

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

**NRC STAFF POSITION ON THE APPLICABILITY OF THE 10 C.F.R. § 50.75 MINIMUM
FUNDING REQUIREMENT TO THE LICENSE TRANSFER APPLICATION**

INTRODUCTION

Although not a party in the captioned proceeding, the U.S. Nuclear Regulatory Commission Staff, in response to the invitation of the Commission, submits separately from the parties' pleadings its position on the applicability of the 10 C.F.R. § 50.75 minimum funding requirement to the license transfer application (LTA) at issue in the captioned proceeding. As supported by NRC regulations, NRC guidance, and prior Staff positions, the Staff position is that the 10 C.F.R. § 50.75 minimum funding requirement does not apply to the LTA.

BACKGROUND

By the LTA dated December 23, 2020, as supplemented, Entergy Nuclear Operations, Inc. (ENOI), on behalf of itself, Entergy Nuclear Palisades, LLC (ENP), Holtec International (Holtec), and Holtec Decommissioning International, LLC (HDI), requested NRC permission to (1) transfer the licenses for Palisades Nuclear Plant (Palisades), the Palisades independent spent fuel storage installation (ISFSI), Big Rock Point Plant (Big Rock Point), and the Big Rock Point ISFSI from ENP to a Holtec subsidiary to be known as Holtec Palisades, LLC; (2) transfer

the authority to conduct licensed activities under these licenses from ENOI to HDI; and (3) make conforming administrative amendments to the licenses to reflect the license transfer and the name change from ENP to Holtec Palisades, LLC.¹ Pursuant to the terms of a membership interest purchase and sale agreement, this transaction would occur only after the permanent cessation of operations and permanent removal of fuel from the reactor vessel of Palisades.² In support of the LTA, HDI submitted, among other things, a post-shutdown decommissioning activities report, including a site-specific decommissioning cost estimate, describing the decommissioning plan to be implemented following any completion of the proposed license transfer.³ As part of its review of the LTA, the Staff noted that the site-specific decommissioning cost estimate submitted by HDI was less than the amount calculated according to 10 C.F.R. § 50.75(c),⁴ which that regulation describes as the “minimum amount[] ... required to demonstrate reasonable assurance of funds for decommissioning....” However, the Staff found that the applicants’ justification for the site-specific decommissioning cost estimate being less than the amount calculated according to 10 C.F.R. § 50.75(c) was acceptable.⁵

On February 4, 2021, the Staff published its notice of consideration of approval of the LTA and of conforming amendments to the licenses to reflect the proposed transfer, including

¹ Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments (Application), attached (Encl. 1) to Letter from A. Christopher Bakken III, ENOI, to NRC (Dec. 23, 2020) (ML20358A075) (Application Cover Letter); Supplement to Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments (Oct. 29, 2021) (ML21302A064); Update to December 23, 2020 Palisades and Big Rock Point License Transfer Application, attached to Letter from Jean A. Fleming, HDI, to NRC (Jan. 21, 2022) (ML22021B670).

² Application Cover Letter at 2-3.

³ Palisades Nuclear Plant Post-Shutdown Decommissioning Activities Report, attached to Letter from Andrea L. Sterdis, HDI, to NRC (Dec. 23, 2020) (ML20358A232).

⁴ Safety Evaluation by the Office of Nuclear Reactor Regulation related to the Request for Transfer of Control of Facility Operating License No. DPR-6, Renewed Facility Operating License No. DPR-20, and the General Licenses for the Independent Spent Fuel Storage Installations from Entergy Nuclear Operations, Inc. and Entergy Nuclear Palisades, LLC to Holtec International and Holtec Decommissioning International, LLC, Big Rock Point Plant and Palisades Nuclear Plant, Docket Nos. 50-155, 50-255, 72-007, and 72-043, at 11 (Dec. 13, 2021) (ML21292A148) (Staff Safety Evaluation).

⁵ *Id.*

an opportunity to request a hearing.⁶ Among others, the Michigan Attorney General filed a hearing request.⁷ In December 2021, the Staff issued an order approving the LTA, subject to the Commission's authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing on the LTA.⁸ On May 20, 2022, Palisades permanently ceased operations and on June 10, 2022, the fuel was permanently removed from the Palisades reactor vessel and placed in the Palisades spent fuel pool.⁹ Thereafter, on June 28, 2022, the transfer transaction closed and the Staff issued the conforming amendments consistent with its December 2021 order.¹⁰

On July 15, 2022, the Commission issued CLI-22-08, granting the Michigan Attorney General's hearing request with respect to specific enumerated issues.¹¹ The Commission also invited the Staff, even if a non-party, to address whether the 10 C.F.R. § 50.75 minimum funding requirement applies to the LTA.¹² Thereafter, pursuant to 10 C.F.R. § 2.1316(c)(1), the Staff informed the Atomic Safety and Licensing Board and the parties that it did not desire to participate as a party, but that it would submit, as a non-party and along with the pleadings of

⁶ Palisades Nuclear Plant and Big Rock Point Plant Consideration of Approval of Transfer of Control of Licenses and Conforming Amendments, 86 Fed. Reg. 8225 (Feb. 4, 2021).

⁷ Petition of the Michigan Attorney General for Leave to Intervene and for a Hearing (Feb. 24, 2021) (ML21055A888).

⁸ Order Approving Transfer of Licenses and Draft Conforming Administrative License Amendments (Dec. 13, 2021) (ML21292A146).

⁹ Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel (June 13, 2022) (ML22164A067).

¹⁰ Palisades Nuclear Plant and Big Rock Point Plant – Issuance of Amendment Nos. 129 and 273 Re: Order Approving Transfer of Licenses and Conforming Administrative License Amendments (June 28, 2022) (ML22173A179).

¹¹ *Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-08, 96 NRC __, __ (July 15, 2022) (slip op. at 134-35).

¹² *Id.* at __ (slip op. at 42, 134).

the parties, its views on the applicability of the minimum funding requirement in 10 C.F.R. § 50.75(b) to the LTA.¹³

DISCUSSION

10 C.F.R. § 50.75 states, in part, that an applicant for or holder of an operating license must certify that “financial assurance for decommissioning will be (for a license applicant), or has been (for a license holder), provided in an amount which may be more, but not less, than the amount stated in the table in [10 C.F.R. § 50.75(c)(1)] adjusted using a rate at least equal to that stated in [10 C.F.R. § 50.75(c)(2)].”¹⁴ This amount “may be based on a cost estimate for decommissioning the facility.”¹⁵ This is referred to as the 10 C.F.R. § 50.75 minimum funding requirement. Separately, 10 C.F.R. § 50.82(a)(4)(i) states, in part, that “[p]rior to or within 2 years following permanent cessation of operations, the licensee shall submit a post-shutdown decommissioning activities report ... to the NRC,” which must contain “a site-specific [decommissioning cost estimate]....”¹⁶ 10 C.F.R. § 50.82(a)(8)(iii) also states that “[w]ithin 2 years following permanent cessation of operations, if not already submitted, the licensee shall submit a site-specific decommissioning cost estimate.”¹⁷ These are referred to as the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates. As discussed below, the structure and language of the NRC regulations, as well as NRC guidance and prior Staff positions, demonstrate that the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates supersede the 10 C.F.R. § 50.75

¹³ Notification that the NRC Staff Is Not Participating as a Party (Aug. 1, 2022) (ML22213A224). *See also* Memorandum and Order (Scheduling and Case Management Order), at 3, App. A (Aug. 31, 2022) (unpublished) (ML22243A168) (stating that the schedule permits several opportunities for the parties to submit statements of position, which shall be filed as pleadings, and identifying in the schedule a separate opportunity for the Staff to submit a written statement on the applicability of the 10 C.F.R. § 50.75 minimum funding requirement).

¹⁴ 10 C.F.R. § 50.75(b)(1).

¹⁵ 10 C.F.R. § 50.75(b)(4).

¹⁶ 10 C.F.R. § 50.82(a)(4)(i).

¹⁷ 10 C.F.R. § 50.82(a)(8)(iii).

minimum funding requirement for a facility that has permanently ceased operations. Therefore, there is no regulatory requirement that such a facility's 10 C.F.R. § 50.82(a)(4)(i) or 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimate must be greater than or equal to the 10 C.F.R. § 50.75 minimum funding requirement.

I. The Structure and Language of the NRC Regulations Indicate that 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) Site-Specific Decommissioning Cost Estimates Supersede the 10 C.F.R. § 50.75 Minimum Funding Requirement for a Facility that Has Permanently Ceased Operations

A licensee is required to provide decommissioning financial assurance “at any time during the life of the facility, through termination of the license....”¹⁸ The NRC regulations at 10 C.F.R. § 50.75 and 10 C.F.R. § 50.82 accomplish this through analogous requirements in the two regulations, with the requirements in 10 C.F.R. § 50.75 focusing on facilities during their operation and the requirements in 10 C.F.R. § 50.82 focusing on facilities during their decommissioning. Several of these requirements indicate that once the 10 C.F.R. § 50.82 requirement applies to the facility, then it effectively supersedes the analogous 10 C.F.R. § 50.75 requirement. For example, 10 C.F.R. § 50.75(f) requires the submission of decommissioning funding status reports “at least once every 2 years” or annually “for a plant that is within 5 years of the projected end of its operation, or where conditions have changed such that it will close within 5 years ... or that has already closed....”¹⁹ 10 C.F.R. § 50.82 also includes a decommissioning funding status report requirement, which applies to the facility “[a]fter submitting [the] site-specific [decommissioning cost estimate] required by [10 C.F.R. § 50.82(a)(4)(i)], and until the licensee has completed its final radiation survey and demonstrated that residual radioactivity has been reduced to a level that permits termination of its license....”²⁰ Although the 10 C.F.R. § 50.75 reporting requirement does not specify an end-

¹⁸ Decommissioning of Nuclear Power Reactors, 61 Fed. Reg. 39,278, 39,278 (July 29, 1996) (final rule).

¹⁹ 10 C.F.R. § 50.75(f)(1)-(2).

²⁰ 10 C.F.R. § 50.82(a)(8)(v).

date, the express start-date for submitting analogous reports under 10 C.F.R. § 50.82 indicates that for licensees that have submitted a site-specific decommissioning cost estimate, the 10 C.F.R. § 50.82 reporting requirement effectively supersedes the 10 C.F.R. § 50.75(f) reporting requirement.

Similarly, 10 C.F.R. § 50.75(h) and 10 C.F.R. § 50.82(a)(8)(i)-(ii) are analogous requirements with respect to a licensee's use of its decommissioning trust funds. The point at which the 10 C.F.R. § 50.82 requirements effectively supersede the 10 C.F.R. § 50.75 requirements is made clear in 10 C.F.R. § 50.75(h)—this section states that its limitations on withdrawals apply “[e]xcept for withdrawals being made under [10 C.F.R.] § 50.82(a)(8)” and that its notification requirement does not apply “[a]fter decommissioning has begun and withdrawals from the decommissioning fund are made under [10 C.F.R.] § 50.82(a)(8)....”²¹ Also, the decommissioning trust fund requirements are expressly linked to sequential milestones in the lifetime of the facility.²² Taken together, the structure of the NRC decommissioning financial assurance regulations at 10 C.F.R. § 50.75 and 10 C.F.R. § 50.82 appears to be one in which, as a facility moves later into its life, requirements in 10 C.F.R. § 50.75 are generally superseded by analogous requirements in 10 C.F.R. § 50.82.

Based on the above-described structure of the NRC decommissioning financial assurance regulations, it appears that the best interpretation of the applicability of the 10 C.F.R. § 50.75 minimum funding requirement is that it is ultimately superseded by 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates, just as the 10 C.F.R. § 50.75 requirements governing reporting and decommissioning trust fund

²¹ 10 C.F.R. § 50.75(h)(1)(iv)-(h)(2).

²² See 10 C.F.R. § 50.82(a)(8)(ii) (stating that three percent of the 10 C.F.R. § 50.75 minimum funding requirement may be used at any time for decommissioning planning; that an additional 20 percent may be used for decommissioning expenses 90 days after the permanent cessation of operations, the permanent removal of fuel, and the NRC receipt of a post-shutdown decommissioning activities report; and that the rest may be used for decommissioning expenses after the submission of a site-specific decommissioning cost estimate); 10 C.F.R. § 50.75(h)(1)(iv)-(2) (stating that withdrawals are not restricted after final decommissioning has been completed).

use are superseded by analogous requirements in 10 C.F.R. § 50.82. The 10 C.F.R. § 50.75 minimum funding requirement and 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates are analogous requirements—both entail the determination of the funds necessary to ensure the decommissioning of a facility. The 10 C.F.R. § 50.75 minimum funding requirement appears to focus more on the earlier life of a facility by specifying “an applicant for” in addition to the “holder of” an operating license.²³ This is also supported by the Staff statement as part of a decommissioning rulemaking that this requirement ensures that “the bulk of the funds necessary for a safe decommissioning are being considered and planned for early in facility life....”²⁴ On the other hand, the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates focus more on the later life of a facility, i.e., “[p]rior to or within 2 years following permanent cessation of operations” for the 10 C.F.R. § 50.82(a)(4)(i) site-specific decommissioning cost estimate and “[w]ithin 2 years following permanent cessation of operations” for the 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimate. Because the 10 C.F.R. § 50.75 minimum funding requirement and the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates are analogous and because the former focuses more on facility operations and the latter focus more on facility decommissioning, consistent with other interactions between the decommissioning financial assurance requirements in 10 C.F.R. § 50.75 and 10 C.F.R. § 50.82, the best interpretation of these requirements is that the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates ultimately supersede the 10 C.F.R. § 50.75 minimum funding requirement.

This position is further supported by the language of the regulations. Specifically, neither 10 C.F.R. § 50.82(a)(4)(i) nor 10 C.F.R. § 50.82(a)(8)(iii) contains language referring to or

²³ 10 C.F.R. § 50.75(b)(1).

²⁴ General Requirements for Decommissioning Nuclear Facilities, 53 Fed. Reg. 24,018, 24,030 (June 27, 1988) (final rule).

implicating the applicability of the 10 C.F.R. § 50.75 minimum funding requirement. And, as part of a decommissioning financial assurance rulemaking, the Staff clarified that licensees “undergoing decommissioning under [10 C.F.R.] § 50.82” are not covered by the 10 C.F.R. § 50.75 minimum funding requirement.²⁵ The language of the decommissioning funding status report requirements also supports this position. As explained above, 10 C.F.R. § 50.75(f) governs reporting up until the submission of a 10 C.F.R. § 50.82(a)(4)(i) site-specific decommissioning cost estimate at which point 10 C.F.R. § 50.82(a)(8)(v) governs reporting. During operations, under 10 C.F.R. § 50.75(f), these reports must include “the amount of decommissioning funds estimated to be required pursuant to 10 [C.F.R. §] 50.75(b) and (c);”²⁶ however, during decommissioning, under 10 C.F.R. § 50.82(a)(8)(v), there is no reference to the 10 C.F.R. § 50.75 minimum funding requirement but instead only a requirement for an “estimate of the costs to complete decommissioning....”²⁷

Although the regulations are not clear as to what point in time exactly the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates supersede the 10 C.F.R. § 50.75 minimum funding requirement, what is clear is that the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates are required to be submitted at the latest “[w]ithin 2 years following permanent cessation of operations....”²⁸ Accordingly and for the reasons discussed above, the 10 C.F.R. § 50.75 minimum funding requirement appears generally to not apply to 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates for facilities that have permanently ceased operations.

²⁵ Decommissioning Trust Provisions, 67 Fed. Reg. 78,332, 78,344 (Dec. 24, 2002) (final rule).

²⁶ 10 C.F.R. § 50.75(f)(1)-(2).

²⁷ 10 C.F.R. § 50.82(a)(8)(v)(B).

²⁸ 10 C.F.R. § 50.82(a)(4)(i); 10 C.F.R. § 50.82(a)(8)(iii).

Based on the structure and language of 10 C.F.R. § 50.75 and 10 C.F.R. § 50.82, the Staff position is that the site-specific decommissioning cost estimates of 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) supersede the minimum funding requirement in 10 C.F.R. § 50.75 for a facility that has permanently ceased operations.

II. NRC Guidance and Prior Staff Positions Indicate that 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) Site-Specific Decommissioning Cost Estimates Supersede the 10 C.F.R. § 50.75 Minimum Funding Requirement for a Facility that Has Permanently Ceased Operations

NRC guidance supports the position that the 10 C.F.R. § 50.75 minimum funding requirement is superseded by the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates for a facility that has permanently ceased operations because instead of stating that a site-specific decommissioning cost estimate is unacceptable if it is less than the minimum funding requirement, the guidance consistently treats the minimum funding requirement as only a reference value to be used as part of the determination of whether a site-specific decommissioning cost estimate is acceptable. For example, NUREG-1713 states that the NRC reviewer should compare the site-specific decommissioning cost estimate to the minimum funding requirement and if the amount of the site-specific decommissioning cost estimate is less than the minimum funding requirement, the licensee must provide adequate justification for the difference.²⁹ Similarly, Regulatory Guide 1.202 states that the site-specific decommissioning cost estimate must clearly identify and provide the basis for the funding level if it differs from the minimum funding requirement.³⁰ Additionally, Regulatory Guide 1.202 explains that the site-specific decommissioning cost estimate discussed in

²⁹ NUREG-1713, Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors, at 20-21 (Dec. 2004) (ML043510113).

³⁰ Regulatory Guide 1.202, Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors, at 9 (Feb. 2005) (ML050230008) (RG 1.202). *See also* LIC-205, Rev. 6, Procedures for NRC's Independent Analysis of Decommissioning Funding Assurance for Operating Nuclear Power Reactors and Power Reactors in Decommissioning, at 14 (Apr. 10, 2017) (ML17075A095) ("The analyst should document any concerns, including [a site-specific decommissioning cost estimate] that is reported below the [minimum funding requirement] or a shortfall in funding.").

10 C.F.R. § 50.75(b)(4) is not the same as the site-specific decommissioning cost estimates discussed in 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii).³¹ Tellingly, whereas guidance treats the 10 C.F.R. § 50.75 minimum funding requirement as a reference level to help determine the reasonableness of a 10 C.F.R. § 50.82(a)(4)(i) or a 10 C.F.R. § 50.82(a)(8)(iii) site specific decommissioning cost estimate, guidance is definitive that for a 10 C.F.R. § 50.75(b)(4) site-specific decommissioning cost estimate, that estimate must be greater than or equal to the 10 C.F.R. § 50.75 minimum funding requirement or else an exemption must be obtained.³²

The Staff previously addressed the issue of the applicability of the 10 C.F.R. § 50.75 minimum funding requirement as part of an inter-office working group evaluating the effectiveness of the NRC decommissioning financial assurance regulations.³³ Although the working group concluded that there were no gaps in these regulations,³⁴ it identified, among other things, that the regulations were unclear with respect to whether the 10 C.F.R. § 50.75 minimum funding requirement applies to 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates.³⁵ Therefore, the working group recommended that NRC guidance documents be updated to clearly state that the 10 C.F.R. § 50.75 minimum funding requirement “is only applicable until a licensee’s submittal of the

³¹ RG 1.202 at 4. See also Regulatory Guide 1.159, Rev. 2, Assuring the Availability of Funds for Decommissioning Nuclear Reactors, at 10-11 (Oct. 2011) (ML112160012) (RG 1.159) (identifying that the “initial estimate that may be calculated according to 10 CFR 50.75(c), or that may be site-specific and at least equal to the decommissioning cost from 10 CFR 50.75(c)” is different than the site-specific decommissioning cost estimate discussed in 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii)).

³² RG 1.159 at 8 (“At its discretion, a power reactor licensee may submit a certification based either on the formulas provided in 10 CFR 50.75(c)(1) and (2) or, when a higher funding level is desired, on a site-specific cost estimate that is equal to or greater than that calculated in the formulas in 10 CFR 50.75(c)(1) and (2)... For certification amounts below the amount stated in the formulas in 10 CFR 50.75(c)(1) and (2), licensees must submit an exemption request....”).

³³ Reactor Decommissioning Financial Assurance Working Group Final Report (Apr. 29, 2020) (ML20121A188).

³⁴ *Id.* at 10.

³⁵ *Id.* at 20-21.

certifications required under 10 [C.F.R. §] 50.82(a)(1) (i.e., until the license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel).”³⁶

The position taken in NRC guidance that the 10 C.F.R. § 50.75 minimum funding requirement is superseded by the 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates for a facility that has permanently ceased operations also has been taken by the Staff in individual licensing actions. For example, in 2018, a license transfer application was submitted to the NRC for the Pilgrim Nuclear Power Station (Pilgrim) and the Pilgrim ISFSI, which was supported by a post-shutdown decommissioning activities report, including a 10 C.F.R. § 50.82(a)(4)(i) site-specific decommissioning cost estimate, to become effective upon the consummation of the transfer.³⁷ Power operations ceased at Pilgrim on May 31, 2019, and fuel was permanently removed from the reactor vessel and placed in the spent fuel pool on June 9, 2019.³⁸ During its review of this license transfer application, the Staff noted that the 10 C.F.R. § 50.82(a)(4)(i) site-specific decommissioning cost estimate that was provided was less than the 10 C.F.R. § 50.75 minimum funding requirement and, consistent with its guidance, asked the applicants to justify this difference.³⁹ In response, the applicants provided a justification and the Staff found that justification to be acceptable and approved the transfer.⁴⁰

NRC guidance and the Staff’s implementation of that guidance demonstrate that the 10 C.F.R. § 50.75 minimum funding requirement is superseded by the 10 C.F.R. § 50.82(a)(4)(i)

³⁶ *Id.*

³⁷ Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Request for Direct and Indirect Transfers of Control of Renewed Facility Operating License No. DPR-35 and the General License for the Independent Spent Fuel Storage Installation from Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. to Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC, Pilgrim Nuclear Power Station, Docket Nos. 50-293 and 72-1044, at 1-2 (Aug. 22, 2019) (ML19170A250).

³⁸ *Id.* at 2.

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 10-11.

and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates for a facility that has permanently ceased operations.

III. The LTA Includes a 10 C.F.R. § 50.82(a)(4)(i) Site-Specific Decommissioning Cost Estimate for a Facility that Has Permanently Ceased Operations that Supersedes the 10 C.F.R. § 50.75 Minimum Funding Requirement

Based on the structure and language of the NRC regulations, as well as NRC guidance and prior Staff positions, the Staff position is that 10 C.F.R. § 50.82(a)(4)(i) and 10 C.F.R. § 50.82(a)(8)(iii) site-specific decommissioning cost estimates supersede the 10 C.F.R. § 50.75 minimum funding requirement for a facility that has permanently ceased operations. This position applies to the facts of the LTA.

Approval of the LTA was sought to effectuate a transaction under which control of Palisades and Big Rock Point would be transferred to Holtec pursuant to the terms of a membership interest purchase and sale agreement, including that the transaction would occur only after the permanent cessation of operations and permanent removal of fuel from the Palisades reactor.⁴¹ The LTA relies on a 10 C.F.R. § 50.82(a)(4)(i) site-specific decommissioning cost estimate that would become effective upon the transfer of the licenses.⁴² As part of its review of the LTA, the Staff determined that, although less than the amount calculated according to the 10 C.F.R. § 50.75 minimum funding requirement, this site-specific decommissioning cost estimate was acceptable.⁴³ On May 20, 2022, Palisades permanently ceased operations and on June 10, 2022, the fuel was permanently removed from the Palisades reactor vessel.⁴⁴ Because the LTA involves a 10 C.F.R. § 50.82(a)(4)(i) site-specific decommissioning cost estimate that became effective after the permanent cessation of operations of the facility, NRC regulations, NRC guidance, and prior Staff determinations in

⁴¹ Application Cover Letter at 2; Application at 3.

⁴² Application Cover Letter at 3; Application at 4.

⁴³ Staff Safety Evaluation at 11.

⁴⁴ Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel (June 13, 2022) (ML22164A067).

similar situations support the Staff's position that, under these circumstances, the 10 C.F.R. § 50.75 minimum funding requirement does not apply. Therefore, there is no regulatory requirement that the site-specific decommissioning cost estimate included with the LTA must be greater than or equal to the 10 C.F.R. § 50.75 minimum funding requirement.

CONCLUSION

As supported by NRC regulations, NRC guidance, and prior Staff positions, the Staff position is that the 10 C.F.R. § 50.75 minimum funding requirement does not apply to the LTA.

Respectfully submitted,

/Signed (electronically) by/

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Certificate of Service

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing “NRC Staff Position on the Applicability of the 10 C.F.R. § 50.75 Minimum Funding Requirement to the License Transfer Application,” dated November 18, 2022, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the captioned proceeding, this 18th day of November 2022.

/Signed (electronically) by/

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Dated November 18, 2022