

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

Before Administrative Judge:

Paul S. Ryerson
Presiding Officer

In the Matter of

ENERGY NUCLEAR OPERATIONS, INC.,
ENERGY 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 31, 2022

MEMORANDUM AND ORDER
(Scheduling and Case Management Order)

I. Background

This proceeding concerns an application to transfer control of (1) the renewed facility operating license for the Palisades Nuclear Plant (Palisades) and the general license for the Palisades Independent Spent Fuel Storage Installation (ISFSI); and (2) the facility operating license for Big Rock Point and the general license for the Big Rock Point ISFSI. Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC (HDI) seek NRC consent to the indirect transfer of control of the licenses to Holtec International and to the transfer of operating authority to HDI to conduct licensed activities at the sites. They also seek NRC approval of conforming administrative license amendments to reflect the requested transfers.

Although the Commission typically oversees license transfer proceedings (10 C.F.R. § 2.1319(a)), in this case the Commission directed that the Chief Administrative Judge of the

Atomic Safety and Licensing Board Panel “[a]ppoint a single administrative judge . . . to serve as the Presiding Officer to take all necessary actions to compile, complete, and certify the hearing record, including presiding over any oral hearing.”¹ In CLI-22-08, the Commission stated, inter alia, that (1) the hearing shall be limited to the four issues specified in CLI-22-08; (2) the Presiding Officer should endeavor to adhere to the Model Milestones to the extent practicable; and (3) the Presiding Officer shall certify the hearing record to the Commission within twenty-five days of the conclusion of the hearing.²

II. Schedule

On July 27, 2022 the Board conducted a prehearing conference by telephone, during which the parties agreed that the evidentiary hearing in this subpart M proceeding will be oral and will be held in the ASLBP Hearing Room in Rockville, Maryland.³ They also agreed to submit a joint proposed schedule for the Board’s consideration.⁴

Thereafter, the parties proposed a schedule leading up to an evidentiary hearing to be held during the week of February 6, 2023.⁵ The NRC Staff notified the Board that it will not participate as a party, although, inter alia, it will offer into evidence its safety evaluation associated with the license transfer application and provide one or more sponsoring witnesses.⁶

The Board previously approved as reasonable the parties’ proposed hearing schedule,⁷ which is appended to this order. See Appendix A. Absent compelling reasons, the Board will

¹ See Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-08 at 135 (2021).

² See CLI-22-08, slip op. at 133-36.

³ See Official Transcript of Prehearing Teleconference, Entergy Nuclear Operations, et al., at 11-14 (July 27, 2022) [hereinafter cited as Tr.].

⁴ See id. at 16-17.

⁵ See Joint Proposed Schedule (Aug. 5, 2022).

⁶ See Notification that the NRC Staff is Not Participating as a Party (Aug. 1, 2022).

⁷ See Licensing Board Order (Granting Joint Proposed Schedule) (Aug. 8, 2022) (unpublished).

be reluctant to grant requested changes to the schedule that might delay the evidentiary hearing.

III. Procedural Matters

a. Disclosures. The disclosure obligations of the parties and the NRC Staff will conform to the protocols embodied in this Board's Mandatory Disclosures Order,⁸ and are subject to the terms of the Protective Order.⁹

b. Exhibits and Pre-filed Testimony. Filings by parties and the NRC Staff should use the agency's E-Filing system¹⁰ and should both comply with the schedule in Appendix A and the requirements set forth in Appendix B to this Order.

If practicable, the Board expects to admit all admissible pre-filed testimony and exhibits into the evidentiary record at the outset of the evidentiary hearing. The parties are strongly encouraged to resolve evidentiary disagreements, if any, prior to the hearing.

In addition to written testimony and exhibits, the schedule permits several opportunities for the parties to submit statements of position, which shall be filed as pleadings. Such statements shall be in the nature of a trial brief that summarizes the party's case on the relevant issues, identifying witnesses and evidence, and specifying with as much particularity as practicable how each witness, exhibit, or category of evidence supports a factual or legal position.

⁸ See Licensing Board Order (Protocols Governing Mandatory Disclosures) (Aug. 31, 2022) (unpublished).

⁹ See Licensing Board Order (Protective Order Governing Disclosure of Proprietary Materials) (Aug. 31, 2022) (unpublished).

¹⁰ For assistance with the agency's E-filing system, participants may contact the Electronic Filing Helpdesk by visiting its webpage (<https://www.nrc.gov/site-help/e-submittals/contact-us-eie.html>), calling (866) 672-7640 between the hours of 9:00 am to 6:00 pm Eastern time, Monday through Friday (excluding Government holidays), or sending an e-mail to MSHD.Resource@nrc.gov.

c. Proposed Questions. Pursuant to 10 C.F.R. § 2.1323(e), participants and witnesses will be questioned orally or in writing and only by the Presiding Officer. Questions may be addressed to individuals or to panels of participants or witnesses. Any proposed questions submitted by counsel for the parties should contain a brief description of the issue or issues that the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective. Proposed examination questions and plans should be filed in camera, using the NRC's E-Filing system's "Legal In-Camera Submission," so that the questions are only sent to the Presiding Officer and not served on the other parties.

d. Stipulations. The parties are encouraged to discuss among themselves and submit to the Board stipulations of any relevant fact or the contents or authenticity of any document. The Board expects to review the status of such stipulations during a subsequent prehearing conference. See 10 C.F.R. § 2.329(c)(3).

e. Availability of Witnesses. Unless the Presiding Officer orders otherwise, each party must, at its own expense and effort, assure that each person for whom it has submitted written testimony attends the entire evidentiary hearing in person and is available to testify and to respond orally to questions.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson
PRESIDING OFFICER

Rockville, Maryland
August 31, 2022

APPENDIX A
Hearing Schedule

October 14, 2022	Initial disclosures and witness identification
November 18, 2022	Initial written statements of position and written testimony with supporting affidavits *NRC Staff written statement on applicability of 10 CFR § 50.75(b) formula amount
December 16, 2022	Written responses and rebuttal testimony with supporting affidavits
January 20, 2023	Proposed written questions for the Board to consider
January 27, 2023	Written concluding statements of position on the issues
Week of February 6, 2023	Oral hearing in Rockville, MD
20 days after the close of the hearing	Written post-hearing statements of position on the issues
25 days after the close of the hearing	Board certifies the hearing record to the Commission

APPENDIX B
Prefiled Exhibits and Testimony

A. Ordering and Numbering.

Each party shall number its prefiled exhibits with their assigned character party designation, followed by a three-character zero-filled number, as follows: Entergy Nuclear Operations, Inc and Entergy Nuclear Palisades, LLC – ENT; Holtec International and Holtec Decommissioning International, LLC – HOL; Michigan Office of Attorney General – MICH; NRC Staff – NRC. While the NRC Staff has provided notice it does not intend to participate as a party, the Staff “will offer into evidence its safety evaluation associated with the license transfer application and provide one or more sponsoring witnesses.”¹ The Board intends to mark and enter prefiled testimony and exhibits into the record electronically. Pursuant to 10 C.F.R. § 2.304(g), each item of prefiled testimony and each exhibit that is submitted via the agency’s E-Filing system must be submitted as an individual electronic file in portable document format (PDF) or PDF/A format.² The Board recommends that each party’s first numbered exhibit should consist of its witness testimony, if filed, to be followed by that party’s exhibits. All prefiled testimony shall identify the individual(s) and shall be submitted in exhibit form, under oath, so that it is suitable for receipt into evidence without the necessity of the appearance of the witness. Unless otherwise advised by the Board, however, each party shall ensure that each person for whom it submits written testimony is available to testify and respond to questions at the evidentiary hearing.

B. Exhibit List.

At the time each party submits its prefiled exhibits, each party shall also submit an exhibit list. The parties should utilize an exhibit list similar to the one attached to this Appendix.

¹ See Notification that the NRC Staff is Not Participating as a Party (Aug. 1, 2022).

² See “Guidance for Electronic Submission to the NRC” (<https://www.nrc.gov/docs/ML1303/ML13031A056.pdf>).

Each party shall file an updated exhibit list if new or revised exhibits are added to the docket. For each exhibit listing, the parties shall provide (1) the exhibit number; (2) the exhibit title; and (3) the ADAMS accession number, to the extent an ADAMS accession number is available for the document (or portion of the document).³ For any exhibit with confidential information, that exhibit's row should be bolded. The exhibit list should not be numbered as a separate exhibit.

C. Exhibit Cover Sheet.

Each prefiled exhibit shall have a cover sheet.⁴ The cover sheet is a PDF fillable form with fields for an exhibit number and exhibit title that should be appended to the front of the exhibit so that it is part of the PDF file for that exhibit when it is submitted via the E-Filing system. Exhibit titles must be 200 characters or less and must match the title on the exhibit list. There are four exhibit cover sheets, one for initial exhibits, revised exhibits, confidential exhibits, and revised confidential exhibits. The Board's law clerk, Allison Wood, will provide a template of each exhibit cover sheet.

D. Large Exhibits.

In the unlikely event a party finds that it needs to break a large document into several documents to ensure it does not exceed the agency's guidance on recommended file sizes for submissions,⁵ each of the documents should be labeled by placing an alpha designation next to the number of the exhibit. For example, if an Intervenor exhibit that would otherwise have the number MICH001 were submitted in three parts because of the file size, each portion would have a different exhibit number, e.g., MICH001A, MICH001B, and MICH001C.

³ Parties should not add the ADAMS Accession Number to the exhibit title.

⁴ Using a cover sheet on each exhibit avoids unnecessary duplications of exhibits/testimony in ADAMS. See Licensing Board Order (Providing Case Management Instructions), NextEra Energy Seabrook, LLC (Seabrook Station Unit 1), No. 17-953-LA-BD01 at 2 n.3 (May 23, 2019) (unpublished).

⁵ A single file can be no larger than 500 megabytes (MB) and the aggregate size of the attached files cannot exceed 500 MB.

E. Revised Exhibits.

If approved by the Board, a party may submit a revised version of a previously filed exhibit. The revised exhibit shall use the exhibit cover sheet for a revised exhibit. The exhibit should be refiled with the designation “-R” placed after the exhibit number, e.g., HOL001 would be designated HOL001-R. If a subsequent revision is approved, the exhibit should be refiled using the revised exhibit cover sheet with the revised exhibit number reflecting the additional revision, e.g., HOL001-R2.

F. Exhibits Containing Confidential Information.

Documents containing confidential information should be filed electronically using the NRC’s E-Filing system. To file a confidential document, each party shall use the “Non-Public Submission” option to prevent the document from being filed in the public docket. Any party filing an exhibit containing protected information should also ensure that it uses the appropriate confidential exhibit cover sheet.

G. Page Number References.

When referring to/citing page numbers for exhibits, parties should reference the actual page number of the document and not the page number of the electronic document (i.e., not the PDF page number). If the document lacks pagination, the PDF page number can be referenced.

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NUCLEAR REGULATORY COMMISSION

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Entergy Nuclear Operations, Inc., Entergy)	Docket Nos. 50-255-LT-2
Nuclear Palisades, LLC, Holtec)	50-155-LT-2
International, and Holtec Decommissioning)	72-007-LT
International, LLC)	72-043-LT-2
(Palisades Nuclear Plant & Big Rock Point))	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Scheduling and Case Management Order)** have been served upon the following persons by Electronic Information Exchange.

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Entergy Nuclear Operations, Inc, Holtec International (Palisades Nuclear Plant and Big Point Rock)

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MEMORANDUM AND ORDER (Scheduling and Case Management Order)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 31st day of August 2022