

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Ho K. Nieh, Chairman  
David Wright  
Bradley R. Crowell  
Matthew J. Marzano  
Douglas W. Weaver

In the Matter of

HOLTEC DECOMMISSIONING  
INTERNATIONAL, LLC and HOLTEC  
PALISADES, LLC

(Palisades Nuclear Plant)

Docket No. 50-255 LA-3

CLI-26-7

**MEMORANDUM AND ORDER**

This decision addresses the petitions for review by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (collectively, the Petitioning Organizations) of two Atomic Safety and Licensing Board decisions that, together, denied their petition to intervene and request for a hearing in this license amendment proceeding.<sup>1</sup> For the reasons set forth below, the petitions for review are denied.

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<sup>1</sup> LBP-25-4, 101 NRC 133 (2025); LBP-25-5, 101 NRC 211 (2025); *Notice of Appeal of ASLB Decision LBP-25-04, By Beyond Nuclear, Don't Waste Michigan, Michigan Clean Energy Future, Three Mile Island Alert and Nuclear Energy Information Service, and Brief in Support of Appeal* (Apr. 25, 2025) (Petition for Review of LBP-25-4); *Notice of Appeal of ASLB Decision LBP-25-05, By Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service and Brief In Support of Appeal* (July 15, 2025) (Petition for Review of LBP-25-5); *NRC Staff Brief in Opposition to the Beyond*

## I. BACKGROUND

This proceeding arises from four license amendment requests and a related exemption request to support the potential resumption of operations (i.e., restart) at Palisades Nuclear Plant (Palisades).<sup>2</sup> The previous license holder, Entergy Nuclear Operations, Inc. (Entergy), permanently shut down Palisades in May 2022, before transferring the licenses to Holtec Decommissioning International, Inc. and Holtec Palisades, LLC (together, Holtec).<sup>3</sup> On June 13, 2022, Entergy certified to the NRC that all fuel was removed from the core and placed in the spent fuel pool, and the plant was placed into a decommissioning status.<sup>4</sup> Holtec purchased Palisades from Entergy on June 28, 2022.<sup>5</sup>

Shortly after acquiring Palisades, however, Holtec filed several requests for amendments to its license and exemptions from regulatory requirements related to potentially restarting the plant.<sup>6</sup> On August 7, 2024, the Commission issued a *Federal Register* notice

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*Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service Appeal of the Atomic Safety and Licensing Board's Decision in LBP-25-4 (May 20, 2025); Holtec Decommissioning International, LLC and Holtec Palisades, LLC Brief in Opposition to Appeal (May 20, 2025); NRC Staff Brief in Opposition to the Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service Appeal of the Atomic Safety and Licensing Board's Decision in LBP-25-5 (Aug. 8, 2025); Holtec Decommissioning International, LLC and Holtec Palisades, LLC Brief in Opposition to Appeal (Aug. 11, 2025).*

<sup>2</sup> The Staff approved the license amendment requests and related exemption on July 24, 2025. See *Notification* (July 24, 2025) (ADAMS accession no. ML25205A193) (Notification).

<sup>3</sup> See Letter from Darrell W. Corbin, Entergy Nuclear Operations, Inc., to NRC Document Control Desk (June 13, 2022) (regarding certifications of permanent cessation of power operations and permanent removal of fuel from the reactor vessel) (ML22164A067).

<sup>4</sup> *Id.*

<sup>5</sup> See Letter from Scott P. Wall, NRC, to Pierre Paul Oneid, Holtec International, and Kelly D. Trice, Holtec Decommissioning International, LLC (June 28, 2022) at 1-2 (ML22173A179 (package)) (approving transfer of licenses and conforming license amendments).

<sup>6</sup> See *Holtec Decommissioning International, LLC (Palisades Nuclear Plant), CLI-25-3, 101 NRC 197, 201 (2025).*

describing Holtec's requests for four license amendments and one exemption from regulatory requirements and providing a notice of the opportunity to request a hearing.<sup>7</sup>

The Petitioning Organizations requested a hearing and proposed seven contentions raising claims under both the Atomic Energy Act of 1954, as amended (AEA), and under the National Environmental Policy Act of 1969, as amended (NEPA).<sup>8</sup> Holtec opposed the hearing request entirely while the NRC Staff took the position that one proposed contention relating to climate change effects was admissible in part.<sup>9</sup> A group of individuals, known as the Joint Petitioners, also requested a hearing.<sup>10</sup>

The Staff issued its Draft Environmental Assessment (Draft EA) and Draft Finding of No Significant Impact (Draft FONSI) for the application before the Board held oral argument on the

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<sup>7</sup> See Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Applications for Amendments to Renewed Facility Operating License Involving Proposed No Significant Hazards Considerations and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 89 Fed. Reg. 64,486, 64,487-88 (Aug. 7, 2024); see also Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Sept. 28, 2023), Encl. 1, "Request for Exemption from 10 CFR 50.82(a)(2)," (ML23271A140) (Exemption Request).

<sup>8</sup> *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. 7, 2024) (Petition); see also *Petitioning Organizations' Combined Reply to Answers Filed by NRC Staff and Holtec to the Petition to Intervene* (Nov. 12, 2024) (Reply). There are other license amendment requests related to Palisades' potential restart, but they are not the subject of this proceeding. See, e.g., Holtec Palisades, LLC; Palisades Nuclear Plant; License Amendment Request, 90 Fed. Reg. 15,722 (Apr. 15, 2025); Holtec Palisades, LLC; Palisades Nuclear Plant; License Amendment Application, 90 Fed. Reg. 34,019 (July 18, 2025).

<sup>9</sup> See *Applicants' Answer Opposing Beyond Nuclear et al.'s Petition for Hearing* (Nov. 4, 2024) (Applicants Answer); *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* (Nov. 4, 2024), at 76-80 (Staff Answer).

<sup>10</sup> See LBP-25-4, 101 NRC at 152-53, 160-73 (referencing and considering Joint Petitioners' petition, including eleven supplements).

admissibility of the Petitioning Organizations' initial contentions.<sup>11</sup> The Board set a schedule for filing new and amended contentions on the Draft EA and Draft FONSI.<sup>12</sup>

The Petitioning Organizations filed five new and amended contentions on the Draft EA, along with a motion explaining the rationale supporting them.<sup>13</sup> Four of the Petitioning Organizations' contentions—Amended Contentions 2, 4, 5, and 6—sought to substitute for contentions submitted with the initial petition, and one new contention—Contention 8—challenged the Staff's use of incorporation by reference in the Draft EA.<sup>14</sup> Holtec and the Staff opposed all five contentions, arguing that they all failed to meet one or more of the contention admissibility criteria.<sup>15</sup> The Board held a pre-hearing conference on May 15, 2025, to question the participants about their written filings.<sup>16</sup>

In LBP-25-4, the Board found that none of the Petitioning Organizations' initial contentions were admissible, but the Board did not terminate the proceeding because it had not

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<sup>11</sup> See *Notification of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact* (Jan. 31, 2025); see also "Draft Environmental Assessment and Draft Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project" (Jan. 2025) (ML24353A157) (Draft EA).

<sup>12</sup> Memorandum and Order (Adopting Proposed Schedule for New and Amended Contentions) (Feb. 10, 2025) (unpublished).

<sup>13</sup> See *Petitioning Organizations' Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant* (Mar. 3, 2025) (New and Amended Contentions); *Petitioning Organizations' Motion to File Amended and New Contentions* (Mar. 3, 2025) (Motion). The Joint Petitioners did not file any new and amended contentions.

<sup>14</sup> See New and Amended Contentions at 1-36.

<sup>15</sup> *Applicants' Answer Opposing Beyond Nuclear et. al.'s New and Amended Contentions* (Mar. 28, 2025); *NRC Staff Answer to Petitioning Organizations' Motion to File Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact in the Palisades Restart Amendment Proceeding* (Mar. 28, 2025). In addition, Holtec opposed all contentions on timeliness grounds, and the Staff opposed four of the five on timeliness grounds.

<sup>16</sup> See Memorandum and Order (Altering Schedule and Format of Initial Prehearing Conference) (Feb. 6, 2025) (unpublished).

yet ruled on the new and amended contentions.<sup>17</sup> In LBP-25-5, the Board found that none of the Petitioning Organizations' new and amended contentions were admissible, and it terminated the proceeding.<sup>18</sup>

The Petitioning Organizations sought Commission review of both LBP-25-4 and LBP-25-5. We consider the Petitioning Organizations' arguments with respect to both decisions below.

## II. DISCUSSION

### A. Legal Standards

A request for Commission review not associated with an initial hearing request, including one related to a Board's ruling on new and amended contentions filed after the deadline for an initial hearing request, is treated as a petition for discretionary review rather than an appeal as of right.<sup>19</sup> The standard of review is the same for petitions for discretionary review and appeals as of right; we afford substantial deference to the Board on threshold decisions such as standing and contention admissibility.<sup>20</sup> We will not disturb a licensing board's ruling on contention admissibility unless the petition for review or appeal demonstrates an error of law or

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<sup>17</sup> LBP-25-4, 101 NRC at 173-86. The Board also denied the Joint Petitioners' hearing request, and that ruling was not appealed.

<sup>18</sup> LBP-25-5, 101 NRC at 218-31. Because none of the "amended and new" contentions was admissible—some on multiple grounds—the Board did not reach the timeliness issue for any of them. *Id.* at 218.

<sup>19</sup> See 10 C.F.R. § 2.341, 10 C.F.R. § 2.311; see *Interim Storage Partners LLC* (WCS Consolidated Interim Storage Facility), CLI-21-9, 93 NRC 244, 246 (2021) (citing *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 385 (2012)). In LBP-25-5, the Board noted that any appeals of the decision must be filed in accordance with 10 C.F.R. § 2.341. See LBP-25-5, 101 NRC at 231.

<sup>20</sup> See, e.g., *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 26 (2014) (Commission gives "substantial deference" to Board's decision to admit contention even where it may consider support "weak" or the issue a "close question"); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 326-27, 329 (2012).

abuse of discretion.<sup>21</sup> In addition, we do not consider new legal arguments on appeal, and a petitioner cannot use a petition for review as an opportunity to expand on arguments which the Board never had the chance to consider.<sup>22</sup> We review legal rulings *de novo* but defer to the Board's factual determinations.<sup>23</sup>

## **B. Contentions**

### **1. Contention 1: Challenges to the Exemption Request**

In Contention 1, the Petitioning Organizations challenged Holtec's request for an exemption from the provision in 10 C.F.R. § 50.82(a)(2) that prohibits reactor power operations or retention of fuel in the reactor vessel once the NRC has docketed the certifications described in 10 C.F.R. § 50.82(a)(1).<sup>24</sup> Section 50.12 allows for an exemption from a regulation where the exemption is "[a]uthorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security," and where one of six listed "special circumstances" exist.<sup>25</sup> The requested exemption allowed Holtec to rescind the 10 C.F.R. § 50.82(a)(1) certifications on the same date that the related power operations license

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<sup>21</sup> *Nuclear Fuel Services, Inc.* (License Amendment Application), CLI-23-3, 98 NRC 33, 36 (2023).

<sup>22</sup> *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 503-04 (2007).

<sup>23</sup> *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 351 (2015).

<sup>24</sup> Petition at 30. Section 50.82(a)(2) provides that once a reactor operator has certified that operations have permanently ceased and the fuel permanently removed from the reactor vessel, the license "no longer authorizes operation of the reactor" or placement of fuel in the reactor vessel. Holtec seeks an exemption from this rule so it can resume operations.

<sup>25</sup> See 10 C.F.R. § 50.12(a)(1), (a)(2)(i-vi) (listing six "special circumstances"). Holtec claims that its request meets three of these: application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, complying with the rule "would result in undue hardship or other costs significantly in excess of those contemplated when the regulation was adopted, and "any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant the exemption." See Exemption Request at 10-12.

amendments became effective, and on this date Palisades “transition[ed] from a facility in decommissioning back to a power operations plant” subject to inspection under the NRC Reactor Oversight Process.<sup>26</sup>

In Contention 1, the Petitioning Organizations argued that the exemption request did not meet the requirements for an exemption.<sup>27</sup> As outlined below, the Petitioning Organizations have not shown any Board error regarding the admissibility of Contention 1.

a. *Petitioning Organizations’ Arguments that Section 50.12 Criteria Are Not Met*

**(1) SECTION 50.12(a)(1): REQUIRED SHOWING THAT THE EXEMPTION IS AUTHORIZED BY LAW, PRESENTS NO RISK TO PUBLIC HEALTH AND SAFETY, AND IS CONSISTENT WITH THE COMMON DEFENSE AND SECURITY**

On review, the Petitioning Organizations argue that the exemption request does not meet the requirements of 10 C.F.R. § 50.12(a)(1) because it is not authorized by law and because it was not shown to present no risk to public health and safety.<sup>28</sup>

The Petitioning Organizations argued before the Board that the exemption is not “authorized by law” because Holtec cited no provision of law that specifically authorizes the exemption.<sup>29</sup> The Board rejected this argument because the Petitioning Organizations cited no authority that § 50.12(a)(1) requires an “affirmative legal authorization” for a specific exemption.<sup>30</sup> In their petition for review, the Petitioning Organizations argue that “[t]aken to its logical conclusion, the majority’s position means that anything is authorized unless it is specifically prohibited,” which would “make the regulatory regime a nullity.”<sup>31</sup>

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<sup>26</sup> Exemption Request at 3, 7; see *also* Notification.

<sup>27</sup> Petition at 30.

<sup>28</sup> See Petition for Review of LBP-25-4 at 17-18.

<sup>29</sup> Petition at 32-33.

<sup>30</sup> LBP-25-4, 101 NRC at 176.

<sup>31</sup> Petition for Review of LBP-25-4 at 17.

We find no Board error regarding the Petitioning Organizations' claim that the exemption is not authorized by law. An agency's authority to issue exemptions from its regulations has long been recognized by the courts, and the NRC discussed the extent of this authority in the preamble for the 1985 Specific Exemptions Rule.<sup>32</sup> The preamble cited *United States v. Allegheny-Ludlum Steel*, wherein the Supreme Court held that "[i]t is well-established that an agency's authority to proceed in a complex area . . . by means of rules of general application entails a concomitant authority to provide exemptions procedures in order to allow for special circumstances."<sup>33</sup> The preamble stated that the agency could not find "any evidence in the general licensing standards of [AEA] section 103b(2) that Congress intended to prohibit the Commission from issuing exemptions in limited circumstances."<sup>34</sup>

The Petitioning Organizations also argue that Holtec's exemption request does not meet the requirements in 10 C.F.R. § 50.12(a)(1) because Holtec has not demonstrated that the exemption presents no undue risk to public health and safety. In their petition for review of LBP-25-4, the Petitioning Organizations argue that they raised an admissible issue as to whether Holtec's request would present an "undue risk to public health and safety" in contravention of the requirements of § 50.12(a)(1), which they claim the Board failed to address.<sup>35</sup> In support of this claim, the Petitioning Organizations repeat general arguments they asserted before the Board, such as that Palisades is "not licensable to 21st century standards,"

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<sup>32</sup> See Specific Exemptions; Clarification of Standards, 50 Fed. Reg. 50,764, 766-67 (Dec. 12, 1985) (1985 Specific Exemptions Rule).

<sup>33</sup> *Id.* at 50,766 (citing *United States v. Allegheny-Ludlum Steel*, 406 U.S. 742, 755 (1972)); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances").

<sup>34</sup> 1985 Specific Exemptions Rule, 50 Fed. Reg. at 50,767.

<sup>35</sup> Petition for Review of LBP-25-4 at 18-19.

is “one of the world’s most decrepit” nuclear reactors, that it was “poorly maintained,” and that Holtec has no nuclear operations or engineering experience and will employ an inexperienced workforce.<sup>36</sup> But the Board addressed these claims and found that the statements of the Petitioning Organizations’ expert were “conclusory” and included “bald assertions.”<sup>37</sup> The Board correctly held that conclusory statements, even by an expert, are insufficient to support a contention.<sup>38</sup> We therefore defer to the Board’s judgment that these statements did not support admission of Contention 1.

**(2) SECTION 50.12(a)(2): SPECIAL CIRCUMSTANCES**

The Petitioning Organizations also challenged Holtec’s claim of “special circumstances.”<sup>39</sup> The Petitioning Organizations argued before the Board that Holtec had not shown that applying § 50.82 would not serve the underlying purpose of the rule under exemption criterion § 50.12(a)(2)(ii).<sup>40</sup> The Board rejected this argument, reasoning that a rule providing a process for decommissioning does not apply to the “particular circumstances presented here—[Holtec’s] plan to restart Palisades.”<sup>41</sup>

On review, the Petitioning Organizations argue that the “purpose” of § 50.82 is to “provide a process for decommissioning and license termination.”<sup>42</sup> But they do not confront the Board’s reasoning or explain why an applicant who seeks to resume operations at a reactor

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<sup>36</sup> *Id.* at 18; *see also* Gundersen Decl. at 8, 11, 22.

<sup>37</sup> LBP-25-4, 101 NRC at 176.

<sup>38</sup> *See Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility)*, CLI-25-5, 102 NRC \_\_, \_\_ (2025) (slip op. at 7); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station)*, CLI-12-15, 75 NRC 704, 714 (2012).

<sup>39</sup> Petition at 34-40.

<sup>40</sup> *See id.* at 34-35.

<sup>41</sup> LBP-25-4, 101 NRC at 176.

<sup>42</sup> Petition for Review of LBP-25-4 at 17, 19-20; *see also* Petition at 34-35.

must follow “a process for decommissioning and license termination.” We find the Board’s reasoning to be logical: if the purpose of the rule was to provide a process for decommissioning, then that purpose would not be served where the license holder is seeking to restart operations. We further disagree with the Petitioning Organizations’ assertion that the purpose of § 50.82 is to promote decommissioning, as opposed to providing clarity as to which reactors are authorized to operate and which are not.<sup>43</sup> An operating reactor is subject to inspection and the Reactor Oversight Process, but once a reactor has entered into decommissioning, it is subject to different requirements. Therefore, it is essential that the NRC is current on the reactor’s status. We therefore see no error in the Board’s rejection of the Petitioning Organizations’ § 50.12(a)(2)(ii) argument.

The Petitioning Organizations also repeat on review their argument that Holtec cannot show “undue hardship” under § 50.12(a)(2)(iii).<sup>44</sup> But Holtec’s exemption request claimed three special circumstances applied to its request, and the Petitioning Organizations did not challenge the Board’s reasoning on the third one under § 50.12(a)(2)(vi).<sup>45</sup> We need not address whether Holtec has shown undue hardship, because Holtec only needs to show that one special circumstance applies to justify the exemption.

**(3) SECTION 50.12 DOES NOT REQUIRE A SEPARATE SHOWING OF “EXIGENT CIRCUMSTANCES”**

The Petitioning Organizations also argue that the exemption cannot be granted because there has been no separate showing of “exigent circumstances.”<sup>46</sup> They rely on a federal appeals court decision that predates the 1985 revisions to § 50.12, which were intended to

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<sup>43</sup> See Petition for Review of LBP-25-4 at 17, 19-20; Petition at 34-35.

<sup>44</sup> Petition for Review of LBP-25-4 at 20.

<sup>45</sup> See Exemption Request at 10-12; LBP-25-4, 101 NRC at 175.

<sup>46</sup> Petition for Review of LBP-25-4 at 16; see Petition at 31-32.

“state clearly the circumstances for which the Commission believes that exemptions are warranted.”<sup>47</sup>

Prior to the 1985 revision, § 50.12(a) was substantially similar to the current § 50.12(a)(1) and provided that the Commission may grant an exemption to the regulations in part 50 where the requested exemption was authorized by law, would not endanger life or property or the common defense and security, and was otherwise in the public interest.<sup>48</sup> The 1985 Specific Exemptions Rule added the six “special circumstances” that are now enumerated in § 50.12(a)(2), which were based on past examples where the circumstances were found to warrant exemption relief, including “exemption criteria that [had] been noted by the courts with approval.”<sup>49</sup> In other words, the specific “special circumstances” listed in the 1985 revision were based on previous examples where the Staff had found “exigent circumstances” warranting an exemption. Imposing an “exigent circumstances” requirement now would effectively add an unwritten requirement to the criteria set forth in the current rule. We decline to do so and therefore reject the Petitioning Organizations’ argument.

*b. Whether the Exemption Request is Within the Scope of the Proceeding*

On review, the Petitioning Organizations reassert their view that the exemption request is not within the scope of the proceeding.<sup>50</sup> The Petitioning Organizations initially stated this view in their reply to the Staff’s and Holtec’s answers.<sup>51</sup> The Board majority ruled that the

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<sup>47</sup> Petition for Review of LBP-25-4 at 16 (citing *NRDC. v. NRC*, 695 F.2d 623 (D.C. Cir. 1982), which relies on *Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 and 5)*, CLI-77-11, 5 NRC 719, 723 (1977)); see also 1985 Specific Exemptions Rule, 50 Fed. Reg. at 50,765.

<sup>48</sup> See 1985 Specific Exemptions Rule, 50 Fed. Reg. at 50,764.

<sup>49</sup> See *id.* at 50,776.

<sup>50</sup> Petition for Review of LBP-25-4 at 13-15.

<sup>51</sup> Compare Petition at 30-40 to Reply at 10-11. Holtec argued that the exemption was outside the scope of the proceeding. See Applicants Answer at 39-45. The Staff viewed the exemption

exemption request was within the scope of the proceeding because it is “inextricably intertwined” with the license amendment requests that are the subject of the proceeding.<sup>52</sup>

In their petition for review, the Petitioning Organizations do not explain how the Board majority’s ruling would constitute reversible error. Instead, they reassert the argument that the exemption is outside the scope of the proceeding.<sup>53</sup> As the concurring opinion noted, this argument is an independent reason to find Contention 1 inadmissible.<sup>54</sup> We need not reexamine a Board ruling on a matter that has no bearing on whether the Petitioning Organizations are entitled to a hearing.

**2. Contention 2 and Amended Contention 2:  
The Proposed Licensing Action Requires an Environmental Impact Statement**

**Contention 3: Holtec Must Obtain a New Operating License**

In Contention 2, Amended Contention 2, and Contention 3, the Petitioning Organizations raised related and overlapping arguments that restarting Palisades requires preparation of an environmental impact statement (EIS), rather than an EA.<sup>55</sup> In all three contentions, the Petitioning Organizations argued that Holtec needs a new license to restore Palisades to

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request as within the scope of the proceeding. See Staff Answer at 30-48 (opposing Contention 1 on other grounds).

<sup>52</sup> See LBP-25-4, 101 NRC at 170-71 (ruling with respect to Joint Petitioners’ proposed Contention 5); see also 101 NRC at 188-92 (Arnold, J., concurring) (expressing view that the exemption request is not within the scope of the proceeding).

<sup>53</sup> Petition for Review of LBP-25-4 at 13-15.

<sup>54</sup> See LBP-25-4, 101 NRC at 188 (Arnold, J., concurring) (concluding that Contention 1 is “simply out of scope”).

<sup>55</sup> In LBP-25-4, the Board considered Contentions 2 and 3 together because they raised many of the same arguments. See *id.* at 177.

operations, because, as the Board phrased it, “an operating license that has been amended to reflect a plant’s decommissioning status is not an operating license.”<sup>56</sup>

In LBP-25-4, the Board found the claims in Contention 2 and 3 inadmissible because they raised issues beyond the scope of the proceeding—principally by challenging the Commission’s determination that restart requests will be evaluated under the existing regulatory framework.<sup>57</sup> The Board cited to a 2021 denial of a rulemaking petition where the Commission explained the legal conclusion and policy decision that restart requests may be and will be evaluated under the NRC’s existing regulatory framework.<sup>58</sup>

The Petitioning Organizations reasserted the “new license” argument in Amended Contention 2, and in LBP-25-5, the Board rejected it for the same reasons as in its earlier ruling.<sup>59</sup> The Board explained that to the extent that the Petitioning Organizations’ argument challenged the regulations that allowed license amendments and exemptions, it is also out of scope.<sup>60</sup>

For the reasons outlined below, the Petitioning Organizations’ petitions for review of the Board’s decisions in Contentions 2 and 3 point to no reversible error.

*a. Claim that Holtec Must Obtain a New License, Necessitating an EIS*

In their petition for review of LBP-25-4, the Petitioning Organizations argue that NRC regulations do not allow for restarting a shutdown reactor. They claim that Holtec cannot exchange “a presently unusable operating license into a fully functional operating license”

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<sup>56</sup> *Id.* at 178.

<sup>57</sup> *Id.* at 178-79.

<sup>58</sup> *Id.* at 179 (citing Criteria to Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362 (May 6, 2021) (Denial of Restart Rulemaking Petition); 10 C.F.R. §§ 50.12, 50.90, 50.92 (procedures for license amendment)).

<sup>59</sup> LBP-25-5, 101 NRC at 220.

<sup>60</sup> *Id.*

through license amendments and an exemption.<sup>61</sup> As a result, they argue that Holtec must apply for a new license and NRC must complete an EIS as it would for a new license.<sup>62</sup>

We find no error in the Board's rulings. The Board correctly interpreted the 2021 rulemaking petition denial as expressing the Commission's view that our regulations allow for the possibility of restarting a shutdown reactor.<sup>63</sup> The 2018 petition for rulemaking proposed a revision to the regulations which would allow a reactor that has been shut down for 21 years or less to restart after passing a general safety inspection.<sup>64</sup> The petitioner for rulemaking argued that the rule revision would provide a "fair, reasonable and unobstructed opportunity to return a retired facility to full operational status."<sup>65</sup> In 2021, the NRC decided to deny the petition because "the issue does not involve a significant safety or security concern and the existing regulatory framework may be used" to allow shutdown reactors to restart.<sup>66</sup> The preamble for the rulemaking denial explained that the NRC had previously determined that existing regulations provide a means by which a shutdown power plant could resume operations, noted that commenters objected to the proposal that shutdown facilities not be required to "meet the latest safety standards before resuming operations," and observed that industry had "expressed minimal interest" in an "explicit" process to resume operations.<sup>67</sup> The Commission reiterated its

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<sup>61</sup> Petition for Review of LBP-25-4 at 23-24.

<sup>62</sup> *Id.* at 25.

<sup>63</sup> See LBP-25-4, 101 NRC at 179.

<sup>64</sup> See "Petition of George Berka to Revise the Criteria to Return Retired Nuclear Power Reactors to Operations," Petition for Rulemaking PRM-50-117 (Dec. 26, 2018) (ML19050A507).

<sup>65</sup> *Id.* at 1.

<sup>66</sup> Denial of Restart Rulemaking Petition, 86 Fed. Reg. at 24,362; see *id.* at 24,363 ("While current regulations do not specify a particular mechanism for reauthorizing operation of a nuclear power plant after both certifications are submitted, there is no statute or regulation prohibiting such action.").

<sup>67</sup> *Id.* at 24,363.

policy that the existing regulations allow the possibility of restart in 2025 in a separate *Palisades* proceeding.<sup>68</sup>

In their petition for review, the Petitioning Organizations argue that if the denial of rulemaking was intended to positively state a policy that would allow a shutdown reactor to “reverse course and restart,” then under the *Paralyzed Veterans* doctrine, notice and comment rulemaking is required.<sup>69</sup> *Paralyzed Veterans* stated that once an agency has provided a definitive interpretation of its rule, it may not revise that rule without a notice and comment rulemaking.<sup>70</sup> The Petitioning Organizations argue that an interpretation allowing a shutdown reactor to resume operations is “at odds with prior history.”<sup>71</sup> We find this argument unpersuasive for two reasons. First, in 2015, the Supreme Court overruled *Paralyzed Veterans* and held that because an agency is not required to use notice and comment rulemaking to issue an interpretive rule, it is not required to use those procedures to change its interpretation.<sup>72</sup> Second, the NRC’s policy of allowing a shutdown reactor to restart under existing regulations is not a new policy.

The NRC has long taken the view that shutting down a reactor is not irreversible. For example, Regulatory Guide 1.184 on reactor decommissioning, issued in 2000 and revised in 2013, recognized that after permanent shutdown, the facility license continues in effect until the NRC notifies the licensee that the license has been terminated and there is no need to renew or

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<sup>68</sup> *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), CLI-25-3, 101 NRC 197, 210 (2025).

<sup>69</sup> Petition for Review of LBP-25-4 at 26-27 (citing *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579 (D.C. Cir. 1997).

<sup>70</sup> *Paralyzed Veterans*, 117 F.3d at 586.

<sup>71</sup> Petition for Review of LBP-25-4 at 26-27.

<sup>72</sup> *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015).

extend the license.<sup>73</sup> Both versions of the Regulatory Guide 1.184 stated that the decision to allow resumption of operations would be handled on a case-by case basis.<sup>74</sup> Similarly, in a 2016 letter to Nuclear Energy Information Service (one of the Petitioning Organizations here), the NRC explained that docketing the two certifications in § 50.82(a)(1) results in “a permanent cessation of operations but will not result in permanent irreversible termination of the operating license. A facility that has permanently ceased operations and removed fuel from the reactor vessel and is being decommissioned maintains the same license that it had during operations.”<sup>75</sup> The letter explained that the license is not terminated until the decommissioning process is complete and the license holder demonstrates that the facility has been radiologically decontaminated and meets the criteria for site release.<sup>76</sup>

Therefore, the Board did not err in rejecting the Petitioning Organizations’ arguments that our existing regulatory processes cannot be used to restore a decommissioning reactor to operations. The Board’s ruling is consistent with the NRC’s longstanding interpretation of the regulations.

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<sup>73</sup> See “Decommissioning of Nuclear Power Reactors,” Regulatory Guide 1.184, rev. 0 (July 2000), at 8 (Reg. Guide 1.184); “Decommissioning of Nuclear Power Reactors,” rev. 1 (Oct. 2013), at 7 (Reg. Guide 1.184 (rev. 1)).

<sup>74</sup> Reg. Guide 1.184 at 8, Reg. Guide 1.184 (rev. 1) at 7.

<sup>75</sup> Letter from John B. Giessner, NRC, to David A. Kraft, Nuclear Energy Information Service (Aug. 4, 2016), at 2 (ML16218A266).

<sup>76</sup> *Id.* at 2. The letter further explained that nothing in our regulations would prohibit a licensee from requesting an exemption from the regulations relating to the certifications or license termination, and no regulation would prevent NRC from allowing the reversal of a license termination. *Id.* at 3-4.

b. *Claim that Restart is a "Major Federal Action" Requiring an EIS*

In their petition for review of LBP-25-4, the Petitioning Organizations reassert their claim that an EIS is required because the decision to allow restart is a "major Federal action."<sup>77</sup> But as the Board pointed out, the NRC's NEPA implementing regulations only require an EIS when a major Federal action will "significantly affect[] the quality of the human environment."<sup>78</sup> And in the Draft EA/FONSI, the Staff determined that resumption of operations will have no significant impact. The Petitioning Organizations do not point to any information disputing that conclusion. Therefore, the Petitioning Organizations have not shown that the Board erred in rejecting this argument.

c. *Claim that the Draft EA Used the Wrong Environmental Baseline*

In Amended Contention 2, the Petitioning Organizations also claimed that the Draft EA used the incorrect "environmental baseline" for evaluating the effect of resuming operations at Palisades.<sup>79</sup> The Board found this claim did not raise a genuine dispute with the Draft EA.<sup>80</sup> The Board pointed out that the Draft EA specified that the baseline is "the current decommissioning state at Palisades prior to implementing any of the activities related to the preparation for the resumption of power operations."<sup>81</sup> Therefore it found that "there appears to be no difference between the Staff's position in the Draft EA and [the] Petitioning Organizations' claim."<sup>82</sup>

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<sup>77</sup> See Petition for Review of LBP-25-4 at 23; Petition at 44; New and Amended Contentions at 2, 3-4.

<sup>78</sup> LBP-25-4, 101 NRC at 179 (citing NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C)).

<sup>79</sup> Petition for Review of LBP-25-5 at 17.

<sup>80</sup> LBP-25-5, 101 NRC at 221.

<sup>81</sup> *Id.* (quoting Draft EA at 1-6).

<sup>82</sup> *Id.*

In their petition for review of LBP-25-5, Petitioning Organizations state that the Board misunderstood their argument and that the Draft EA did not compare the environmental effects of operating the reactor for the remainder of its license against the effects of leaving it shut down. They argue that the Draft EA could not have been using the correct baseline because it “consistently uses documents and other sources that predate the Palisades decommissioning.”<sup>83</sup>

We find no Board error. While the Draft EA considered documents that predate Palisades’ shutting down—specifically the Supplemental EIS developed for Palisades’ 2006 license renewal proceeding (2006 SEIS)—this does not mean the Staff’s analysis in the Draft EA used the wrong baseline. The Draft EA used the 2006 SEIS to evaluate the environmental impact of resuming operations, not the impacts of continuing in decommissioning.<sup>84</sup> The Petitioning Organizations do not explain how the environmental effects of resumed operations following a shutdown would be materially different from the effects of continuing to operate as evaluated in the 2006 SEIS. Further, the Draft EA specifies that the Staff used the shutdown reactor as the “baseline” for its impacts analysis, and that analysis focused on the difference between Palisades operating for the remainder of its operating license and its continuing in decommissioning status.<sup>85</sup> We therefore find the Board did not err in rejecting this claim.

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<sup>83</sup> Petition for Review of LBP-25-5 at 17.

<sup>84</sup> See Draft EA § 3.1.3 (“When evaluating the potential environmental impacts from the *resumption of power operations*, the NRC staff reviewed and incorporated by reference analyses completed in the 2006 SEIS . . . and other relevant environmental review documents, where appropriate”); see also “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 27, Regarding Palisades Nuclear Plant” (Final Report), NUREG-1437 (Oct. 2006) (ML062710300) (2006 SEIS).

<sup>85</sup> See Draft EA § 1.3.4 (“The affected environment for the potential reauthorization of power operations at Palisades is the current decommissioning state at Palisades prior to implementing any of the activities related to the preparation for the resumption of power operations.”); *id.* § 3.1.1. (“[T]he environmental baseline or affected environment for Palisades and the proposed Federal actions under the NRC staff’s evaluation are the environmental conditions at the point in time prior to the commencement of the project. Palisades is currently in a decommissioning

d. *Impacts from Earthquakes and Radioactive Waste*

In Amended Contention 2, the Petitioning Organizations also claimed that the Palisades dry cask storage facility does not meet regulatory engineering standards and is vulnerable to earthquakes.<sup>86</sup> As support for this claim, the Petitioning Organizations provided a 19-year-old comment related to the 2006 Palisades license renewal, which in turn referred to an expert affidavit that was not provided with the comment.<sup>87</sup>

In LBP-25-5, the Board rejected the Petitioning Organizations' claims for two reasons. First, the Board found that the Petitioning Organizations had provided no factual support that discussing these effects would "lead to a finding of significant impacts."<sup>88</sup> Second, the Board found that Amended Contention 2 did not address the portions of the Draft EA that discussed the fuel cycle and accident analyses.<sup>89</sup>

In their petition for review of LBP-25-5, the Petitioning Organizations reiterate their arguments below that the Draft EA failed to consider impacts of radioactive waste and the possible effects of an earthquake.<sup>90</sup> The Petitioning Organizations do not address the Board's findings that the contention did not dispute the portions of the Draft EA that discussed waste and accidents. The Petitioning Organizations also incorrectly state that the Board held that these issues were "out of scope" of the proceeding because the Draft EA referenced the 2006

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state. Therefore, the affected environment will be defined for each resource area given this temporal baseline.").

<sup>86</sup> New and Amended Contentions at 4-6.

<sup>87</sup> *Id.* at 4 n.1 (citing "Halting 20 Extended Years of Risky, Reactor Operations and Radioactive Waste Generation and Storage on Lake Michigan at Palisades Nuclear Power Plant; Comments on NUREG-1437, Supplement 27 to the Generic Environmental Impact Statement for License Renewal of the Palisades Nuclear Power Plant" (Feb. 23, 2006) (ML061570042)).

<sup>88</sup> LBP-25-5, 101 NRC at 221.

<sup>89</sup> *Id.* (citing Draft EA § 3.13.4 at 3-63, G-1 (waste effects); § 3.14 at 3-64 to -65 (postulated accidents)).

SEIS.<sup>91</sup> But the Board did not hold that the Petitioning Organizations could not challenge earthquake impacts or radioactive waste discussions in the Draft EA. The Board simply stated—in a footnote—that the Petitioning Organizations cannot “litigate the contents of the 2006 SEIS.”<sup>92</sup> The Board rejected the contention because it was unsupported and did not address relevant discussions in the Draft EA. We find no error in the Board’s rejection of these claims.

**3. *Contention 4 and Amended Contention 4:  
There is No Law or Regulation Allowing Resumption of Operations;  
NRC Lacks Authority to Approve the License Amendments; and  
Holtec Cannot Use the 10 C.F.R. § 50.59 Process***

In Contention 4 as initially submitted, the Petitioning Organizations echoed arguments made in Contentions 2 and 3 that there is no legal pathway to restarting Palisades.<sup>93</sup> They also challenged Holtec’s planned use of the 10 C.F.R. § 50.59 change process to implement changes at Palisades.<sup>94</sup> In connection with this argument, the Petitioning Organizations asserted that restarting the reactor will require “many changes in specifications and operating characteristics” that “will exceed the minimal change limitations” permissible under the § 50.59 process.<sup>95</sup> They further argued that the NRC has no authority to permit restarting a shutdown

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<sup>91</sup> Petition for Review of LBP-25-5 at 15-16.

<sup>92</sup> LBP-25-5, 101 NRC at 221 n.37. The New and Amended Contentions included two paragraphs discussing the comments submitted for the 2006 SEIS, which may have suggested to the Board that the Petitioning Organizations sought to re-litigate the 2006 SEIS, particularly the SEIS’s discussion of radioactive waste and earthquakes. See New and Amended Contentions at 4-5.

<sup>93</sup> See Petition at 48-55; see also Reply at 23-25.

<sup>94</sup> See Petition at 48-50, 55-58; see also Reply at 25-29. 10 C.F.R. § 50.59 allows licensees to make certain changes to a facility without the license amendment process set forth in 10 C.F.R. § 50.90.

<sup>95</sup> Petition at 50.

reactor because this is a “major question” that Congress has not clearly authorized the NRC to address.<sup>96</sup>

In LBP-25-4, the Board dismissed Contention 4, finding that it challenged NRC regulations and policy, was based on conclusory and speculative claims, and did not “otherwise raise a specific challenge to the four license amendment requests that are the subject of this proceeding.”<sup>97</sup> The Board found the contention’s overarching claim that a shutdown reactor may not be restarted using the existing regulatory framework was not litigable in an individual adjudication because the claim constituted an impermissible challenge to the NRC’s regulations and Commission policy.<sup>98</sup> With respect to the specific challenge to Holtec’s use of the § 50.59 process, the Board noted that this provision includes standards for determining whether a license amendment under 10 C.F.R. § 50.90 is needed and a license amendment application under § 50.90 carries its own hearing opportunity.<sup>99</sup> The Board therefore found that a challenge to Holtec’s use of the § 50.59 process is an impermissible challenge to a regulation.<sup>100</sup> Because the Board found Contention 4 inadmissible for these other reasons, it did not reach the Petitioning Organizations’ argument that restarting a reactor is a “major question” that Congress, rather than the NRC, must address.<sup>101</sup>

In Amended Contention 4, the Petitioning Organizations restated Contention 4 and “inserted new supporting evidence” from the Draft EA concerning the effects of climate

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<sup>96</sup> *Id.* at 51-55 (citing *West Virginia v. EPA*, 597 U.S. 697, 723, 735 (2022) (cited by Petitioning Organizations as 142 S. Ct. 2587, 2609, 2616 (2022))).

<sup>97</sup> LBP-25-4, 101 NRC at 182.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 183-84; *see also id.* at 164-65 (discussing similar argument in Joint Petitioners’ Contention 2).

<sup>100</sup> *Id.* at 183-84.

<sup>101</sup> *Id.* at 182.

change.<sup>102</sup> The Petitioning Organizations argued that the Staff's climate change analysis "confirm[ed]" the claims in Contention 4 and "comprise[d] evidence favorable to [the contention's] admissibility."<sup>103</sup> In LBP-25-5, the Board found that Amended Contention 4 did not remedy the deficiencies in Contention 4 (that the contention lacked the support and specificity required by 10 C.F.R. § 2.309(f)(1)(v) and (vi)).<sup>104</sup>

In their petitions for review, the Petitioning Organizations reiterate their general claims that the existing regulations do not allow for restart and the 2021 denial of the 2018 petition for rulemaking was insufficient to create a new policy with the force of a rule.<sup>105</sup> In connection with this claim, the Petitioning Organizations reassert their argument that restarting a reactor is a "major question" that Congress has not referred to the NRC to resolve.<sup>106</sup> They further argue that the Board misunderstood their argument concerning the § 50.59 change process.<sup>107</sup> Finally, in their petition for review of LBP-25-5, the Petitioning Organizations argue that the Board erred in rejecting their climate change impact claims in Amended Contention 4.<sup>108</sup>

We find that the petitions for review identify no Board error or abuse of discretion. As discussed above with respect to Contentions 2, 3, and Amended Contention 2, the existing regulations provide a process to allow for the resumption of operations at a reactor that has submitted the § 50.82(a) certifications and permanently shut down.

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<sup>102</sup> New and Amended Contentions at 8 n.17.

<sup>103</sup> Motion at 4; see New and Amended Contention at 8 n.17.

<sup>104</sup> LBP-25-5, 101 NRC at 223 & n.60 (incorporating the discussion and analysis of Contention 4 in LBP-25-4 in full and outlining reasons Contention 4 was inadmissible).

<sup>105</sup> Petition for Review of LBP-25-4 at 30-31.

<sup>106</sup> *Id.* at 30-32.

<sup>107</sup> *Id.* at 32.

<sup>108</sup> Petition for Review of LBP-25-5 at 17-18.

We further reject the Petitioning Organizations' argument that restart of Palisades is a "major question" which the NRC has no authority to decide. The Petitioning Organizations rely on the Supreme Court's decision in *West Virginia v. EPA*, wherein the Court invalidated the EPA's regulatory scheme to shift the power industry away from coal-fired generation. The Court held that considering the "magnitude and consequence" of such a decision, it was "not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme."<sup>109</sup> The Petitioning Organizations argue that *West Virginia* supports its claim that "by allowing a unique bypass of the [AEA's] purposes and existing regulations, the NRC is applying the AEA in a way which Congress has not clearly delegated to the agency."<sup>110</sup> We disagree with the argument that Congress has not clearly authorized the NRC to permit the proposed licensing action.

The AEA authorizes the NRC to issue licenses to "transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export . . . utilization or production facilities<sup>111</sup> for industrial or commercial purposes . . . subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this chapter."<sup>112</sup> With this language, Congress granted the NRC broad authority to issue licenses and to prescribe rules over the construction, operations, transfer, and decommissioning of nuclear reactors. The rules under which a nuclear reactor begins and ends power operations all come from the broad authority Congress conferred in the AEA.<sup>113</sup> We are therefore not persuaded that, in conferring broad authority upon the NRC to create and

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<sup>109</sup> *West Virginia*, 597 U.S. at 735.

<sup>110</sup> Petition for Review of LBP-25-4 at 32.

<sup>111</sup> See 10 C.F.R. § 50.2 (defining utilization facility, production facility, and nuclear reactor).

<sup>112</sup> AEA § 103(a), 42 U.S.C. § 2133(a).

<sup>113</sup> Congress also directed that the NRC could not relinquish its authority over the construction and operation of a utilization facility to a State. See *id.* at § 274(c)(1), 42 U.S.C. § 2021(c)(1).

implement a regulatory scheme governing the use of radioactive materials for commercial electricity production, Congress intended to withhold from this agency the ability to allow a nuclear reactor to resume operations.<sup>114</sup>

In any event, this case does not raise a major question, as defined in *West Virginia*. There, the Supreme Court explained that in “ordinary case[s],” the traditional rules of statutory construction, including the “words of a statute” and “their place in the overall statutory scheme,” define the scope of agency authority.<sup>115</sup> Nonetheless, the Court recognized that there are “‘extraordinary cases’ . . . in which ‘the history and the breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion, provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.’”<sup>116</sup> Yet none of the indicia that the Court recognized in *West Virginia* that might turn a conventional dispute about statutory interpretation into an extraordinary one are present here.

Most notably, the question of the conditions under which a reactor may be licensed lies at the core of the NRC’s expertise and exclusive authority.<sup>117</sup> And the impacts associated with restarting a previously licensed reactor pale in comparison to the regulatory actions of “extraordinary” political or economic significance that the *West Virginia* Court identified as triggering the major questions doctrine. Those examples include a rule mandating vaccinations for a quarter of the population,<sup>118</sup> a rule granting permitting authority over millions of pollution

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<sup>114</sup> Cf. *Siegel v. AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968) (describing the AEA as “a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives”).

<sup>115</sup> *West Virginia*, 597 U.S. at 721.

<sup>116</sup> *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-60 (2000)).

<sup>117</sup> Cf. *Ala. Ass’n of Realtors v. Dep’t of Health & Human Servs.*, 594 U.S. 758 (2021) (staying rule issued by agency regulating public health concerning evictions from rental properties).

<sup>118</sup> *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. 109, 113 (2022).

sources,<sup>119</sup> a rule imposing a moratorium on evictions that was applicable to at least 80% of the country,<sup>120</sup> and, as in *West Virginia* itself, a rule that according to one projection would reduce the national gross domestic product by at least a trillion 2009 dollars by 2040.<sup>121</sup> And while it might be argued that an accident involving a restarted reactor could have wide-ranging effects, neither *West Virginia* nor its major questions forerunners relied on the speculative (and highly unlikely) impacts of agency action to measure significance; instead, they relied on the direct effects that broad recognition of agency authority would have. Indeed, were such speculative impacts the touchstone of the analysis, the vast majority of the NRC's ordinary actions could be recast as "extraordinary," a result that cannot possibly be what the Supreme Court intended.

We also find no error with the Board's rulings on the Petitioning Organizations' § 50.59 claims. The Petitioning Organizations assert that the Board mischaracterized their argument in Contention 4 with respect to the § 50.59 process.<sup>122</sup> They argue that the point they were trying to make was that "subjecting major componentry at Palisades to the § 50.59 threshold analysis . . . will militate in favor of a very changed, new [Safety Analysis Report (SAR)]."<sup>123</sup> But the Petitioning Organizations appear to be changing their own arguments; in Contention 4, the Petitioning Organizations repeatedly assert that Holtec cannot use the § 50.59 process to update its UFSAR.<sup>124</sup> In addition, the Petitioning Organizations' Contention 4 claims appear to

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<sup>119</sup> *Utility Air Regul. Group v. EPA*, 573 U.S. 302, 324 (2014).

<sup>120</sup> *Ala. Ass'n of Realtors*, 594 U.S. at 764.

<sup>121</sup> *West Virginia*, 597 U.S. at 715.

<sup>122</sup> Petition for Review of LBP-25-4 at 32.

<sup>123</sup> *Id.*

<sup>124</sup> See, e.g., Petition at 49 (Holtec . . . cannot confine the forthcoming updates, upgrades and changes to Palisades to the minimums contemplated by 10 C.F.R. § 50.59(c)(2)"), 50 ("many changes . . . will exceed the minimal change limitations"), and 56 ("10 C.F.R. § 50.59 cannot be used as the vehicle by which Holtec restores Palisades to operations.").

anticipate that Holtec will abuse the § 50.59 process by making changes under § 50.59 that should require a license amendment.<sup>125</sup> But the unsupported claim that a license applicant will violate our regulations in the future cannot be the basis of an admissible contention.<sup>126</sup> The Petitioning Organizations' assertions concerning Holtec's use of the § 50.59 process show no Board error.

Regarding the climate change aspects of Amended Contention 4, the Petitioning Organizations state in their petition for review that the Board did not address their claims in LBP-25-5 and therefore the decision was arbitrary and capricious.<sup>127</sup> But the Board addressed their climate change claims when it explained that these claims did not cure the deficiencies in the initial Contention 4.<sup>128</sup> The Petitioning Organizations' additional assertions about climate change simply added factual arguments to aspects of Contention 4 that the Board already rejected—for reasons other than their lack of factual support—in its ruling on the initial contentions. The Petitioning Organizations do not explain in their petition for review how the supposed effects of climate change on Palisades would affect the two principal claims of Contention 4: that the NRC has no authority to authorize restarting operations at Palisades, and that the 10 C.F.R. § 50.59 change process cannot be used to update the UFSAR. Therefore, we find no Board error with respect to Amended Contention 4.

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<sup>125</sup> See 10 C.F.R. § 50.90.

<sup>126</sup> See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235 (2001).

<sup>127</sup> Petition for Review of LBP-25-5 at 18.

<sup>128</sup> LBP-25-5, 101 NRC at 223; see also *id.* at 222 (citing Draft EA at F-3) (in analyzing Amended Contention 2, the Board noted that the Petitioning Organizations did not challenge the Draft EA's climate change discussion).

**4. Amended Contention 5: The Purpose and Need Statement in the Draft EA Fails to Comply with NEPA**

***Amended Contention 6: The Draft EA Alternatives Discussion is Inadequate***

In their petition for review of LBP-25-5, the Petitioning Organizations raise overlapping arguments related to Amended Contention 5 and Amended Contention 6; therefore, we consider these arguments together below.

*a. Claims in Amended Contention 5 and Amended Contention 6 and Board Ruling*

In Amended Contention 5 and Amended Contention 6, the Petitioning Organizations raised several challenges to the Draft EA's language, including claims about the purpose and need statement and the alternatives analysis.

With respect to the purpose and need statement, the Petitioning Organizations claimed in Amended Contention 5 that the Staff's Draft EA language aligned too closely with Holtec's statement of purpose and need, making restarting Palisades the only option that fits that purpose.<sup>129</sup> They argued that the Staff's language limits the purpose and need to providing energy specifically within the term of the Palisades operating license and essentially defines the purpose and need as "reauthorize[ing] the Palisades license for power operations."<sup>130</sup>

They further argued that the Staff must substantiate the "need" for power from Palisades by analyzing "projections of regional demand," "forecasts of new sources of power generation," and consideration of energy conservation measures.<sup>131</sup> The Petitioning Organizations also

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<sup>129</sup> New and Amended Contentions at 27-30. Holtec provided a "purpose and need statement" in response to a request for additional information from the Staff. See Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk, "Response to Request for Additional Information Regarding the Proposed Reauthorization of Power Operations at Palisades Nuclear Plant under Renewed Facility Operating License No. DPR-20" (Oct. 4, 2024), Encl. 2 (ML24278A027).

<sup>130</sup> New and Amended Contentions at 29.

<sup>131</sup> *Id.* at 29-30 (Amended Contention 5), 31-32 (Amended Contention 6).

challenged the Draft EA's references to a recent Michigan law that promotes clean energy (and expressly includes nuclear power within that definition).<sup>132</sup>

In Amended Contention 6 the Petitioning Organizations also stated generally that the Draft EA's discussion of alternatives was not supported by "any facts or credible analysis."<sup>133</sup> They further argued that the Draft EA unreasonably eliminated any alternative energy source that would not be located on the Palisades site and did not consider alternatives that could be built on the Palisades site.<sup>134</sup>

The Board rejected both of these contentions. The Board found the challenge to the Michigan law to be outside the scope of the proceeding because licensing boards have no authority to rule on the actions of states or other federal agencies.<sup>135</sup> It found Amended Contention 5's claim that the Staff adopted Holtec's purpose and need statement without independent analysis to be factually unsupported and noted that the Commission gives "substantial weight" to an applicant's well-supported purpose and need statement in determining the scope of alternatives to be considered.<sup>136</sup> In addition, the Board held that the Draft EA's discussion of alternatives, which included the no-action and alternative technology alternatives, "directly contradict[s]" the claim that there was no independent analysis in defining the proposal's purpose and need.<sup>137</sup>

The Board also rejected the argument raised in both contentions that the Staff must conduct a need for power analysis—particularly in the detail that the Petitioning Organizations

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<sup>132</sup> Motion at 5 (arguing that this law reflects a "political, not a science-based, decision").

<sup>133</sup> New and Amended Contentions at 30.

<sup>134</sup> *Id.* at 31-33.

<sup>135</sup> LBP-25-5, 101 NRC at 225 (Amended Contention 5), 227 (Amended Contention 6).

<sup>136</sup> *Id.* at 225.

<sup>137</sup> *Id.* at 226.

demanded—because NRC regulations do not require a need for power analysis for post-construction licensing actions.<sup>138</sup> The Board explained that this is because “post-construction, any significant environmental impacts from siting and construction already would have occurred.”<sup>139</sup>

The Board also rejected the Petitioning Organizations’ arguments in Amended Contention 6 regarding alternative energy sources that could be built either on or off the Palisades site. The Board found the claims inadmissible because they lacked specificity, were based on conclusory statements, and “in some cases, [were] based on a misreading of the Draft EA.”<sup>140</sup> The Board pointed out that NEPA case law holds that the alternatives analysis in an EA is not required to be as extensive as that for an EIS.<sup>141</sup>

*b. Purpose and Need Statement*

In their petition for review of LBP-25-5, the Petitioning Organizations argue that Amended Contention 5 challenges the Staff’s “impartiality and procedural integrity” in adopting a “near-verbatim” version of Holtec’s purpose and need statement.<sup>142</sup> They cite foundational NEPA caselaw to argue generally that the Staff must take a “‘hard look’ at environmental consequences.”<sup>143</sup> Then they characterize the Staff’s analysis in the Draft EA as “uncritical,”

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<sup>138</sup> *Id.* at 226 (citing Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55,910 (Sept. 29, 2003); 10 C.F.R. §§ 51.53, 51.95) (Amended Contention 5), 227 (Amended Contention 6).

<sup>139</sup> *Id.* at 226.

<sup>140</sup> *Id.* at 228.

<sup>141</sup> *Id.* at 229 (citing *N. Idaho Cmty. Action Network v. U.S. Dep’t of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008)).

<sup>142</sup> Petition for Review of LBP-25-5 at 18.

<sup>143</sup> *Id.* at 19 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)).

“uncorroborated by independent skepticism,” “speculative,” and they assert that the Staff “abdicated its role as a neutral decision maker.”<sup>144</sup>

We find that the Board did not err in finding that the similarity of Holtec’s and the Staff’s purpose and need statements alone is “an insufficient basis on which to claim a NEPA deficiency.”<sup>145</sup> Of the several federal cases the Petitioning Organizations cite with respect to Amended Contention 5, only two consider the definition of a project’s purpose and need. Neither case suggests Board error. One of them, the D.C. Circuit’s decision in *Citizens Against Burlington*, supports the proposition that an “agency should take into account the needs and goals of the parties involved in the application.”<sup>146</sup> The other case—a district court case from the Southern District of California—struck down an agency’s EIS where the purpose and need statement was drawn so narrowly that it foreclosed consideration of any alternative that did not involve granting the requested permit.<sup>147</sup> As the Board pointed out, the purpose and need statement in the Draft EA did not preclude consideration of alternatives, and the Draft EA considered four alternatives.<sup>148</sup> We therefore defer to the Board’s conclusion that the Petitioning Organizations did not raise an admissible contention with respect to the Draft EA’s purpose and need statement.

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<sup>144</sup> *Id.* at 21, 23.

<sup>145</sup> LBP-25-5 101 NRC at 225-26; see *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 806-07 (2005) (an “agency should take into account the applicant’s goals for the project” (relying on *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195, 199 (D.C. Cir. 1991))).

<sup>146</sup> *Citizens Against Burlington*, 938 F.2d at 196.

<sup>147</sup> See *Backcountry Against Dumps v. Chu*, 215 F. Supp. 3d 966, 978-79 (S.D. Cal. 2015) (according to the court, the EIS in *Backcountry* dismissed all proposals for alternative energy generation “because they do not respond to [the Department of Energy’s] purpose and need, which is to respond to the ESJ request for a Presidential permit,” without further discussion.).

<sup>148</sup> LBP-25-5, 101 NRC at 226.

c. *Need for Power*

In addition, the Petitioning Organizations argue in their petition for review that the Staff must perform a need for power analysis.<sup>149</sup> As support for this claim, the Petitioning Organizations cite cases related to general NEPA principles. But these cases do not override the Commission's longstanding view, codified in our NEPA-implementing regulations, that a need for power assessment is not required for post construction reactor licensing actions.<sup>150</sup> Therefore, we find no error in the Board's ruling that the Petitioning Organizations' need for power claims were inadmissible.

d. *Range of Alternatives*

With respect to Contention 6, the Petitioning Organizations critique the Staff's analysis of four alternatives in the Draft EA.<sup>151</sup> But the Petitioning Organizations do not explain whether these critiques were part of Amended Contention 6, how the Board ruled on them, or how the Board erred. This petition for review is not the forum to expand on arguments which the Board never had the chance to consider.<sup>152</sup> Instead, a petition for review must identify Board error or abuse of discretion; a petition that simply recites the petitioners' "prior positions in a proceeding or state[s] . . . general disagreement with a decision's result is not sufficient."<sup>153</sup> For this reason alone, the petition for review fails to show Board error with respect to the four alternatives discussed in the Draft EA.

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<sup>149</sup> Petition for Review of LBP-25-5 at 20, 21, 22, 26-27, 28.

<sup>150</sup> See *Clinton*, CLI-05-29, 62 NRC at 805-08.

<sup>151</sup> Petition for Review of LBP-25-5 at 26-29.

<sup>152</sup> See *Shieldalloy*, CLI-07-20, 65 NRC at 503-04.

<sup>153</sup> *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 NRC 215, 219 (2017).

Similarly, some of the Petitioning Organizations' arguments are impermissibly raised for the first time in their petition for review. The Petitioning Organizations argue, for example, that the Board's decision "permitted the exclusion of viable alternatives such as demand-side management, grid modernization, or distributed renewable energy resources."<sup>154</sup> But the Petitioning Organizations did not raise these alternatives in Amended Contention 6.<sup>155</sup> The petition for review also contains a new argument that the Draft EA should have compared the "long-term environmental and safety advantages" of building a new reactor against the temporary environmental disturbances that would result from constructing a new reactor onsite.<sup>156</sup> There is no similar argument in Amended Contention 6. And while the petition for review challenges the Draft EA's discussion of system design alternatives, Amended Contention 6 stated only that "installing new system designs at the current Palisades reactor . . . [was] not [a] serious attempt[] at evaluating reasonable alternatives."<sup>157</sup> We do not consider new arguments, which the Board never had the chance to consider, on appeal.<sup>158</sup>

e. *Permissibility of Less Extensive Alternatives Analysis for EAs than for EISs*

The Petitioning Organizations argue that the Board erred in holding the Draft EA's alternatives analysis to a lower standard than would have been permitted for an EIS.<sup>159</sup> The Petitioning Organizations rely on the 2004 U.S. Court of Appeals for the Tenth Circuit's decision in *Greater Yellowstone Coalition v. Flowers* for the proposition that an abbreviated alternatives

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<sup>154</sup> Petition for Review of LBP-25-5 at 26-27.

<sup>155</sup> See New and Amended Contentions at 30-34.

<sup>156</sup> See Petition for Review of LBP-25-5 at 27.

<sup>157</sup> New and Amended Contentions at 30; see Petition for Review of LBP-25-5 at 29-30; Draft EA § 2.2.2.3 at 2-7.

<sup>158</sup> See, e.g., *Shieldalloy*, 65 NRC at 504; *Interim Storage Partners LLC (WCS Consolidated Interim Storage Facility)*, CLI-20-14, 92 NRC 463, 473-74 & n.62 (2020).

<sup>159</sup> Petition for Review of LBP-25-5 at 24-25.

analysis is only appropriate when the environmental consequences of the proposed action are “conceivably small.”<sup>160</sup>

*Greater Yellowstone* holds the converse of Petitioning Organizations’ proposition. *Greater Yellowstone* states that when an agency makes an informed decision that the environmental impact of a project is small, a less extensive search for reasonable alternatives is called for under NEPA (as does the *North Idaho Community Action Network* decision, on which the Board relied).<sup>161</sup> As discussed above, the Petitioning Organizations have not raised an admissible contention suggesting that the proposed resumption of operations will have significant environmental consequences or that the proposal requires an EIS. Therefore, the Board did not err in holding that the alternatives discussion in the Draft EA did not need to be as extensive as would be required for an EIS.

**5. *New Contention 8: Incorporation by Reference Invalidates the Draft EA***

The Petitioning Organizations argued in Contention 8 that recent court decisions prohibit the Staff from using incorporation by reference because the Council on Environmental Quality’s (CEQ) regulations that endorse the practice of incorporation have been found invalid.<sup>162</sup> The Petitioning Organizations pointed out that the Draft EA incorporated “previous Palisades-related documents and more general environmental documents” by reference, and argued that the Draft EA was therefore “invalid” and “must be completely redone.”<sup>163</sup> As support, Petitioning

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<sup>160</sup> *Id.* (citing *Greater Yellowstone Coal. v. Flowers*, 359 F.3d 1257, 1278-79 (10th Cir. 2004)).

<sup>161</sup> *Greater Yellowstone*, 359 F.3d at 1278-79; see also *N. Idaho Cmty. Action Network*, 545 F.3d at 1153.

<sup>162</sup> New and Amended Contentions at 34-36.

<sup>163</sup> *Id.* at 34.

Organizations cited *Marin Audubon Society v. FAA*—a 2024 decision from the D.C. Circuit Court of Appeals—and a 2025 district court opinion from North Dakota.<sup>164</sup>

The Board rejected the contention because it was based on the flawed premise that the Staff's ability to use incorporation by reference depends on the CEQ's regulation.<sup>165</sup> The Board specified that the NRC has promulgated its own regulations governing its NEPA review and has long taken the position that CEQ regulations are not binding on it.<sup>166</sup> The Board noted that the NRC's NEPA-implementing regulations specifically provide that incorporation by reference may be used in preparing an EIS.<sup>167</sup>

The Petitioning Organizations' petition for review identifies no Board error. Instead, the Petitioning Organizations simply assert that the "[Draft] EA specifically says it is relying on the CEQ regulations."<sup>168</sup> But the *Marin Audubon* decision on which the Petitioning Organizations rely does not purport to invalidate every agency policy, procedure, or action that conforms to CEQ regulations. In *Marin Audubon*, the U.S. Court of Appeals for the D.C. Circuit was asked to set aside a plan governing tourist flights over four national parks because the agencies responsible had not performed any environmental analyses, and a majority of the court took the opportunity to opine that the CEQ had no authority to issue regulations binding on other agencies.<sup>169</sup> The *Marin County* court majority did not say that agencies are prohibited from using CEQ regulations as guidance or from drafting their own environmental regulations in a manner

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<sup>164</sup> *Id.* at 34-35 (citing *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024); *Iowa v. CEQ*, 765 F.Supp.3d 859 (D.N.D. 2025)).

<sup>165</sup> LBP-25-5, 101 NRC at 230-31.

<sup>166</sup> *Id.* (citing *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011)).

<sup>167</sup> LBP-25-5, 101 NRC at 231 n.115 (citing 10 C.F.R. pt. 51, app. A).

<sup>168</sup> Petition for Review of LBP-25-5 at 30.

<sup>169</sup> See *Marin Audubon Society*, 121 F.4th at 905, 908.

consistent with the CEQ's advice. We conclude that the Petitioning Organizations did not identify an error with the Board's holding that this contention was inadmissible.<sup>170</sup>

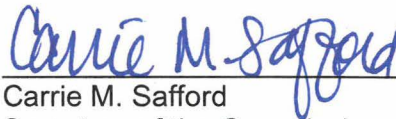
### III. CONCLUSION

For the reasons described above, we deny the Petitioning Organizations' requests for review of LBP-25-4 and LBP-25-5.

IT IS SO ORDERED.

For the Commission





Carrie M. Safford  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 15<sup>th</sup> day of June 2026

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<sup>170</sup> Petitioners additionally argued generally that the Board applied the contention admissibility standards too strictly, effectively requiring them to prove contentions on the merits. See Petition for Review of LBP-25-4 at 10; Petition for Review of LBP-25-5 at 8-9. The Petitioning Organizations point to a Board decision relating to the Diablo Canyon Independent Spent Fuel Storage Installation to illustrate the distinction between adequate support for admissibility and proof on the merits. See Petition for Review of LBP-25-4 at 10 (citing *Pacific Gas and Electric Co. (Diablo Canyon Independent Spent Fuel Storage Installation)*, LBP-23-7, 98 NRC 1 (2023)). We reject this general argument; as discussed with each claimed point of error the Petitioning Organizations raised, the Board examined and gave its reasons for rejecting each claim. We see no reason to depart from our usual deferential standard of review with respect to contention admissibility.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
HOLTEC DECOMMISSIONING ) Docket No. 50-255-LA-3  
INTERNATIONAL, LLC, AND HOLTEC )  
PALISADES, LLC )  
)  
(Palisades Nuclear Plant) )  
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-26-7)** have been served upon the following persons by Electronic Information Exchange.

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Palisades Nuclear Plant, Docket No. 50-255-LA-3  
**COMMISSION MEMORANDUM AND ORDER (CLI-26-7)**

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 15<sup>th</sup> day of June 2026.