

March 22, 2021

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
Entergy Nuclear Operations, Inc.,)	
Entergy Nuclear Palisades, LLC,)	Docket Nos. 50-255-LT
Holtec International, and)	50-155-LT
Holtec Decommissioning International, LLC)	72-007-LT
)	72-043-LT
(Palisades Nuclear Plant and)	
Big Rock Point Site))	

**Applicants' Answer Opposing the
Environmental Law & Policy Center
Petition to Intervene and Hearing Request**

Table of Contents

I.	Introduction.....	1
II.	Background.....	2
III.	ELPC’s Proposed Contentions Are Inadmissible	6
	A. Contention 1 Is Inadmissible	6
	B. Contention 2 Is Inadmissible	9
	C. Contention 3 Is Inadmissible	11
	D. Contention 4 Is Inadmissible	14
IV.	ELPC Has Not Demonstrated Standing.....	15
	A. Applicable NRC Legal Standards and Precedent	16
	1. Standing Based on Geographic Proximity.....	16
	2. Traditional Standing.....	18
	3. Representational Standing Organizations.....	19
	4. Discretionary Intervention	19
	B. ELPC Has Not Established Representational Standing.....	20
	C. ELPC Has Not Demonstrated a Sufficient Basis for Granting Discretionary Intervention Under Section 2.309(e).....	24
V.	Conclusion	27

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I. Introduction

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. (“ENOI”), Entergy Nuclear Palisades, LLC (“ENP”), Holtec International (“Holtec”), and Holtec Decommissioning International, LLC (“HDI”) (collectively, “Applicants”) hereby answer and oppose the Environmental Law & Policy Center Petition to Intervene and Hearing Request (Feb. 24, 2021) (“Petition” or “Pet.”) in the license transfer proceeding for the Palisades Nuclear Plant (“Palisades”) and Big Rock Point Site (“BRP”). The Petition should be denied because the Environmental Law & Policy Center (“ELPC” or “Petitioner”) has failed to propose an admissible contention or demonstrate its standing.

To be admitted as a party and granted a hearing, a petitioner must demonstrate standing and proffer at least one admissible contention. 10 C.F.R. § 2.309(a). ELPC has done neither. Three of ELPC’s four proposed contentions simply advance incorrect legal interpretations of the NRC rules and requirements that have been soundly rejected by the Commission – that (1) the

Application may not rely on an exemption allowing use of the Palisades nuclear decommissioning trust (“NDT”) for spent fuel management and site restoration, (2) the Application may not take credit for a 2 percent real rate of return on the NDT funds, and (3) the Application may not rely solely on the NDT to demonstrate the financial qualifications of the transferees. These contentions fail to demonstrate any genuine dispute with the Application. ELPC’s fourth contention seeks to adopt the contentions of other petitioners, which is impermissible where ELPC has advanced no admissible contention of its own. ELPC’s assertion of standing is based on declarations of two individuals who do not identify themselves as members of ELPC and who express only theoretical and speculative fears of possible future harm that do not demonstrate a concrete, certainly impending, real and imminent injury.

II. Background

On December 23, 2020, Applicants submitted an application requesting that the Commission approve (1) the indirect transfer of control of Renewed Facility Operating License No. DPR-20 for Palisades and the general license for the Palisades Independent Spent Fuel Storage Installation (“ISFSI”) and Facility Operating License No. DPR-6 for BRP and the general license for the BRP ISFSI to Holtec; and (2) the transfer of ENOI’s operating authority (*i.e.*, its authority to conduct licensed activities at Palisades and BRP) to HDI.¹ The transfer is sought as part of a transaction in which Holtec Palisades, LLC (“Holtec Palisades”), an indirect, wholly-owned subsidiary of Holtec, will become the licensed owner of Palisades and the BRP Site, and ENOI’s operating authority will be transferred to HDI, a wholly-owned subsidiary of

¹ *Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments, Palisades Nuclear Plant, Docket Nos. 50-255 and 72-007, Renewed Facility Operating License No. DPR-20, Big Rock Point, Docket Nos. 50-155 and 72-043, License No. DPR-6 (Dec. 23, 2020) (ADAMS Accession No. ML20358A075) (“Application” or “LTA”).*

Holtec formed to decommission nuclear plants. This transaction would occur only after Palisades has permanently ceased operation and all spent nuclear fuel has been permanently removed from the reactor vessel.² HDI plans to then complete the transfer of Palisades spent nuclear fuel to the Palisades ISFSI as soon as practicable and, following a ten-year period of dormancy, to complete the radiological decommissioning, restoration and release for unrestricted use of the Palisades site by approximately 2041.³

The Application provides the information required by 10 C.F.R. § 50.80, including a demonstration of HDI's and Holtec Palisades' technical and financial qualifications. Because the license transfers will occur after Palisades has permanently ceased operation and has been permanently defueled, the demonstration of financial qualifications is based on funding assurance for decommissioning and spent fuel management. With respect to Palisades, the Application provides a cash flow analysis demonstrating that, crediting a 2-percent annual real rate of return as permitted by the NRC rules, the balance in Palisades NDT will be sufficient to cover the estimated cost of decommissioning and spent fuel management, as well as site restoration, with an excess of approximately \$20 million remaining at license termination.⁴ As stated in the Application, reimbursement of spent fuel management expenses by the U.S. Department of Energy ("DOE"), which is not credited in the cash flow analysis, would provide a substantial source of additional funds that could be used to adjust funding assurance if necessary.⁵

² BRP has already been decommissioned and all property other than the ISFSI and an adjacent non-impacted parcel of property has been released for unrestricted use. LTA, Encl. 1 at 2.

³ LTA, Encl. 1 at 18.

⁴ LTA, Encl. 1, Att. E at 5.

⁵ LTA, Encl. 1, at 18.

On the same day that the license transfer application was filed, HDI also submitted a Post-Shutdown Decommissioning Activities Report (hereinafter referred to as the “PSDAR”),⁶ which includes HDI’s site-specific decommissioning cost estimate (“DCE”).⁷ Because of the reliance on Palisades’ NDT, HDI also requested, concurrent with submission of the LTA, an exemption to allow the NDT to be used for spent fuel management and site restoration costs.⁸

The PSDAR and DCE explain that HDI’s cost estimate is based on information compiled during an extensive due diligence period,⁹ – including review of Palisades decommissioning records required by 10 C.F.R. § 50.75(g), subsurface monitoring reports, groundwater contamination reports, and annual NRC effluent reports¹⁰ – input and professional judgment of experienced specialty subcontractors and subject-matter experts, and real time experience and executed contracts from Holtec-owned nuclear decommissioning sites.¹¹ Additionally, HDI’s breakdown of work and cost estimates incorporate subcontractor estimates for reactor segmentation and waste removal.¹² For large contracts, the selected contractors, including affiliates, will be required to post performance bonds (or insurance, where appropriate) issued by Treasury-rated surety companies to guarantee performance of work scope to ensure the work is

⁶ Letter from P. Cowan, HDI, to NRC, Post Shutdown Decommissioning Activities Report including Site-Specific Decommissioning Cost Estimate for Palisades Nuclear Plant (Dec. 23, 2020) (ADAMS Accession No. ML20358A232). This PSDAR is contingent upon NRC approval of the license transfers, completion of transfers of the licenses, and the sale closure. *Id.* at 2.

⁷ PSDAR, Encl. 1 (hereinafter cited as the “DCE”). The DCE is also summarized in the Application. *See* LTA, Encl. 1, Att. E at 2-4.

⁸ Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), Palisades Nuclear Plant, Docket Nos. 50-255 and 72-007, Renewed Facility Operating License No. DPR-20 (Dec. 23, 2020) (ADAMS Accession No. ML20358A239).

⁹ PSDAR at 16; DCE at 38.

¹⁰ DCE at 21.

¹¹ PSDAR at 16; DCE at 7.

¹² LTA, Encl. 1 at 18.

performed at the specified costs.¹³ Further, the DCE includes a 12-percent contingency allowance¹⁴ (amounting to approximately \$50 million in contingency in the DCE on which the cash flow analysis is based).

As discussed in the DCE, the estimates of costs associated with license termination in NUREG/CR-5884, “Revised Analyses of Decommissioning for the Reference Pressurized-Water Reactor Power Station,” were reviewed to evaluate the reasonableness of the estimates in the DCE.¹⁵ In addition, the Palisades decommissioning cost estimates for license termination, spent fuel management and site restoration activities were compared to costs from similar activities from other decommissioned pressurized water reactor nuclear power plants.¹⁶

On February 4, 2021, the NRC published a notice in the Federal Register regarding the Application.¹⁷ In the Notice, the Commission provided an opportunity to any person whose interest may be affected, within 20 days of the Notice, to request a hearing and file a petition for leave to intervene. The Notice states that any such petitions should be filed in accordance with the Commission’s Rules of Practice and Procedure set forth in 10 C.F.R. Part 2 and lays out the standards for pleading admissible contentions and establishing standing. On February 24, 2021, ELPC filed its Petition.

A thorough discussion of the legal and regulatory framework related to decommissioning, spent nuclear fuel management, reactor license transfers, and contention admissibility is

¹³ *Id.*

¹⁴ DCE at 41.

¹⁵ DCE at 38.

¹⁶ *Id.*

¹⁷ Palisades Nuclear Plant and Big Rock Point Plant Consideration of Approval of Transfer of Control of Licenses and Conforming Amendments, 86 Fed. Reg. 8,225 (Feb. 4, 2021) (“Notice”).

presented in Applicants' answer to the hearing request filed by the Michigan Attorney General.¹⁸ For the sake of brevity, rather than republishing the lengthy discussion in full, Applicants incorporate it herein by reference.

III. ELPC's Proposed Contentions Are Inadmissible

As discussed below, ELPC's contentions predominantly rehash legal arguments that the Commission has specifically rejected in the Indian Point proceeding. ELPC makes little attempt to identify, address or meaningfully distinguish the binding precedent adverse to its positions,¹⁹ and thus demonstrates no genuine dispute with the Application on any material issue of law.²⁰ ELPC also offers no factual basis supported by any expert opinion or references to other specific sources or documents demonstrating any genuine dispute with the DCE, cash flow analysis, exemption request, or any other part of Application on any material issue of fact.²¹

A. Contention 1 Is Inadmissible

ELPC's Contention 1, which alleges that Holtec Palisades' decommissioning financial assurance is deficient because it relies on receiving an exemption authorizing use of the NDT for site restoration and spent fuel management,²² is inadmissible because it fails to demonstrate any genuine dispute with the Application. ELPC baldly asserts that "[t]he Commission should base its determination of whether the Holtec Companies' financial assurance complies with 10 C.F.R. §§ 50.54(bb) and 72.30(b) on the Holtec Companies' ability to meet requirements if the

¹⁸ Applicants' Answer Opposing the Michigan Attorney General's Petition for Leave to Intervene and Request for a Hearing (Mar. 22, 2021), Section III.

¹⁹ In its discussion of Contention 2, ELPC states that the Commission should revisit its logic pertaining to the ability to credit a 2 percent real rate of return. Pet. at 12-13. That appears to be the only instance where ELPC acknowledges the precedent adverse to its positions.

²⁰ See 10 C.F.R. § 2.309(f)(1)(vi).

²¹ See 10 C.F.R. § 2.309(f)(1)(v), (vi).

²² Pet. at 8.

exemption is not granted.”²³ To the extent that ELPC is making this assertion as a matter of law, its assertion is entirely unsupported. As the Commission has squarely held, such an exemption request “is intertwined with, and constitutes an integral part of, the license transfer application.”²⁴ Further, there is no provision in the Atomic Energy Act or NRC regulations that precludes the Commission from considering an exemption request as part of licensing application. Consequently, as the Commission has held, a general argument that an applicant cannot rely on an exemption to support its cost estimates does not raise a genuine dispute with the application.²⁵

Nor does ELPC offer any basis demonstrating any specific genuine dispute with the exemption request. ELPC states that “[t]he Commission should be especially wary of granting an exemption in situations where, as here, unforeseen costs that occur early in the decommissioning process could significantly impact the availability of funds late in the process.”²⁶ Such a generalized admonition regarding how the NRC should perform its duties raises no genuine dispute. A petitioner cannot seek to use a specific adjudicatory proceeding to “express generalized grievances about NRC policies.”²⁷ ELPC also asserts that “[i]f spent fuel management and site restoration costs are both withdrawn from the decommissioning trust fund, but the estimated costs of license termination in one year—such as 2024—were to double, the

²³ Pet. at 9.

²⁴ *Entergy Nuclear Operations, Inc. et al.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-01, 92 N.R.C. __ (2021) (slip op. at 18).

²⁵ *Id.* at 19.

²⁶ Pet. at 9.

²⁷ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 N.R.C. 231, 233 (2008). “A contention that simply alleges that some matter ought to be considered does not provide the basis for an admissible contention.” *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), *petition for review denied*, CLI-94-2, 39 N.R.C. 91 (1994).

trust fund balance would go into the negative in 2040, before decommissioning was complete.”²⁸ ELPC, however, does not offer one whit of support for the proposition that license termination costs might double in 2024, or any other year. ELPC does not provide any expert opinion, reference, or other source that such a cost increase should be assumed. Nor does ELPC identify any particular activity in 2024 (when Palisades is being prepared to enter dormancy, and therefore more than ten years before dismantlement activities occur) that might result in a doubling of the estimated cost.

ELPC offers two other arguments, but they too raise no genuine dispute with the Application. ELPC argues that ongoing litigation in other proceedings demonstrates that there is a significant debate whether the Commission should allow such exemptions.²⁹ That there is an ongoing proceeding on judicial review pertaining to the transfer of the Indian Point licenses does not overturn the Commission’s precedent and has no bearing on whether or not the DCE and cash flow analysis supporting HDI’s exemption request in this proceeding are based on plausible assumptions.³⁰ ELPC also argues that the settlement agreement that was reached between Massachusetts and Holtec pertaining to Pilgrim decommissioning represents a more reasonable mechanism to manage trust fund balances.³¹ The NRC’s approval of the exemption for Pilgrim, however, was not based on Holtec’s settlement with Massachusetts; nor does that settlement

²⁸ Pet. at 9-10.

²⁹ Pet. at 10. ELPC cites the petition for judicial review relating to the exemption granted for Indian Point, and a previous petition for judicial review pertaining to the transfer of the Pilgrim license. *Id.* n.40. The petition relating to Pilgrim is not “ongoing litigation” as it was withdrawn in 2020.

³⁰ “When evaluating a license transfer applicant’s ability to meet financial obligations related to decommissioning, the NRC ‘will accept financial assurances based on plausible assumptions and forecasts, even though the possibility is not insignificant that things will turn out less favorably than expected.’” *Indian Point*, CLI-21-01, 92 N.R.C. at __ (slip op. at 9).

³¹ Pet. at 10-11.

demonstrate any genuine dispute with the exemption requested for Palisades. That settlement agreement has no bearing on whether or not the DCE and cash flow analysis supporting HDI's exemption request in this proceeding are based on plausible assumptions.

B. Contention 2 Is Inadmissible

ELPC's Contention 2, which alleges that "the Application and PSDAR are deficient under 10 C.F.R. §§ 50.75(b)(1) and (e)(1)(i) because they improperly assume a 2% rate of return,"³² is inadmissible as an impermissible challenge to the NRC rules. 10 C.F.R. § 2.335 provides that, except pursuant to a waiver (which ELPC has not sought), no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding.

The gravamen of ELPC's Contention – that Holtec may not take advantage of the 2-percent real rate of return allowed by 10 C.F.R. § 50.75(e)(1)(i) in the cash flow analysis for Palisades because Holtec is not proposing the SAFSTOR method of decommissioning³³ – misinterprets and therefore impermissibly challenges that rule. 10 C.F.R. § 50.75(e)(1)(i) provides in pertinent part that:

A licensee that has prepaid funds based on a site-specific estimate under § 50.75(b)(1) of this section may take credit for projected earnings on the prepaid decommissioning trust funds, using up to a 2 percent annual real rate of return from the time of future funds' collection through the projected decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination.

As the Commission has held, "section 50.75(e)(1) does not limit use of the 2% return rate to licensees proposing an extended storage period."³⁴ Rather, the rule permits a 2-percent real rate

³² Pet. at 11.

³³ See Pet. at 12.

³⁴ *Indian Point*, CLI-21-01, 92 N.R.C. at __ (slip op. at 14).

of return to be credited as long as the site-specific cost estimate specifically describes a period of safe storage, regardless of whether the overall decommissioning method is described as SAFSTOR, DECON, or something else.³⁵ Here, ELPC acknowledges that the Palisades decommissioning schedule shows a ten-year period of dormancy.³⁶ The DCE specifically describes it as a period of “Safe Storage Operations.”³⁷

Even if 10 C.F.R. § 50.75(e)(1)(i) were interpreted as only applying to SAFSTOR, contrary to the Commission’s interpretation binding in this proceeding, ELPC’s assertion that HDI is proposing to use the DECON method³⁸ is simply a mischaracterization. Nowhere in the Application, PDSAR or DCE is the proposed decommissioning method described as the DECON method. And while ELPC attempts to discount the dormancy period as short³⁹ it provides no information showing that the 10-year dormancy period (following the initial three-year period in which all spent nuclear fuel is moved into the ISFSI) does not constitute “a period of safe storage” for which 10 C.F.R. § 50.75(e)(1) expressly allows crediting a 2-percent real rate of return.⁴⁰

³⁵ *Id.* at 15.

³⁶ Pet. at 13. ELPC cites “PSDAR at 9, 44.” Pet at 13 n.52. As there is no page 44 of the PSDAR, Applicants assume that ELPC is referring to the DCE at page 45, which shows the schedule.

³⁷ DCE at 13.

³⁸ *See* Pet. at 2 (“Holtec now estimates a 2041 completion of all radiological decommissioning and restoration under a DECON approach”), 17 (“the Holtec LLCs propose using the DECON approach”).

³⁹ Pet. at 13.

⁴⁰ When the NRC promulgated its regulations on decommissioning funding assurance, the supplemental information published with the rule defined SAFSTOR merely as “the alternative in which the nuclear facility is placed and maintained in condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.” *General Requirements for Decommissioning Nuclear Facilities, Final Rule*, 53 Fed. Reg. 24,018, 24,022 (June 27, 1988). The Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, published in the same timeframe, described the storage period as “variable.” NUREG-0586, *Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities* (Oct. 1987) at 2-12 (ADAMS Accession No. ML20151A155).

In addition, ELPC ignores 10 C.F.R. § 50.82(a)(8)(vi), which indicates that in demonstrating the adequacy of decommissioning funds following permanent cessation of operations, the licensee may credit “earnings on such funds calculated at not greater than a 2 percent real rate of return.” ELPC’s Contention 2 is therefore also an impermissible challenge to 10 C.F.R. § 50.82(a)(8)(vi).

C. Contention 3 Is Inadmissible

ELPC’s Contention 3, which alleges that the Application is deficient because Holtec Palisades offers only the decommissioning trust fund to support its financial qualifications,⁴¹ is inadmissible because ELPC offers no legal or factual basis for this contention demonstrating any genuine material dispute with the Application, and instead simply repeats arguments that the Commission has rejected in the Indian Point proceeding. Similar to the contention rejected by the Commission in *Indian Point*, ELPC fails “to identify any NRC requirement that prevents an applicant from relying on a single funding source to establish that it is financially qualified to decommission a site.”⁴²

Citing 10 C.F.R. § 50.33(f)(2), ELPC incorrectly argues that “[t]o establish its financial qualification, the applicant must offer reasonable assurances that the transferee will have the necessary funds to safely *operate* and decommission the nuclear power plant.”⁴³ As the Commission has stated, where power reactor operations will have permanently ceased prior to a proposed license transfer, the applicants need not demonstrate financial qualifications to cover reactor operating costs.⁴⁴ Indeed, because Palisades will have permanently ceased operation

⁴¹ Pet. at 14.

⁴² *Indian Point*, CLI-21-01, 92 N.R.C. at ___ (slip op. at 49).

⁴³ Pet. at 15 & n.59 (emphasis added).

⁴⁴ *Indian Point*, CLI-21-01, 92 N.R.C. at ___ (slip op. at 8 n.37).

prior to the license transfer and permanently removed fuel from the reactor vessel, there obviously are no “estimated operation costs” to address under 10 C.F.R. § 50.33(f)(2).

ELPC’s argument that financial assurances for decommissioning are meant “to provide a second line of defense, if the financial operations of the licensee are insufficient, by themselves to ensure that sufficient funds are available to carry out decommissioning”⁴⁵ has likewise been rejected by the Commission. As the Commission explained in *Indian Point*, the quoted language is not relevant, “because it relates to licensees with ongoing operations that might provide funding for, or divert funding from, decommissioning activities.”⁴⁶ As the Commission held in *Indian Point*, neither 10 C.F.R. § 50.75 nor any other NRC rule requires a licensee at the decommissioning stage to supplement its financial assurance method with a showing that its operations will generate additional funding.⁴⁷

Nor does ELPC provide any factual basis raising any genuine material dispute with the Application’s demonstration of financial qualifications. First, ELPC’s statement that it “refers to other parties’ contentions in this proceeding explaining how Holtec has understated decommissioning costs”⁴⁸ does not satisfy NRC pleading requirements. 10 C.F.R. § 2.309(f)(1)(v) specifically requires a petitioner to provide a concise statement of the alleged facts or expert opinion which support its proposed contention, together with references to those specific sources and documents of which the petitioner is aware, and on which the petitioner intends to rely to establish those facts or expert opinion. ELPC’s vague reference to other

⁴⁵ Pet. at 16, quoting SECY-11-0133, Encl. 5, Questions and Answers on Decommissioning Financial Assurance at 1 (ADAMS Accession No. ML111950031).

⁴⁶ *Indian Point*, CLI-21-01, 92 N.R.C. at __ (slip op. at 51).

⁴⁷ *Id.*

⁴⁸ Pet. at 17.

unidentified parties' unspecified contentions does not meet this standard.⁴⁹ Further, as discussed in response to ELPC's Contention 4 below, a petitioner may not adopt another participant's contentions or arguments without first establishing an admissible contention of its own.⁵⁰ In the same vein, ELPC's reference to concerns raised with the financial assurance in the Indian Point proceeding⁵¹ says nothing about the sufficiency of the decommissioning funding assurance in this proceeding.

Second, contrary to ELPC's assertion,⁵² the NDT is not the only financial means that Holtec Palisades will have to decommission Palisades. As the Application states, "[r]eimbursement of spent fuel management expenses by DOE, which is not credited in the cash flow analysis..., would provide a substantial source of additional funds that could be used to provide such adjustment if necessary."⁵³ The Application and DCE estimate these spent fuel management expenses at approximately \$160 million.⁵⁴ As the Commission has held, these potential recoveries are relevant to whether an applicant could provide additional financial assurance if the decommissioning trusts prove insufficient.⁵⁵ ELPC does not address or dispute this information in the Application and thus raises no genuine material dispute with Holtec

⁴⁹ See also *Pub. Serv. Co. of New Hampshire* (Seabrook Station, Units 1 & 2), CLI-89-3, 29 N.R.C. 234, 240-41 (1989) ("[A] petitioner may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions. . . . Such a wholesale incorporation by reference does not serve the purposes of a pleading. . . . The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point.") (citations omitted).

⁵⁰ *Entergy Nuclear Operations, Inc. et al.* (Pilgrim Nuclear Power Station), CLI-20-12, 91 N.R.C. ___ (slip op. at 18).

⁵¹ Pet. at 17-18.

⁵² Pet. at 16.

⁵³ LTA, Encl. 1 at 18.

⁵⁴ LTA, Encl. 1, Att. E at 3, 5; DCE at 33, 46.

⁵⁵ *Indian Point*, CLI-21-01, 92 N.R.C. at ___ (slip op. at 49).

Palisades' financial qualifications.

Third, ELPC's assertion that Holtec Palisades' and HDI's proposed use of the DECON method eliminates their ability to rely upon a 2-percent annual growth⁵⁶ provides no support for this contention. As previously discussed, this assertion not only mischaracterizes the Application, PSDAR and DCE (which make no mention of DECON) but also misinterprets the NRC rules and ignores Commission precedent.

Finally, ELPC's assertion that it cannot conduct further analysis of Holtec Palisades' financial qualifications because it has not been provided a "Disclosure Schedule"⁵⁷ raises no genuine dispute with the Application. No NRC rule requires that an application provide a disclosure schedule.⁵⁸ Nor does ELPC explain what such a schedule is or why ELPC needs it in order to formulate contentions regarding the sufficiency of the NDT to fund the estimated costs in the DCE. ELPC also observes that some provisions of the Membership Interest Purchase and Sale Agreement included in the Application have been redacted, and requests that they be made public. The Federal Register Notice in this proceeding provided a procedure for requesting access to such information.⁵⁹ ELPC simply failed to take advantage of that opportunity.

D. Contention 4 Is Inadmissible

ELPC's Contention 4, which seeks to adopt all contentions filed by Don't Waste Michigan, Beyond Nuclear, and Michigan Safe Energy Future,⁶⁰ must be rejected because ELPC

⁵⁶ Pet. at 17.

⁵⁷ Pet. at 18.

⁵⁸ A petitioner is not entitled to discovery to flesh out support for its proposed contentions. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 N.R.C. 658, 676 & n.73, (2008).

⁵⁹ Notice, 86 Fed. Reg. at 8,228.

⁶⁰ Pet. at 18.

has failed to demonstrate standing or proffer any admissible contention of its own, and as will be discussed below, has failed to demonstrate standing. As the Commission has held:

[A] petitioner must be admitted to a proceeding as a party, by demonstrating standing and submitting at least one admissible contention, before it may be permitted to adopt another party's contention, arguments, or evidentiary support. Otherwise, petitioners with little or no knowledge of the issues raised in adopted contentions might be admitted as parties to litigate those contentions in our proceedings. This would essentially defeat the purpose of our contention admissibility standards, which are meant to ensure that parties to a proceeding have demonstrated the necessary factual or legal knowledge to participate meaningfully.⁶¹

In addition, ELPC has not complied with 10 C.F.R. § 2.309(f)(3), which requires a petitioner seeking to adopt another sponsoring petitioner's contention to either agree that the sponsoring petitioner shall act as the representative with respect to that contention or jointly designate with the sponsoring petitioner a representative who shall have the authority to act for the petitioners with respect to the contention. As ELPC has not done so, its attempt to adopt the contentions filed by Don't Waste Michigan, Beyond Nuclear, and Michigan Safe Energy Future is contrary to the NRC rules.

IV. ELPC Has Not Demonstrated Standing

Because ELPC has not posed at least one admissible contention, the Commission need not address the question of ELPC's standing to intervene in this proceeding.⁶² But as explained below, ELPC also has not established standing in the proceeding as a matter of right under 10

⁶¹ *Pilgrim*, CLI-20-12, 91 N.R.C. __ (slip op. at 18).

⁶² See *PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 N.R.C. 500, 503 n.19 (2015) ("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 *In re Fla. Power & Light Co.*, 54 N.R.C. 3, 26 (2001)).

C.F.R. § 2.309(d) or as a matter of discretion under 10 C.F.R. § 2.309(e).

A. Applicable NRC Legal Standards and Precedent

To demonstrate that it has standing pursuant to 10 C.F.R. § 2.309(d), ELPC must address: (1) the nature of its right under the AEA to be made a party to the proceeding; (2) the nature and extent of its property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on its interest.⁶³ In practice, this requires satisfying either the traditional elements of standing, or satisfying presumptive standing based on geographic proximity to the proposed facility.⁶⁴ Where the petitioner is an organization, it must either demonstrate standing in its own right or representational standing.⁶⁵ Here, ELPC asserts only representational standing.⁶⁶

1. Standing Based on Geographic Proximity

Under NRC case law, a petitioner may, in some instances, be presumed to have fulfilled the judicial standards for standing based on his or her geographic proximity to a facility or source of radioactivity.⁶⁷ “Proximity” standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility.⁶⁸ The NRC has held that the proximity presumption may be sufficient to confer standing on an individual or group in proceedings

⁶³ 10 C.F.R. § 2.309(d)(1)(ii)-(iv).

⁶⁴ *See Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 N.R.C. 577, 579-83 (2005).

⁶⁵ *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 N.R.C. 111, 115 (1995).

⁶⁶ Pet. at 7.

⁶⁷ *Peach Bottom*, CLI-05-26, 62 N.R.C. at 580.

⁶⁸ *Id.* (citations omitted).

conducted pursuant to Part 50 for reactor construction permits, operating licenses, or significant license amendments.⁶⁹

Although the NRC has applied a presumption of standing in initial reactor operating license proceedings for individuals who live within 50 miles of a plant, it has held that a more stringent standard applies to proceedings involving approvals lacking a “clear potential for offsite consequences.”⁷⁰ Such proceedings include license transfer cases, where the Commission “determine[s] on a case-by-case basis whether the proximity presumption should apply, considering the ‘obvious potential for offsite [radiological] consequences,’ or lack thereof, from the application at issue, and specifically ‘taking into account the nature of the proposed action and the significance of the radioactive source.’”⁷¹

NRC tribunals have “recognized proximity standing at such close distances where a petitioner *frequently* engages in *substantial* business and related activities in the vicinity of the facility, engages in normal everyday activities in the vicinity, has regular and frequent contacts in an area near a license facility, or otherwise has visits of a length and nature showing an ongoing connection and presence.”⁷² Conversely, the NRC has denied proximity-based standing where contact has been limited to “mere occasional trips to areas located close to reactors.”⁷³ Furthermore, to establish proximity standing, a petitioner must provide “*fact-specific standing*

⁶⁹ *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 N.R.C. 325, 329 (1989) (citations omitted).

⁷⁰ *Id.* at 329; *see also Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 N.R.C. 97, 98-99, *aff’d on other grounds*, ALAB-816, 22 N.R.C. 461 (1985) (residence 43 miles from the plant is inadequate for standing with respect to a spent fuel pool expansion).

⁷¹ *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 N.R.C. 423, 426 (2007) (quoting *Peach Bottom*, CLI-05-26, 62 N.R.C. at 580-81).

⁷² *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 N.R.C. 519, 523-524 (2007) (internal quotation marks and citations omitted) (emphasis in original).

⁷³ *Id.* at 520, 524 (citation omitted).

allegations, not conclusory assertions,” as the Commission “cannot find the requisite ‘interest’ based on . . . general assertions of proximity.”⁷⁴

2. *Traditional Standing*

In instances where the proximity presumption of standing does not apply, “the Commission applies judicial concepts of standing.”⁷⁵ To demonstrate standing, a petitioner must show: (1) an actual or threatened, concrete and particularized injury that is (2) fairly traceable to the challenged action, and (3) likely to be redressed by a favorable decision.⁷⁶ These criteria are commonly referred to as injury-in-fact, causality, and redressability, respectively. The asserted injury must be “distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical.”⁷⁷ Also, “when future harm is asserted, it must be ‘threatened,’ ‘certainly impending,’ and ‘real and immediate.’”⁷⁸ Although a petitioner is not required to show that the injury flows directly from the challenged action, it must nonetheless show that the “chain of causation is plausible.”⁷⁹ Finally, a petitioner must show that “its actual or threatened injuries

⁷⁴ *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 N.R.C. 399, 410 (2007) (emphasis added).

⁷⁵ *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 5-6 (1998), *aff’d sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999) (citations omitted).

⁷⁶ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 195 (1998) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1998)).

⁷⁷ *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 N.R.C. 116, 117-18 (1998) (citing *Steel Co. v. Citizens for a Better Env’t*, 118 S. Ct. 1003, 1016 (1998); *Warth v. Seldin*, 422 U.S. 490, 501, 508, 509 (1975); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 72 (1994)).

⁷⁸ *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 N.R.C. 344, 349 (2001), *aff’d*, CLI-01-21, 54 N.R.C. 247 (2001) (citations omitted).

⁷⁹ *Sequoyah Fuels*, CLI-94-12, 40 N.R.C. at 75. See also *Crow Butte Res., Inc.* (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 N.R.C. 331, 345 (2009).

can be cured by some action of the tribunal.”⁸⁰

3. *Representational Standing Organizations*

To invoke representational standing, an organization must: (1) show that at least one of its members has standing in his or her own right (*i.e.*, by demonstrating geographic proximity in cases where the presumption applies, or by demonstrating injury-in-fact within the zone of protected interests, causation, and redressability), (2) identify that member by name and address, and (3) show—preferably by affidavit—that the organization is authorized by that member to request a hearing on behalf of the member.⁸¹

4. *Discretionary Intervention*

Pursuant to 10 C.F.R. § 2.309(e), the Commission may consider a request for discretionary intervention where a party lacks standing to intervene as a matter of right under 10 C.F.R. § 2.309(d)(1). However, discretionary intervention may be granted only when at least one petitioner has established standing and at least one contention has been admitted for hearing.⁸² In addition to addressing the factors in 10 C.F.R. § 2.309(d)(1), a petitioner who seeks intervention as a matter of discretion (if it is determined that standing as a matter of right is not demonstrated) must specifically address in its initial petition the six factors set forth in 10 C.F.R.

⁸⁰ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 N.R.C. 9, 14 (2001).

⁸¹ *See, e.g., N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 and 2; Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 N.R.C. 37, 47 (2000); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 202 (2000).

⁸² 10 C.F.R. § 2.309(e). *See also PPL Susquehanna LLC*, (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 N.R.C. 1, 21 n.14 (2007) (“[D]iscretionary standing [is] only appropriate when one petitioner has been shown to have standing as of right and an admissible contention so that a hearing will be conducted.”).

§ 2.309(e), which the Commission will consider and balance.⁸³ Of the six factors, primary consideration is given to the first factor—assistance in developing a sound record.⁸⁴ The petitioner has the burden to establish that the factors in favor of intervention outweigh those against intervention.⁸⁵

B. ELPC Has Not Established Representational Standing

ELPC has failed to establish representational standing. Its claim to representational standing is based solely on the declarations of two individuals – Jody Flynn⁸⁶ and Charles Brand.⁸⁷ Neither of these declarations state that the declarant is a member of ELPC. Without proof that either is a member of ELPC, representational standing should be denied. Otherwise, any organization could establish its standing simply by soliciting individuals to authorize their representation.

In addition, ELPC has not demonstrated that either of the declarants has standing in his or her own right. As a threshold matter, the physical proximity of cottages in which the declarants

⁸³ Factors weighing in *favor* of allowing intervention include (i) the extent to which its participation would assist in developing a sound record; (ii) the nature of petitioner’s property, financial or other interests in the proceeding; and (iii) the possible effect of any decision or order that may be issued in the proceeding. *See* 10 C.F.R. § 2.309(e)(1)(i)-(iii). Conversely, factors weighing *against* allowing intervention include (i) the availability of other means whereby the petitioner’s interest might be protected; (ii) the extent to which petitioner’s interest will be represented by existing parties; and (iii) the extent to which petitioner’s participation will inappropriately broaden the issues or delay the proceeding. *See* 10 C.F.R. §§ 2.309(e)(2)(i)-(iii).

⁸⁴ *See Portland Gen. Elec. Co.* (Pebble Springs Nuclear Power Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 617 (1976); *see also Gen. Pub. Utils. Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 N.R.C. 143, 160 (1996).

⁸⁵ *See Nuclear Eng’g Co. Inc.* (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 N.R.C. 737, 744 (1978) (requiring potential discretionary intervenor to show “that it is both willing and able to make a valuable contribution to the full airing of the issues . . . in this proceeding”).

⁸⁶ Pet., Exh. 1, Standing Declaration of Jody G. Flynn (“Flynn Decl.”).

⁸⁷ Pet., Exh. 2, Standing Declaration of Charles M. Brand (“Brand Decl.”).

reside a few months each year⁸⁸ does not by itself establish proximity-based injury. As stated above, even in a license transfer or amendment proceeding involving an *operating* reactor, a petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action “quite obvious[ly] entails an increased potential for offsite consequences.”⁸⁹ Here, given the shutdown and defueled status of Palisades at the time of the license transfer, the proposed license transfers and conforming license amendment do not “on their face present any ‘obvious’ potential of offsite radiological consequences.”⁹⁰ At the time of the license transfer, the primary significant nuclear activities ongoing at Palisades will be the storage and handling of spent fuel bundles in the spent fuel pool and the transfer of spent fuel assemblies to dry cask storage. Because the reactor will not operate again, the scope of activities at the plant—and in turn, the risk of an offsite radiological release—will be greatly reduced. As a result, “the spectrum of accidents and events that remain credible is significantly reduced,” and it is incumbent upon ELPC and its declarants to provide “some ‘plausible chain of causation,’ some scenario suggesting how these particular license [transfers and] amendments would result in a distinct new harm or threat to [them].”⁹¹ It is also up to ELPC to show that “its actual or

⁸⁸ Flynn Decl. ¶ 1; Brand Decl., ¶ 2.

⁸⁹ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 N.R.C. 185, 191 (1999) (citing *St. Lucie*, CLI-89-21, 30 N.R.C. at 329-30) (internal quotation marks omitted). See also *Peach Bottom*, CLI-05-26, 62 N.R.C. at 580-81 (explaining how the Commission considers proximity-based standing in license transfer cases and stating that “[i]f the petitioner fails to show that a particular licensing action raises an *obvious potential for offsite consequences*, then our standing inquiry reverts to a traditional standing analysis of whether the petitioner has made a specific showing of injury, causation and redressability”) (emphasis in original).

⁹⁰ *Zion*, CLI-99-4, 49 N.R.C. at 191. See also *Big Rock Point*, CLI-07-19, 65 N.R.C. at 426 (“There is simply no ‘obvious potential for offsite consequences’ from this ISFSI transfer sufficient to justify applying a presumption of standing.”).

⁹¹ *Zion*, CLI-99-4, 49 N.R.C. at 192. The Commission has specifically noted that “the radiological effects of decommissioning a power plant are far less than those associated with the operation of a plant,” and that “[a]s a result, the decommissioning activities have considerably less potential to

threatened injuries can be cured by some action of the tribunal” on the license transfer.⁹²

Applicants respectfully assert that ELPC and their declarants have failed to do so here. ELPC’s claim of representational standing fails because the declarants rely on unsupported, conclusory fears of hypothetical future injury based on “what ifs,” and fail to show any injury that that is concrete, real and imminent, or redressable.⁹³

Both declarants express concern about whether they will be able to use the Palisades property in the future. Ms. Flynn states:

Before the Palisades nuclear power plant was constructed, the community regularly used that land. . . . If decommissioning were done well, I think people would be able to use the land again like they had when I was younger. That’s hard to imagine, however, with all my concerns with how the clean up will go.⁹⁴

Similarly, Mr. Brand states:

The community association has discussed buying some of the property back after the plant is shut down so that the community can increase the amount of property available for community purposes. . . . I worry that if the cleanup is not adequately funded, the land adjacent to the nuclear plant would not be safe for people to use.⁹⁵

impact public health and safety.” *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235, 246 (1996).

⁹² *Sequoyah Fuels*, CLI-01-2, 53 N.R.C. at 14.

⁹³ Applicants recognize that past petitioners have established standing to intervene in proceedings to challenge the adequacy of facility decommissioning activities by alleging injuries that are not dissimilar to certain injuries alleged by ELPC’s declarants here. *See, e.g., Yankee*, CLI-96-7, 43 N.R.C. at 247-48; *Sequoyah Fuels*, CLI-94-12, 40 N.R.C. at 71-75. However, those proceedings are procedurally and factually distinguishable. For example, Yankee Rowe predated the NRC’s implementation of the 1996 Decommissioning Rule and involved the issuance of an order approving the licensee’s decommissioning plan and related amendments to the facility’s Final Safety Analysis Report. And Sequoyah Fuels stemmed from an NRC enforcement order related to financial assurance for decommissioning an NRC materials licensee’s site. Neither of these proceedings involved a license transfer application, which by itself proposes no physical changes to Palisades and the ISFSI or operational changes. *See Notice*, 86 Fed. Reg. at 8,226.

⁹⁴ Flynn Decl., ¶ 4.

⁹⁵ Brand Decl., ¶ 9.

If there is not enough money set aside for Holtec to decommission the plant, I would not feel comfortable walking or swimming near the plant.⁹⁶

This theoretical and speculative “worry” and “imagin[ing]” about some future harm (presumably not occurring until 2041, when decommissioning is expected to be complete) does not constitute a concrete, “certainly impending,” “real and imminent” injury.

Ms. Flynn also asserts that “if there isn’t enough money, Holtec won’t be able to do a complete job” and “[i]f there isn’t enough money for Holtec to pay for decommissioning, I’m afraid that my water will be contaminated.”⁹⁷ This speculative fear too does not amount to a future injury that certainly is impending, real and imminent. Indeed, “an injury does not meet the imminence requirement if “one cannot describe how the [plaintiffs] will be injured without beginning the explanation with the word ‘if.’” Moreover, Ms. Flynn adds:

I’ve been concerned about the plant for years—so much so that I don’t drink the water coming out of the wells around here. I don’t plan on drinking the water during decommissioning either. However, I think I would feel better if the state were in an oversight position.⁹⁸

Consequently, it does not appear that Ms. Flynn’s alleged fear of water contamination would even affect her.

Mr. Brand asserts:

I am concerned that during decommissioning that HDI takes every precaution not to expose the community to nuclear waste. I’m worried that they will not properly dispose of the waste, which could result in radioactive waste being released from the site. Our property could suddenly become worthless and unusable.⁹⁹

⁹⁶ *Id.*, ¶ 17.

⁹⁷ Flynn Decl., ¶ 7.

⁹⁸ *Id.*, ¶ 8.

⁹⁹ Brand Decl., ¶ 13. This alleged economic harm—*i.e.*, diminished property value—is insufficient, by itself, to support a claim of standing. *See Ambrosia Lake*, CLI-98-11, 48 N.R.C. at 9 (“The fact that

Similarly, Ms. Flynn states:

I also worry about unexpected costs and decommissioning needs during the decommissioning process. For example, decommissioning will require digging into the land, and I'm concerned that it could pull up pipes or materials that could release even more pollution into the area. More money for decommissioning might help the chance of a poorly done decommissioning job.¹⁰⁰

Mr. Brand's "concern" and Ms. Flynn's "worry" that decommissioning might not be performed properly are again hypothetical and conjectural, presupposing that HDI would at some point in the future violate NRC's rules. Such speculative concerns do not suffice, as the alleged injury is not "certainly impending," and "real and immediate."

Further, ELPC does not show that any of this alleged harm is likely to be redressed by a favorable decision in this proceeding. In essence, ELPC argues that the alleged injuries to the declarants would be redressed if HDI's exemption request is denied. However, if the exemption request were denied precluding the transfer from proceeding and leaving the responsibility for decommissioning with ENP, site restoration and spent fuel management would still be funded pursuant to an exemption, because ENP too is a limited liability company that would be dependent on its NDT and DOE recoveries to fund these expenses.

C. ELPC Has Not Demonstrated a Sufficient Basis for Granting Discretionary Intervention Under Section 2.309(e)

ELPC's alternative request for discretionary intervention under 10 C.F.R. § 2.309(e)¹⁰¹ is procedurally and factually deficient. As an initial matter, ELPC fails to address all of the six

economic interest or motivation is involved will not preclude standing, but the petitioner must also be threatened by environmental harm"); *see also Int'l Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 N.R.C. 259, 265 (1998) ("[I]t has long been our practice as an agency to reject standing for petitioners asserting a bare economic injury, unlinked to any radiological harm.").

¹⁰⁰ Flynn Decl., ¶ 9.

¹⁰¹ Pet. at 7.

factors enumerated in Section 2.309(e), much less show that a balancing of those factors militates in favor of the Commission's exceptional granting of discretionary intervention status.

ELPC has provided no specific and compelling reasons as to why an exceptional grant of discretionary intervention would be warranted in this license transfer proceeding. ELPC's statements are vague and unparticularized; indeed, they could be made by any similarly situated petitioner. Furthermore, the burden of convincing the Commission that a petitioner can make a valuable contribution to the agency's decision-making process lies with the petitioner.¹⁰²

ELPC addresses none of the considerations that NRC tribunals typically have considered as potential indicia of a petitioner's ability to contribute to development of a sound record. Such considerations include a petitioner's showing of significant ability to contribute on substantial issues of law or fact that will not be otherwise properly raised or presented; the specificity of such ability to contribute on those substantial issues of law or fact; justification of time spent on considering the substantial issues of law or fact; the ability to provide additional testimony, particular expertise, or expert assistance; and specialized education or pertinent experience.¹⁰³ Instead, ELPC merely asserts that its participation will assist in developing a sound record because ELPC has experience working on Michigan energy issues and cases related to the financial issues surrounding site restoration and reclamation at nuclear power plants.¹⁰⁴ This conclusory assertion is belied by ELPC's hearing request, as ELPC's contentions (other than the one attempting to adopt the contentions of other petitioners) merely repeat arguments concerning NRC regulations and requirements that have been soundly rejected by the Commission. ELPC's

¹⁰² *Nuclear Eng'g Co.*, ALAB-473, 7 N.R.C. at 745 (1978).

¹⁰³ *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 N.R.C. 27, 33 (1981) (and cases cited therein). *See also Fla. Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-24, 32 N.R.C. 12, 16-17 (1990), *aff'd*, ALAB-952, 33 N.R.C. 521, 532 (1991).

¹⁰⁴ Pet. at 7.

hearing request is not supported by any expert opinion, or any other indication that ELPC has expertise relevant to any admissible contention in this proceeding. In short, EPLC's petition gives no indication that its participation would contribute to a sound record.

ELPC's claim that "[t]here are no other means by which ELPC and its members' interests will be protected"¹⁰⁵ is also conclusory and unsupported. ELPC has been given the opportunity to provide comments on the decommissioning activities and schedules described in the PSDAR, including the DCE.¹⁰⁶ Further, after Palisades permanently ceases operation, the NRC Staff will monitor the licensee's use of the decommissioning trust fund via its review of the licensee's annual financial assurance status reports.¹⁰⁷ Those annual reports must include, among other information, the amount spent on decommissioning activities, the amount remaining in the fund, and an updated estimate of the costs required to complete decommissioning.¹⁰⁸ If the licensee or NRC identifies a shortfall between the remaining funds and the updated cost to complete decommissioning (as a result of these annual status reports or otherwise), then the licensee must provide additional financial assurance.¹⁰⁹ The annual reports must also include the status of funding to manage spent fuel, including the amount of funds available, the projected cost of managing spent fuel until it is removed by the DOE and, if there is a funding shortfall, a plan to obtain additional funds to cover the cost.¹¹⁰ Moreover, ELPC and its declarants have the ability to seek an enforcement action under 10 C.F.R. § 2.202 if Holtec Palisades fails to maintain

¹⁰⁵ *Id.*

¹⁰⁶ Notice, 86 Fed. Reg. at 8,226.

¹⁰⁷ 10 C.F.R. § 50.82(a)(8)(v).

¹⁰⁸ 10 C.F.R. § 50.82(a)(8)(v)(A)-(B).

¹⁰⁹ 10 C.F.R. § 50.82(a)(8)(vi).

¹¹⁰ 10 C.F.R. § 50.82(a)(8)(vii).

adequate funding assurance for Palisades decommissioning.

V. Conclusion

For the foregoing reasons, the Commission should determine that ELPC has failed to put forward an admissible contention or establish standing and should therefore deny ELPC's Petition.

Respectfully submitted,

/signed electronically by Anne Leidich /

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March 22, 2021

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
Entergy Nuclear Operations, Inc.,)	
Entergy Nuclear Palisades, LLC,)	Docket Nos. 50-255-LT
Holtec International, and)	50-155-LT
Holtec Decommissioning International, LLC)	72-007-LT
)	72-043-LT
(Palisades Nuclear Plant and)	
Big Rock Point ISFSI))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing the Environmental Law & Policy Center Petition to Intervene and Hearing Request has been served through the E-Filing system on the participants in the above-captioned proceeding this 22nd day of March, 2021.

/signed electronically by Anne R. Leidich/

Anne R. Leidich