

April 5, 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’ Motion to Strike Portions of Beyond Nuclear et al.’s Reply  
and Second Declaration of Robert Alvarez**

Pursuant to 10 CFR §§ 2.323 and 2.1325, Entergy Nuclear Operations, Inc. (“ENOI”), Entergy Nuclear Palisades, LLC, Holtec International (“Holtec”), and Holtec Decommissioning International, LLC (“HDI”) (collectively, “Applicants”) submit this motion to strike portions of the “Reply of Beyond Nuclear, Michigan Safe Energy Future and Don’t Waste Michigan [(“Petitioners”)] in Support of Petition for Leave to Intervene, and Request for an Adjudicatory Hearing” (“Reply”) and second “Declaration of Robert Alvarez” filed with the Reply (“Second Declaration”).<sup>1</sup> Petitioners have impermissibly added new arguments and materials in their reply brief. The portions of the Reply and Second Declaration identified below should be stricken from the record.

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<sup>1</sup> Reply of Beyond Nuclear, Michigan Safe Energy Future and Don’t Waste Michigan in Support of Petition for Leave to Intervene, and Request for an Adjudicatory Hearing (Mar. 29, 2021) (ADAMS Accession No. ML21088A441); Attachment B to Reply, Declaration of Robert Alvarez (ADAMS Accession No. ML21088A442).

## I. Background

On December 23, 2020, Applicants submitted an application requesting that the Commission approve the indirect transfer of control of Renewed Facility Operating License No. DPR-20 for Palisades Nuclear Plant (“Palisades”), the general license for the Palisades Independent Spent Fuel Storage Installation (“ISFSI”), Facility Operating License No. DPR-6 for Big Rock Point Site (“BRP”) and the general license for the BRP ISFSI to Holtec and the transfer of ENOI’s operating authority (*i.e.*, its authority to conduct licensed activities at Palisades and BRP) to HDI.<sup>2</sup> In response to the NRC’s Federal Register notice,<sup>3</sup> Petitioners filed their Petition and accompanying Declaration of Robert Alvarez (“First Declaration”) on February 24, 2021, requesting a hearing on the Application.<sup>4</sup> Applicants filed an Answer opposing the Petition on March 22, 2021, explaining why Petitioners’ contentions are inadmissible and Petitioners lack standing.<sup>5</sup> Petitioners filed the Reply, as allowed by 10 CFR § 2.309(i)(2). However, as detailed below, the Reply and Second Declaration raise new arguments and cite new materials that were not included in the Petition or First Declaration and exceed the scope of permissible contents of a reply brief.

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<sup>2</sup> 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”). HDI submitted its Post Shutdown Decommissioning Activities Report and Site-Specific Decommissioning Cost Estimate alongside the LTA. 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”); PSDAR, Enclosure 2, Palisades Nuclear Plant Site Specific Decommissioning Cost Estimate (Dec. 23, 2020) (ADAMS Accession No. ML20358A232) (“DCE”).

<sup>3</sup> 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).

<sup>4</sup> 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”); Petition, Exhibit B, Report of Robert Alvarez.

<sup>5</sup> Applicants’ Answer Opposing Beyond Nuclear et al.’s Petition to Intervene and Hearing Request (Mar. 22, 2021) (ADAMS Accession No. ML21081A313) (“Answer”).

## II. Legal Standard

“It is well established in NRC proceedings that a reply cannot expand the scope of the arguments set forth in the original hearing request. Replies must focus narrowly on the legal or factual arguments first presented in the original petition or raised in the answers to it.”<sup>6</sup> This rule is based on principles of judicial economy and fairness<sup>7</sup> and reflects the diligence expected of petitioners who wish to participate in NRC adjudicatory proceedings.<sup>8</sup> The Commission’s “contention admissibility and timeliness requirements ‘demand a level of discipline and preparedness on the part of petitioners,’ who must examine the publicly available material and set forth their claims and the support for their claims at the outset.”<sup>9</sup> Commission rules “do not allow [use of] reply briefs to provide, for the first time, the necessary threshold support for contentions.”<sup>10</sup> Reply briefs are not an opportunity to “‘reinvigorate’ and effectively amend what had been inadequately supported contentions in the [original] hearing petitions.”<sup>11</sup> Ignoring these principles would render the Commission’s intentionally-restrictive pleading standard meaningless—as petitioners could simply cure defective contentions and provide additional support after the filing deadline, without the need to satisfy the late filing requirements of 10 CFR § 2.309(c).<sup>12</sup> Accordingly, petitioners are required to include all their arguments and supporting

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<sup>6</sup> *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006).

<sup>7</sup> *La. Energy Servs. L.P.* (Nat’l Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004) (“*LES I*”).

<sup>8</sup> *Palisades*, CLI-06-17, 63 NRC at 732.

<sup>9</sup> *LES I*, CLI-04-25, 60 NRC at 224–225.

<sup>10</sup> *La. Energy Servs. L.P.* (Nat’l Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004) (“*LES II*”).

<sup>11</sup> *Id.* at 621.

<sup>12</sup> See *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-22, 65 NRC 525, 527–28 (2007). Petitioners’ Reply does not cite or provide any basis for satisfying the standard for late filings in 10 CFR § 2.309(c). Nevertheless, it bears noting that all of the new information and arguments that Petitioners improperly included in the Reply and Second Declaration were available to Petitioners before the February 24, 2021 filing deadline.

materials in the initial petition and may not, via their reply, cure or recast unsupported or defective contentions.<sup>13</sup>

### **III. Petitioners' Reply and Second Declaration Impermissibly Add New Arguments and Additional Supporting Materials**

The following portions of Petitioners' Reply and the Second Declaration constitute new arguments and materials that exceed the allowable scope of a reply brief and should be stricken from the record.

#### **A. New Arguments and Materials regarding HI-STORM 100 Cask Capacity and Geological Repository Cooling Times**

Second Decl. at 1-2 – “Robert Alvarez’s Reply” beginning with “The 2013 presentation by SNL . . .” through the end of the block quote on p.2 “. . . between 225 and 300 years.”

Reply at 16 – “When Applicants criticize that Mr. Alvarez . . .” to “. . . can be far greater than 5 years.”

Alvarez argues for the first time that the HI-STORM 100 cask is not “small” and, therefore, the short spent fuel pool cooling times presented in the Sandia National Labs presentation he relies on in his First Declaration do not apply to the HI-STORM 100. The HI-STORM 100 is not referenced in the First Declaration, the Petition, the Answer (or indeed, any of the Applicants’ submittals in this proceeding, since the remaining Palisades fuel will be stored in HI-STORM FW casks<sup>14</sup>). Nor did Alvarez’s or Petitioners’ original filings make any arguments connecting the selection or capacity of dry storage systems at Palisades to spent fuel pool cooling times.

Alvarez also block quotes a new source (which is mis-cited in footnote 1 of the Second Declaration)<sup>15</sup> discussing geological repository disposal times. The Sandia National Labs report

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<sup>13</sup> *LES II* at 621.

<sup>14</sup> DCE at 22.

<sup>15</sup> The block quote spanning pages 1 and 2 of the Second Declaration is from page 23 of Sandia Report no. SAND2015-5503, Integrating Management of Spent Nuclear Fuel from Generation to Disposal, June 2015 (available

Alvarez quotes is not referenced in the First Declaration or the Petition, nor did Alvarez or Petitioners make any arguments about cooling times for ultimate disposal in a geological repository.

**B. New Materials to Support High Burnup Fuel Volumes**

Second Decl. at 2-3 – “With respect to high burnup SNF . . .” (p.2) to “. . . burnup for each individual SNF assembly” (p.3)

The Second Declaration refers, generally and without specific citation, to the Energy Information Administration’s (“EIA”) collection of fuel assembly discharge data in an attempt to cure Alvarez’s failure in the First Declaration to provide documentary support for his estimated high burnup fuel volumes. Neither the First Declaration nor the Petition referred to EIA data or provided any citation to support Alvarez’s estimated high burnup fuel volumes. The Second Declaration improperly attempts to cure Alvarez’s unsupported statements by providing supplemental materials after the filing deadline without satisfying the late filing requirements of 2.309(c).

**C. New and Different Support for ISFSI O&M Costs**

Second Decl. at 3, ¶2 – “As for cost, Holtec assumes . . .” to “. . . of spent nuclear fuel at the two sites.”

Alvarez cites new materials, not referenced in the original Petition or the First Declaration, regarding possible ISFSI operation and maintenance (“O&M”) costs associated with delayed removal of fuel by DOE.<sup>16</sup> Alvarez’s First Declaration estimated that O&M costs could be “as

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at <https://www.osti.gov/servlets/purl/1504841>), which neither Alvarez nor Petitioners cited in their initial filings. However, Alvarez incorrectly attributes the block quote to Sandia Report no. SAND2013-1698C, Cooling Times for Storage and Transportation of Spent Nuclear Fuel, Jan. 2013 (available at <https://www.osti.gov/servlets/purl/1145261>), which Alvarez did cite in the First Declaration.

<sup>16</sup> Though Alvarez provides no citation, the quote on page 3, paragraph 2 is from the June 2015 Sandia National Labs Report no. SAND2015-5503 referenced in note 15 *supra*, which was not referenced in the First Declaration or Petition.

high as \$6.5 million/yr.”<sup>17</sup> The new source he cites estimates annual storage costs between \$4.5 and \$10 million per year.<sup>18</sup> This presentation of new and different supporting materials is an improper attempt to supplement the Petition after the filing deadline.

**D. New Arguments Regarding VSC-24 Repackaging Costs and New Basis to Challenge the Commingled Fund Exemption Request**

Second Decl. at 3 – “Finally repackaging of the 432 assemblies . . .” to “. . . to be drawn from the D&D . . . fund are excessive.”

Reply at 7-8 – “Petitioners’ expert, Bob Alvarez, . . .” to “. . . in the U.S. has been repackaged.”

Reply at 16-17 – “Respecting Applicants’ sparsely-described intention . . .” to “. . . fuel cask in the U.S. has been repackaged.”

Alvarez argues for the first time that repackaging fuel in the VSC-24 casks will be very difficult and/or will involve more costs than those presented in his First Declaration. In the First Declaration, Alvarez opined that repackaging fuel in the VSC-24 casks would cost \$40,000 to \$87,000 per assembly.<sup>19</sup> The Second Declaration now asserts that repackaging the VSC-24 casks “will require the continued operation of the reactor pool,” use of “dry hot cells,” and an additional \$9,500 per assembly for “managing low-level radioactive waste.”<sup>20</sup> This is yet another improper attempt to supplement his original arguments after the filing deadline. As for Alvarez’s final statement—“[i]f [his estimates] match up with Holtec’s assertions [in the PSDAR and DCE], then the costs allocated for SNF management to be drawn from the [NDT] *are excessive*”<sup>21</sup>—it appears that Alvarez is now asserting, not that HDI’s cost estimates are *too low*, but instead that they are *inflated* and *too conservative*. While Applicants agree that HDI’s cost estimate is indeed

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<sup>17</sup> First Declaration at 4.

<sup>18</sup> Second Declaration at 3.

<sup>19</sup> First Declaration at 3.

<sup>20</sup> Second Declaration at 3.

<sup>21</sup> *Id.* (emphasis added).

conservative, neither Alvarez nor Petitioners challenged HDI's commingled fund exemption request on this basis.

**E. New Arguments in Support of Petitioners' NEPA Contention**

Reply at 8-10 – “And therein lies the fallacy” to “issues of fact with the application, necessitating a trial.”

Reply at 10-13 – § II.B (entire section)

The Reply impermissibly adds new legal theories and arguments in support of Petitioners' NEPA contention: “[c]hanges in land use, effects of historical site events, and inadequacies of the 2006 Supplemental Environmental Impact Statement all comprise new information which necessitates additional NEPA supplementation.”<sup>22</sup> Petitioners' contention and all of their supporting arguments in the initial Petition were founded on the theory that the NRC is required to supplement the SEIS prepared in connection with Palisades license renewal to address supposedly changing environmental and site conditions and facility decommissioning and waste management activities.<sup>23</sup> The Petition made no mention of NRC's categorical exclusion applicable to license transfers, the PSDAR section specifically relying on that categorical exclusion, or the PSDAR sections explaining why Palisades decommissioning activities are bounded by prior environmental reviews. Petitioners' Reply seeks to impermissibly amend the original Contention 1 to now attack the PSDAR's bounding analysis and assert various arguments for why the categorical exclusion either does not apply or “special circumstances” are present such that the Commission should require environmental review of this license transfer. The opportunity to file a reply brief does not afford Petitioners the luxury of reformulating their contention.

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<sup>22</sup> Petition at 19.

<sup>23</sup> *Id.* at 21 (“Under NEPA, NRC is obligated to undertake a supplemental EIS when presented with ‘substantial changes in the proposed action that are relevant to environmental concerns’ or ‘new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts’ after the EIS is assembled.”).

#### **IV. Conclusion**

For the foregoing reasons, the portions of the Reply and Second Declaration identified above should be stricken from the record. Should the Commission decline to strike these portions of Petitioners' filings, Applicants respectfully request the opportunity to respond to the new arguments and materials.

Pursuant to 10 CFR § 2.323(b), Applicants' counsel certifies that Applicants made a sincere effort to contact Petitioners and the other parties in this proceeding to resolve the issues raised in this Motion and that Applicants' efforts to resolve the issues have been unsuccessful.



Respectfully submitted,

*/signed electronically by Alan Lovett /*

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	)	72-043-LT
(Palisades Nuclear Plant and	)	
Big Rock Point Site)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Motion to Strike has been served through the E filing system on the participants in the above-captioned proceeding this 5th day of April 2021.

/signed electronically by Alan Lovett/

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