

February 23, 2021

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of )  
 ) Docket No. 50-255  
Entergy Nuclear Operations, Inc., Entergy )  
Nuclear Palisades, LLC, Holtec International, )  
and Holtec Decommissioning International, LLC) )  
 )  
(Palisades Nuclear Plant) )  
 )

**Applicants' Opposition to Don't Waste Michigan, et al.'s  
Motion to Extend Filing Deadline**

**I. Introduction**

Pursuant to 10 C.F.R. § 2.323(c), Entergy Nuclear Operations, Inc., on behalf of itself, Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC (“Applicants”) submits this answer opposing the February 23, 2021 motion of Don't Waste Michigan, Beyond Nuclear, and Michigan Safe Energy Future (collectively, “Petitioners”) to extend the deadline for filing hearing requests in this proceeding.<sup>1</sup> Petitioners claim that the deadline should be extended due to purportedly voluminous historical documents that have been added to NRC’s ADAMS since January 12, 2021. As discussed below, Petitioners have failed to demonstrate good cause to delay the proceeding, as the documents in question largely appear to be documents transmitted from the legacy system, and thus were previously available, and Petitioners have not shown that any bear on its ability to file a hearing

---

<sup>1</sup> Don't Waste Michigan, et. al., *Motion to Extend Deadlines for Filing of Intervention Petitions and Public Comments in Palisades License Transfer Proceeding* (Feb. 23, 2021) (hereinafter, “Motion”).

request. In addition, Petitioners have made no effort to consult as required by the NRC rules or to justify this eleventh-hour request.

## **II. Legal Standard**

The Commission's rules require "good cause" for an extension request.<sup>2</sup> As the Commission has explained, the Commission expects adherence to its hearing procedures and recognizes that applicants are entitled to prompt resolution of disputes concerning their applications.<sup>3</sup> Accordingly, the Commission has stated that extensions should only be granted when warranted by *unavoidable* and *extreme* circumstances.<sup>4</sup> This is especially true when, as in this case, the parties are proceeding under the Commission's Subpart M procedures.<sup>5</sup> Without good cause, failure to comply with the NRC's deadlines is inexcusable.

## **III. Petitioners Fail to Meet the Good Cause Requirement**

Foremost, Petitioners fail to demonstrate unavoidable and extreme circumstances sufficient to justify an extension of the deadline in this case. First, the documents in question are not new. Petitioners claim that the documents have recently "been placed for the first time in the NRC's ADAMS online archive."<sup>6</sup> That is not the case. A brief review demonstrates that these archival documents are repetitive of files already available on request through NRC's Legacy ADAMS system.<sup>7</sup> It appears that many of the documents were placed in Legacy ADAMS

---

<sup>2</sup> 10 C.F.R. § 2.307(a).

<sup>3</sup> *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 N.R.C. 18, 19 (1998).

<sup>4</sup> *Id.* at 21. See also *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 N.R.C. 325, 342 (1998), *petition for review denied sub nom., Nat'l Whistleblower Ctr. v. NRC*, 208 F.3d 256, 264 (D.C. Cir. 2000); *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 & 2), CLI-10-26, 72 N.R.C. 474, 476 (2010).

<sup>5</sup> *Streamlined Hearing Process for NRC Approval of License Transfers, Final Rule*, 63 Fed. Reg. 66,721, 66,722 (Dec. 3, 1998) ("The procedures are designed to provide for public participation . . . while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases").

<sup>6</sup> Motion at 2.

<sup>7</sup> Revealing the "Document/Report" column in ADAMS shows the document's Accession number from Legacy ADAMS.

starting in 2001, thus they have, in fact, been available to the public on request for nearly 20 years. The documents are now being digitized as part of agency efforts “to ingest more than 42 million images of Atomic Energy Commission and NUDOCS microforms and paper” to improve access.<sup>8</sup> This digitization effort is not extreme, unavoidable, or even unique. It is occurring across the agency’s legacy files. If the NRC’s digitization of documents available in the Legacy system were considered grounds for an extension, then there would be grounds for continuous extensions across agency proceedings until the digitization process is complete. This cannot be the case.

Second, Petitioners make no effort to show that these documents are relevant or needed to formulate a hearing request. Petitioners only speculate as to the potential relevance of these documents. Petitioners admit that the “archival material is *potentially* important to the public’s understanding” of matters at Palisades or the documents “*may* have direct relevance to understanding the decommissioning plans” at Palisades.<sup>9</sup> This does not indicate that any of the purportedly new archival documents will impact the hearing requests in this proceeding. Indeed, Petitioners fail to identify a single, “new” archival document with relevance to this matter. Such speculative assertions as to the mere possibility that relevant material may exist cannot be enough to establish an unavoidable or extreme circumstance sufficient to delay the proceeding.

Finally, Petitioners have provided no reason for waiting until the last minute to move for this extension. Petitioner’s affiant Michael Keegan admits that he has been searching ADAMS for “weeks,” and during those “recent weeks” has “encountered literally hundreds of documents

---

<sup>8</sup> USNRC, *Congressional Budget Justification, Fiscal Year 2021*, NUREG-1100, Vol 36 at 87 (ADAMS Accession No. ML20024D764).

<sup>9</sup> Motion at 3.

related to Palisades from the 1980's to the present.”<sup>10</sup> Thus, there is no reason for Petitioners to wait until the day before the deadline to file a request for an extension, when the asserted grounds for that request have been known to them for weeks.

Nor have Petitioners provided any justification for ignoring the consultation requirement set forth in the NRC's rules. The motion rule, at 10 C.F.R. § 2.323(b), requires that the moving party must make a “sincere effort” to “contact other parties in the proceeding” and to “resolve the issue(s) raised in the motion,” before filing a motion. The “motion must be rejected” if it does not include a certification that the moving party met this requirement. Petitioners did not meet this requirement, and Applicants were not consulted prior to the filing of the Motion. That failure, by itself, is sufficient justification for the Motion to be denied.

#### **IV. Conclusion**

For all of the foregoing reasons, Petitioners' Motion to Extend the Filing Deadline should be denied.

Respectfully submitted,

/Signed electronically by Anne R. Leidich/

Anne R. Leidich  
David R. Lewis  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
1200 Seventeenth Street, NW  
Washington, DC 20036  
Telephone: 202-663-8707  
Facsimile: 202-663-8007  
anne.leidich@pillsburylaw.com  
david.lewis@pillsburylaw.com

---

<sup>10</sup> Declaration of Michael Keegan at 1 (Feb. 23, 2021).

Counsel for Entergy Nuclear  
Operations, Inc  
and Entergy Nuclear Palisades, LLC

/Executed in Accord with 10 C.F.R. § 2.304(d)/  
Susan H. Raimo  
ENTERGY SERVICES, LLC  
101 Constitution Avenue, N.W.  
Washington, D.C. 20001  
(202) 530-7330  
sraimo@entergy.com

/Executed in Accord with 10 C.F.R. § 2.304(d)/  
Alan D. Lovett  
BALCH & BINGHAM LLP  
1710 Sixth Avenue North  
Birmingham, AL 35203-2015  
(205) 226-8769  
alovett@balch.com

Counsel for Holtec International  
and Holtec Decommissioning  
International, LLC

/Executed in Accord with 10 C.F.R. § 2.304(d)/  
William F. Gill IV  
HOLTEC INTERNATIONAL  
1 Holtec Boulevard  
Camden, NJ 08104  
(856) 797-0900  
w.gill@holtec.com

February 23, 2021

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of )  
 ) Docket No. 50-255  
Entergy Nuclear Operations, Inc., Entergy )  
Nuclear Palisades, LLC, Holtec International, )  
and Holtec Decommissioning International, LLC) )  
(Palisades Nuclear Plant) )  
 )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Entergy Nuclear Operations, Inc., on behalf of itself, Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC Opposition to Don't Waste Michigan et al.'s Motion to Extend the Filing Deadline has been served through the EFiled system on the participants in the above-captioned proceeding this 23rd day of February 2021.

/signed electronically by Anne R. Leidich/

Anne R. Leidich