

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 Beyond Nuclear et al.'s
Petition to Intervene and Hearing Request**

Table of Contents

I. Introduction.....1

II. Background and Regulatory Framework.....2

III. Petitioners Have Not Offered an Admissible Contention2

 A. Contention 1 is Inadmissible.....4

 B. Contention 2 is Inadmissible.....11

 C. Contention 3 is Inadmissible.....16

 D. Petitioners’ Request to Adopt the Contentions of ELPC Is Impermissible.....28

IV. Petitioners Have Not Demonstrated Standing28

 A. Applicable Legal Standard.....29

 B. Petitioners Have Not Established Standing to Intervene as a Matter of Right Under
 Section 2.309(d)29

V. Conclusion35

**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 Beyond Nuclear et al.’s
Petition to Intervene and Hearing Request**

I. Introduction

Pursuant to 10 CFR § 2.309(i)(1), Entergy Nuclear Operations, Inc. (“ENOI”), Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC (“HDI”), (collectively, “Applicants”) submit this answer and opposition to the Petition of Beyond Nuclear, Michigan Safe Energy Future and Don’t Waste Michigan (collectively, “Petitioners”) for Leave to Intervene, and Request for an Adjudicatory Hearing (“Petition”).¹ Petitioners seek to intervene in the license transfer proceeding for the Palisades Nuclear Plant (“Palisades”) and Big Rock Point Site (“BRP”) and requests that the Nuclear Regulatory Commission (“Commission” or “NRC”) conduct a hearing on the license transfer request submitted by Applicants on December 23, 2020 (“Application”).² The Petition should be denied because none of the three contentions

¹ Petition of Beyond Nuclear, Michigan Safe Energy Future and Don’t Waste Michigan for Leave to Intervene, and Request for an Adjudicatory Hearing (Feb. 24, 2021) (ADAMS Accession No. ML21055A953) (“Petition”).

² 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.

submitted by the Petitioners satisfies the Commission’s admissibility criteria, and the Petitioners lack standing to intervene in this proceeding.

II. Background and Regulatory Framework

Applicants’ answer opposing the petition filed by the Michigan Attorney General describes Applicants’ submissions in this proceeding, the regulatory framework governing plant decommissioning and spent fuel management, the requirements for license transfers, and the Commission’s contention admissibility requirements.³ For brevity, Applicants incorporate that background discussion herein by reference.

III. Petitioners Have Not Offered an Admissible Contention

Petitioners bring three contentions and seek to adopt the contentions offered by the Environmental Law & Policy Center (“ELPC”) in ELPC’s separate petition. None of Petitioners’ contentions satisfy the Commission’s strict pleading standard, and their request to adopt ELPC’s contentions should be denied as well.

Contention 1 asserts that prior National Environmental Policy Act (“NEPA”) documents must be supplemented based on the environmental impacts of Palisades plant operations and alleged deficiencies in prior environmental reviews conducted in support of Palisades’ license renewal,⁴ and argues that this issue is within the scope of this proceeding because of requirements pertaining to HDI’s Post-Shutdown Decommissioning Activities Report (“PSDAR”).⁵ This

DPR-20, Big Rock Point, Docket Nos. 50-155 and 72-043, License No. DPR-6 (Dec. 23, 2020) (ADAMS Accession No. ML20358A075) (hereinafter “Application” or “LTA”).

³ Applicants’ Answer Opposing the Michigan Attorney General’s Petition for Leave to Intervene and Request for a Hearing, Section III (Mar. 22, 2021).

⁴ Petition at 19-41.

⁵ HDI, Post Shutdown Decommissioning Activities Report including Site-Specific Decommissioning Cost Estimate, Enclosure 1, Palisades Nuclear Plant Post Shutdown Decommissioning Activities Report (Dec. 23, 2020) (ADAMS Accession No. ML20358A232) (“PSDAR”).

contention misapprehends the scope of this proceeding and federal action and amounts to an impermissible challenge to NRC's categorical exclusion applicable to license transfers. The Commission has unambiguously held that such claims fall outside the scope of license transfer proceedings. Petitioners do not acknowledge or contend with the applicable NRC regulations and precedent and do not allege any environmental impacts associated with the license transfer itself.

Contention 2 challenges the corporate character of Holtec International, the upstream parent company of HDI (the company that would be responsible for the conduct of licensed activities at Palisades), and SNC-Lavalin, who's subsidiary owns a minority interest in Comprehensive Decommissioning International, LLC ("CDI")⁶ (the company that would serve as decommissioning general contractor).⁷ Petitioners have merely recycled the same attacks that have been rejected by the Commission in other license transfer proceedings involving the same companies, without any attempt to distinguish their contention from those that were rejected. Petitioners have not raised any claims that demonstrate a propensity by any of the companies that will conduct licensed activities to ignore or willfully violate NRC regulations.

Contention 3 challenges the commingled fund exemption submitted by HDI in parallel with the Application,⁸ which if granted would allow use of the Palisades nuclear decommissioning trust ("NDT") to pay for Palisades spent fuel management and site restoration costs.⁹ But Petitioners and their declarant Robert Alvarez fail to acknowledge or dispute any of the details in HDI's spent fuel management cost estimate that form the basis for this exemption request. Indeed, when examined alongside HDI's submittals, it appears that Petitioners' declarant actually *agrees* with

⁶ HDI is the majority owner of CDI.

⁷ Petition at 41-44.

⁸ *Id.* at 44-51.

⁹ *See* Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), Dec. 23, 2020 (ADAMS Accession No. ML20358A239) ("Exemption Request").

HDI's cost estimates. In any event, Petitioners' claims are all based on generic industry data and speculative or unexplained claims of cost overruns. Petitioners have not demonstrated that HDI's spent fuel management cost estimates are unreasonable or based on implausible assumptions, have not challenged HDI's conclusion that the NDT can fund radiological decommissioning, spent fuel management, and site restoration costs with nearly \$20 million of margin, and have not contested the substantial conservatisms included in HDI's cost estimate.

Finally, Petitioners' request to incorporate and adopt the contentions raised separately by ELPC is not permitted because Petitioners themselves have not submitted an admissible contention and demonstrated standing and have not complied with applicable NRC rules.

A. Contention 1 is Inadmissible

Contention 1 demands additional NEPA review due to “[c]hanges in land use, effects of historical site events, and inadequacies of the 2006 Supplemental Environmental Impact Statement [prepared in connection with Palisades’ license renewal].”¹⁰ Specifically, Petitioners claim that rising Lake Michigan water levels, alleged contamination from various sources during facility operations, supposed deficiencies in the seismic design of the Palisades independent spent fuel storage installation (“ISFSI”) concrete pads, the need to dispose of Greater Than Class C (“GTCC”) waste, the potential need to repackage spent nuclear fuel (“SNF”), and high fuel burnup rates all require additional environmental review.¹¹ As is evident from the contention title and this list of alleged impacts, none of these arguments has any bearing on the federal action in question, which is the transfer of the facility license and operating authority from the existing Entergy licensees to the proposed Holtec transferees. Contention 1 is, thus, inadmissible because it fails to

¹⁰ Petition at 19.

¹¹ *Id.* at 21-41.

raise any issues within the scope of this licensing proceeding, challenges existing NRC rules, is not adequately supported, and fails to raise a genuine dispute with the Application.

1. Contention 1 Impermissibly Challenges the Categorical Exclusion Applicable to License Transfers

The NRC has determined that license transfers do not trigger the need to prepare an environmental assessment or environmental impact statement, except in the case of special circumstances as found by the Commission.¹² The NRC made this determination based on the fact that the transfer itself does not permit a licensee to operate a facility any differently than what has been permitted under an existing license and, therefore, will not raise environmental issues that differ from those considered in prior NEPA analyses.¹³ This categorical exclusion was the result of many environmental assessments, “which uniformly demonstrated no significant environmental effects linked to license transfers.”¹⁴ It “does not indicate the absence of an environmental review, but rather, that the agency has established a sufficient administrative record to show that the subject actions do not, individually or cumulatively, have a significant effect on the human environment.”¹⁵

Petitioners make no mention of the categorical exclusion, despite the fact that the Application, in the section titled “Environmental Review,” explicitly references and relies on that exclusion.¹⁶ From the discussion and citations offered in support of Contention 1, it appears that

¹² 10 CFR §§ 51.22(b) and 51.22(c)(21).

¹³ Streamlined Hearing Process for NRC Approval of License Transfers, Final Rule, 63 Fed. Reg. 66,721, 66,728 (Dec. 3, 1998) (“Subpart M Rule”).

¹⁴ *Exelon Generation Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 479 (2019) (citing Subpart M Rule, 63 Fed. Reg. at 66,728).

¹⁵ See *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 91 NRC __ (2020) (slip op. at 46) (quoting Categorical Exclusions from Environmental Review, Final Rule, 75 Fed. Reg. 20,248, 20,251 (Apr. 19, 2010)).

¹⁶ Application at 21.

Petitioners believe the requirement to discuss environmental impacts in the PSDAR brings NEPA supplementation within the scope of this proceeding,¹⁷ thereby requiring the Application to revisit environmental reviews conducted in connection with Palisades’ license renewal and providing an opportunity to raise issues related to historical facility operations, many of which Petitioners have unsuccessfully sought to litigate in the past.¹⁸ Indeed, most of Petitioners’ claims are directed at alleged deficiencies in the Supplemental Environmental Impact Statement prepared in connection with Palisades’ license renewal (“License Renewal SEIS”).¹⁹ Of course, claims regarding the License Renewal SEIS were required to be raised at the time of its publication.²⁰ But Petitioners’ arguments reveal a more fundamental misunderstanding of NEPA review. It is *the federal action*, and potential environmental consequences of that action, that are subject to NEPA review—not the ongoing existence of the Palisades facility or activities associated with decommissioning and storing SNF at the facility, each of which has been subject to prior environmental review, and none of which are being approved by the NRC in this proceeding.²¹ The federal action at issue is the proposed transfer of the facility license and operating authority from the existing Entergy licensees to the Holtec transferees. NRC’s approval of the Application would not extend the facility’s

¹⁷ Petition at 20-21.

¹⁸ See Nuclear Information and Resource Service *et. al* Request for Hearing and Petition to Intervene (Aug. 8, 2005) (ADAMS Accession No. ML052940221); Terry J. Lodge: 2.206 Enforcement Action to Terminate Use of Dry Cask Storage Pads at Palisades Nuclear Power Plant (Apr. 4, 2006) (ADAMS Accession No. ML060960061). Both the request for hearing and the 2.206 petition were denied. See Memorandum and Order (Ruling on Standing, Contentions, and Other Pending Matters), LBP-06-10 (Mar. 7, 2006) (ADAMS Accession No. ML060660560); Director’s Decision Under 10 CFR 2.206 (Mar. 20, 2007) (ADAMS Accession No. ML070720768).

¹⁹ See NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 27 Regarding Palisades Nuclear Plant (Oct. 2006) (ADAMS Accession No. ML062710300).

²⁰ See *Duke Power Co. et al.* (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1048-49 (1983).

²¹ See *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 127 (2016) (“An agency’s NEPA obligations are triggered by agency action.”) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)); *Mayo v. Reynolds*, 875 F.3d 11, 21 (D.C. Cir. 2017) (“[A]n agency is not required to make a new assessment under NEPA every time it takes a step that implements a previously studied action . . .”).

operating license, allow substantive changes to plant operations, or authorize any additional licensed activities beyond those that may already be undertaken by the current licensees. “[A] license transfer review does not itself involve any consideration of the potential environmental impacts of decommissioning activities.”²²

As noted above, the NRC has categorically determined that a change in the identity of the licensee through a license transfer does not have a significant effect on the human environment. While the Commission may determine, on a case-by-case basis, that environmental review of a license transfer is appropriate when “special circumstances” are present,²³ such is not the case here. The Commission has not clearly defined what may constitute “special circumstances” in all instances, but the Commission has explained that the categorical exclusion will not apply to licensing actions involving “changes in actual operations or requirements directly involving health and safety-related activities.”²⁴ As the Application states, though, “the proposed transfers do not directly affect the actual maintenance or decommissioning of the shutdown facility in any substantive way, other than facilitating a change in the timeframe for conducting certain activities.”²⁵ Indeed, in the absence of the license transfer, the current Entergy licensees could perform all of the same decommissioning activities expected to be performed by the transferees.²⁶ Petitioners have not challenged the Application’s conclusion that the transfer will not substantively change facility operations and have not identified any environmental impacts that could result from transferring the license. Petitioners’ claims related to facility operation in general and alleged

²² *Pilgrim*, CLI-20-12, 91 NRC __ (2020) (slip op. at 41).

²³ *See* 10 CFR § 51.22(b).

²⁴ Subpart M Rule, 63 Fed. Reg. at 66,728.

²⁵ Application at 21.

²⁶ *See* 10 CFR §§ 50.75 and 50.82.

deficiencies with prior environmental reviews are outside the scope of this proceeding, fail to raise a material dispute with the Application, and constitute an impermissible challenge to NRC's categorical exclusion.²⁷

2. Petitioners' Claims Related to the PSDAR and ENOI ISFSI Decommissioning Funding Plan Are Out of Scope

Rather than addressing the federal action in this proceeding, Contention 1 challenges HDI's PSDAR, as well as the ISFSI Decommissioning Funding Plan submitted by ENOI in 2018.²⁸ For example, Petitioners claim that HDI's PSDAR and/or ENOI's ISFSI Decommissioning Funding Plan do not sufficiently address the environmental effects of off-site waste transport,²⁹ GTCC disposal,³⁰ repackaging SNF into transportation casks,³¹ long-term storage of SNF on the ISFSI pads,³² and dry storage of high-burnup fuel.³³ But neither HDI's PSDAR nor ENOI's ISFSI Decommissioning Funding Plan is subject to challenge in this proceeding.

As an initial matter, the financial qualifications of HDI and Holtec Palisades are not based on the ENOI ISFSI Decommissioning Funding Plan. HDI's Site-Specific Decommissioning Cost Estimate ("DCE") includes its own cost estimate for decommissioning the Palisades ISFSI.³⁴ In any event, neither the PSDAR nor the ENOI ISFSI Decommissioning Funding Plan must be

²⁷ NRC regulations are not subject to challenge unless a properly supported waiver petition has been approved. 10 CFR § 2.335. Petitioners have not submitted a waiver request in this proceeding.

²⁸ See ENOI Letter No. CNRO 2018-0050, ISFSI Decommissioning Funding Plans (10 CFR 72.30) (Dec. 17, 2018) (ADAMS Accession No. ML18351A491) ("ENOI ISFSI Decommissioning Fund Plan").

²⁹ Petition at 22-24.

³⁰ *Id.* at 32.

³¹ *Id.* at 35-39.

³² *Id.* at 36-37.

³³ *Id.* at 39-41.

³⁴ HDI, Post Shutdown Decommissioning Activities Report including Site-Specific Decommissioning Cost Estimate, Enclosure 2, Palisades Nuclear Plant Site Specific Decommissioning Cost Estimate, at 22-23, 51 (Dec. 23, 2020) (ADAMS Accession No. ML20358A232) ("DCE").

approved by NRC or constitutes a major federal action.³⁵ As the Commission succinctly put it in its recent order rejecting similar claims in the Indian Point license transfer proceeding, “the PSDAR . . . does not amend the NRC license and is not a major federal action subject to NEPA review.”³⁶ The PSDAR is instead meant to provide a “general overview for the public and the NRC of the licensee’s proposed decommissioning activities.”³⁷ In fact, when the NRC promulgated its decommissioning regulations, “it specifically considered and rejected the idea that review of the PSDAR should be defined as a major federal action under NEPA because environmental analysis of activities to be performed under the PSDAR will necessarily have been performed in accordance with prior site-specific or generic analysis.”³⁸ The fact that HDI submitted the PSDAR at the same time it is seeking approval of the Application does not change this fact.³⁹ Petitioners’ claims related to the PSDAR and ENOI ISFSI Decommissioning Funding Plan are thus beyond the scope of this proceeding and constitute an impermissible challenge to NRC rules.

While it is not necessary to dispose of Petitioners’ out-of-scope arguments, it bears noting that the alleged environmental impacts associated with off-site waste disposal, facility decommissioning, and SNF management have all been previously reviewed in the Decommissioning GEIS, Continued Storage GEIS, or the License Renewal SEIS for Palisades.⁴⁰

³⁵ See 10 CFR §§ 50.82(a)(4) and 72.30(c).

³⁶ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-01, 92 NRC __ (2021) (slip op. at 64) (footnote omitted).

³⁷ *Id.* (quoting Decommissioning of Nuclear Power Reactors; Final Rule, 61 Fed. Reg. 39,278, 39,281 (July 29, 1996) (“Decommissioning Rule”).

³⁸ *Vermont Yankee*, CLI-16-17, 84 NRC at 126 (citing Decommissioning Rule, 61 Fed. Reg. at 39,279, 39,283, 39,286).

³⁹ *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-19-11, 90 NRC 258, 282 (2019) (explaining that “Staff [does] not conduct a review of the environmental impacts of the planned decommissioning activities” when conducting review of a license transfer application).

⁴⁰ See generally NUREG-0586, Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Supplement 1, Regarding the Decommissioning of Nuclear Power Reactors (Nov. 2002) (ADAMS

In fact, HDI is prohibited by NRC regulations from performing any decommissioning activities that would “[r]esult in significant environmental impacts not previously reviewed.”⁴¹ Accordingly, all PSDARs must include “a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements.”⁴² Consistent with these requirements, HDI’s PSDAR contains an analysis of the various environmental impacts expected in decommissioning and an explanation of how those impacts are bounded by prior environmental reviews.⁴³ Petitioners do not engage with the PSDAR’s issue-by-issue analysis; nor do they explain *why* the reviews conducted in the Decommissioning GEIS, Continued Storage GEIS, and License Renewal SEIS do not bound decommissioning activities at Palisades. Even a cursory review would confirm that the issues raised by Petitioners have been evaluated.⁴⁴ Regardless, if

Accession Nos. ML023470304, ML023470323, ML023500187, ML023500211, ML023500223) (“Decommissioning GEIS”); NUREG-2157, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (Sept. 2014) (ADAMS Accession No. ML14196A105) (“Continued Storage GEIS”); License Renewal SEIS.

⁴¹ 10 CFR § 50.82(a)(6)(ii).

⁴² 10 CFR § 50.82(a)(4)(i).

⁴³ PSDAR at 18-37.

⁴⁴ *See, e.g.*, Continued Storage GEIS, § 4.18.2.2 at 4-89 to 4-90 (evaluating risk of floods to spent nuclear fuel storage systems); License Renewal SEIS, App’x A at A-20 (evaluating changes in watershed characteristics at Palisades); Decommissioning GEIS, Supp. 1, § 4.3.8.3 at 4-35, App’x E at E-4, E-7, E-16 (ADAMS Accession Nos. ML023470304 and ML023470323) (evaluating effect of steam generator removal); License Renewal SEIS, § 4.8.5 (analyzing cumulative impacts on groundwater use and quality at Palisades); Decommissioning GEIS, Supp. 1, § 4.3.3.2 (ADAMS Accession No. ML023470304) (discussing potential impacts of decommissioning on water quality); License Renewal SEIS, § 2.2.7 (describing Palisades radiological environmental monitoring program); Continued Storage GEIS, § 4.18 (analyzing environmental impacts of postulated accidents involving spent nuclear fuel storage, including earthquakes); License Renewal SEIS, § 7.1 at 7-3 (analyzing impact of GTCC waste at Palisades); Continued Storage GEIS, § 4.0 (analyzing environmental impacts of continued storage of spent fuel over “short-term storage” (sixty years beyond licensed life for operations), “long-term storage” (one-hundred years beyond “short-term storage”), and indefinite storage); *id.* at § 4.15 (discussing environmental impacts related to waste management, including repackaging of spent nuclear fuel); License Renewal SEIS, App’x I at I-7 (concluding that environmental impacts of high-burnup fuel do not require separate consideration because the impacts would “be the same or slightly less” than the impacts of storing low-burnup fuel). If Applicants ever contemplate performing decommissioning activities that are not enveloped by previous environmental impact statements, they will be required to submit a license amendment request evaluating the additional impacts. *See Indian Point*, CLI-21-01, 92 NRC __ (2021) (slip. op. at

Petitioners had grounds for asserting that Palisades decommissioning activities will exceed those that have been previously reviewed, Petitioners' recourse would be to file a 2.206 petition for enforcement action, not to obtain a hearing in this license transfer proceeding.⁴⁵

Accordingly, Contention 1's challenge to the PSDAR's environmental review falls outside the scope of this proceeding, constitutes an impermissible challenge to NRC regulations, and fails to raise any genuine dispute.

B. Contention 2 is Inadmissible

Contention 2 attacks the general corporate character of Holtec International and SNC-Lavalin. Petitioners recycle the same claims that have been previously raised and rejected in three prior license transfer proceedings involving subsidiaries of these same two companies, but they make no attempt to distinguish their contention from those that have been consistently rejected, nor have they attempted to satisfy the Commission's requirements for these kind of character contentions. Contention 2 should be rejected for the same reasons given in the Oyster Creek, Pilgrim, and Indian Point license transfer proceedings.

1. Legal Standard for Character Contentions

The NRC places "strict limits on 'management' and 'character' contentions"⁴⁶ and any such claims must have "some direct and obvious relationship between the character issues and the licensing action in dispute."⁴⁷ Claims based on prior actions or past violations must "be directly

64) (citing *Vermont Yankee*, CLI-16-17, 84 NRC at 123-24; Decommissioning GEIS at 1-11, 2-3; Decommissioning Rule, 61 Fed. Reg. at 38,283, 39,286).

⁴⁵ See *Indian Point*, CLI-21-01, 92 NRC __ (2021) (slip op. at 65).

⁴⁶ *Dominion Nuclear Conn. Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 366 (2001).

⁴⁷ *Id.*; see also *Ga. Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993) ("We do not mean to suggest that every licensing action throws open an opportunity to engage in a free-ranging inquiry

germane to the challenged licensing action.”⁴⁸ “Allegations of management improprieties or poor ‘integrity’ . . . must be of more than historical interest.”⁴⁹ Any claims attacking a license transferee’s character must be connected to the technical and financial qualifications of the applicants in the proceeding.⁵⁰ In this context, the Commission has admitted contentions alleging deliberate NRC violations by a proposed licensee’s plant managers or personnel during operation of the plant or in response to NRC investigations.⁵¹ But the Commission has consistently rejected generic claims related to large companies’ conduct of business activities when the cited conduct is not directly connected to the licensed activities in question.⁵²

That standard is intentionally restrictive. Admitting general claims about unrelated corporate activities, adequacy of company procedures or culture, or general misconduct of company personnel or executives in every licensing proceeding would invite freewheeling

into the ‘character’ of the licensee. There must be some direct and obvious relationship between the character issues and the licensing action in dispute.”).

⁴⁸ *Millstone*, CLI-01-24, 54 NRC at 366-67; see also *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-04, 49 NRC 185, 189 (1999) (“[L]icensing actions as a rule do not ‘throw[] open an opportunity to engage in a free-ranging inquiry into the ‘character’ of the licensee.’”) (quoting *Vogtle*, CLI-93-16, 38 NRC at 32).

⁴⁹ *Millstone*, CLI-01-24, 54 NRC at 366 (quoting *Ga. Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 120 (1995)).

⁵⁰ See *Oyster Creek*, CLI-19-06, 89 NRC at 477 (2019).

⁵¹ See *Millstone*, CLI-01-24, 54 NRC at 366 (“[W]e found character allegations directly pertinent when . . . the allegations specifically concerned the current director of the facility, and the current organizational structure of the facility, and were supported by expert witnesses alleged to have knowledge of the current management.” (citing *Ga. Tech*, CLI-95-12, 42 NRC 111 (1996))); see also *Consumers Energy Co.* (Big Rock Point ISFSI), CLI-07-21, 65 NRC 519, 523 (2007) (explaining that the Commission has admitted contentions where the petitioner “alleged that management had submitted material false statements to the Commission in order to obstruct an NRC investigation.” (citing *Vogtle*, CLI-93-16, 38 NRC at 33))).

⁵² See *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-85-9, 21 NRC 1118, 1136–37 (1985) (rejecting character contention that did not provide any indication the individual’s involved in wrongdoing were likely to be managing decommissioning activities and explaining that any evidence must have “a rational connection to the safe operation of a nuclear power plant.”); see also *Millstone*, CLI-01-24, 54 NRC at 366 (rejecting character contention due to petitioner’s failure to establish link between individuals and direct management involved in wrongdoing and activities occurring at the plant); *Power Authority of the State of New York* (James A. Fitzpatrick Nuclear Power Plant and Indian Point Nuclear Generating Unit No. 3), CLI-00-22, 52 NRC 266, 312 (2000) (“[W]e are unwilling to use our hearing process as a forum for a wide-ranging inquiry into the corporate parent’s general activities across the country.”).

litigation about issues that have no direct bearing on the licensee's ownership and operation of the plant or conduct of the licensed activities at issue.⁵³ Because of that, the scope of character claims relevant to a license transfer are those that directly relate to the character or integrity of the proposed licensee's personnel and their integrity and willingness to operate and manage the plant in compliance with NRC requirements.

2. Petitioners' Claims Are Outside the Scope of this Proceeding

Petitioners have not raised any claims that relate to the proposed licensees' personnel or management who would be responsible for decommissioning activities at Palisades and BRP. Petitioners' attack focuses on the global business activities of Holtec International and SNC-Lavalin instead. As stated in the Application, Holtec International is the ultimate indirect parent of HDI and would become the ultimate indirect owner of the project company that will continue to own Palisades and BRP.⁵⁴ A subsidiary of SNC-Lavalin is minority owner of CDI—the company that will serve as decommissioning general contractor at Palisades under the supervision and oversight of HDI.⁵⁵ Neither Holtec International nor SNC-Lavalin will hold the Palisades and BRP licenses or conduct licensed activities at the sites. These same claims against the upstream parents have already been raised and rejected in the license transfer proceedings for Oyster Creek, Pilgrim, and Indian Point because they are not directly linked to the qualifications of the proposed transferees to safely decommission these facilities.⁵⁶ Petitioners do not attempt to connect any of their claims to HDI, CDI, or any of the individuals who will be responsible for safely

⁵³ See *Fitzpatrick*, CLI-00-22, 52 NRC at 311–12; *Zion*, CLI-99-04, 49 NRC at 189.

⁵⁴ Application at Figure 2.

⁵⁵ *Id.* The majority owner of CDI is HDI.

⁵⁶ See *Oyster Creek*, CLI-19-06, 89 NRC at 478; *Pilgrim*, CLI-20-12, 91 NRC __ (2020) (slip op. at 58); *Indian Point*, CLI-21-01, 92 NRC __ (2021) (slip op. at 70).

decommissioning Palisades and BRP in accordance with NRC requirements. Thus, all of these claims are outside the scope of this proceeding.

Similarly, none of the claims have any rational connection to the safe operation of a nuclear power plant or show any propensity by any of Petitioners' corporate targets to willfully violate NRC regulations.⁵⁷ Of the laundry list of blog posts and news clippings that actually relate to NRC-regulated activities, none show any indication of wrongdoing or a propensity to violate NRC regulations by Holtec International or SNC-Lavalin (much less the proposed Palisades and BRP transferees).

For example, Petitioners refer to a cask design change screening evaluation performed by Holtec under 10 CFR § 72.48(c).⁵⁸ Holtec determined it could make the design change without obtaining prior NRC approval; however, NRC staff later disagreed with the evaluation and notified Holtec that it should have obtained NRC approval prior to making the change.⁵⁹ Holtec took immediate corrective action. Although staff disagreed with Holtec's engineering judgment that the change could be implemented without NRC pre-approval, they found no evidence that Holtec willfully violated NRC requirements, concluded that the design change "did not result in an actual significant safety concern," and did not impose financial penalties in light of Holtec's past compliance record and "prompt and comprehensive correction of the violation."⁶⁰ Petitioners also

⁵⁷ See *Three Mile Island*, CLI-85-9, 21 NRC at 1136–37; *Big Rock Point*, CLI-07-21, 65 NRC at 523; *Millstone*, CLI-01-24, 54 NRC at 366; see also *Ga. Tech*, CLI-95-12, 42 NRC at 121 (admitting a character contention where the petitioner alleged deliberate violations of NRC regulations by the project director with support from NRC inspection reports and an expert witness).

⁵⁸ Petition, Contention 2, Exhibit A at 7.

⁵⁹ See Notice of Violation, NRC Inspection Report No. 07201014/2018-201, EA-18-151, at 2 (April 24, 2019) (ADAMS Accession No. ML19072A128). NRC regulations allow cask designers like Holtec to implement certain design changes without NRC approval. 10 CFR § 72.48(c)(1).

⁶⁰ *Id.* at 2-3.

refer to a cask loading incident at San Onofre Nuclear Generating Station.⁶¹ In that case the NRC issued a violation to the facility licensee, Southern California Edison (“SCE”)—not Holtec—for failure to promptly report the issue.⁶² Contrary to the blog post cited by Petitioners, NRC did not fine SCE (or Holtec) for its untimely report, in light of SCE’s sufficiently comprehensive corrective actions.⁶³ As the Commission explained in response to these same arguments raised in the Indian Point license transfer proceeding “[w]e see nothing in the record of either enforcement case to suggest that Holtec—much less the proposed license transferees in this proceeding—lacked candor or willingness to comply with NRC requirements.”⁶⁴

Petitioners also cite as evidence of corporate malfeasance: historical exemptions sought by Holtec and HDI in accordance with NRC regulations; use of limited liability companies and reliance on NDTs to fund decommissioning in accordance with NRC regulations; assumptions from the Indian Point PSDAR that NRC staff and the Commission found to be reasonable; opposition of intervenors to other licensing actions; and blogger critiques of Holtec cask designs that have been reviewed and approved by NRC.⁶⁵ None of these shows any wrongdoing by Holtec, or anyone else, or has any relationship to the Palisades and BRP license transfers.

⁶¹ Petition, Contention 2, Exhibit A at 7.

⁶² See Errata: San Onofre Nuclear Generating Station – NRC Special Inspection Report 050-00206/2018-005, 050-00361/2018-005, 050-00362/2018-005, 072-00041/2018-001 and Notice of Violation, EA-18-155, at 16–17 (Dec. 19, 2018) (ADAMS Accession No. ML18341A172).

⁶³ *Id.*; Notice of Violation and Proposed Imposition of Civil Penalty - \$116,000 and NRC Inspection Report 050-00206/2018-005, 050-00361/2018-005, 050-00362/2018-005, 072-00041/2018-001, EA-18-155, at 44 (Mar. 25, 2019) (ADAMS Accession ML19080A208).

⁶⁴ *Indian Point*, CLI-21-01, 92 NRC __ (2021) (slip op. at 68–69).

⁶⁵ See Petition, Contention 2, Exhibit A.

An NRC proceeding is not a forum for litigating “historical allegations or past events with no direct bearing on the challenged licensing action.”⁶⁶ Because Petitioners have failed to establish any nexus between its allegations and the conduct of licensed activities at Palisades and BRP, it has failed to meet its burden under 10 CFR § 2.309(f)(1)(iii), (iv) and (vi).

3. Petitioners’ Claims are Unsupported

In addition to the above failings, Petitioners do not provide the requisite factual basis for its claim that HDI lacks integrity and has a propensity to willfully violate NRC regulations. Petitioners do not provide any affidavit or expert statement in support of its claims against Holtec International or SNC-Lavalin, much less HDI. The sources cited—which primarily consist of online articles reporting events and quoting individuals expressing their opinion—do not support the culpability that Petitioners project onto the companies and do not provide the requisite support to satisfy § 2.309(f)(1)(v). This lack of factual support for Petitioners’ claims provides an independent basis for rejecting Contention 2.

C. Contention 3 is Inadmissible

Contention 3 challenges the commingled fund exemption request submitted by HDI concurrent with the Application (“Exemption Request”).⁶⁷ If granted, the Exemption Request would allow HDI and Holtec Palisades to fund spent fuel management and site restoration costs from the NDT (in addition to radiological decommissioning). As shown in the Exemption Request,

⁶⁶ *Millstone*, CLI-01-24, 54 NRC at 366 (quotations and citations omitted); *U.S. Dep’t of Energy* (High Level Waste Repository), CLI-09-14, 69 NRC 580, 606 (2009) (“[I]t is not sensible for us to divert scarce licensing resources to potentially complex mini-trials on alleged past [applicant] misdeeds—some entirely unrelated to the [licensing matter before the Commission].”).

⁶⁷ See Exemption Request, *supra* n.9.

the NDT is sufficiently funded such that even with expenditures for spent fuel management and site restoration, the NDT would still hold approximately \$20 million at license termination.⁶⁸

Petitioners challenge the Exemption Request by raising a handful of claims related to HDI's estimate of spent fuel management costs. Most of Petitioners' arguments are based on a rudimentary evaluation of general industry data, without any explanation or analysis to connect this data to Palisades or compare it to the corresponding amounts in HDI's submissions. This type of showing does not raise a material dispute with the Application or related cost estimates. Licensees may demonstrate decommissioning funding assurance based on "plausible assumptions and forecasts, even though the possibility is not insignificant that things will turn out less favorably than expected."⁶⁹ Accordingly, Petitioners have the burden of demonstrating that Applicants' cost estimates are based on *implausible* assumptions and forecasts, which a petitioner does not do simply by providing a general estimate that may be higher or identifying costs or scenarios that might happen in the future.⁷⁰

But Petitioners have not even done that. When Petitioners' estimates for specific cost categories are compared to the DCE, in nearly all cases the DCE actually *aligns with* Petitioners' anecdotal math. Alvarez only engages with HDI's cost estimate by comparing his total number of \$206.8 million with HDI's total of \$166 million.⁷¹ However, as explained below, he only arrives at a higher number by simplistically adding annual ISFSI operation and maintenance ("O&M") costs from an industry range reported by GAO—without recognizing that, at Palisades, these costs are incurred on a site-wide basis and, therefore, spread between spent fuel management and

⁶⁸ Exemption Request at 13.

⁶⁹ *Indian Point*, CLI-21-01, 92 NRC __ (2021) (slip op. at 9) (quoting *North Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999)).

⁷⁰ *Indian Point*, CLI-21-01, 92 NRC __ (2021) (slip op. at 30).

⁷¹ See Petition, Exhibit B, Report of Robert Alvarez at 4 ("Alvarez Report").

radiological decommissioning in the DCE. With that in mind, HDI's O&M estimate is well within the industry spread Alvarez relies on. For every other category rolled into Alvarez's total, Alvarez's estimate is *lower* than the amount included in the DCE. In other words, Petitioners have not even challenged discrete portions of HDI's cost estimate, much less HDI's ultimate conclusion that the NDT can adequately fund radiological decommissioning, spent fuel management, and site restoration. Nor have Petitioners disputed any of the multiple layers of financial assurance provided by the Application or explained why, in light of those conservatisms and ongoing Commission oversight, there is not reasonable assurance that funding will be adequate.⁷² For example, even if Petitioners' speculation that spent fuel costs *could* exceed HDI's estimates were to one day come true, Petitioners have not explained why expected recoveries from DOE could not be used to supply the requisite additional financial assurance.⁷³

Thus, Contention 3 fails to raise a material dispute within the scope of this proceeding. In addition, the abstract arguments presented by Petitioners are not adequately supported. Petitioners rely on the declaration of Mr. Robert Alvarez to support their contention; however, Alvarez does not provide citations or other documentary support for most of his statements—which amount to unsupported speculation that cannot form the basis for an admissible contention, even if provided by an expert.⁷⁴

⁷² Applicants' answer to the petition filed by the Michigan Attorney General discusses the layers of protection in more detail on pages 19–20.

⁷³ Application at 18; *see also Indian Point*, CLI-21-01, 92 NRC __ (2021) (slip op. at 49-50).

⁷⁴ “‘Bare assertions and speculation,’ even by an expert, are insufficient to trigger a full adjudicatory proceeding.” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012) (citation omitted). “[A]n expert opinion that merely states a conclusion . . . without providing a reasoned basis or explanation for that conclusion is inadequate.” *USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) (quoting *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998), *aff’d*, CLI-98-13, 48 NRC 26 (1998)); *see also Fitzpatrick*, CLI-00-22, 52 NRC at 315 (“Unsupported hypothetical theories or projections, even in the form of an affidavit, will not support invocation of the hearing process.”).

1. Petitioners' Claims Related to VSC-24 Repackaging Costs Do Not Raise a Material Dispute with the Application and are Unsupported

Petitioners' first basis relates to the costs of repackaging SNF stored in 18 legacy VSC-24 casks. According to Alvarez, “[r]epackaging expenses for the VSC-24 casks at Palisades would add as much as another 30% to the spent nuclear fuel management costs estimated by Holtec.”⁷⁵ Though he does not mention HDI’s cost estimate, Alvarez’s opinion is premised on the mistaken belief that HDI did not account for costs of repackaging fuel. However, **the DCE includes nearly \$39 million for estimated repackaging costs.** Table 3-1 includes, as part of the “Fuel and Nuclear Material” cost breakdown, a \$38,907,478 line item for “Transfer of fuel and/or other nuclear material away from the ISFSI” that includes the estimated costs to repackage in transportation casks.⁷⁶ Alvarez estimates the costs to repackage fuel in the VSC-24 between \$17.3 and \$37.6 million—i.e., *less than* what HDI included in the PSDAR. Rather than disputing Applicants’ submittals, it would appear that Alvarez actually agrees that HDI’s estimate bounds the cost of repackaging fuel in the VSC-24 casks. Petitioners’ failure to engage with HDI’s cost estimate or provide any arguments that call into question the amount HDI included in the DCE for fuel repackaging (much less the ultimate conclusion that the NDT contains sufficient funds to justify the Exemption Request) does not raise a material dispute with Applicants’ submittals and cannot form the basis for an admissible contention.⁷⁷

⁷⁵ Alvarez Report at 3.

⁷⁶ DCE at 29. As explained by the International Structure for Decommissioning Costing guidelines referenced by HDI in its submittals, this cost category covers transfers of fuel assemblies into transfer casks. OECD Nuclear Energy Agency, International Structure for Decommissioning Costing (ISDC) of Nuclear Installations, at 176 (2012) (available at https://www.oecd-nea.org/jcms/pl_14804); *see also* DCE Table 4-1 and 6-1.

⁷⁷ It bears noting that, in light of the uncertainty of the ultimate DOE transportation requirements, including whether *any* repackaging will be required, the DCE’s addition of \$39 million for potential repackaging costs is a conservative assumption. Indeed, in addressing similar challenges to HDI’s cost estimate for the Pilgrim Nuclear Power Station, the Commission recognized that, in light of the uncertainty regarding ultimate DOE transportation requirements, challenges related to speculative future costs of repackaging and off-site transport do not form an adequate basis for

In addition to this failure, Petitioners have not supplied the requisite documentary or expert support. Petitioners' argument is based entirely on Alvarez's statement that repackaging fuel in the VSC-24 casks will cost somewhere between \$17.3 and \$37.6 million.⁷⁸ Alvarez arrived at this conclusion by assuming that repackaging will cost between \$40,000 and \$87,000 per assembly; however, the source he cites for this proposition (a presentation given to the Nuclear Waste Technical Review Board in 2016) does not include any per-assembly cost data,⁷⁹ nor does Alvarez provide any explanation or documentation to substantiate why his assumed range is an appropriate estimate for the costs of repackaging the fuel stored in VSC-24 casks at Palisades. Even an expert declaration is required to provide substantiating documentary and explanatory support for such statements.⁸⁰ Absent that, Alvarez's cost estimate is bare speculation that cannot support an admissible contention, even if offered in an expert declaration.

Finally, Petitioners' passing reference to "the troubling conundrum of unloading and repackaging the SNF in defective Cask No. 4"⁸¹ does not present an assertion of fact or law to be litigated, much less raise a material dispute with Applicants' submittals. In Petitioners' NEPA contention, Petitioners recount an old violation issued to Consumers (ENOI's predecessor licensee at Palisades) for Consumers' failure to develop adequate procedures for unloading the VSC-24 casks prior to commencing initial loading in 1993.⁸² Consumers long ago resolved this issue and

challenging an applicant's qualifications in a license transfer proceeding and could not be resolved at hearing in any event. *See Pilgrim*, CLI-20-12, 91 NRC __ (2020) (slip op. at 26).

⁷⁸ *See Alvarez Report* at 3.

⁷⁹ *See id.*, n.11 (citing U.S. Department of Energy, Office of Nuclear Energy, Standardized Transportation, Aging, and Disposal (STAD) Canister Design, Presentation to the Nuclear Waste Technical Review Board, June 24, 2015 (available at <https://www.nwtrb.gov/docs/default-source/meetings/2015/june/jarrell.pdf>)).

⁸⁰ *See supra* note 74.

⁸¹ Petition at 50.

⁸² *Id.* at 38–39.

revised its procedures to comply with applicable regulatory and licensing requirements,⁸³ and there is nothing in Petitioners' retelling of decades-old events to support the insinuation that fuel contained in "Cask No. 4" cannot be safely repackaged in a transportation cask, should such repackaging be required, or that this particular cask would cause spent fuel management costs to exceed HDI's cost estimate. Petitioners have not challenged any portion of HDI's submittals, much less the conclusion that the NDT is sufficiently funded to account for estimated radiological, spent fuel management, and site restoration costs.

2. Petitioners' Claims Related to Pool-to-Pad Costs Do Not Raise a Material Dispute with the Application and are Unsupported

Petitioners' next argument repeats the same mistakes as the first. Petitioners claim that "Alvarez predicts much more expense than do the Applicants" for the cost of moving the remaining fuel assemblies from the spent fuel pool to the ISFSI.⁸⁴ In fact, Alvarez again appears to agree with HDI's estimate.

Relying on a GAO-published range of typical industry costs (excerpted below), Alvarez estimates that the Holtec casks required to store the remaining fuel in the pool will cost \$30 million.⁸⁵ The DCE includes \$35 million.⁸⁶

Alvarez next estimates that other "activities and equipment" associated with the fuel-to-pad campaign "can run as high as \$42.8 million."⁸⁷ Alvarez does not explain how he arrived at this number, and even using the high end of the ranges provided in the GAO table Alvarez relies on, it

⁸³ See NRC Inspection Report 50-255/99003, at 16 (Apr. 23, 1999) (ADAMS Accession No. ML18068A579).

⁸⁴ Petition at 49.

⁸⁵ Alvarez Report at 4.

⁸⁶ DCE at 28 (Table 3-1, "Containers" line item, \$35,605,743).

⁸⁷ Alvarez Report at 4.

is impossible to reach such a high number unless the initial costs of designing, licensing, and constructing the ISFSI are also included. The Palisades ISFSI has already been constructed and paid for, and HDI will not bear those costs after closing.⁸⁸ The DCE does include \$14.5 million for a potential expansion of the eastern ISFSI pad,⁸⁹ which falls squarely in the GAO range for ISFSI design, licensing, and construction, and which Alvarez does not acknowledge or challenge. Nor does Alvarez explain why the one-time costs of loading and transport equipment should be included in light of the fact that ENOI has been loading fuel into Holtec casks at Palisades for many years.⁹⁰

GAO Table Included in Alvarez Report⁹¹

| Component | Typical Costs |
|--|---|
| Labor costs to transfer spent nuclear fuel from pool to dry storage ^a | \$150,000 to \$550,000 |
| Transfer cask | \$1.5 million to \$3 million |
| Crawler-type transporter | \$1 million to \$1.5 million |
| Vertical storage cask | \$250,000 to \$350,000 |
| Horizontal storage module | \$500,000 to \$600,000 |
| Design, licensing, and construction | \$5.5 million to \$42 million |
| Annual operations | \$100,000 to \$300,000 for operating reactor site \$2.5 million to \$6.5 million for permanently shutdown reactor site |

Source: GAO analysis of Nuclear Energy Institute data. | GAO-15-141

Note: Some items, such as a transfer cask and a transporter can be re-used and may reflect one-time costs. In addition, costs for the transfer cask and transporter reflect purchase costs, but this equipment could be leased, rather than purchased. The costs for canisters, ranging from \$700,000 to \$1.5 million, are not included in this table.

In any event, even accepting for sake of argument Alvarez’s \$42.8 million estimate for general “activities and equipment” associated with the movement of fuel to the ISFSI, the DCE

⁸⁸ See Palisades Nuclear Plant Revision 33 to Updated Final Safety Analysis Report, Chapter 9 – Auxiliary Systems, § 9.11 (Oct. 19, 2017) (ADAMS Accession No. ML17300A423).

⁸⁹ DCE at 29 (Table 3-1, “Construction of ISFSI” line item, \$14,534,282).

⁹⁰ See ENOI Letter No. PNP 2015-015, Notification of Spent Fuel Loading at Palisades Nuclear Plant (Feb. 12, 2015) (ADAMS Accession No. ML15049A041).

⁹¹ Alvarez Report at 4.

includes \$57 million for spent fuel management costs (excluding the cost of Holtec containers that Alvarez breaks out separately) during Period 3,⁹² which covers “preparations for, and conduct of, fuel movement to an onsite dry fuel storage facility.”⁹³ Alvarez does not mention any of the spent fuel estimates in HDI’s submissions; he simply opines in the abstract, using general industry data that he does not attempt to reconcile with the particulars of Palisades or HDI’s submittals. Regardless, his anecdotal math appears to reinforce, rather than question, the reasonableness of HDI’s estimated pool-to-pad costs. Petitioners have not demonstrated a material dispute with Applicants’ cost estimate, much less provided a basis to question the reasonableness of HDI’s ultimate conclusion or substantial conservatisms created by expected DOE recoveries. Accordingly, Alvarez’s estimation of pool-to-pad costs provides no basis for an admissible contention.

3. Petitioners’ Claims Related to ISFSI O&M Costs Do Not Raise a Material Dispute with the Application and are Unsupported

Alvarez next estimates ISFSI O&M will cost \$6.5 million per year. He arrives at this number by simply picking the high end of the annual cost for an ISFSI at a shutdown plant from the GAO table above. He does not provide a cost breakdown or explain why that number is representative of the Palisades site configuration—where HDI plans to maintain much of the site infrastructure (including the main plant protected area that encompasses one of the ISFSI pads) through the dormancy phase and early parts of dismantlement. O&M costs during this period primarily fall in the Program Management category (e.g., security, taxes, insurance, site upkeep, regulatory compliance programs, and licensing/engineering/home office costs).⁹⁴ These costs are

⁹² See DCE at 46 (Table 5-1). \$57 million comes from the sum of spent fuel costs shown for 2023 – 2025 (\$92.8 million), less the cost of Holtec containers (\$35.6 million).

⁹³ PSDAR at 8.

⁹⁴ See DCE at 31–32 (Table 3-2); PSDAR at 13.

generally incurred on site-wide basis and then allocated to radiological decommissioning and spent fuel management proportionately. DCE Table 5-1 best illustrates the site-wide hotel load during the years 2027 to 2029—the part of the dormancy period when no other major cost drivers are reflected in the annualized cash flows. For those years, site-wide O&M costs come to about \$6.3 million⁹⁵—squarely within the GAO-reported industry spread and close to the upper-end estimate Alvarez picked. Alvarez does not challenge this estimate; nor does he engage with the detailed breakdown of program management costs in DCE Table 3-2 or HDI’s allocation between radiological decommissioning and spent fuel management.

4. Petitioners’ Claims Related to the Presence of High Burnup Fuel Do Not Raise a Material Dispute with the Application and are Unsupported

Finally, Alvarez speculates that the presence of high burnup fuel at Palisades will require additional cooling time, beyond the time periods assumed by HDI, both in the spent fuel pool and in dry storage prior to transport.

On his first point, the sole source cited by Alvarez is a 2013 presentation that appears to be a statistical analysis of fuel cooling properties by varying cask design.⁹⁶ But Alvarez misrepresents the presentation, which he cites for the proposition that “minimal cooling times prior to emplacement of high burnup SNF into a dry cask range from 25 to 30 years.”⁹⁷ The presentation actually says, “[t]ransfer from pool to cask within 5 years after reactor discharge is possible for smaller cask sizes, even for high burnup fuels,” and “[i]ndividual assemblies could be cool enough, in principle, to load into dry storage at very early times, within days to weeks of reactor shut-

⁹⁵ Table 5-1 shows \$4.58 million allocated to radiological decommissioning and \$1.71 million to spent fuel management in these years. DCE at 46.

⁹⁶ See Alvarez Report at 4–5 (citing Sandia National Labs, Cooling Times for Storage and Transportation of Spent Nuclear Fuel, Feb. 25, 2013 (available at <https://www.osti.gov/servlets/purl/1145261>) (“Sandia Presentation”)).

⁹⁷ Alvarez Report at 4.

down.”⁹⁸ The “Minimum Cooling Time” table shows a minimum period prior to dry storage for assemblies with burnup of 45,000 MWd/MTU (generally considered “high burnup fuel”⁹⁹) of approximately 3 years.¹⁰⁰ Alvarez provides no support for his order-of-magnitude greater time period, nor does he provide any support for his guesses about the volume of high burnup fuel present at Palisades.¹⁰¹

The properties of the fuel that can be stored in any given design are specified in the applicable certificate of compliance. In this case, Holtec’s HI-STORM FW system will be used to store remaining Palisades fuel, which will be placed in MPC-37 canisters.¹⁰² According to the HI-STORM FW certificate of compliance, the minimum cooling time before high-burnup fuel can be placed in an MPC-37 canister is 1.88 years.¹⁰³ Alvarez does not acknowledge or challenge this calculation (nor could he challenge the certificate of compliance in this proceeding¹⁰⁴) and does not assert that any fuel assemblies at Palisades are incapable of being loaded into MPC-37 canisters

⁹⁸ Sandia Presentation at 2.

⁹⁹ See NRC, Backgrounder on High Burnup Spent Nuclear Fuel (Sept. 2018) (ADAMS Accession No. ML18270A110).

¹⁰⁰ Sandia Presentation at 4.

¹⁰¹ Alvarez claims, without citation, that through 2013 “about 20% of the Palisades SNF is high burnup” and since then the fuel discharged is “mostly high burnup.” Alvarez Report at 4.

¹⁰² DCE at 22; see also Certificate of Compliance No. 1032, Amend. No. 5, at 2 (June 25, 2020) (ADAMS Accession No. ML20163A703) (explaining that the MPC designation “MPC-37” corresponds to the number of fuel assemblies that can be placed in the canister).

¹⁰³ Minimum post-irradiation cooling time is a function of heat load and fuel burnup. The formula for calculating cooling time is provided in section 2.5 of Appendix B to the HI-STORM FW certificate of compliance: $Ct = A \cdot Bu^3 + B \cdot Bu^2 + C \cdot Bu + D$, where Ct is the minimum cooling time in years, Bu is assembly burnup in MWd/MTU, and A , B , C , and D are coefficients provided in Table 2.5-2. See Certificate of Compliance No. 1302, Amend. No. 5, App’x B, at 2-43 (June 11, 2020) (ADAMS Accession No. ML20163A705). The cooling time calculation for the maximum heat load that MPC-37 canisters can accommodate (3.2 kW, as shown in Figures 2.3-1 to 2.3-9 (*id.* 2-26 to 2-34)) for 45,000 MWd/MTU burnup is calculated as follows: $1.19409E-14 \cdot (45,000)^3 + -1.53990E-09 \cdot (45,000)^2 + 9.56825E-05 \cdot (45,000) + -3.98326E-01 = 1.88$ years.

¹⁰⁴ Certificates of Compliance for spent fuel casks are approved by the NRC under 10 CFR Part 72, Subpart L, and 10 CFR § 72.214 then authorizes the “storage of spent fuel under the conditions specified in” the Certificates of Compliance. Consequently, any challenge to the certificate of compliance in this proceeding is barred by 10 CFR § 2.335.

on the timeframes assumed in the PSDAR. His entire argument amounts to a misinterpretation of general industry data presented by someone else, but the data itself is not inconsistent with HDI's assumed spent fuel pool cooling times prior to dry storage, nor is the applicable certificate of compliance. Needless to say, speculative claims and misinterpreted statistical data do not form the basis for an admissible contention.

Alvarez's claims with respect to dry storage cooling times prior to DOE pickup fare no better. He block quotes a few paragraphs from a 2019 congressional report that includes the statement, "if no repackaging occurs, some of the largest SNF canisters storing the hottest SNF would not be cool enough to meet the [NRC] transportation requirements until approximately 2100."¹⁰⁵ Alvarez provides no context or analysis that connects this general observation about fuel in use across the nuclear industry to Palisades. This long cooling time is premised on the assumption that high burnup fuel would not be repackaged—meaning, presumably, that fuel initially loaded in compliance with applicable 10 CFR Part 72 and certificate of compliance storage criteria would take many decades to cool sufficiently on its own before being able to obtain NRC approval for transportation under the more stringent requirements of 10 CFR Part 71. However, as explained above, HDI's cost estimate assumes that repackaging will occur. Alvarez does not assert, and the congressional report he cites does not indicate, that Palisades fuel assemblies cannot be repackaged into transportation casks or otherwise approved for transport in time to remove all fuel by the end of 2040.

While Alvarez does not provide *any* analysis relevant to the fuel or dry storage systems in use at Palisades, it bears noting that the Sandia National Labs statistical analysis (cited by Alvarez

¹⁰⁵ Alvarez Report at 5 (quoting U.S. Nuclear Waste Technical Review Board, Preparing for Nuclear Waste Transportation, at 77 (Sept. 2019) (available at https://www.nwtrb.gov/docs/default-source/reports/nwtrb_nuclearwastetransport_508.pdf?sfvrsn=6)).

for the point above), reports a range of cooling times for transportation of high burnup fuel between 11 and 22 years.¹⁰⁶ And as a general point of reference, the HI-STAR 190 (Holtec transportation cask certified under 10 CFR Part 71) safety analysis report shows a minimum post-irradiation cooling time for high-burnup fuel in MPC-37 canisters of only 3.5 years.¹⁰⁷ Alvarez has not engaged with or challenged any of the relevant materials to show that HDI's assumed fuel removal schedule is unreasonable or implausible. His citation to a single report that discussed industry-wide trends and hypothetical situations does not constitute a challenge to HDI's submittals and cannot form the basis for an admissible contention in this proceeding.

5. Petitioners' Passing References to Other Issues Do Not Provide any Basis for an Admissible Contention

In addition to Petitioners' claims based on Alvarez's declaration, Petitioners offer a rhetorical question about the ISFSI pads and an isolated statement about barge transportation in their discussion of Contention 3. Neither of these undeveloped thoughts has any expert or documentary support, challenges any particular part of Applicants' submittals, or even poses an articulable issue of fact or law that relates to Contention 3, which deals solely with HDI's cost estimate for spent fuel management costs. Similarly, the Petition's introduction contains a handful of critiques of HDI's submittals that are never further developed in a contention (e.g., criticizing HDI's waste volume estimates, DOE pickup schedule, failure to account for "likely project delays," and reliance on NDT funds).¹⁰⁸ All of these brief and unsupported comments fail to satisfy

¹⁰⁶ Sandia Presentation at 7.

¹⁰⁷ Minimum cooling times for fuel stored in MPC-37 canisters are shown in Table 7.C.8(a) of the HI-STAR Safety Analysis Report. Holtec International, Safety Analysis Report on the HI-STAR 190 Package, Rev. 3, at 7.C-19 (Nov. 2, 2018) (ADAMS Accession No. ML18306A911). In the HI-STAR 190 system, an MPC-37 canister can accommodate fuel with head loads up to 1.7 kW (*id.* Table 7.C.7 at p. 7.C-18), which corresponds to a cooling time of 3.5 years for fuel with burnup of 45,000 MWd/MTU (*id.* Table 7.C.8(a) at p.7.C-19).

¹⁰⁸ Petition at 3-4.

the basic requirements in 10 CFR 2.309(f)(1)(i)-(ii) and provide no basis for an admissible contention challenging HDI's cost estimate. Applicants' response to some of these same claims is set forth in Applicants' Answer to the Michigan Attorney General's petition and is equally applicable to Petitioners' passing statements.¹⁰⁹

D. Petitioners' Request to Adopt the Contentions of ELPC Is Impermissible

Petitioners' request to adopt all contentions filed by ELPC must be rejected because Petitioners have failed to proffer any admissible contention of their own, and as discussed below, have failed to demonstrate standing. In addition, Petitioners have not complied with 10 CFR § 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 Petitioners have not done so, their attempt to adopt the contentions filed by ELPC is contrary to the NRC rules. In any event, the contentions raised by ELPC also are inadmissible for the reasons set forth in Applicants' answer to ELPC's petition.¹¹⁰

IV. Petitioners Have Not Demonstrated Standing

Because Petitioners have not posed at least one admissible contention, the Commission need not address the question of their standing to intervene in this proceeding.¹¹¹ Nonetheless, as

¹⁰⁹ See Applicants' Answer Opposing the State of Michigan's Petition to Intervene and for a Hearing, Sections IV.A.2, IV.A.5, IV.A.6, and IV.A.9 (Mar. 22, 2021).

¹¹⁰ Applicants' Answer Opposing the Environmental Law & Policy Center Petition to Intervene and Hearing Request, Section III (Mar. 22, 2021).

¹¹¹ See *PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 NRC 500, 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

explained below, Petitioners also have not established standing to intervene in this proceeding as a matter of right under 10 CFR § 2.309(d).¹¹²

A. Applicable Legal Standard

A thorough discussion of the Commission’s standing requirements is set forth in Applicants’ answer to the ELPC hearing request.¹¹³ For brevity, that discussion is incorporated herein by reference.

B. Petitioners Have Not Established Standing to Intervene as a Matter of Right Under Section 2.309(d)

Petitioners request that they be admitted as parties to this proceeding as advocates for several affected representative members; *i.e.*, they assert representational standing to intervene. Petitioners, however, do not make the requisite demonstrations to support either proximity-based or traditional standing of its members.

1. Petitioners have failed to identify potential for offsite consequences caused by the license transfer sufficient to establish proximity-based standing

Petitioners’ first argument for standing is based on nothing more than the fact that some of their members live or recreate close to Palisades. While it’s true that a number of the members who submitted declarations claim residences within just a few miles of the facility, the physical proximity of the residences does not by itself establish proximity-based injury. 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

Court, is that satisfaction of standing requirements, alone, falls short of meriting intervention.”) (citing *In re Fla. Power & Light Co.*, 54 NRC 3, 26 (2001)).

¹¹² Petitioners apparently seek only intervention as of right. Petitioners make no effort to address the six factors required for discretionary intervention under 10 CFR § 2.309(e).

¹¹³ Applicants’ Answer Opposing the Environmental Law & Policy Center Petition to Intervene and Hearing Request, Section IV.A (Mar. 22, 2021).

obvious[ly] entails an *increased* potential for offsite consequences.”¹¹⁴ It would be non-sensical to apply a more lenient standard to a shutdown reactor.

Petitioners cannot demonstrate that the license transfer here carries with it an “increased potential for offsite consequences.” Rather, “given the shutdown and defueled status of the units [at the time of the license transfer], the [transfer and conforming] license amendment[] do[es] not on [its] face present any ‘obvious’ potential of offsite radiological consequences.”¹¹⁵ The primary significant nuclear activities ongoing at Palisades will be the storage and handling of spent fuel in the spent fuel pool and the transfer of spent fuel assemblies to dry cask storage. Because the reactors will not operate again, the scope of activities at the plant—and in turn, the risk of “accidents and events that remain credible is significantly reduced”—not *increased*.¹¹⁶

Even if Petitioners could show requisite offsite consequences, more is required for proximity-based standing. They must also explain “some ‘plausible chain of causation,’ some scenario suggesting how these particular license amendments would result in a distinct new harm or threat to [them].”¹¹⁷ Petitioners don’t even try. Instead, they say “[i]t is the inherent dangers of the radioactive materials that create the obvious potential for offsite consequences.”¹¹⁸ Thus, they

¹¹⁴ *Zion*, CLI-99-04, 49 NRC at 191 (citing *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329–30 (1989)) (internal quotation marks omitted). *See also Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580–81 (2005) (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”) (footnote omitted).

¹¹⁵ *Zion*, CLI-99-04, 49 NRC at 191.

¹¹⁶ *Id.* at 192 (citations and internal quotation marks omitted). 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 impact public health and safety.” *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 246 (1996).

¹¹⁷ *Zion*, CLI-99-04, 49 NRC at 192.

¹¹⁸ Petition at 16.

“fail to indicate how these various harms might result from the license amendments, particularly given not only the shutdown status of the facility, but also the continued applicability of the NRC’s safety-oriented regulations governing defueled nuclear plants.”¹¹⁹ Nor could they, since the inherently dangerous radioactive materials will be present at Palisades even if the Commission disapproves of the license transfer—in fact, as discussed below, they will be present for a longer time if the license is not transferred.

2. Petitioners’ vague “concerns” that “might” occur at some indeterminate time in the future do not satisfy traditional standing requirements.

When, as here, “a petitioner cannot establish proximity-plus standing, he or she must resort to establishing standing under traditional standing principles.”¹²⁰ Petitioners devote nearly their entire standing section to the argument that the threat of radiation exposure is an “injury.”¹²¹ Simply identifying such an injury, though, is not enough, and they ignore the remaining requirements. First, “the asserted injury must be distinct and palpable and particular [and] concrete, as opposed to being conjectural. . . .[,] hypothetical, . . . or abstract. The injury need not already have occurred but when future harm is asserted, it must be threatened, certainly impending, . . . and real and immediate.”¹²² Second, that injury must be “fairly traceable to the challenged

¹¹⁹ *Zion*, CLI-99-04, 49 NRC at 192.

¹²⁰ *U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, & Pohakuloa Training Area, Island of Hawaii, Hawaii), LBP-10-4, 71 NRC 216, 229 (2010) (citing *Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005)).

¹²¹ *See* Petition at 13-18.

¹²² *Cabot Performance Materials* (Reading, Pennsylvania), LBP-00-13, 51 NRC 284, 289 (2000) (citations and internal quotation marks omitted).

action.”¹²³ Finally, Petitioners also must show that their “actual or threatened injuries can be cured by some action of the tribunal” on the license transfer.¹²⁴ They can do none of this.

The carbon-copy declarations from Petitioners’ seven members rely on unsupported, conclusory assertions of hypothetical injury at some indeterminate time in the future based on a series of “what ifs.” This fails to establish a plausible nexus between the alleged harms and the proposed license transfers.¹²⁵ In particular, each member who submitted a declaration purports to be “concerned” about several theoretical harms:

- “that there might be groundwater contamination in the plant complex that has traveled into, or will travel into.[sic] Lake Michigan during decommissioning;”¹²⁶
- “that if a spent fuel accident were to occur at Palisades Nuclear Plant involving a spent fuel storage pool fire or canister drop accident, or a serious breach of the dozens of spent fuel storage casks maintained at Palisades, that my family and/or I might be killed, injured or sickened by airborne or waterborne radioactive releases, and that I might suffer irreparable damage to real and personal property located at my residence”;¹²⁷ and

¹²³ *Ne. Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-98-22, 48 NRC 149, 154 (1998).

¹²⁴ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001) (citing *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 5–6 (1998)).

¹²⁵ 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 Petitioners’ members here. *See, e.g., Yankee*, CLI-96-7, 43 NRC at 247–48; *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71–75 (1994). However, those proceedings are procedurally and factually distinguishable. For example, *Yankee* 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 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 Palisades Nuclear Plant and Big Rock Point Plant Consideration of Approval of Transfer of Control of Licenses and Conforming Amendment*, 86 Fed. Reg. 8225, 8226 (Feb. 4, 2021).

¹²⁶ Decl. of Carolyn Ferry at ¶ 4. The Declarations of William D. Reed, Maynard Kaufman, Alice Hirt, Joseph C. Kirk, Ann Scott, and James Scott repeat this alleged potential future injury verbatim, including the same typographical error in all but the Hirt Declaration.

¹²⁷ Ferry Decl. at ¶ 5. To the extent this allegation alleges economic harm—*i.e.*, diminished property value—it is insufficient, by itself, to support a claim of standing. *See Quivira*, CLI-98-11, 48 NRC at 9 (“The fact that economic interest or motivation is involved will not preclude standing, but the petitioner must also be threatened by environmental harm.”) (citing *City of Los Angeles v. U.S. Dep’t of Agric.*, 950 F.Supp. 1005, 1011–12 (C.D. Cal. 1996).; *see also Int’l Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259, 265 (1998) (“[I]t has long been our practice as an agency to reject standing for petitioners asserting a bare

- “that the spent fuel pool will be dismantled and there will be no means at the Palisades site to stabilize, unload or fix defects in a canister or cask used for spent nuclear fuel.”¹²⁸

These harms that Petitioners’ members believe may come to pass at some indeterminate time in the future are not sufficient for standing. Rather, the declarants’ claimed injuries are speculative and based upon hypothetical events: “there *might* be groundwater contamination;” they “*might* be” injured or “*might* suffer” damage “*if* a spent fuel accident were to occur;” and HDI *might* not be able to unload canisters or casks *if* a defect were to occur.¹²⁹ Such a “speculative chain of possibilities” does not establish that the asserted injury is “certainly impending.”¹³⁰ To be sure, the Petition itself cites only the “possibility, albeit ‘low,’” and “potential” radiation contamination that Applicant’s themselves disclosed.¹³¹ And Petitioners say this could happen sometime during the “decades” fuel will remain at Palisades.¹³² But “[a]llegations of *possible* future injury’ are not sufficient.”¹³³ In other words, “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.’”¹³⁴

Not only have Petitioners’ members failed to establish that the alleged harms are “real and immediate,” but they do not explain how their concerns are plausibly linked to the proposed license

economic injury, unlinked to any radiological harm.”) (citing *Va. Elec. & Power Co.* (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98, 105-06 (1976)).

¹²⁸ Ferry Decl. at ¶ 6.

¹²⁹ *Id.* at ¶¶ 4-6 (emphases added).

¹³⁰ *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 (2013).

¹³¹ Petition at 15.

¹³² *Id.* at 14-15.

¹³³ *Clapper*, 568 U.S. at 409 (emphasis in original).

¹³⁴ *Williams v. Governor of Penn.*, 552 F. App’x 158, 162 (3d Cir. 2014); *see also In re Navy Chaplaincy*, 516 F. Supp. 2d 119, 126 (D.D.C. 2007), *aff’d*, 534 F.3d 756 (D.C. Cir. 2008) (“Even were they to allege that they might encounter such discrimination in the future, a case that rests on ‘ifs’ stands not on solid ground but on stilts of conjecture.”).

transfer. This is detrimental to their standing because not only must they show that their harms are “traceable” to the license transfer, but also that the Commission can cure those harms in this proceeding. This they cannot do.

After all, if the license authority is transferred to HDI, it would not be able to perform any decommissioning activities that the current licensed operator could not already perform. If the Commission were to deny the license transfer, then the site would still be decommissioned, and there would be no change in the radiological risk profile. Groundwater “might” still be contaminated, the declarants or their property “might” still be injured “if a spent fuel accident occurs” for another operator, and the spent fuel pool will still be dismantled.

For many of these same reasons, Petitioners also fail to establish a plausible chain of causation relative to the proposed action.¹³⁵ Indeed, the alleged harms derive solely from the *assumption* that Applicants will not “conduct the decommissioning of the Palisades plant in a manner that protects the environment, public health and safety”¹³⁶ and that those unspecified actions could result in various hypothetical harms. None of the declarants provides evidence or other factual support for her underlying assumptions, nor provides any link between these concerns (related to decommissioning actions at the site) and the instant licensing action. Rather, the Petition itself makes clear that Petitioners’ concerns are with “the inherent dangers of the radioactive materials.”¹³⁷ In other words, it is not the identity of the operator that truly bothers Petitioners, but instead the very existence of the nuclear facility.

¹³⁵ See *Peach Bottom*, CLI-05-26, 62 NRC at 581 (“The initial question we need to address is whether the kind of action at issue, when considered in light of the radioactive sources at the plant, justifies a presumption that the licensing action ‘could plausibly lead to the offsite release of radioactive fission products from . . . the . . . reactors.’”) (*quoting Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2)*, LBP-98-27, 48 NRC 271, 277 (1998), *aff’d*, CLI-99-4, 49 NRC 185 (1999), *petition for review denied*, *Dienethal v. NRC*, 203 F.3d 52 (D.C. Cir. 2000)).

¹³⁶ Ferry Decl. at ¶ 4.

¹³⁷ Petition at 16.

In conclusion, Petitioners have failed to establish representational standing because their members cannot identify any real and immediate injuries in fact that are plausibly traceable to the license transfer. As noted in the Application, the proposed transfers are intended to place licensed responsibility in an organization (HDI) that will facilitate the decommissioning of Palisades and the release of the site on a much more accelerated schedule than if Entergy continued to hold the licenses and chose to implement a maximum SAFSTOR decommissioning scenario, deferring most radiological decommissioning until after a significantly longer dormancy period. Whatever concerns Petitioners' members may have about decommissioning activities at Palisades would still exist, and indeed, would persist for a longer period in the absence of the license transfers. Further, to the extent that they are alleging that they would be injured if decommissioning is not completed properly, their concerns are 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." Consequently, none of the alleged injuries is concrete, fairly traceable to the license transfer, or likely to be redressed by a decision to disapprove of the license transfer.

V. Conclusion

Because Petitioners have not submitted an admissible contention and have not demonstrated their standing to participate in this proceeding, the Petition should be denied.

Respectfully submitted,

/signed electronically by Alan Lovett /

William F. Gill IV
Holtec International
Holtec Technology Campus
1 Holtec Boulevard
Camden, NJ 08104
Tel. 856-797-0900
Email: w.gill@holtec.com

Alan D. Lovett
Jason P. Tompkins
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203-2015
Tel. 205-251-8100
Email: alovett@balch.com
Email: jtompkins@balch.com

Counsel for Holtec International
and Holtec Decommissioning
International, LLC

Susan H. Raimo
Entergy Services, LLC
101 Constitution Avenue, NW
Suite 200 East
Washington, DC 20001
Tel. 202-530-7330
Email: sraimo@entergy.com

Anne Leidich
Pillsbury Winthrop Shaw Pittman, LLP
1200 Seventeenth Street, N.W.
Washington, DC 20036-3006
Tel. 202-663-8707
Email: Anne.Leidich@pillsburylaw.com

William B. Glew, Jr.
Entergy Services, LLC
639 Loyola Avenue, 22nd Floor
New Orleans, LA 70113
Tel. 504-576-3958
Email: wglew@entergy.com

David R. Lewis
Pillsbury Winthrop Shaw Pittman, LLP
1200 Seventeenth Street, N.W.
Washington, DC 20036-3006
Tel. 202-663-8474
E-mail: David.Lewis@pillsburylaw.com

Counsel for Entergy Nuclear Operations,
Inc. and Entergy Nuclear Palisades, LLC

March 22, 2021

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) |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing Beyond Nuclear et al.'s Petition to Intervene and Hearing Request has been served through the EFiled system on the participants in the above-captioned proceeding this 22nd day of March 2021.

/signed electronically by Alan Lovett/

Alan D. Lovett
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203-2015
Tel. 205-226-8769
Email: alovett@balch.com