

December 19, 2024

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
)	
Holtec Decommissioning)	Docket Nos. 50-255-LA-3
International, LLC and)	
Holtec Palisades, LLC)	ASLBP No. 24-986-01-LA-BD01
)	
(Palisades Nuclear Plant))	
)	

**APPLICANTS' ANSWER TO
JOINT PETITIONERS' LATE-FILED PLEADINGS**

Pursuant to 10 CFR 2.309(i)(1), Holtec Palisades, LLC and Holtec Decommissioning International, LLC (“**HDI**” and, collectively with Holtec Palisades, LLC, “**Applicants**”) provide this answer to several late-filed pleadings by Mr. Alan Blind on behalf of himself and eight other individuals (collectively “**Joint Petitioners**”).¹ Joint Petitioners recently filed four pleadings, all after the relevant deadlines, that attempt to supplement his original arguments and/or further reply to Applicants’ or NRC staff’s answers to those arguments (collectively, the “**Late-Filed Pleadings**”).² As evidenced by NRC staff’s recent reply, staff has interpreted these pleadings as

¹ The eight other individuals are Jody Flynn, Tom Flynn, Bruce Davis, Karen Davis, Christian Moevs, Mary Hoffman, Chuck Hoffman, and Diane Ebert.

² Applicants address the following pleadings filed by Mr. Blind, for convenience, referring to them by the order in which they were filed: Supplement to Petitioners’ Rebuttal to NRC Staff’s: Applicants’ Answer Opposing Joint Petitioners’ Petition for Hearing; Supplemental in Addition to Argument Against NRC Staff’s Misuse of § 50.82(b) (Dec. 8, 2023) (ML24343A001) (“**Pleading No. 18**”); Supplement Two Based On New Information, To Supplement Petitioner’s Rebuttal To NRC Staff’s: Applicants’ Answer Opposing Joint Petitioners’ Petition For Hearing (Dec. 13, 2024) (ML24348A106) (“**Pleading No. 19**”); Rebuttal to NRC Staff’s Reply With New Comments: Joint Petitioners’ Brief on Representation, Consolidation of Petitions, and Standing of Our Appointed Consolidated Point of Contact, Alan Blind (Dec. 13, 2023) (ML24348A104) (“**Pleading No. 20**”); Ensuring a Common Understanding of NRC Terms: Design Basis, Final Safety Analysis Report (FSAR), and Technical Specifications (Dec. 16, 2024) (ML24351A005) (“**Pleading No. 21**”). Applicants previously addressed the

de facto motions.³ To the extent the Board views the Late-Filed Pleadings the same way, Applicants agree that any embedded motions should be denied. Applicants have responded to Joint Petitioners' Late-Filed Pleadings based on how they described them: supplements to their original pleadings and/or additional replies to Applicants' and NRC staff's answers to those pleadings after the relevant deadlines. Applicants reach the same conclusion as NRC staff, which is that the Board should not entertain the Late-Filed Pleadings. The procedural confusion is the product of Joint Petitioners' informal approach to these proceedings, which has thus far produced twenty-one pleadings that defy categorization, are not well organized or explained, and are mostly just an ongoing catalog of Mr. Blind's observations for the "record," submitted without regard to NRC procedural rules or the briefing schedule ordered by this Board.

The Board should not entertain the Late-Filed Pleadings, but even if the Board does, the Late-Filed Pleadings do not support an admissible contention.

I. Legal Standard

NRC rules in 10 CFR Part 2 do not afford any participants in adjudicatory proceedings (including petitioners, applicants, and the NRC staff) the ability to continually supplement and reply to filings. Section 2.309(i)(2) provides an opportunity for petitioners to file a reply within 7 days of the date the applicant or NRC staff file their answer. After that, 10 CFR 2.309(i)(3) says, "[n]o other written answers or replies will be entertained." Likewise, new or supplemental arguments after the Federal Register deadline may only be entertained upon a showing of "good cause" for late filing, under the standard set forth in 10 CFR 2.309(c), which requires that:

untimeliness of Pleading No. 18 in Applicants' Response to Joint Petitioners' Supplemental Filings filed on December 12, 2024 (ML24347A244). Because Mr. Blind has since filed three more pleadings demonstrating the same disregard for deadlines and procedural rules, Applicants address Pleading No. 18 again in this answer given that it suffers from the same flaws as the other Late-Filed Pleadings.

³ NRC Staff Answer to Joint Petitioners' Requests to Supplement Their Replies to the Answers to Joint Petitioners' Hearing Request (Dec. 18, 2024) (ML24353A255).

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

Procedural deadlines and the 10 CFR 2.309(c) good cause standard promote efficiency and fairness in NRC adjudicatory proceedings.⁴ “[T]here would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements every time they ‘realize[d] . . . that maybe there was something after all to a challenge it either originally opted not to make or which simply did not occur to it at the outset.’”⁵

II. The Late-Filed Pleadings Violate NRC Rules and the Board’s Orders

The deadline to submit a request for a hearing was October 7, 2024,⁶ and the deadline for Joint Petitioners to file a reply to Applicants’ and NRC staff’s answers was November 12, 2024.⁷ Joint Petitioners have filed four supplements to their original pleadings and/or replies after these deadlines. None should be entertained by the Board because the pleadings were not authorized by the NRC’s rules or the Board’s orders.

A. Pleading No. 18 Should be Rejected

In Pleading No. 18, filed December 8, 2024, Joint Petitioners attempt to supplement their reply to NRC staff’s answer “to enhance the original arguments” in the reply Joint Petitioners filed on November 7, 2024.⁸ NRC rules are clear: after the deadline for filing a reply, “[n]o other written

⁴ *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998).

⁵ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2), CLI-03-17, 58 NRC 419, 428-29 (2003).

⁶ Palisades Nuclear Plant, Applications for Amendments to Renewed Facility Operating License Involving Proposed No Significant Hazards Considerations, 89 Fed. Reg. 64,486, 64,487 (Aug. 7, 2024).

⁷ Memorandum and Order (Amending Initial Prehearing Order) (Oct. 17, 2024) (ML24291A105).

⁸ Pleading No. 18 at 2.

answers or replies will be entertained.”⁹ Pleading No. 18 suggests that the Board’s decision to delay oral argument “provides procedural flexibility for the Board to consider this supplemental filing without impacting the efficiency or timeline of the hearing process.”¹⁰ But 10 CFR 2.309(i)(3) was not altered by the fact that the Board deferred oral argument to give Joint Petitioners the chance to cure deficiencies in their original pleadings. Pleading No. 18 was filed in violation of 2.309(i)(3) and should not be entertained.

B. Pleading No. 19 Should be Rejected

Similarly, Pleading No. 19, filed December 13, 2024, presents a supplement to Joint Petitioners’ “base argument”¹¹ (presumably the pleadings filed before the Federal Register deadline) based on a letter HDI filed on December 4, 2024 requesting that NRC rescind certain exemptions that will no longer apply when Palisades transitions back to operational status.¹² Pleading No. 19 states that the “good cause” factors in 2.309(c) have been satisfied because the HDI letter “is materially different from any information previously available.”¹³ HDI’s December 4, 2024 letter requests to rescind a recordkeeping exemption that NRC granted in 2021, which HDI told NRC it would rescind in docketed correspondence Joint Petitioners cited in their

⁹ 10 CFR 2.309(i)(3).

¹⁰ Pleading No. 18 at 2.

¹¹ Pleading No. 19 at 1.

¹² HDI PNP 2024-047, Palisades Nuclear Plant – Request for NRC to Rescind Previously Approved Exemptions to Support Transition to a Power Operations Licensing Basis (Dec. 4, 2024) (ML24339A068); *see also* NRC letter to Entergy Nuclear Operations, Inc., Palisades Nuclear Plant – Partial Exemptions from Record Retention Requirements, (Nov. 23, 2021) (ML21195A368 (package)) (“Recordkeeping Exemption”).

¹³ Pleading No. 19.

initial pleading.¹⁴ The fact that HDI has now done so is not new and does not provide a basis for more filings by the Joint Petitioners.

C. Pleading No. 20 Should be Rejected

Pleading No. 20, filed December 13, 2024, is a reply to NRC staff's answer to the brief the Board allowed Joint Petitioners to file to address defects in their original pleadings.¹⁵ The Board's order granting Joint Petitioners that accommodation did not authorize them to reply. Yet Joint Petitioners did, citing 10 CFR 2.309(c) as giving them the opportunity to reply to "new statements raised by the NRC Staff in their response" which "if left unaddressed, would present an incomplete and potentially biased record for future adjudication."¹⁶ In other words, NRC staff made arguments Joint Petitioners disagree with. But if arguments in a legal brief were a basis for late-filed pleadings under 10 CFR 2.309(c), there would be no end to the back and forth, and 10 CFR 2.309(i)(3) would be rendered meaningless.¹⁷ Section 2.309(c) does not afford Joint Petitioners the chance to file unauthorized replies or supplements simply because they would like the last word.

D. Pleading No. 21 Should be Rejected

Pleading No. 21, filed December 16, 2024, seeks to clarify certain terminology "to avoid any potential misunderstanding."¹⁸ Joint Petitioners again cite the Board's decision to delay oral argument for Joint Petitioners' benefit as a basis for filing more pleadings and assert that good

¹⁴ HDI PNP 2023-001, Regulatory Path to Reauthorize Power Operations at the Palisades Nuclear Plant, Encl. 1 at 4 (Mar. 13, 2024) (ML23072A404) (discussion rescission of the Recordkeeping Exemption); HDI PNP 2023-025, Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82, Encl. 1 at 7 (Sept. 28, 2023) (ML23271A140) (discussing rescission the Recordkeeping Exemption). *See* Petition for Hearing regarding the Holtec Decommissioning International, LLC and Holtec Palisades, LLC Application for License Amendments for Palisades Nuclear Plant, at 10, 21-22 (Sept. 9, 2024) (ML24253A185) (challenging both letters).

¹⁵ Pleading No. 20 at 1.

¹⁶ *Id.* at 2.

¹⁷ *McGuire*, CLI-03-17, 58 NRC at 428-29.

¹⁸ Pleading No. 21 at 1.

cause exists under 2.309(c) because they “did not previously present this detailed explanation.”¹⁹ But a petitioner’s oversight is not “good cause” under 2.309(c).²⁰

* * *

For the foregoing reasons, the Board should reject the Late-Filed Pleadings as untimely under 10 CFR 2.309(c) or improper replies to Applicants’ and NRC staff’s answers in violation of 10 CFR 2.309(i)(3).

III. The Late-Filed Pleadings Do Not Support an Admissible Contention

Even if the Board engages with the Late-Filed Pleadings, they clearly do not satisfy NRC contention-admissibility requirements or cure Joint Petitioners’ previous pleadings’ failure to do so. The Late-Filed Pleadings are a poorly organized collection of out-of-scope observations that fail to present any relevant factual or legal issues for this adjudication. Like the filings before the Federal Register deadline, none of the Late-Filed Pleadings follow a cogent organizational structure or present clearly-articulated arguments that Applicants can meaningfully engage with without taking substantial effort to untangle and reorganize the stream of consciousness pleadings—in the process lending them more weight than they warrant in an adjudicatory framework that demands diligent research and thoughtful presentation of arguments.²¹ It is not the Applicants’ or the Board’s job to sift through poorly presented arguments to find something worth responding to.²² It suffices to say that the Late-Filed Pleadings suffer from the same deficiencies that are present in Joint Petitioners’ first dozen pleadings filed before the Federal Register deadline.

* * *

¹⁹ *Id.* at 10.

²⁰ *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 396 (2020); *see also Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-16-10, 83 NRC 494, 522 n.136 (2016).

²¹ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-, 87 NRC 89, 96 n.49 (2018).

²² *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 194 (1999).

For the foregoing reasons, the Board should not entertain the Late-Filed Pleadings, and even if it does, they fail to support admission of any contention under 10 CFR 2.309(f)(1).

Respectfully submitted,

Signed (Electronically) by Alan D. Lovett

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Executed in Accord with 10 CFR 2.304(d)

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CERTIFICATE OF SERVICE

Pursuant to 10 CFR 2.305, I certify that, on December 19, 2024, a copy of the foregoing “Applicants’ Answer to Joint Petitioners’ Late Filed Pleadings” was served through the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned docket.

Signed (Electronically) by Alan D. Lovett

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