

August 26, 2022

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	Docket Nos.	50-255-LT-2
ENERGY NUCLEAR OPERATIONS,	)		50-155-LT-2
INC., ENERGY NUCLEAR	)		72-007-LT
PALISADES, LLC, HOLTEC	)		72-043-LT-2
INTERNATIONAL, and HOLTEC	)		
DECOMMISSIONING	)	ASLBP No.	22-974-01-LT-BD01
INTERNATIONAL, LLC	)		
	)		
(Palisades Nuclear Plant and Big Rock	)		
Point Site)	)		

**Joint Motion Regarding Mandatory Disclosures  
and Proposed Protective Order**

Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, Holtec International, Holtec Decommissioning International, LLC, and the Michigan Attorney General (collectively, “the Parties”) request that the Board grant this joint motion regarding the disclosures required by 10 CFR Part 2 and adopt the enclosed protective order to cover confidential and proprietary documents expected to be produced in this proceeding. While NRC Staff has elected not to participate as a party, the Parties have consulted with NRC Staff, and they are in agreement with the disclosure protocols set forth herein, insofar as the protocols describe NRC Staff’s disclosure obligations as a non-party. The disclosure protocols requested herein are largely consistent with similar refinements to the Part 2 procedural rules requested by parties to NRC hearings and are based on the present Parties’ shared interest of conducting discovery in this proceeding in a manner that is efficient, avoids unnecessary burden, and is appropriately focused on the matters admitted for hearing.

The proposed disclosure protocols are as follows:

1. NRC Staff will identify or produce all documents required by 10 CFR §§ 2.336(b)(1)-(2), 2.1303, and 2.1316 that are relevant, including all such documents available via the NRC's website or ADAMS. The Parties shall not otherwise be required to identify or produce docketed correspondence or other documents available via the NRC's website or ADAMS.

2. The Parties will produce a log of public documents deemed relevant and within their possession, custody and control, identifying where they can be obtained (other than documents available via the NRC's website or ADAMS).

3. The Parties are not required to identify or produce drafts of documents (including markups of and comments on such drafts).

4. The Parties are not required to identify or produce emails.

5. The Parties are not required to identify or produce privileged documents (e.g., attorney-client communications, attorney work product, deliberative process).

6. The Parties will produce proprietary and confidential documents, subject to the terms of the protective order entered by the Board, a proposed form of which is attached hereto as Attachment A. While proprietary and confidential documents should be clearly labeled as such, the Parties need not produce a proprietary document log.

7. If an identical document (including identical marginalia, if any) is found in multiple locations or in multiple formats, the Parties are only required to identify or produce one instance of the document.

8. Information related to work activities at the Palisades facility may be produced in the form routinely reported and disseminated at the project management level in the ordinary course of business (e.g., a level 3 project schedule may be produced without also providing all detailed work breakdowns, work packages, etc. related to every activity reflected in the schedule; monthly reports may be produced without providing underlying invoices, purchase orders, payroll checks, etc. reflected or summarized in the report). A Party with reasonable need for any such underlying information may request the production of that information, and the Party from whom such underlying information is requested shall make a reasonable effort to produce the requested information in a timely fashion.

9. Following the initial disclosures on October 14, 2022, updates to the disclosures required by § 2.336(d) shall be due the first business day on or after the fifteenth (15th) day of each month, beginning November 15, 2022, and shall cover any new documents as of the first (1st) day of such month—until such time that the hearing record is closed.

10. The following general categories of documents do not need to be produced absent a specific discovery request (addressed below):

- a. press clippings;
- b. documents that contain only administrative information, such as notices of meetings or calls, records of time and expenses, billing statements, and similar documents;
- c. documents related to Palisades that predate Entergy's ownership of the facility (i.e., April 2007);
- d. transactional documents between Entergy and Holtec related to Holtec's acquisition of Palisades;

- e. documents related to the decommissioning of facilities other than Palisades (except information regarding other projects/plants used by the NRC to derive the minimum formula in 10 CFR § 50.75(c)); and
- f. documents related to claims against the U.S. Department of Energy for breach of its obligation to accept spent nuclear fuel from facilities other than Palisades.

If a Party reasonably believes that certain information in general categories (c) through (f) of this paragraph is necessary to develop relevant arguments in the present proceeding, such Party may request, with as much particularity as possible, production of such information by September 14, 2022, and the Party from whom such information is requested shall make a reasonable effort to produce the requested information (provided it is in its possession, custody or control, is not privileged, and is subject to disclosure under 10 CFR § 2.336(a)) in its initial disclosures, due October 14, 2022. Production of any such information shall not constitute an admission that documents or related arguments are relevant to the issues admitted for hearing. To the extent a Party objects to a request as unreasonably broad and/or beyond the scope of issues admitted for hearing, the Parties will meet and confer in an attempt to resolve any disagreements prior to elevating to the Board. If a dispute is submitted to the Board, disclosure of disputed documents, to the extent required by the Board, shall be deferred until five (5) business days following the Board's order.

The undersigned, on behalf of the joint movants, respectfully requests that the Board approve the disclosure protocols described above and issue the attached proposed protective order.

Respectfully submitted,

/Executed in accord with § 2.304(d)/

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**ATTACHMENT A – PROPOSED PROTECTIVE ORDER**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge:

Paul S. Ryerson  
Presiding Officer

In the Matter of

ENTERGY NUCLEAR OPERATIONS,  
INC., ENTERGY NUCLEAR PALISADES,  
LLC, HOLTEC INTERNATIONAL, and  
HOLTEC DECOMMISSIONING  
INTERNATIONAL, LLC

(Palisades Nuclear Plant and Big Rock  
Point Site)

Docket Nos. 50-255-LT-2  
50-155-LT-2  
72-007-LT  
72-043-LT-2

ASLBP No. 22-974-01-LT-  
BD01

August \_\_, 2022

**MEMORANDUM AND ORDER**

(Protective Order Governing Disclosure of Proprietary Materials)

This protective order governs the parties' disclosure and use in this proceeding of certain documents that a party to this proceeding identifies as containing proprietary trade secrets and/or commercial and financial information of the party or its affiliates, vendors, or contractors ("Protected Information"). Pursuant to this protective order, counsel, witnesses, employees, consultants, and others representing the parties shall be permitted access to such Protected Information subject to the conditions set forth herein.<sup>1</sup> Except

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<sup>1</sup> NRC Staff has elected not to participate as a party in this proceeding and as such will not receive Protected Information via the parties' disclosures made under 10 CFR § 2.336. NRC Staff will, however, have access

as otherwise expressly set forth herein, this protective order shall remain in effect until specifically modified or terminated by this Board or the Commission.

A. Counsel for each party shall designate the documents that contain Protected Information by prominently marking such documents with “confidential,” “proprietary” or similar labels.

B. Documents labeled in accordance with Paragraph A shall be deemed to contain proprietary trade secrets and/or commercial and financial information required to be held in confidence pursuant to the policy reflected in 10 CFR § 2.390(a)(4). The receiving parties shall hold such documents in confidence and in compliance with the terms and conditions of this protective order.

C. Only individual counsel, consultants, witnesses, employees, and others representing the parties who have executed the attached nondisclosure declaration may have access to Protected Information. Each executed nondisclosure declaration shall be served on the parties (email being sufficient) before it is deemed in effect.

D. Protected Information shall only be used as necessary for the conduct of this proceeding. Protected Information shall not be disclosed in any manner to any person except (1) the Board and its staff and the NRC Staff; and (2) those engaged in the conduct of this proceeding who have executed a nondisclosure declaration and who reasonably need to know the Protected Information to carry out his or her responsibilities in this proceeding. An individual with access to Protected Information may make copies of and

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to the non-public portion of the electronic hearing docket for this proceeding. NRC Staff’s disclosure and use of any documents in its non-party role are governed by 10 CFR §§ 2.390, 9.17, and 9.25, and NRC Management Directive 12.6, “NRC Sensitive Unclassified Information Security Program.”

take notes on the protected documents, but such copies and notes shall also be considered Protected Information subject to the terms of this protective order.

E. Counsel, consultants, witnesses, employees, and others representing a party who receive documents subject to the terms of this protective order shall maintain the confidentiality of the information contained therein as required in the nondisclosure declaration. Even if no longer engaged in this proceeding, every person who has executed a nondisclosure declaration shall continue to be bound by the provisions of the protective order and the declaration.

F. Counsel shall take all reasonable precautions necessary to assure that proprietary documents and the information contained therein are not distributed to unauthorized persons. Counsel are responsible for ensuring that persons under their supervision or control comply with this protective order. Counsel, consultants, employees, or any other individuals representing a party who have reason to believe that proprietary documents may have been lost or misplaced or may have otherwise become available to unauthorized persons during the pendency of this proceeding shall notify the Board and counsel for the party asserting proprietary interest in the document promptly of their concerns and the reasons for them.

G. The Michigan Attorney General acknowledges and agrees that Protected Information supplied to it pursuant to this NRC proceeding is protected from public disclosure by federal statute and regulation, including without limitation, 5 USC § 552(b)(4) and 10 CFR § 2.390(a)(4) and, accordingly, is exempt from public disclosure under Michigan law by one or more subparts of MCL § 15.243(1), including but not limited to §§ 15.243(1)(d) and (f). Accordingly, it is intended that the Protected Information



subject to this protective order should be shielded from public disclosure by the Michigan Attorney General or any other embodiment or agency of the State of Michigan. Without limiting the foregoing, if any person files a request under the Michigan Freedom of Information Act with the Michigan Attorney General or other embodiment or agency of the State of Michigan seeking access to documents subject to this protective order, the Attorney General shall promptly notify the disclosing party and reasonably cooperate with the disclosing party to take whatever legal actions are appropriate to protect the Protected Information from disclosure. In light of Section 5 of the Michigan Freedom of Information Act, MCL § 15.235, such notice must be given at least five (5) business days before the Michigan Attorney General grants any such information request in full or in part; however, the Michigan Attorney General shall promptly provide notice of any such information request sufficiently in advance of acting on it such that the disclosing party may adequately exercise its rights hereunder and under the Michigan Freedom of Information Act.

H. All pleadings, issuances, testimony, exhibits, and correspondence in this proceeding that contain information derived from Protected Information shall be treated as confidential, marked in accordance with Paragraph A above, and, if served, shall be served via the Commission's E-Filing electronic submittal system, but shall be excluded from the public docket for this proceeding by selecting the "Non-Public Submission" filing option on the agency's E-Filing website.<sup>2</sup>

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<sup>2</sup> Prior to the parties' submission of any filings containing Protected Information, counsel for the parties will advise the Office of the Secretary of the individuals from each party who have executed the nondisclosure declaration and may be served with proprietary documents or filings, issuances, transcripts, and exhibits via the E-Filing system.

I. At any hearing or conference in this proceeding in which a statement is made by a representative of a party, or a witness is questioned, concerning Protected Information, the statement or testimony shall be given in camera or under other suitable conditions as the Board may establish, and the record of that portion of the hearing and any transcript thereof shall be withheld from distribution to the public. It shall be the duty of the presenting party to notify the Board and the other parties that such testimony or statement will contain Protected Information prior to the testimony or statement being made.

J. Proprietary documents shall remain available to all parties until the date that an order terminating this proceeding is no longer subject to judicial review. The parties shall, within fifteen (15) days of the date described above, return documents containing Protected Information to counsel for the party asserting proprietary interest in the document or shall destroy that material and advise counsel for the party asserting proprietary interest in the document of such destruction, except that copies of filings, transcripts, and exhibits in this proceeding that contain such information and notes taken by persons reviewing proprietary material, may be retained if they are maintained in a secure place such that no distribution of the information to unauthorized individuals will occur. Within such time period, each party receiving proprietary documents shall submit to counsel for the party asserting proprietary interest in the document an affidavit stating that, to the best of its actual knowledge, all proprietary documents have been returned or destroyed, or, in the case of filings, transcripts, or exhibits, or notes in this proceeding, that such documents will be maintained in a secure place such that no distribution of the information to unauthorized individuals will occur. To the extent that such filings,

transcripts, exhibits, and notes are not returned or destroyed, they shall remain subject to the provisions of this protective order.

K. The Board will resolve any disputes arising under this protective order, including those relating to a contested claim that a document contains Protected Information or disputes related to the public release of Protected Information. Prior to presenting any such dispute to the Board, the parties shall consult and use their best efforts, including the use of redaction, to resolve such dispute.

L. Any violation of the terms of this protective order or a nondisclosure declaration executed in furtherance of this protective order may result in the imposition of such sanctions as the Board may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

M. Nothing in this protective order shall preclude any person from seeking public disclosure of Protected Information in accordance with NRC regulations. Nothing in this protective order shall preclude any person from seeking, through discovery in any other administrative or judicial proceeding, information protected by this protective order.

N. The Board may alter or amend this protective order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

THE ATOMIC SAFETY AND  
LICENSING BOARD



Paul S. Ryerson  
PRESIDING OFFICER

Rockville, Maryland  
August \_\_, 2022

## NONDISCLOSURE DECLARATION

Under penalty of perjury, I hereby certify that:

1. Access to "Protected Information," as the term is defined in the Atomic Safety and Licensing Board's protective order, dated August \_\_, 2022, has been provided to me pursuant to the terms and restrictions of the protective order.
2. I have been given a copy of and have read the protective order.
3. I agree to be bound by the terms of the protective order. I understand and agree that proprietary documents, their contents, or any notes or other memoranda summarizing or otherwise describing their contents, or any form of information that derives from the proprietary documents and copies or discloses the contents of the proprietary documents, shall be held in confidence and shall not be disclosed to anyone except in accordance with that protective order.
4. I acknowledge that a violation of this declaration or the protective order, which incorporates the terms of this declaration, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of such sanctions as the Atomic Safety and Licensing Board or the Nuclear Regulatory Commission may deem to be appropriate.

WHEREFORE, I do solemnly swear to protect such proprietary documents, and their contents, as may be disclosed to me in this proceeding, in accordance with the terms of this declaration.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Representing: \_\_\_\_\_

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

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INTERNATIONAL, and HOLTEC	)		
DECOMMISSIONING	)		
INTERNATIONAL, LLC	)		

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion has been served through the E-Filing system on the participants in the above-captioned proceeding, this 26th day of August, 2022.

Respectfully submitted,

/Signed electronically by Alan D. Lovett/

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