

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

December 22, 2022

ORDER

(Amended 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.¹ Except as otherwise expressly set forth herein, this protective order shall remain in effect until specifically modified or terminated by this Board or the Commission.

¹ 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 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."

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 either through the Agency’s E-filing system or served on the Office of the Secretary by email 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 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.² Within fourteen (14) days of filing the parties' concluding statements of position (due January 27, 2023), and post-hearing statements of position (due 20 days after close of the hearing), the parties will agree to redactions of Protected Information contained therein and will file redacted versions of those pleadings on the public docket. The parties will also file redacted, public versions of their initial statements of position (filed on November 18, 2022 in the non-public docket) and rebuttal statements of position (filed December 16, 2022) promptly following the Board's issuance of this amended protective order.

I. In light of the issues set for hearing in this proceeding, the parties anticipate extensive discussion and testimony regarding Protected Information during the hearing. Accordingly, the record of the hearing and any transcript thereof shall be withheld from distribution to the public. At any pre-hearing conference that involves discussion of Protected Information, it shall be the duty of the presenting party to notify the Board and the other parties that such statements will contain Protected Information prior to the statement being made. The transcript of any such statements will be withheld from distribution to the public. At the presiding officer's discretion and direction, the Parties will submit proposed redactions of any such transcripts within fourteen (14) days of receiving a non-public transcript of any such pre-hearing conferences.

² 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.

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

/RA/

Paul S. Ryerson
PRESIDING OFFICER

Rockville, Maryland
December 22, 2022

ATTACHMENT

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 31, 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

In the Matter of)	
)	
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 **ORDER (Amended Protective Order Governing Disclosure of Proprietary Materials)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16B33
Washington, DC 20555-0001
ocaamail@nrc.gov

Laura Shrum, Esq.
Brian Newell, Senior Paralegal
Georgia Hampton, Paralegal
Amanda Black, Paralegal
david.roth@nrc.gov
anita.ghoshnaber@nrc.gov
susan.vrahoretis@nrc.gov
jeremy.watchutka@nrc.gov
mary.woods@nrc.gov
laura.shrum@nrc.gov
brian.newell@nrc.gov
georgia.hampton@nrc.gov
amanda.black@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16B33
Washington, DC 20555-0001
hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Paul S. Ryerson, Presiding Officer
Paul.Ryerson@nrc.gov
Noel Johnson, Law Clerk
noel.johnson@nrc.gov
Emily Newman, Law Clerk
emily.newman@nrc.gov
Allison R. Wood, Law Clerk
Allison.Wood@nrc.gov

Michigan Department of Attorney General
525 W. Ottawa St.
Lansing, MI 48906
Michael Moody, Esq.
Amanda Churchill, Esq.
Joel King, Esq.
moodym2@michigan.gov
churchilla1@michigan.gov
kingj38@michigan.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-14A44
Washington, DC 20555-0001
David E. Roth, Esq.
Anita G. Naber, Esq.
Susan Vrahoretis, Esq.
Jeremy L. Wachutka, Esq.
Mary F. Woods, Esq.

Counsel for Entergy Nuclear Operations, Inc
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036
Anne R. Leidich, Esq.
David R. Lewis, Esq.
anne.leidich@pillsburylaw.com
david.lewis@pillsburylaw.com

Entergy Nuclear Operations, Inc, Holtec International (Palisades Nuclear Plant and Big Point Rock)
Docket No. 50-255-LT-2, 50-155-LT-2, 72-007-LT, 72-043-LT-2
ORDER (Amended Protective Order Governing Disclosure of Proprietary Materials)

Susan H. Raimo, Esq.
Entergy Services, LLC
101 Constitution Avenue, N.W.
Washington, D.C. 20001
sraimo@entergy.com

Counsel for Holtec International
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203-2015
Alan D. Lovett, Esq.
alovett@balch.com

Environmental Law & Policy Center
35 E. Wacker Drive, Ste. 1600
Chicago, IL 60601
Michael J. Zoeller
E-mail: mzoeller@elpc.org

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of December 2022