UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Commission

In the Matter of	)	Docket No. 50-255-LA-3
	)	
HOLTEC DECOMMISSIONING INTERNATIONAL, LLC, AND HOLTEC PALISADES, LLC	)	April 25, 2025
	)	
(Palisades Nuclear Plant - Request for Exemption and License Amendments)	)	

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

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NOTICE OF APPEAL

Beyond Nuclear, Don't Waste Michigan Clean Energy Future, Three Mile Island Alert and Nuclear Energy Information Service, by and through counsel, pursuant to 10 C.F.R. § 2.311(c), hereby give notice of their appeal to the U.S. Nuclear Regulatory Commission ("Commission") from the Atomic Safety and Licensing Board's ("ASLB") ruling, LBP-25-04, "Memorandum and Order (Ruling on Intervention Petitions)" (March 31, 2025) ("ASLB Decision") in this proceeding.

Petitioners appeal and seek reversal of the Atomic Safety and Licensing Board's (ASLB's) underlying determinations and the Board's overall decision which individually and collectively denied admission of Petitioners' proffered contentions for adjudication.

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BRIEF IN SUPPORT OF APPEAL

INTRODUCTION

Holtec Decommissioning and Holtec Palisades (Holtec) have filed with the NRC a request for exemption pursuant to 10 C.F.R. § 50.12 and license amendment requests (LARs) in support of Holtec's plan to return the permanently shutdown Palisades Nuclear Plant (Palisades) to power operations. As a shut down plant, Palisades is in decommissioning status.

Both Holtec and NRC staff have admitted that "NRC regulations do not prescribe a specific regulatory path for reinstating operational authority."[1] Holtec, with the complicity of the NRC,[2] has cobbled together a scheme to attempt to use existing regulations to restore Palisades' operating license. The linchpin of this plan is a proposed exemption from the certifications provided pursuant to 10 C.F.R. § 50.82 for permanent shutdown and removal of fuel from the reactor. There is no basis in fact or law supporting this exemption, nor is there any legal or factual basis for the LAR to revise the license and technical specifications to support resumption of power operations at Palisades. There are both safety issues and National Environmental Policy Act (NEPA) compliance aspects to the LARs.

The Petitioning Organizations, Beyond Nuclear, Michigan Safe Energy Future, Don't Waste Michigan, Three Mile Island Alert and Nuclear Energy Information Service timely filed a Petition for Leave to Intervene on October 7, 2024 pursuant to a notice in the Federal Register. These Petitioners included seven proposed contentions of law and fact in their Petition. Holtec and the NRC Staff timely answered the Petition, and these Petitioners replied in support of their petition. Oral argument directed at contention admissibility took place on February 12, 2025.

On March 31, 2025, the assigned ASLB issued a ruling that granted legal standing to the Petitioning Organizations but denied all of their contentions to be inadmissible for hearing. Two members of the Board found that Contention 1, challenging the exemption request, was within the scope of the proceeding and that all of Petitioners' claims were conclusory or speculative. In a concurring opinion, however, Judge Arnold agreed with Petitioners and Holtec that Contention

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[1] Holtec letter to NRC, Regulatory Path to Reauthorize Power Operations at the Palisades Nuclear Plant, March 13, 2023 (ML23072A404.

[2] NRC Chair Christopher Hanson testimony to U.S. House Subcommittee of Energy and Commerce Committee on July 23, 2024 ("This is something we have never done before and requires some creativity by the staff as well as Holtec's part."), video at https://www.youtube.com/watch?v=TjVfV2tDomQ, starting at 1:41:00.

1 was not within the scope of this proceeding because it is not a licensing action and is not inextricably intertwined with the LAR. He noted that " the Staff has the authority to decouple the applications but has chosen a review/approval methodology that keeps them linked." Concurring Opinion p. 5. "Where such separation is possible, but the Staff 'chooses' not to separate them," Judge Arnold concluded, "in my view the term 'inextricably intertwined' just does not apply." *Id.*

Contentions 2 and 3 asserted that because Holtec's restart plan presents significant environmental issues in order to restart Palisades, a new operating license is required, and that an Environmental Impact Statement (EIS) is required instead of the Environmental Assessment (EA) that the NRC has prepared. Without actually analyzing the regulatory framing, the ASLB concluded that these contentions were beyond the scope of this proceeding because Petitioners were ostensibly challenging NRC regulations. Furthermore, the ASLB claimed that the Petitioners did not show that there were significant environmental impacts requiring an EIS.

Contention 4 asserted that there was no regulatory pathway to restarting Palisades and that the exemption request and LARs submitted by Holtec were not a valid application of the existing regulations. The ASLB claimed that Petitioners were attacking the regulations, even though Petitioners were alleging that the NRC was misapplying and misinterpreting the regulations. The regulations themselves were not being attacked.

Finally, Contentions 5, 6, and 7 alleged that the environmental document Holtec submitted did not contain a purpose and need statement, an analysis of alternatives, or a discussion of the impacts of climate change. After the contentions were filed, the NRC produced an EA that did contain those missing elements, in response to which Petitioners have since asserted that the EA presentation of those subjects is deficient. Because the EA allegedly cured the contentions of omission, the ASLB dismissed the contentions as moot.

STANDARDS FOR ADMISSIBILITY OF CONTENTIONS

The ASLB purported to set forth the standards for admissibility of contentions, but simply recited the 6 criteria for contentions in 10 C.F.R. § 2.309(f).[3] The Board then determined that, based on those criteria, the Petitioners' contentions did not satisfy the "strict admissibility standards."[4] But the § 2.309(f) criteria are not as strict as the ASLB claimed nor are they as strict as applied by the Board to the facts and issues in this case.

The pleading requirements of 10 C.F.R. § 2.309(f)(1) do not encompass the overly burdensome standards asserted by the ASLB. The standards are not meant to be insurmountable. *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 335 (1999) (explaining that the rule should not be used as a "fortress to deny intervention") (internal quotation marks and citation omitted); see *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), 96 NRC 1, 104-05 (2022) (admitting for hearing portions of a contention that raised a genuine material dispute with the application). The rule serves to assess the scope, materiality, and support provided for a proposed contention, to ensure that the hearing process is "properly reserve[d] . . . for genuine, material controversies between knowledgeable litigants." *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), 75 NRC 393, 396 (2012) (internal quotation marks omitted).Contentions need only have "some reasonably specific factual or legal basis." *Entergy NuclearVermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear PowerStation), 82 NRC 211, 221 (2015) (internal quotation marks omitted); see also *Entergy Nuclear Operations* (Palisades Nuclear Plant and Big Rock Point Site), 96 NRC 1 at 45 (rejecting argument that did not "establish a supported genuine dispute with the application"). Specificity is key: mere

[3] ASLB Decision, pp. 23-24.
[4] *Id.* at p. 24.

speculation is insufficient, see, *e.g., Dominion Nuclear Connecticut, Inc*. (Millstone Nuclear Power Station, Unit 2), 58 NRC 207, 216 (2003) (rejecting an argument that, at best, was based on speculation); *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), 51 NRC 193, 208 (2000) (finding "bare assertions and speculation" insufficient to trigger a contested hearing), and a petitioner may not simply reference documents without clearly identifying or summarizing the portions of the documents on which it relies. See *Fansteel, Inc.* (Muskogee, Oklahoma Site), 58 NRC 195, 204 (2003); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), 29 NRC 234, 240-41 (1989)). While petitioners need not prove their contentions at the admissibility stage, the contention admissibility standards do require petitioners to "proffer at least some minimal factual and legal foundation in support of their contentions." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 334 (1999).

Based on the foregoing, the ASLB erred in requiring Petitioners to present enough evidence to prove the merits of the contentions at the admissibility stage.

The decision in *Pacific Gas and Electric Co.* (Diablo Canyon Independent Spent Fuel Storage Installation), 98 NRC 1 (2023) demonstrates this misuse of admissibility criteria. That proceeding concerned a hearing request from San Luis Obispo Mothers for Peace (SLOMFP) challenging an application from Pacific Gas and Electric Company (PG&E) to renew its license to store spent nuclear fuel in the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) for an additional 40 years beyond the current license expiration date. The petitioner's contention alleged that PG&E's analysis of its financial qualifications to operate the ISFSI failed to satisfy 10 C.F.R. § 72.22(e) because the analysis was based on the invalid assumption that PG&E would not seek renewal of the operating licenses for the Diablo Canyon reactors. PG&E countered that the contention was inadmissible for failing to satisfy the materiality requirement

in § 2.309(f)(1)(iv) because "PG&E is financially qualified to continue operating the ISFSI regardless of whether the reactor licenses are renewed." However, the ASLB determined that that argument went to the merits, and that the issue at that point was only whether the petitioner had satisfied the contention admissibility requirements.

Another way to contextualize this point is to compare contention admissibility to the motion to dismiss procedure in federal court. Pursuant to Federal Rule of Civil Procedure (FRCP) 12(b), a motion to dismiss is evaluated by accepting all factual allegations in the complaint as true and drawing all reasonable inferences in favor of the plaintiff. *Ashcroft v. Iqbal,* 556 U.S. 662 (2009). If, by doing so, the complaint fails to plausibly state a claim, then dismissal is warranted. Beyond the motion to dismiss, if facts are developed, a party can file with the court a motion for summary judgment, where the judge reviews substantive facts to determine if there is a genuine factual dispute. That procedure is analogous to the motion for summary disposition provided in 10 C.F.R. § 2.710, which becomes available only after a contention is admitted for hearing.

The current contention admissibility standards were adopted in 1989 out of concern that the previously existing standards allowed intervention for petitioners who had no real basis for their contentions. 54 Fed. Reg. 33,168 (1989). The Federal Register discussion states that the rule, now 10 C.F.R. § 2.309(f)(1), does not require the petitioner to make its case at the contention admissibility stage, but merely to indicate what facts or expert opinions provide the basis for the contention. The Federal Register discussion goes on to say that a petitioner need only include some alleged facts in support of its position sufficient to indicate that a genuine issue of material fact or law exists. This prevents admission of a contention where the petitioner has no facts to support its position and where the intervenor wants to use discovery or

cross-examination as a fishing expedition. Most importantly, the Federal Register discussion contains the following statement:

> [The rule] was intended to parallel the standard for dismissing a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The intent of Rule 12(b)(6) is to permit dismissal of a claim where the plaintiff would be entitled to no relief under any set of facts which could be proved in support of his claim.

Shortly after the 1989 amendment to the admissibility criteria, the Commission had occasion to address the intent and purpose of the rule, in *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 335 (1999):

> The 1989 revisions to the contention rule thus insist upon ''some factual basis'' for an admitted contention. 54 Fed. Reg. at 33,171. The intervenor must ''be able to identify some facts at the time it proposes a contention to indicate that a dispute exists between it and the applicant on a material issue.'' Id. These requirements are intended to ''preclude a contention from being admitted where an intervenor has no facts to support its position and [instead] contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts.'' Id. Although in quasi-formal adjudications like license renewal an intervenor may still use the discovery process to develop his case and help prove an admitted contention, contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by ''some alleged fact or facts'' demonstrating a genuine material dispute. *Id.* at 33,170.

What has happened since the 1989 rule amendment, however, is that the NRC Staff and permit applicants have created axioms that misconstrue the intent of the rule and have nudged licensing boards, and sometimes the Commission, to accept and normalize overly strict contention admissibility interpretations. Petitioners respectfully request the Commission in this case to take this opportunity to clarify the contention admissibility standards.

Despite clear precedent that the standards for admissibility of contentions are not heavy and must not be used as a "fortress to deny intervention," the ASLB, as more specifically enumerated in the discussion below regarding the decision on Petitioners' contentions, contravened precedent and held Petitioners to an unreasonable standard for admissibility.

THE ASLB ERRED IN REJECTING PETITIONERS' CONTENTIONS

Contention 1

In Contention 1, the Petitioners asserted that the exemption requested by Holtec, pursuant to 10 C.F.R. § 50.12, to reverse the effects of the certifications for decommissioning filed by Palisades' prior owner, Entergy, does not satisfy the exemption requirements of 10 C.F.R. § 50.12. Petitioners argued that the exemption request was not within the scope of this licensing proceeding, but that even if it was, the contention should be admitted for hearing. Two of the ASLB members held that the exemption request is within the scope of this proceeding, but that it was inadmissible. Judge Arnold, in a concurring opinion, agreed with the Petitioners that the exemption request is not a licensing action and was not admissible in this proceeding.

1. The Exemption Request Is Not A Licensing Action And Should Not Be Considered In This Proceeding.

As stated in Petitioners' Petition, Holtec's exemption request is the linchpin upon which the subsequent elements of Holtec's plan to restart Palisades rests.[5] But it is not a licensing action. Even if the exemption were granted, the subsequent license amendments could still be denied. Moreover, the granting of the requested exemption would not change the status or any aspects of the license. It would simply allow Palisades to be removed from decommissioning status. So Holtec correctly argues that Contention 1 is outside the scope of this proceeding. The Commission's decision in *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), 93 NRC 1 (2021) is instructive. In that case, as in this case, Holtec had obtained ownership of the nuclear plant for the alleged purpose of decommissioning. Holtec requested an exemption to use the decommissioning trust fund for non-decommissioning activities. The Commission held that the exemption request was properly

[5] Petition to Intervene, p. 30.

addressed in the licensing proceeding because the exemption requests "were 'completely dependent on the [license-amendment request]' and 'cannot take effect unless and until the [license-amendment request] is approved.'" *Id*. at 16, citing *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), 82 NRC 68, 78 (2015). See *id.* at 16, n. 78 ("Where a requested exemption raises questions that are material to a proposed licensing action and bear directly on whether the proposed action should be taken, however, a petitioner may propose exemption-related arguments in the licensing proceeding."). The requested exemption in this case does not depend on granting the LARs nor does it bear directly on whether the LARs should be granted.

Petitioners presented Contention 1 only because the NRC inferred that the exemption request was so closely intertwined with the license amendment requests that it must be included as a contention in this proceeding.[6] Out of an abundance of caution, Petitioners have submitted Contention 1, so as not to waive any challenge to the exemption request, if indeed, the challenge to the exemption must be raised in this proceeding.

It is significant that Holtec agreed with the Petitioners that the exemption request is not within the scope of this proceeding. As Holtec pointed out, "Congress intentionally limited the opportunity for a hearing to certain designated agency actions—agency actions that do not include exemptions."[7] Holtec's Answer went on to state:[8]

> NRC has allowed hearings on exemption requests that make up the "required elements" of a parallel licensing action, such that the proposed exemption "directly bears on whether the proposed action should be granted." Put another way, when NRC's review of a licensing action necessarily involves consideration of the same subject matter as its review of an exemption request, Section 189a of the Atomic Energy Act does not remove the exemption request from scope of matters that may be adjudicated on the licensing

[6] Order of the Secretary, September 26, 2024 (ML24270A263).
[7] Holtec Answer, p. 39, citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), 51 N.R.C. 91, 96 (1999).
[8] *Id.* at p. 43.

> action. This situation most often presents itself when an exemption request is bundled with a licensing action, such that the applicant cannot meet the criteria for approval of the licensing action without receiving approval of the related exemption.

Finally, Holtec correctly concluded:[9]

> But the fact that the Exemption Request and the LARs are both aimed at the same ultimate objective - authorizing the restart - does not mean that NRC's approval of the LARs is dependent on its parallel review of the Exemption Request. Put differently, just because both the exemption and the amendments may ultimately be required to resume power operations does not mean that the two are co-dependent in a manner that scopes the Exemption Request into the Section 189a hearing process. They are separate approvals on parallel tracks, just like the license transfer application that is also not within the scope of this proceeding. Whether NRC grants the exemption from 10 CFR 50.82(a)(2) to allow application to rescind the certifications of shutdown and defueling will not affect the criteria against which the LARs are judged.

However, even in the face of this clear precedent, a majority of the ASLB discarded the Petitioners' and Holtec's argument in one short paragraph[10] without referring to any of the authority cited by the Petitioners and Holtec, nor considering the definition of "inextricably intertwined," as Judge Arnold did.[11] The majority simply concluded that because the exemption was necessary to the restart plan, it was therefore inextricably intertwined with the LARs, without considering whether the LARs could be denied even if the exemption were granted.

Judge Arnold, in his concurring opinion, correctly made the distinction between the concepts of intertwined and linked, relying on the statements of NRC counsel that the exemption and LARs could be separated.[12] The Board majority should have made a similar analysis, but did not.

Consequently, the majority erred in finding that the exemption request is within the scope of this licensing proceeding.

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[9] *Id.* at p. 44-45.
[10] ASLB Decision, p. 43.
[11] *Id.*, concurring opinion, p. 2.
[12] *Id.*, concurring opinion, p. 5.

2. Even If The Exemption Is Within Scope, Contention 1 Should Have Been Admitted

On May 20, 2022, Entergy, the previous owner of Palisades, closed Palisades and placed the plant into decommissioning status. As a part of the decommissioning process, Entergy certified, pursuant to 10 C.F.R. § 50.82(a)(1)(i), that power operations permanently ceased at Palisades on May 20, 2022, and that pursuant to 10 C.F.R. § 50.82 (1)(a)(ii), the fuel was permanently removed from the Palisades reactor vessel and placed in the spent fuel pool on June 10, 2022.[13] Holtec, the current owner of Palisades, now requests an exemption pursuant to 10 C.F.R. § 50.12 from the impact of the 50.82 certifications. But an exemption is not so easily obtained. The District of Columbia Circuit has limited the granting of exemptions to "exigent circumstances":

> Section 50.12 provides a mechanism for obtaining an exemption from the procedures incorporated in section 50.10, but one that may be invoked only in extraordinary circumstances. The Commission has made clear that section 50.12 is available "only in the presence of exigent circumstances, such as emergency situations in which time is of the essence and relief from the Licensing Board is impossible or highly unlikely." [citing *Washington Public Power Supply System*, 5 NRC 719, 723 (1977)].

NRDC v. NRC, 695 F.2d 623 (D.C. Cir. 1982). The Commission has similarly emphasized that § 50.12 exemptions are to be granted sparingly and only in cases of undue hardship. 39 Fed. Reg. 14,506, 14,507 (1974). So Holtec bears an extremely heavy burden to justify its request for an exemption.

It is clear that exemptions are meant to apply, *ad hoc*, to specific situations in specific cases, much like a variance in zoning cases. The abuse of the exemption procedure, as demonstrated here by Holtec and the NRC Staff, is not being narrowly invoked just for Palisades, but is being directly replicated in efforts to restart the reactors at Three Mile Island and

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

Duane Arnold.[14] This "exemption" is actually a new policy, not an exemption. Indeed, the exemption provision is an unofficial rulemaking procedure, albeit one that bypasses the formal rulemaking requirements of 10 C.F.R. §§ 2.800 *et seq.* That is clearly not the purpose of an exemption.

Exemptions under § 50.12 must first be authorized by law.[15] The ASLB majority opinion claimed that the Petitioners cited no legal authority for the proposition that § 50.12 requires affirmative legal authorization.[16] But the majority did not cite any legal authority for its claim that silence is authorization. Taken to its logical conclusion, the majority's position means that anything is authorized unless it is specifically prohibited. That would essentially make the regulatory regime a nullity.

The majority next criticizes the Petitioners' argument that the exemption doesn't serve the purpose of § 50.82, as required by § 50.12(2)(ii).[17] The purpose of § 50.82 is to provide a process for decommissioning and operating license termination. The majority apparently claims that somehow the restart of Palisades is a circumstance that would achieve the underlying purpose of the rule.[18] In fact, restarting Palisades would contradict the purpose of a rule focused on decommissioning and license termination. There is absolutely nothing in § 50.82 that even infers a purpose to restart a decommissioning reactor, and the ASLB majority did not identify one.

Beyond those misguided attacks on Petitioners' Contention, the ASLB majority simply attacks the Petitioners' claims and evidence as generalized, conclusory and speculative.[19] In doing so, the majority is misapplying the standards for admissibility as discussed in the first

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[14] Three Mile Island application (ML24324A048); Duane Arnold application (ML25023A270).
[15] 10 C.F.R. § 50.12(a)(1).
[16] ASLB Decision, p. 50.
[17] *Id.*
[18] *Id.*
[19] *Id.* at p. 49-51

section of this Brief.

Even though the ASLB majority did not really discuss or address the Petitioners' arguments as to why Holtec's exemption request does not satisfy the requirements of § 50.12, Petitioners believe the Commission would benefit from such a discussion.

A request for a § 50.12 exemption must show that the exemption will not present an undue risk to the public health and safety and common defense and security. In an attempt to satisfy this requirement, Holtec simply states that Palisades will be returned to the condition it was in prior to decommissioning. The problem with that assertion, however, is that there were significant safety problems with the plant that militated against such a conclusion. In fact, risks to the public health and safety prompted Palisades to be shut down earlier than anticipated. The attached declaration of Arnold Gundersen[20] establishes the undue risks to public health and safety and common defense and security if Palisades is reopened. Pointing out that "[t]he overall design of the Palisades reactor is not licensable to the 21st century standards,"[21] Mr. Gundersen asserts that "the Palisades atomic facility is one of the world's most decrepit and flawed nuclear reactors. When Entergy sold it to Holtec two years ago, the reactor was operating with poorly maintained parts, woefully inadequate safety equipment, and outdated and outmoded components."[22] In discussing Holtec's void of corporate nuclear power plant construction and operating experience, he observes that "Relicensing and resuscitating a shuttered, aged and defunct atomic reactor by a corporation with no nuclear operations or engineering experience, while relying on a workforce of mercenaries without corporate nuclear operations and management knowledge, is a recipe for an atomic disaster."[23] He sees several reasons prompting "genuine danger and risk from Holtec

[20] Declaration and CV of Arnold Gundersen, Exhibit A to Petitioning Organizations' October 10, 2024 Petition to Intervene filing ("Gundersen Declaration").
[21] Gundersen Declaration, p. 22.
[22] Gundersen Declaration, p. 8.
[23] Gundersen Declaration, p. 11.

attempting to bring Palisades back to life." These include that "[t]he long-standing equipment problems at Holtec Palisades are substantial and extensive. Additionally, Holtec's entire proposal completely underestimates the extreme costs of these repairs and equipment fabrication in its whole proposal. Furthermore, the duration for making said repairs is grotesquely underestimated and minimized by years."[24] Besides the requirements for an exemption in 10 C.F.R § 50.12(a)(1), § 50.12(a)(2) lists several special circumstances, at least one of which must be present. Holtec relied on circumstances ii, iii, and vi, discussed as follows:

(ii) Application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

This requirement means that applying § 50.82 to this case would not serve the purpose of § 50.82. The purpose of § 50.82 is to ensure that the reactor is certified to be in decommissioning status in order to facilitate decommissioning. Palisades has been in the process of decommissioning since June 2022. It is absurd to think that § 50.82 is not serving its purpose in this case.

Holtec's attempted justification for reliance on this factor is twofold. First, Holtec claims that application of § 50.82 in this case would not serve its purpose because that would prevent Holtec from reopening Palisades. The fallacy of that argument is self-evident. It is not the purpose of § 50.82 to allow a reactor in decommissioning status to restart. On the contrary, as explained above, the purpose of the rule is to facilitate decommissioning.

Second, Holtec claims that the purpose of § 50.82 is simply to notify the NRC of Entergy's intent to place Palisades into decommissioning status. If that is so, why does Holtec need an exemption? It could just rescind the certification. Furthermore, Holtec has not shown that application of § 50.82 in this case would not serve that rule's purpose. If the rule's purpose, as

[24] Gundersen Declaration, p. 21.

Holtec alleges, is just to notify the NRC of the intent to decommission, that purpose is accomplished without an exemption.

What Holtec tacitly admits is that the actual purpose of § 50.82 is to formally undertake the decommissioning process. That application of the rule is clearly served in this case by continuing the decommissioning process, not by attempting to restart Palisades.

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

In its attempt to support this factor, Holtec relies on support it has received from the State of Michigan. It is not at all clear how there will be an undue hardship on Holtec if the requested exemption is not granted. Even if, as Holtec contends, reopening Palisades would benefit the people of Michigan (a concept with which Petitioners vehemently disagree), that does not show an undue hardship on Holtec. Holtec merely finds itself in a difficult situation of its own making. To the contrary, Holtec knew Palisades was going to be in decommissioning status when it bought the plant. This is certainly not an exigent circumstance or undue hardship, except for Holtec's profit motive. See, *NRDC v. NRC, supra*. Holtec's argument brings to mind the quip about the boy who killed his parents and then begged for mercy because he is an orphan.

(vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

The public interest criterion for granting an exemption under 10 C.F.R. § 50.12(b) is a stringent one: exemptions of this sort are to be granted sparingly and only in extraordinary circumstances. *United States Dep't of Energy, et al.* (Clinch River Breeder Reactor Plant), 16 NRC 412, 426 (1982), citing *Washington Public Power Supply System* (WPPSS Nuclear Power Projects Nos. 3 & 5), 5 NRC 719 (1977).

Here, Holtec contends that NRC regulations for decommissioning, including § 50.82, were adopted for reactors intended to be permanently shut down, not reactors that are proposed to be restarted. But that does not mean that NRC did not consider the possibility of restarting a reactor in decommissioning status when it promulgated the decommissioning rules. On the other hand, if the NRC had considered the possibility of restarting a decommissioning reactor, it would have provided for that possibility in the rules. Beyond that, however, Holtec must establish that restarting Palisades is in the public interest.

Holtec insists that its scheme to restart is just a simple matter of getting the requested exemption and then a few license amendments. But in a February 9, 2023, interview with NRC Commissioner Bradley Crowell by the *ExchangeMonitor*,[25] Commissioner Crowell acknowledges that a Palisades restart would be a difficult and complicated process. Crowell said the NRC has no authority to license a restart, and that Holtc would have to apply for a new license. He surmised that Holtec would have to "start from scratch."[26]

Holtec relies on the fact of having monetary support appropriated by the Michigan legislature to support its argument that restarting Palisades is in the public interest. But political support of Holtec does not equate to a scientific or technical basis for the restart scheme. Petitioners attached the declaration of Mark Z. Jacobson, recognized as a premier expert in the country on renewable energy and future energy policy. He makes it clear that nuclear power is not the energy source of the future, and consequently restarting Palisades is not in the public interest:

> Nuclear power contributes to global warming and air pollution in the following ways: (1) emissions of air pollutants and global warming agents from the background grid due to its long planning-to-operation and refurbishment times (Section 3.2.2.1); (2) lifecycle

[25] www.exchangemonitor.com/nuclear-renaissance-now-or-never-30-minutes-with-bradley-crowell-commissioner-nuclear-regulatory-commission/
[26] *Id.*

> emissions of air pollutants and global warming agents during construction, operation, and decommissioning of a nuclear plant; (3) heat and water vapor emissions during the operation of a nuclear plant (Sections 3.2.2.2 and 3.2.2.3); (4) carbon dioxide emissions due to covering soil or clearing vegetation during the construction of a nuclear plant, uranium mine, and waste site (Section 3.2.2.5); and (5) the emissions risk of air pollutants and global warming agents due to nuclear weapons proliferation (Section 3.3.2.1).
>
> **Every one of these categories represents an actual emission or emission risk, yet most of these emissions, except for lifecycle emissions, are incorrectly ignored in virtually all studies of nuclear energy impacts on climate**. Virtually no study considers the impact of nuclear energy on air pollution mortality. By ignoring these factors, studies distort the impacts on climate and air pollution health associated with some technologies over others.[27]

(Emphasis added).

The declaration of Kevin Kamps further demonstrates that public support from the State of Michigan and Federal Government does not automatically allow the conclusion that Holtec's scheme is in the public interest because Holtec is driven by whatever public funding it can garner, not by an established history of starting up and operating nuclear power plants. Besides some $3.12 billion in state and federal largesse, Holtec insists on a locked-in power purchase agreement ("PPA") guaranteeing electrical sales at a fixed price that may be well above comparable market prices. As Kamps notes, "Holtec's scheme would protect it from free market competition at the Palisades zombie reactor via $3.3 billion in government subsidies, and $412.5 million per year in new PPA revenues, yet another form of subsidization."[28]

Petitioners' expert nuclear engineer, Arnold Gundersen, explains what the previous fixed-price PPA meant for Palisades when Entergy was the owner and operator: Entergy's corporate laser-like focus on minimizing costs became apparent as Palisades approached 2022. Because Entergy couldn't make a profit at Palisades without the Michigan ratepayer-funded subsidy created by the Power Purchase Agreement, Entergy stopped investing in essential nuclear

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[27] Declaration of Mark Z. Jacobson accompanying this Petition, Ex. C, p. 9
[28] Declaration of Kevin Kamps accompanying Petition, Ex. B., p. 4.

power plant repairs and upgrades made at other nuclear electrical generators during the years leading up to 2022. Simply put, Entergy risked the safety of the Palisades community and the atomic reactor's capacity to operate again in order to make a profit. By not making essential repairs and upgrades, Entergy drove Palisades into the ground before its 2022 closing.[29]

Of significance here, Vogtle Units 3 and 4 in Georgia were the first nuclear reactors to be licensed in over 30 years. Also, 16 reactors have been permanently shut down since the 1990s. It is clear, therefore, that even the nuclear industry knows enough to quit when faced with reality. In this case, if it were not for the billions of DOE dollars on the table, and hundreds of millions of State of Michigan dollars as well, Holtec would not be proposing to restart Palisades, either. The NRC must not abandon the strictures of Atomic Energy Act requirements. Granting the requested exemption would violate NRC regulations

Contentions 2 and 3

The ASLB in this case considered Contentions 2 and 3 together because they assert from different perspectives that the LARs in this case require an EIS to be prepared, rather than an EA. Contention 2 pointed out that restarting a closed and decommissioning reactor is a major federal action with significant environmental impacts, at least as significant as a license renewal, which requires an EIS.[30] Contention 3 asserted that because § 50.82 does not provide a pathway to restart once decommissioning has begun, a new operating license is required. This would necessitate issuance of a new operating license, which would require an EIS.[31]

Regarding Contention 2, what Holtec proposes to do, and what the NRC proposes to permit, is changing a presently unusable operating license into a fully functional operating license, through an exemption and several LARs. Notably, the NRC Staff itself has referred to the

[29] Gundersen Declaration accompanying this Petition, Ex. A p. 13.
[30] 10 C.F.R. § 51.20(b)(2)
[31] *Id.*

Holtec exemption request as a "major licensing action."[32] The Staff then asserts that "[b[ecause license amendments are typically used to change the authorities and requirements for a reactor in decommissioning, the amendment process may be used to restore those authorities so long as the amendment standards in 10 C.F.R. § 50.92(a) are met."[33] Petitioners agree that the standards of 10 C.F.R. § 50.92(a) must be met. According to § 50.92(a):

> In determining whether an amendment to a license, construction permit, or early site permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued before the issuance of the amendment to the license. . . .

Alterations of the type that require a construction permit are those that involve substantial changes that, in effect, introduce significant new issues relating to the nature and function of the facility. See *Portland General Electric Co.* (Trojan Nuclear Plant), 6 NRC 1179, 1183 (1977). To trigger the need for a construction permit, the change must "essentially [render] major portions of the original safety analysis for the facility inapplicable to the modified facility." See *Id.*; *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), 53 NRC 370, 391-92 (2001).

Petitioners submitted to the ASLB the expert declaration of Arnold Gundersen, detailing the major technical and mechanical flaws in the Palisades systems, structures, and components that must be replaced or significantly repaired before Palisades could reasonably be returned to operational status.[34] In fact, one of the most significant points made by Mr. Gundersen – the significant deterioration of the steam generators -- has now been acknowledged by Holtec and NRC Staff, resulting in the submission of a license amendment request by Holtec.[35]

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[32] NRC Staff Answer p. 78 ("[T]the Staff considers climate change to be within the scope of the NEPA environmental review for 'major licensing actions,' a term that the Staff concludes would apply to the restart and resumption of operations at Palisades.")
[33] NRC Staff Answer p. 23.
[34] Petitioners' Petition to Intervene, p. 60-63, 70-73
[35] Holtec Steam Generator LAR (ML25043A348)

In any event, Contention 2 has now been amended in accordance with the Board's Order approving a schedule for amending contentions.[36]

Regarding Contention 3, because there is no legitimate regulatory pathway to restart a closed decommissioning reactor, a new license must be issued. That clearly requires preparation of an EIS.[37] Rather than applying for a new license, Holtec proposes to accomplish the restart with license amendments, and also changes pursuant to 10 C.F.R. § 50.59, essentially a paper transaction, to return Palisades to operational status.

The ASLB claimed that contentions 2 and 3 are not within the scope of this proceeding because they allegedly challenge NRC regulations and policy.[38] The ASLB relied on language in *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 334 (1999). This was an incorrect reading of *Oconee*. What the Commission said was, "a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies." *Id.* Petitioners are clearly not attacking generic NRC requirements or making generalized grievances about NRC policies.

The Board claimed that Petitioners are challenging regulations and policy since the NRC Staff has determined that the restart of Palisades can be accomplished by using existing regulations.[39] But that is a self-serving argument. Reference was made to a decision by the NRC that denied a request for a rule that would allow retired nuclear reactors to return to operation.[40] The NRC decision simply found that a rule was not justified at that time. The NRC specifically emphasized that no request for restarting a closed reactor had ever been made and that reactor

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[36] ASLB Order on amended contentions (ML25041A133)
[37] 10 C.F.R. § 51.20(b)(2)
[38] ASLB Decision, p. 53
[39] *Id.*
[40] The denial of the petition is found at https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20205L305

operators expressed no interest in adopting the requested rule. The NRC mentioned in passing that existing regulations might be available, through an exemption, to accomplish the purpose, but § 50.12 was not mentioned. The Commission's May 2021 decision in PRM-50-117 was not an adjudication, and was far more equivocal than the ASLB would have it:

> 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. Thus, the NRC may address such requests under the existing regulatory framework.*

The ASLB treats the rejection of a rulemaking as the making of a rule, that Volume 10 of the Code of Federal Regulations is consigned to corporate applicants to restart candidate reactors to pick and choose among existing regulations to divine a "pathway," and that the "pathway" has the force and effect of a new Commission regulation. The ASLB has transformed the rejection of a petition for rulemaking and the fact that the Commission specified no definitive regulatory pathway, into an affirmative and unassailable adjudication of a new procedure having the effect of a new rule. It is a new rule leaving it to the applicants to state which rules they intend to follow, whereby the NRC Staff accepts the applicant's proffer outside of the formal notice, comment and court challenge procedures that are part of an actual APA rulemaking.

The ASLB seems to hail the PRM-50-117 rulemaking rejection as the pronouncement of a new Commission policy, *i.e.,* recognition for the first time that existing NRC regulations support a pathway for a shutdown reactor in decommissioning can reverse course and restart the nuclear power plant. And if indeed the Commission was authoritatively re-interpreting its regulations, that is a statement of policy at odds with prior history. If a policy statement changes the agency's interpretation of a rule, it may constitute an interpretive rule and would therefore require notice and comment. *MetWest Inc. v. Sec'y of Labor*, 560 F.3d 506, 509-12 (D.C. Cir. 2009), citing *Alaska Professional Hunters Assn v. F.A.A.*, 177 F.3d 1030, 1034 (D.C. Cir.1999)

("Once an agency gives its regulation an interpretation, it can only change that interpretation as it would formally modify the regulation itself: through the process of notice and comment rulemaking."). An agency has less leeway in its choice of the method of changing its interpretation of its regulations than in altering its construction of a statute. "Rule making," as defined in the APA, includes not only the agency's process of formulating a rule, but also the agency's process of modifying a rule. 5 U.S.C. § 551(5). *Paralyzed Veterans of America v. D.C. Arena,* 117 F.3d 579, 586 (D.C. Cir. 1997) (When an agency has given its regulation a definitive interpretation, and later significantly revises that interpretation, the agency has in effect amended its rule, something it may not accomplish without notice and comment). *Syncor Int'l Corp. v. Shalala*, 127 F.3d 90, 94-95 (D.C. Cir. 1997) (modification of an interpretive rule construing an agency's substantive regulation will "likely require a notice and comment procedure.").

The ASLB conclusively reinforces its "new interpretation" campaign by pointing to the NRC Staff's issuance of a guidance document allegedly establishing a regulatory pathway to restart[41] in August of 2024, long after Holtec's letter proposed a pathway to restart. The NRC guidance amounts to a mere *post hoc* rationalization for approving Holtec's novel scheme. Although NRC guidances are routine agency policy pronouncements that do not carry the binding effect of regulations. *International Uranium (USA) Corp.*, CLI-00-1, 51 NRC 9, 19 (2000); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 254 (2007), the new guidance evidences the need to clarify the NRC's policy change – and that requires treatment as a rulemaking, which has never occurred in the wake of the PRM-50-117 ruling.

In addition, NRC Staff, during the oral argument before the ASLB, described the guidance document as follows:

[41] Palisades Nuclear Plant Restart Inspection Plan, ML24228A195.

> It's an inspection manual chapter, and it concerns inspection and oversight and states that the licensing is discussed only to the extent necessary to provide that context that's needed for the oversight piece. And so we don't see that inspection manual chapter as having the same significance that Holtec does.[42]

It is problematic for the ASLB majority that the NRC Staff made a valid determination that a decommissioning reactor can be restarted using existing regulations. Absent notice and comment opportunity, the overblown significance ascribed to the PRM-50-117 *dicta* that the regulations may allow a restart cannot suffice as a basis for rejecting the Petitioning Organizations' Contentions 2 and 3.

In sum, the ASLB has transformed a Commission rejection of a rulemaking into a hard-and-fast limitation on the "scope" of this proceeding, But whether there is, in fact, an existing regulatory pathway to restart is exactly the factual and legal question the Petitioning Organizations have presented in their petition. The Petitioning Organizations are not challenging a regulation; rather, they are challenging the NRC Staff's misconstruction (or perhaps, deconstruction) and misapplication of specific regulations.

Of Contentions 2 and 3, the ASLB states that "Petitioning Organizations' claims that Applicants' operating license may not be amended or that Applicants may not seek exemptions from regulations amount to an impermissible challenge to agency policy and regulations." Those are striking mischaracterizations of what these Petitioners have stated. They have not stated that the Palisades operating license may not be amended, but instead, that the regulatory scheme of shutdown and decommissioning goes only in one direction, *viz.*, from shutdown to and through decommissioning to termination of license, and that logically, an operating license conditioned by fuel removal and the onset of decommissioning activities is not amenable to whimsy-based reversal. Nor have these Petitioners stated, as the ASLB claims, that Holtec may not seek

[42] Transcript of February 12, 2025 oral argument, p. 89.

exemptions from regulations; to the contrary, the Petitioning Organizations have in considerable detail laid out precisely why the Holtec exemption request, once made, must fail according to the historically limited range of activities for which exemptions have been granted.

In contentions 2 and 3, the Petitioning Organizations have not attacked "generic NRC requirements or regulations," nor have they expressed "generalized grievances about NRC policies," per *Duke Energy Corporation* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999). Rather, they are challenging the lack of sufficient facts and law which would allow the Commission to countenance a means of authorizing the *ad hoc* restart of Palisades.

The present proceeding is the very first litigation opportunity the public has had to legally question this changed regulatory philosophy of the Nuclear Regulatory Commission. The Petitioning Organizations here timely raised their contentions; fleshed them out with disputed facts about the effects of climate change necessitating new components at Palisades; provided an alternative critique of the usefulness of the steam generator tubes at Palisades; and have questioned the unprecedented restart "pathway" suggested by an applicant and merely vouchsafed by the NRC Staff. None of this has ever before been tested in a legal proceeding, and the ASLB is incorrectly precluding any contentions that challenge key already-made NRC decisions about applicable regulations.

The Petitioning Organizations explained earlier in this brief how overlitigation at the contention stage contravenes the established standards for contention admissibility. That has happened with respect to Contentions 2 and 3, and they should, instead, be assigned for adjudication.

Contention 4

The ASLB decision on this contention principally reiterates its ruling as to Contentions 2 and 3. The Licensing Board maintains that:

> . . . Petitioning Organizations' argument that restart-specific statutory and regulatory provisions are necessary to allow Applicants to restart Palisades is not cognizable in this adjudicatory proceeding. The Commission has determined that the agency's existing regulatory framework applies to restart requests, and a challenge to the use of this framework is a challenge to both the NRC's regulations and Commission policy.

Memorandum and Order p. 58. Using this reasoning, the ASLB avoided having to decide whether restart constitutes a "major question" that requires clear Congressional approval.

The Petitioning Organizations respond with the same points they made in defense of Contentions 2 and 3. The ASLB has distorted the Commission's May 2021 decision to deny the rulemaking requested in PRM-50-117; it was far more equivocal a ruling than the ASLB is willing to admit.

But if, as the ASLB maintains, the rulemaking rejection was a precedential Commission statement of policy, then its use as a barrier to the Petitioning Organizations' contentions should founder on the requirements of NRC rulemaking. As the Organizations pointed out, *supra*, if a policy statement changes the agency's interpretation of a rule, it may constitute an interpretive rule and would therefore require notice and comment. *MetWest Inc. v. Sec'y of Labor*, 560 F.3d 506, 509-12 (D.C. Cir. 2009), citing *Alaska Professional Hunters Assn v. F.A.A.*, 177 F.3d 1030, 1034 (D.C. Cir. 1999); *Paralyzed Veterans of America v. D.C. Arena,* 117 F.3d 579, 586 (D.C. Cir. 1997); *Syncor Int'l Corp. v. Shalala*, 127 F.3d 90, 94-95 (D.C. Cir. 1997). There was no public notice and opportunity to comment provided the public in the wake of the rulemaking rejection.

The NRC Staff and the ASLB position that Holtec is allowed to plot its own pathway

through agency regulations to restart Palisades sharply contradicts the long-understood roles of regulator and regulated. Just as regulations that reference the ASME code were not intended to give over the Commission's full rulemaking authority to a private organization on an ongoing basis, neither may a private organization become the authority concerning the criteria necessary to the issuance of a license. *Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), LBP-83-33, 18 NRC 27, 35 (1983). The ASLB interpretation of the significance of PRM-50-117 works to outsource the substance of regulatory action to the regulated. After Holtec posited its pathway to restart, the NRC Staff bolstered Holtec's choice by publishing a *post hoc* guidance document that coincidentally is 100% congruent with Holtec's pathway proposal. By this *post hoc* guidance, the NRC quietly approved a unique new procedure that has completely bypassed the rigors of an announced, intentional interpretive rulemaking. While the ASLB repeatedly characterized the rulemaking rejection as merely an embrace of the NRC's "existing regulatory framework,"[43] it is anything but that endorsement of the routine. The restart pathway delineated by Holtec states a contrived and completely novel, unprecedented procedure for undoing an operating license downgrade that is an interim step toward license termination.

The ASLB found the NRC Staff's argument against applicability of the "major questions doctrine" to undermine the Petitioning Organizations' doctrinal invocation, but the Staff actually buttressed these Petitioners' argument that a new license must be sought. The Staff contended that "if the challenged restart requests involve an issue of such 'economic and political significance' that the 'major questions' doctrine applies, then the doctrine would appear to apply to all new reactor licensing, a result that would undermine the Court's characterization of the

[43] See Memorandum and Order pp.4, 28, 31, 35, 37, 39, 53, 56, 58.

doctrine as one reserved for 'extraordinary cases.'" [44] These Petitioners had previously pointed out that there are at least two other formally shutdown reactors that are moving toward restart and that there are inherently concerning issues involved in restarting a plant that has been inconsistently mothballed for a period of years while approaching startup. The point of citing *West Virginia v. USEPA* was to argue by allowing a unique bypass of the Atomic Energy Act's purposes and existing regulations, that the NRC is applying the AEA in a way which Congress has not clearly delegated to the agency. Holtec's novel relicensing navigation is aimed at avoidance of having to qualify Palisades for a completely new reactor operating license.

The ASLB engages in another false characterization of Contention 4 by referring to "Petitioning Organizations' claim that 10 C.F.R. § 50.59 may not be used to update the UFSAR." That is not at all the nature of the contention. Far from urging that § 50.59 can't be used, the Petitioning Organizations assert that subjecting major componentry at Palisades to the § 50.59 threshold analysis, given future operations will be influenced by deteriorated equipment and the effects of climate change certainly will militate in favor of a very changed, new SAR. The ASLB again reconstituted these Petitioners' contention into a target that it could streamroll instead of acknowledging the factual and legal merit, finding issues of fact were stated, and setting the matter for hearing. That is what the ASLB should have done instead of misstating the nature and thrust of the actual contentions. The Commission should reverse the ASLB decision based on the Petitioning Organizations' compliance with the standards of contention content and presentation.

Contentions 5, 6 and 7

The ASLB noted that "Petitioning Organizations appear to request that we wait until new and amended contentions are filed before dismissing Contentions 5, 6, and 7."[45] In contrast to the

[44] Staff Answer quoted at Memorandum and Order, pp. 58-59.
[45] Memorandum and Order p. 63.

Board mischaracterizations described hereinabove, *supra,* as to Contentions 5, 6 and 7, the Board seems to have correctly understood Petitioning Organizations' objective. For whatever reasons, the Board forbore from dismissing these Petitioners' Contentions 5, 6, and 7 until proposed amendments and supplements were timely filed by these Petitioners.

CONCLUSION

The pleading requirements of 10 C.F.R. § 2.309(f)(1) do not encompass the overly burdensome standards that were repeatedly applied by the ASLB against the Petitioning Organizations. The standards are not meant to be used as a "fortress to deny intervention," *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 335 (1999), yet here, once again, they were. The Petitioning Organizations repeatedly provided the requisite "reasonably specific factual or legal basis." *Entergy NuclearVermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear PowerStation), 82 NRC 211, 221 (2015) (internal quotation marks omitted). These Petitioners "proffer[ed] at least some minimal factual and legal foundation in support of their contentions." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 334 (1999). But it was unavailing, and consequently, the Petitioning Organizations now look to the Commission to thoroughly review the matters they have raised in this Brief, reverse the Atomic Safety and Licensing Board, and remand Contentions 1, 2, 3 and 4 to the ASLB for adjudication on the merits.

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CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305, I hereby certify that a copy of the foregoing "NOTICE OF APPEAL AND BRIEF IN SUPPORT" was deposited in the Electronic Information Exchange (NRC Filing System) in the captioned proceeding this 25th day of April, 2025, and that according to the protocols of the EIE they were served upon all parties registered with the system.

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