

February 19, 2025

**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' BRIEF IN RESPONSE TO BOARD'S ORDER
REQUESTING BRIEFING ON IMPACT OF DRAFT ENVIRONMENTAL
ASSESSMENT AND DRAFT FINDING OF NO SIGNIFICANT IMPACT**

I. Introduction

Holtec Decommissioning International, LLC (“HDI”) and Holtec Palisades, LLC (“Holtec Palisades”) (collectively, “Applicants”) file this brief in accordance with the Atomic Safety and Licensing Board’s (“Board’s”) February 3, 2025 Memorandum and Order Scheduling Briefing Concerning the Draft Environmental Assessment and Draft Finding of No Significant Impact (“Order”).¹ In its Order, the Board requested briefing on the impact of the Nuclear Regulatory Commission (“NRC”) staff’s publication on January 31, 2025 of a Draft Environmental Assessment and Draft Finding of No Significant Impact (“Draft EA/FONSI”)² on the proposed contentions currently pending before the Board.

¹ Memorandum and Order (Scheduling Briefing Concerning the Draft Environmental Assessment and Draft Finding of No Significant Impact) (Feb. 3, 2025) (ML25034A217).

² Draft Environmental Assessment and Draft Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project, Draft for Comment (Jan. 2025) (ML24353A157).

The Draft EA/FONSI moots proposed Contentions 5, 6, and 7 filed by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service ("Petitioning Organizations"). Those three contentions allege that Applicants failed to provide certain information in support of NRC's National Environmental Policy Act ("NEPA") review of the license amendments at issue in this proceeding; *i.e.*, they are contentions of omission. The allegedly missing information is all included in the Draft EA/FONSI. "Where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft [NEPA document], the contention is moot."³ Accordingly, Contentions 5, 6, and 7 are moot and should be dismissed.⁴

II. Petitioning Organizations' Pled Three NEPA Contentions of Omission⁵

On October 10, 2025, Petitioning Organizations filed a Petition to Intervene and Request for Adjudicatory Hearing ("Petition") in the above-captioned proceeding.⁶ The Petition included Contentions 5, 6, and 7, alleging that the environmental documentation Applicants submitted as an enclosure to the Exemption Request was missing required NEPA information.⁷ Specifically,

³ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002).

⁴ Applicants' response to the Board's request for briefing on the impact of the Draft EA/FONSI is not meant to modify or waive Applicants' prior pleadings that explained why these same contentions are inadmissible and should be dismissed by the Board. Most notably, each of the proposed NEPA contentions is based on Petitioning Organizations' claim that Applicants and NRC are required to comply with NEPA requirements applicable to a new operating license, which is incorrect as a matter of law. Applicants' Answer Opposing Beyond Nuclear et al.'s Petition for Hearing at 65 (Nov. 4, 2024) (ML24309A302) ("Applicants' Answer").

⁵ A group of nine individuals also separately submitted a petition and a request for a hearing (collectively referred to as "Joint Petitioners" in this proceeding); however, Joint Petitioners did not raise any challenges to the environmental review or Applicants' or NRC's compliance with NEPA.

⁶ Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (Oct. 10, 2024) (ML24284A364).

⁷ See HDI PNP 2023-025, Request for Exemption from Certain Termination of License Requirements of 10 CFR 50.82, Encl. 2 (Sept. 28, 2023) (ML23271A140) ("Exemption Request").

Petitioning Organizations asserted that Applicants' submittal did not include information required by 10 CFR 51.45 to be included in an environmental report or, in the case of Contention 7, required by Council on Environmental Quality ("CEQ") regulations to be included in an environmental impact statement ("EIS"). Proposed Contention 5 provides:

There is no purpose and need statement appearing in the document the NRC considers to suffice for Holtec's Environmental Report. Pursuant to 10 C.F.R. § 51.45, an Environmental Report must contain a statement of the purpose for the project.⁸

Proposed Contention 6 provides:

There is no presentation of alternatives, nor discussion of the no-action alternative, found in the document the NRC and Holtec claim to suffice as an Environmental Report.⁹

Proposed Contention 7 provides:

The proposed license amendments and supporting documents, including the document that the NRC and Holtec claim to suffice as an Environmental Report, contain no meaningful identification nor discussion of the effects of anthropocene climate change on the functioning and componentry of the plant, nor is there any identification or analysis of the effects that restored plant operations would have on anthropocene climate change, the physical environment and public health.¹⁰

Each of these is a "contention of omission," *i.e.*, a contention alleging that information that was required to be provided was not provided.¹¹

⁸ Petition at 63–64.

⁹ *Id.* at 66.

¹⁰ *Id.* at 68.

¹¹ *Pa'ina Hawaii, LLC* (Material License Application), LBP-06-12, 63 NRC 403, 413 (2006) (describing a proposed contention as "a simple, straightforward contention of omission, *i.e.*, one that claims, in the words of 10 C.F.R. § 2.309(f)(1)(vi), 'the application fails to contain information on a relevant matter as required by law . . . and the supporting reasons for the petitioner's belief'"). Petitioning Organizations also submitted Contention 2, which alleges that NRC is required to prepare an EIS instead of an EA. Petition at 40. Applicants understand Contention 2 as an outgrowth of Petitioning Organizations' overarching claim that the only way to restart Palisades is for Applicants to apply for a new operating license. *See* Petition at 41 (citing 10 CFR 51.20(b)(2), which requires an EIS for "[i]ssuance or renewal of a full power or design capacity license"); *id.* at 45 ("Petitioners' position is that a new operating license is required . . .").

III. Legal Standard Governing Mooting of Contentions of Omission

Where a contention of omission based on the applicant’s environmental submittals is “superseded by the subsequent issuance of licensing-related documents”—including an applicant’s response to a request for additional information (“RAI”) or NRC’s publication of a draft EA—the contention must be “disposed of or modified.”¹² Where a contention argues that certain required information was omitted, the contention is moot once the applicant provides the missing information or NRC staff considers it as part of its NEPA review.¹³ Resolution of such a contention “requires no more than a finding by the presiding officer that the matter has become moot[, which] may be accomplished as part of the contention admission phase of the proceeding.”¹⁴

The Board has separately established a briefing schedule for new or amended contentions based on the Draft EA/FONSI.¹⁵ The possibility that Petitioning Organizations may proffer such contentions does not mean that their original contentions of omission are not moot. “Intervenors must timely file a new or amended contention that addresses the factors in [10 CFR 2.309(c)] in order to raise specific challenges regarding the new information.”¹⁶ If NRC “did not require an amended or new contention in ‘omission’ situations, an original contention alleging simply a failure to address a subject could readily be transformed—without basis or support—into a broad

¹² *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 444 (2006) (quoting *McGuire*, CLI-02-28, 56 NRC at 383).

¹³ *Id.*; *McGuire*, CLI-02-28, 56 NRC at 383; *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-19-6, 90 NRC 17, 21–23 (2019).

¹⁴ *USEC*, CLI-06-9, 63 NRC at 444–45.

¹⁵ Memorandum and Order (Adopting Proposed Schedule for New and Amended Contentions) (Feb. 10, 2025) (unpublished) (ML25041A133).

¹⁶ *McGuire*, CLI-02-28, 56 NRC at 383.

series of disparate new claims[, which] would circumvent NRC contention-pleading standards and defeat the contention rule’s purposes.”¹⁷

IV. The Draft EA/FONSI Moots All Three Contentions of Omission

A. Proposed Contention 5 is Moot

Proposed Contention 5 alleged that Applicants failed to provide a purpose and need statement.¹⁸ Section 1.2.1 of the Draft EA/FONSI, titled “Purpose and Need Statement for NRC Actions,” states that the purpose and need for the requested licensing actions is “to provide an option that allows for baseload clean energy power generation capability within the term of the Palisades’ [Renewed Facility Operating License] to meet current system generating needs.”¹⁹ Proposed Contention 5 is moot and should be dismissed.

B. Proposed Contention 6 is Moot

Proposed Contention 6 alleged that Applicants failed to discuss alternatives to the Palisades restart, including the no-action alternative.²⁰ Section 2.2 of the Draft EA/FONSI, titled “Alternatives,” discusses a range of reasonable alternatives to the Palisades restart, including the no-action alternative (*i.e.*, keeping Palisades in decommissioning), replacing Palisades with new nuclear generation, replacing Palisades with non-nuclear generation, and restarting Palisades with

¹⁷ *Id.*

¹⁸ Petition at 63–64.

¹⁹ Draft EA/FONSI at 1-3. As explained in Applicants’ Answer and NRC Staff’s answer to the Petition, a purpose and need statement was provided by Applicants in October 2024, in response to an NRC RAI issued under 10 CFR 51.41. *See* HDI PNP 2024-037, Responses to Requests for Additional Information Regarding the Proposed Reauthorization of Power Operations of Palisades Nuclear Plant under Renewed Facility Operating License Number DPR-20, Encl. 2 (Oct. 4, 2024) (ML24278A027) (“RAI Response”); *see also* Applicants’ Answer at 71; NRC Staff Answer to Intervention Petition from Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service in Palisades Restart Amendments Proceeding at 75 (Nov. 4, 2024) (ML24309A277) (“NRC Staff’s Answer”).

²⁰ Petition at 66.

alternative system designs.²¹ Section 4.2 of the Draft EA/FONSI, titled “Comparison of Alternatives,” summarizes NRC’s evaluation of the environmental impacts of those alternatives as compared to the proposed restart, concluding that “there are no environmentally preferable alternatives to the proposed Federal actions.”²² Proposed Contention 6 is moot and should be dismissed.

C. Proposed Contention 7 is Moot

Proposed Contention 7 claims that there was “no meaningful identification nor discussion of the effects of anthropocene climate change on the functioning and componentry of the plant, nor is there any identification or analysis of the effects that restored plant operations would have on anthropocene climate change, the physical environment and public health.”²³ Petitioning Organizations cited inapplicable CEQ regulations;²⁴ rather, the relevant NRC requirement is set forth in Commission order CLI-09-21, which directed NRC staff “to include consideration of carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under [NEPA, which] analysis for reactor applications should encompass

²¹ Draft EA/FONSI at 2-5 to 2-7. This information was also provided by Applicants in the original enclosure to the Exemption Request and in the RAI Response. *See* Exemption Request, Encl. 2, at 22; RAI Response, Encl. 5; *see also* Applicants’ Answer at 71; NRC Staff’s Answer at 76.

²² Draft EA/FONSI at 4-6.

²³ Petition at 68.

²⁴ *Id.* at 68, 70 (citing 40 CFR 1502.16(a)(6)). For the inapplicability of CEQ regulations, *see* Applicants’ Answer at 68–69 and NRC Staff’s Answer at 86.

emissions from the uranium fuel cycle as well as from construction and operation of the facility to be licensed.”²⁵

Section 3.1.5, titled “Climate Change and Greenhouse Gas Evaluation,” and Appendix F, titled “Climate Change and Greenhouse Gases,” of the Draft EA/FONSI address these factors. The Draft EA/FONSI cites the Commission’s direction in CLI-09-21.²⁶ Section F.4 discusses expected greenhouse gas emissions associated with the preparations for and resumption of power operations, including direct emissions from the Palisades facility itself and indirect emissions from workforce and fuel transportation, decommissioning, and the uranium fuel cycle.²⁷ The Draft EA/FONSI also discusses how climate change is expected to affect the baseline environment, and how the expected impacts of the Palisades restart would be altered by changes to the baseline environment due to climate change.²⁸ The Draft EA/FONSI concludes that, “potential effects of climate change would not alter the impact determinations in this EA for the preparation for the resumption of power operations and for the resumption of power operations at Palisades.”²⁹

Proposed Contention 7 is moot and should be dismissed.

²⁵ *Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 931 (2009); *see* Applicants’ Answer at 69; NRC Staff’s Answer at 78. NRC staff took the position in its answer that a portion of proposed Contention 7 was admissible as a contention of omission, based on NRC staff’s conclusion that Applicants’ submittals did not supply the information contemplated by NRC guidance for new reactors and license renewals. *Id.* at 78–84. As demonstrated by the Draft EA/FONSI, staff evaluated climate change considerations in accordance with Commission direction and NRC guidance using information submitted by Applicants as well as other publicly-available information (*e.g.*, NOAA data, U.S. Global Change Research Program reports, and previously-published NRC guidance and decision documents that addressed the same subject matter). *See* Draft EA/FONSI at 3-35, F-8 to F-9. The fact that NRC staff did not request any additional information from Applicants does not make proposed Contention 7 any less moot. *USEC*, CLI-06-9, 63 NRC at 444 (“[W]here a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant *or considered by the NRC Staff* in an environmental impact statement, the contention is moot.” (emphasis added) (citation and quotations omitted)).

²⁶ Draft EA/FONSI at 3-11.

²⁷ *Id.* at F-7 to F-8.

²⁸ *Id.* at F-1 to F-6.

²⁹ *Id.* at F-8.

V. Conclusion

Petitioning Organizations' proposed Contentions 5, 6, and 7 are moot and inadmissible and should be dismissed.

Respectfully submitted,

Signed (Electronically) by Grant W. Eskelsen

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