Palisades.⁷¹

⁶⁵ Id. at 30 (asserting that “[a]bsent any authoritative forecasts of demand for power in the region of Palisades, the so-called purpose and need statement in the EA is baseless puffery”).

⁶⁶ Id. at 29.

⁶⁷ Id.; see also Reply at 19.

⁶⁸ New and Amended Contentions at 29–30.

⁶⁹ Motion at 5–6. The Department of Energy is a cooperating agency for the NEPA review of the Palisades restart project. Draft EA at 1-2 to -3.

⁷⁰ Motion at 5.

⁷¹ Id. at 5–6.

To begin, we conclude that Petitioning Organizations' challenges to Michigan law and policy and the Department of Energy's purpose and need statement are outside the scope of this proceeding and therefore not admissible.⁷² Licensing boards have no authority to rule on challenges to the actions of states or other federal agencies.⁷³ And, as we discuss below, their remaining claims are inadmissible because Petitioning Organizations rely on conclusory assertions, and they do not demonstrate that the issues they raise are material to the findings the Staff must make to fulfill its obligations under NEPA.⁷⁴

Other than pointing to the similarity between the Staff's and Applicants' purpose and need statements, Petitioning Organizations provide no support for their claim that the Staff adopted Applicants' purpose and need statement without independent analysis.⁷⁵ Moreover, Petitioning Organizations overlook that consistent with federal case law, the Commission will "give substantial weight to a properly-supported statement of purpose and need by an applicant . . . or sponsor of a proposed project in determining the scope of alternatives to be considered by the NRC."⁷⁶ Thus, the similarity of the statements is an insufficient basis on which to claim a NEPA deficiency. Likewise, Petitioning Organizations' claim that the purpose and need statement is too narrow to allow for the consideration of alternatives to restarting Palisades lacks support and is directly contradicted by the four alternatives the Staff considered in the Draft EA: (1) the no-action alternative; (2) replacing the Palisades reactor with a new onsite

⁷² See 10 C.F.R. § 2.309(f)(1)(iii).

⁷³ See Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121–22 (1998) (instructing presiding officers to "narrowly construe their scope to avoid where possible the litigation of issues that are the primary responsibility of other agencies and whose resolution is not necessary to meet our statutory responsibilities").

⁷⁴ See 10 C.F.R. § 2.309(f)(1)(iv), (v).

⁷⁵ See New and Amended Contentions at 28–29.

⁷⁶ Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55,909 (Sept. 29, 2003) (Denial of Petition for Rulemaking).

reactor; (3) replacing the Palisades reactor with other power generation technologies either on the Palisades site or offsite; and (4) installing system design alternatives for use with the Palisades reactor.⁷⁷

With regard to Petitioning Organizations' claim that the Staff must conduct a need-for-power analysis that considers regional demand forecasts, power from other sources, energy conservation measures, implementation timing, and energy needs for artificial intelligence, Petitioning Organizations do not explain why such an assessment is required, and thus why it would be material to the findings the Staff must make.⁷⁸ Significantly, although need for power must be addressed for actions that would authorize the siting and construction of new plants, the NRC does not require a need-for-power assessment for operating license applications and license renewal applications (i.e., post-construction licensing actions).⁷⁹ The Commission has determined that, post-construction, any significant environmental impacts from siting and construction already would have occurred, obviating the need to weigh the need for power against the environmental impacts of construction and operation.⁸⁰

Further, even for those licensing actions that do require a need-for-power assessment, the Commission does not require the type of detailed quantitative analysis that Petitioning Organizations appear to seek here.⁸¹ In short, not only do their arguments lack legal support,

⁷⁷ See Draft EA at 2-5 to -7.

⁷⁸ See 10 C.F.R. § 2.309(f)(1)(iv).

⁷⁹ See Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,910; 10 C.F.R. §§ 51.53, 51.95.

⁸⁰ Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,910.

⁸¹ See id. (emphasizing that "such an assessment should not involve burdensome attempts to precisely identify future conditions"); see also NEPA §§ 106(b)(2), (b)(3)(B), 107(e), (g), 42 U.S.C. §§ 4336(b)(2), (b)(3)(B), 4336a(e), (g) (imposing page limits and time limits, as well as setting forth the expectation that an agency need not undertake new scientific or technical research unless it would be "essential to a reasoned choice among alternatives and the overall costs and time frame of obtaining it are not unreasonable").

but they also appear to run counter to legal authority arguably relevant to this proceeding. We therefore do not admit Amended Contention 5.

4. Amended Contention 6: The discussion of alternatives in the EA is inadequate and unsupported by any facts or credible analysis. It therefore violates NEPA.⁸²

Amended Contention 6 shares several similarities with Amended Contention 5.

Petitioning Organizations again claim that the Staff defined the purpose and need of the project too narrowly and that the alternatives analysis therefore has become “a foreordained formality” where only the restart of Palisades could satisfy the project’s objectives.⁸³ Petitioning Organizations also repeat their need-for-power argument, asserting that the Staff has not provided “a significant portrayal of the energy picture.”⁸⁴ Additionally, Petitioning Organizations maintain that the Staff should not have referenced Michigan’s new clean energy standard in the Draft EA’s purpose and need statement because, they claim, “nuclear power, contrary to the political decision made by Michigan legislators, is neither clean nor renewable.”⁸⁵ These claims

⁸² New and Amended Contentions at 30.

⁸³ Id. at 34 (quoting Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991)); see also Motion at 7 (asserting that the purpose and need statement should not be based on replacing Palisades’ 800 megawatt capacity and should instead allow for the consideration of “building alternatives on a limited basis,” including wind and solar, along with energy conservation measures).

⁸⁴ New and Amended Contentions at 32; see also id. (asserting that the Staff should have explained whether the “regional grid is presently burdened and needs additional baseload power” or analyzed “the prospective electricity demand situation”); Motion at 7 (“The flawed purpose and need statement is grounded on zero forecasts of near, middle and long-term demand.”).

⁸⁵ New and Amended Contentions at 33 (citing Declaration of Mark Z. Jacobson and Curriculum Vitae (declaration dated Sept. 10, 2024; curriculum vitae last updated Oct. 11, 2023; both filed Oct. 10, 2024) (Jacobson Declaration)). Petitioning Organizations submitted the Jacobson Declaration as an attachment to their hearing petition. In support of Amended Contention 6, they provide two block quotes attributed to Dr. Jacobson and cite the Jacobson Declaration for both. The second quote, however, does not appear in the Jacobson Declaration. Rather, text from the second quote appears in “Attachment 2” to the Jacobson Declaration, which Petitioning Organizations filed on February 1, 2025, and which we considered in LBP-25-4, even though the attachment was not timely submitted. LBP-25-4, 101 NRC at __ (slip op. at 27).

fail for the same reasons provided in our discussion of Amended Contention 5: they lack a legal basis, are based on conclusory assertions, and Petitioning Organizations' challenges to Michigan law and policy are outside the scope of this proceeding.⁸⁶

For the balance of Amended Contention 6, Petitioning Organizations argue that the Staff's dismissal of alternative energy sources due to a lack of space on the Palisades site is a "red herring" and "disingenuous."⁸⁷ Petitioning Organizations assert that "no one is suggesting that an alternate energy source would be located on the Palisades site or that it would have to be."⁸⁸ They also claim that Applicants' proposal to add two small modular reactors to the Palisades site indicates that there is sufficient space for alternative energy sources.⁸⁹ With regard to the construction of alternative energy sources on other sites, Petitioning Organizations assert that the Staff did not support its conclusion that construction on other sites could result in significant environmental impacts.⁹⁰ And finally, Petitioning Organizations assert that the environmental impacts of the proposed addition of two small modular reactors on the Palisades site "are being proposed as a package" with the restart and "should be recognized as cumulative impacts and dealt with in the identification of environmental effects as well as the consideration of alternatives."⁹¹ We conclude that these claims are inadmissible because they

⁸⁶ See New and Amended Contentions at 30–32; Motion at 6–7; 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v); supra section II.B.3. To the extent Petitioning Organizations would fault the Staff for referring to a Michigan statute in the purpose and need statement, see New and Amended Contentions at 33, their claim fails because they do not explain why it would be unreasonable for the Staff to reference legal authority relevant to the proposed project. See Seabrook, CLI-12-5, 75 NRC at 337.

⁸⁷ New and Amended Contentions at 32.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id. at 33.

⁹¹ Motion at 7.

lack specificity, are based on conclusory assertions, and, in some cases, are based on a misreading of the Draft EA.⁹²

Petitioning Organizations appear to object that the Staff even considered the possibility that alternative energy sources might be built on the Palisades site.⁹³ At the same time, however, they assert that the Staff improperly dismissed these alternatives for lack of space.⁹⁴ Aside from the fact that their objections are contradictory and difficult to follow, Petitioning Organizations appear to have overlooked that the Staff agrees “at least some [alternative power generation facilities] could be built using other land within the Palisades site.”⁹⁵ Thus, contrary to Petitioning Organizations’ assertion, the Staff did not dismiss onsite alternatives out of hand.⁹⁶ Moreover, Petitioning Organizations do not identify which alternative energy sources could be built on the Palisades site or explain how consideration of these alternatives would alter an analysis that otherwise appears to be consistent with their position.

With regard to Petitioning Organizations’ argument that the Staff should have considered Applicants’ proposal to construct two small modular reactors on the Palisades site, Petitioning Organizations fail to acknowledge the Staff’s express references to these reactors in its analysis of cumulative impacts and alternatives.⁹⁷ Moreover, contrary to Petitioning Organizations’ bare assertion that the small modular reactors “are being proposed as a package” with the Palisades

⁹² See 10 C.F.R. § 2.309(f)(1)(v), (vi).

⁹³ See New and Amended Contentions at 32.

⁹⁴ See id.

⁹⁵ Draft EA at 2-7. Here, “other land” refers to land not occupied by the Palisades reactor, which would still need to undergo decommissioning under this scenario and would continue to occupy space during the decommissioning process. Id.

⁹⁶ See New and Amended Contentions at 32.

⁹⁷ See Draft EA at 2-7, G-1.

restart,⁹⁸ the Draft EA characterizes the addition of the small modular reactors as a possible future project.⁹⁹ Petitioning Organizations do not explain why the small modular reactors should be viewed as a package with the proposed restart, or how their consideration as a package would change the Staff's existing analysis.¹⁰⁰

With regard to the Staff's consideration of alternative energy sources on other sites, the Staff concluded that new construction would lead to significant environmental impacts in the areas of "additional land use, ground disturbance, and use of construction equipment."¹⁰¹ According to Petitioning Organizations, the Staff's conclusion is an "unsupported assumption[]."¹⁰² But Petitioning Organizations do not explain why it would be unreasonable for the Staff to conclude that new construction on other sites could lead to significant environmental impacts.¹⁰³ NEPA is tempered by a rule of reason,¹⁰⁴ and the alternatives analysis for an EA is expected to be brief.¹⁰⁵ Without an explanation as to how the inclusion of additional (and also unspecified) information would make a material difference in the Staff's analysis, Petitioning

⁹⁸ Motion at 7.

⁹⁹ Draft EA at G-1.

¹⁰⁰ See Motion at 7.

¹⁰¹ Draft EA at 2-7.

¹⁰² New and Amended Contentions at 33.

¹⁰³ See id.

¹⁰⁴ See supra note 14.

¹⁰⁵ See NEPA § 106(b)(2), 42 U.S.C. § 4336(b)(2); 10 C.F.R. § 51.30(a)(1)(ii); N. Idaho Cmty. Action Network v. U.S. Dep't of Transp., 545 F.3d 1147, 1153 (9th Cir. 2008) ("[A]n agency's obligation to consider alternatives under an EA is a lesser one than under an EIS" and "an agency only is required to include a brief discussion of reasonable alternatives." (internal quotations marks and citations omitted)).

Organizations have not met their burden to raise a genuine, material dispute.¹⁰⁶ We therefore do not admit Amended Contention 6.

5. Contention 8: The EA specifically incorporates previous Palisades-related documents and more general environmental documents by reference in the EA. The EA specifically states that the incorporation of other documents is based on [Council on Environmental Quality (CEQ)] regulations authorizing such incorporation. Recent court decisions have held that the CEQ regulations were propounded without legal authority and are therefore invalid. So the incorporation of other documents into the Palisades EA is invalid and invalidates the EA. Therefore, the EA must be completely redone.¹⁰⁷

In Contention 8, Petitioning Organizations assert that “issuance of the EA in its current form is arbitrary, capricious, unreasonable, and an abuse of discretion” because the Staff relied on a CEQ regulation to incorporate prior environmental analyses by reference.¹⁰⁸ Petitioning Organizations argue that the Staff’s use of incorporation by reference is no longer permissible¹⁰⁹ because the D.C. Circuit invalidated the CEQ’s NEPA implementing regulations in Marin Audubon Society v. FAA.¹¹⁰ Petitioning Organizations assert that because the Staff’s use of incorporation by reference provides “a substantial basis” for the Draft EA’s discussions and conclusions, the Draft EA is invalid as a whole.¹¹¹ Similarly, Petitioning Organizations claim that the Draft EA is potentially out of date.¹¹²

¹⁰⁶ See 10 C.F.R. § 2.309(f)(1)(iv), (vi); Seabrook, CLI-12-5, 75 NRC at 341–42.

¹⁰⁷ New and Amended Contentions at 34.

¹⁰⁸ Id. at 34, 36.

¹⁰⁹ See id. at 35 (claiming that “[o]bviously, the EA’s reliance on incorporating other documents depends on the validity of the CEQ regulation”).

¹¹⁰ 121 F.4th 902 (D.C. Cir. 2024), reh’g en banc denied, No. 23-1067, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025). For the same proposition, Petitioning Organizations also reference a federal district court decision applying the D.C. Circuit’s analysis in Marin Audubon. See New and Amended Contentions at 35 (citing Iowa v. CEQ, 765 F. Supp. 3d 859 (D.N.D. 2025)).

¹¹¹ New and Amended Contentions at 34–36.

¹¹² See Motion at 8 (“[T]he EA is seriously flawed in relying on CEQ authority for simply incorporating previous documents instead of actually doing an up-to-date analysis.”).

We conclude that Petitioning Organizations have not raised a genuine dispute with the Draft EA on a material issue of law or fact.¹¹³ Petitioning Organizations' contention is based on the flawed premise that the Staff's ability to use incorporation by reference in its environmental analysis depends upon the validity of the CEQ regulation referenced in the Draft EA. But the NRC has adopted its own NEPA-implementing regulations, and it has long treated CEQ regulations as non-binding.¹¹⁴ Further, the Staff references the CEQ regulation in the Draft EA among other NRC guidance allowing incorporation by reference, contrary to Petitioning Organizations' apparent assumption that the invalidated CEQ regulation is the sole, and binding, basis for the Staff's use of the technique.¹¹⁵

Finally, Petitioning Organizations provide a list of several sections of the Draft EA that incorporate other documents by reference.¹¹⁶ But aside from their mistaken assumption that the Staff may not use incorporation by reference to conduct its NEPA analysis, Petitioning Organizations do not question the adequacy or reasonableness of the content of these sections

¹¹³ See 10 C.F.R. § 2.309(f)(1)(vi).

¹¹⁴ See id. § 51.10(a) (providing that the regulations in 10 C.F.R. Part 51 implement NEPA in a manner "consistent with the NRC's domestic licensing and related regulatory authority under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978, and [in a manner] which reflects the Commission's announced policy to take account of [CEQ] regulations voluntarily, subject to certain conditions"); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443–44 (2011) (reformulating a contention to make clear that a substantive CEQ regulation is not binding on the NRC). We also observe that Petitioning Organizations base their argument on non-binding case law. See supra note 110; Marin Audubon, 2025 WL 374897, at *1 (Srinivasan, C.J., concurring) (observing that rehearing en banc was properly denied because "the panel majority's rejection of the CEQ's authority to issue binding NEPA regulations was unnecessary to the panel's disposition").

¹¹⁵ See Draft EA at 1-7 (citing 40 C.F.R. § 1501.12 and NRC guidance for micro-reactors); accord 10 C.F.R. pt. 51, app. A (providing that the technique of incorporation by reference "may be used as appropriate to aid in the presentation of issues, eliminate repetition or reduce the size of an environmental impact statement").

¹¹⁶ See New and Amended Contentions at 35–36.

to support their claims that the Draft EA is “possibly outdated”¹¹⁷ and “must be completely redone.”¹¹⁸ We therefore do not admit Contention 8.¹¹⁹

III. CONCLUSION

For the reasons set forth above, we deny Petitioning Organizations’ motion for leave to file new and amended contentions and terminate the proceeding. Any appeals of this memorandum and order must be filed in accordance with 10 C.F.R. § 2.341.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Emily I. Krause, Chair
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

/RA/

Dr. Arielle J. Miller
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 20, 2025

¹¹⁷ Motion at 8.

¹¹⁸ New and Amended Contentions at 34; see Seabrook, CLI-12-5, 75 NRC at 323.

¹¹⁹ See 10 C.F.R. § 2.309(f)(1)(v), (vi).

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Palisades Nuclear Plant, Docket No. 50-255-LA-3

MEMORANDUM AND ORDER (Ruling on Motion for Leave to File New and Amended Contentions)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 20th day of June 2025.