

July 19, 2018

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*Via email to Chairman@NRC.gov, CMRBARAN@nrc.gov, CMRBURNS@nrc.gov,
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SUBJECT: Holtec International HI–STORE Consolidated Interim Storage Facility Project
Docket No. 72–1051 (Request for additional 90-day extension of scoping comment
period and delay of Federal Register announcement of intervention window)

Dear Members of the Commission:

Don't Waste Michigan, Sierra Club, Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Nuclear Information and Resource Services, Peace Action Wisconsin, Indigenous Rights Center, Hudson River Sloop Clearwater, Inc., TMI-Alert, Public Citizen, Bruce Peninsula Environmental Group, Portsmouth/Piketon Residents for Environmental Safety and Security, Physicians for Social Responsibility, HEAL Utah, SanOnofreSafety.org, Residents Organized For a Safe Environment, Nuclear Watch South, Uranium Watch, Cape Downwinders, Don't Waste Arizona, Multicultural Alliance for a Safe Environment, New England Coalition on Nuclear Pollution, On Behalf of Planet Earth, Rockland Environmental Group, Vermont Yankee Decommissioning Alliance, Citizens Awareness Network, North American Water Office, Nevada Nuclear Waste Task Force, Citizens' Environmental Coalition, Southern Alliance for Clean Energy, Ecological Options Network, Nuclear Energy Information Service, The Council of Canadians, and Catholic Charities of Gallup Diocese each questions and/or opposes the proposed Holtec International (Holtec) consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) being planned for southeastern New Mexico. Many of these organizations are planning to

intervene in the forthcoming Nuclear Regulatory Commission (NRC) license proceeding for the Holtec CISF.

We hereby request that the Commission extend the scoping comment period for the CISF proposal to October 30, 2018 from the present terminus of July 30, 2018. We further request a suspension of the just-announced 60-day period for submission of petitions for intervention and a hearing.

We make these requests: (1) to afford the public time to comment upon the anticipated disclosures by the NRC in response to a pending Freedom of Information Act (FOIA) request for some 144 pages, more than one-quarter (25%) of the 543-page Holtec Environmental Report (Rev. 1), which NRC Staff have indicated will occur on or before August 8, 2018; and (2) to remedy public frustrations with recurring technical problems with the NRC's systems for submission of public comments and the conduct of research in the ADAMS system. This gamut of difficulty contrives to block the NRC's receipt of public scoping comments and interrupts or slows complicated priority research activity, respectively. Notably, the FOIAonline portal was down for maintenance for more than a week which included July 5, 2018 when the FOIA request discussed in this letter was submitted, and when the requester followed instructions and submitted it directly to the NRC FOIA office, that office did not acknowledge receipt or otherwise act on the request until prompted to do so by the requester's July 11, 2018 followup correspondence.

**1. Redaction of 25% of Holtec CISF Environmental Report
Limits Public Commenting and Ongoing Preparations
To Intervene In Licensing Proceeding**

Holtec applied to the NRC by letter dated March 30, 2017 for license authorization to construct and operate a HI–STORE CISF for spent nuclear fuel storage on a 960-acre site in Lea County, New Mexico. Holtec intends initially to store 500 canisters (8680 metric tons) of SNF, followed by 19 additional phases, all aimed eventually at storing 10,000 canisters and 120,000 or more metric tons. It may be that more than 170,000 metric tons might end up at Holtec's facility. Even at 120,000 MT, the Holtec CISF would easily be the world's largest SNF interim site.

In December 2017, Holtec issued its Holtec Environmental Report on the HI-STORE CIS Facility ("CISF"), Rev. 1 ("ER"). In the 543-page ER, Holtec mentions two historic properties that could be directly affected by this project, but the ER does not explain where they are located, what they are, their significance, how they would be affected by the CISF, nor what measures are being considered to mitigate their destruction or alteration as a consequence of building and operating the CISF. Commencing at p. 321 of the ER, "Appendix C: Cultural Resources Communications and Survey Results," all of Appendix C (pp. 321-464) is redacted, and each page is marked "Security-Related Information Withheld under 10 CFR 2.390." It is probable that Appendix C contains the missing cultural resources information. Without it, the public has, at best, only a partial understanding of the possible environmental damage from CISF construction and operation, and further has no idea of proposed or possible mitigation steps.

The National Environmental Policy Act (NEPA) requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated. *Communities, Inc. v. Busey*, 956 F.2d 619, 625-26 (6th Cir.), *cert. denied*, 113 S.Ct. 408, 121 L.Ed.2d 332 (1992). Council on Environmental Quality regulations at 40 C.F.R. §1502.14(f) require an Environmental Impact Statement to “[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives.”

Don’t Waste Michigan (DWM) filed its FOIA request on July 5, 2018, seeking the cultural resources information as part of its investigation of certain aspects of the Holtec radioactive waste facility application, because DWM intends to comment on the plan and to formally intervene in the forthcoming NRC licensing proceeding. The requested information may possibly directly aid DWM in formulating contentions in support of its intervention petition. By letter dated July 11, 2018, the NRC FOIA officer denied DWM’s request for expedited processing and stated that the request would be answered “on or before August 8, 2018.”

On July 16, 2018, the NRC published a notice in the Federal Register which formally opens the licensing case and simultaneously commences the 60-day clock for filing of intervention petitions. The unavailability of 25% of the Environmental Report at present curtails scrutiny for public comments and investigatory review during the coming three weeks, and possibly beyond (depending on the NRC FOIA office response). It infringes upon the public’s right to know the complete picture and to decide how to best oppose the Holtec license. Potential intervenors and the public are likely to be put at a serious disadvantage in the licensing case, such as being forced to litigate FOIA requests during the same period of time they have to file contentions in the licensing case based upon the missing information.

2. Serial Unavailability of Regulations.gov and ADAMS

The Regulations.gov website, to which the NRC refers the public for online filing of scoping comments, approaches a third month of dysfunctionality and periodic unavailability. Despite formal complaint on June 13, 2018 by Beyond Nuclear of the site’s nonfunctioning circumstances that Regulations.gov had been inaccessible for comment filing for most of the preceding six weeks, the portal is not reliably operating even at present. Since the NRC touts the site as its preferred means of receiving comments, it is possible that members of the public who are blocked by repeated error notices and are either frustrated or unaware of the less-advertised direct email and snail mail submission options, then abandon the attempt to file comments.

Moreover, technical problems also keep cropping up in the NRC’s ADAMS online library. On July 11, 2018, ADAMS was completely and unexpectedly nonfunctioning for several hours. For over a month, ADAMS system ML hotlinks and full URL linkages inconsistently do not copy, which forces mechanical extra formatting in order for researchers to share documents with members of legal teams and interested members of the public. This includes Holtec CISF-related items, which are time-prioritized. Each day the public is hindered from providing electronic comments to NRC through these methods is a period of time that the scoping process, in fairness, must be extended.

3. The NRC Is Legally Obligated to Restore Fairness To the Scoping Stage of This Licensing Proceeding

Scoping is the initial phase of the overall EIS process under NEPA. *Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1022 (10th Cir.2002). Scoping is “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” 40 C.F.R. § 1501.7; *Citizens' Comm. to Save Our Canyons*, 297 F.3d at 1022 (goal of scoping is to “identify [] specific issues to be addressed and studied” during the EIS process (citing 40 C.F.R. § 1501.7)).

The scoping period serves “to notify those who may be affected . . . that the relevant entity is beginning the EIS process; this notice requirement ensures that interested parties are aware of and therefore are able to participate meaningfully in the entire EIS process, from start to finish.” *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1116 (9th Cir. 2002), citing *Northwest Coalition for Alternatives to Pesticides (NCAP) v. Lyng*, 844 F.2d 588, 594-95 (9th Cir. 1988).

Once it has formally initiated the scoping process, the NRC “may . . . [s]et time limits” for the scoping process and “[h]old an early scoping meeting or meetings.” 40 C.F.R. § 1501.7(b)(2), (4) (emphasis added). Those time limits must comply with 40 C.F.R. § 1501.8. *Id.*, § 1501.7(b)(1). Section 1501.8 does not “prescribe [] universal time limits for the entire NEPA process,” but instead authorizes agencies to set time limits, including limits on the scoping process that are “appropriate to individual actions” and “are consistent with the purposes of NEPA and other essential considerations of national policy.” *Id.* § 1501.8.

Council on Environmental Quality (CEQ) regulations do not set minimum time limits for the scoping period and do not require an agency to extend or reopen the scoping period. Congress intended that agency discretion, and not the courts, “be exercised in determining when extra procedural devices should be employed.” *Phillips Petroleum Co. v. U.S. EPA*, 803 F.2d 545, 559 (10th Cir.1986) (emphasis omitted) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 546 (1978) (internal quotation marks omitted). A reviewing court can overturn an agency decision for failure to provide additional procedure when there are “extremely compelling circumstances.” *Vermont Yankee*, 435 U.S. at 543.

The signers of this letter suggest that there are “extremely compelling circumstances” present here that obligate the NRC to extend the scoping comment period until October 30, 2018, and further compel the delay of commencement of the intervention petition filing period until after interested parties have attained relief under FOIA. Fundamental concerns of fairness, coupled with NEPA’s expectation of maximal public participation and the high significance of the Holtec CISF, itself, as a policy determination, all militate in favor of altering the present deadlines.

Accordingly, the public requests the additional time to comment, investigate and prepare for the licensing case. Given the proximity of next steps in this proceeding, we request an

expedited decision from the NRC on these requests. Thank you very much.

Sincerely,

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