

October 9, 2018

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	Docket No. 72-1051
Holtec International)	
)	
HI-STORE Consolidated Interim Storage)	
Facility)	

**Holtec International’s Answer Opposing
NAC International Inc’s Petition to Intervene and Request for Hearing on
Holtec International’s HI-STORE Consolidated Interim Storage Facility Application**

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Holtec International (“Holtec”) hereby answers and opposes the Petition to Intervene and Request for Hearing (“Petition” or “Pet.”) filed by NAC International Inc. (“Petitioner” or “NAC”) on September 14, 2018 in the Consolidated Interim Storage Facility (“CISF”) license proceeding. Petitioner seeks to intervene in this proceeding and requests that the Nuclear Regulatory Commission (“Commission” or “NRC”) conduct a hearing regarding Holtec’s application for a CISF license. NAC is a designer and supplier of canisters for the storage of spent nuclear fuel.¹

The Commission’s regulations and case law clearly set forth the requirements that a petitioner must satisfy in order to obtain standing and to propose an admissible contention. Petitioners bear the burden of establishing standing, and NAC has failed to meet this standard. As this Answer describes more fully below, the Commission’s current pleading standards were designed to raise the threshold for the admission of contentions. The purpose of these intentionally strict admissibility requirements is to ensure that hearings would focus on concrete

¹ Pet. at 2; Affidavit of George C. Carver.

issues that are relevant to the proceeding and that are supported by some factual and legal foundation. Each of Petitioner's Contentions fails to reach the required threshold, falling short of any number of the applicable pleading standards. Section III of this Answer demonstrates that Petitioner does not have standing to participate in the current proceeding. Section IV of this Answer demonstrates that none of Petitioner's proffered contentions meets the standards for admitting contentions and that none is admissible. Therefore, the Petition should be denied.

A. Procedural Background

By letter dated March 30, 2017, pursuant to 10 C.F.R. Part 72, Holtec submitted an Application to the NRC requesting a specific license to construct and operate a Consolidated Interim Storage Facility ("CISF") for Spent Nuclear Fuel on a large parcel of land located in Lea County, New Mexico.² During the course of 2017, Holtec supplemented its Application with additional information on April 13, October 6, December 21, and 22; and then again on February 22, 2018. On March 19, 2018, the NRC published notice of the acceptance and docketing of the Application in the Federal Register at 83 Fed. Reg. 12,034. The Application and this proceeding are governed by 10 C.F.R. Parts 2 and 72. In particular, Subpart C of the Part 72 rules sets out the procedures and requirements applicable to the issuance and conditions of a license for the CISF.

² The Holtec International HI-STORE CISF License Application ("Application") is available at NRC ADAMS Accession No. ML17115A431. Non-proprietary versions of four reports that were submitted with the original application were provided in a Feb. 23, 2018 submittal (ADAMS Accession ML18058A617) identified in the NRC's Notice of Opportunity for Hearing (*see* 83 Fed. Reg. at 32,922). As reflected in the Notice of Opportunity for Hearing (*id.*), Holtec has also submitted supplemental information in response to several NRC Staff requests, which have included updates to the Licensing Report on the HI-STORM CIS Facility (hereinafter referred to as the Safety Analysis Report and cited as the "SAR") and the Environmental Report on the HI-STORM CIS Facility (cited hereinafter as the "ER"). Revision 1 of the ER (Dec. 2017) (ADAMS Accession No. ML18023A904) incorporated the responses to the NRC requests for supplemental information, and Revision 2 of the ER (June 2018) (ADAMS Accession No. ML18255A266) added Appendices F and G. Because ER Revision 2 was only released in ADAMS on September 20, 2018, the citations to the ER in this Answer refer to Revision 1 (though the content and page numbers appear nearly identical). The current version of the SAR is Revision 0C (May 2018) available at ADAMS Accession No. ML18254A413.

On July 16, 2018, the NRC published its Notice of Hearing and Opportunity to Petition for Leave to Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a license to construct and operate the HI-STORE Consolidated Interim Storage (CIS) Facility, in Lea County, New Mexico.³ NAC timely filed its Petition on September 14, 2018.

II. APPLICABLE LEGAL STANDARDS

A. Standing Requirements

Petitioner must have standing to participate in a licensing proceeding under Part 72. The Commission's regulations require that a petitioner state:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.⁴

Commission case law provides that, as an organization, a petitioner may "base its standing on either immediate or threatened injury to its organizational interests, or to the interests of identified members."⁵

The Atomic Energy Act ("AEA," 42 U.S.C. §§ 2011 *et seq.*) allows individuals "whose interest may be affected by the proceeding" to intervene in NRC licensing proceedings. 42 U.S.C. § 2239(a). The Commission has long applied judicial concepts of standing to determine whether a petitioner's interest provides a sufficient basis for intervention. *Private Fuel Storage*,

³ 83 Fed. Reg. 32,919.

⁴ 10 C.F.R. § 2.309(d)(1).

⁵ *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 N.R.C. 111, 115 (1995).

L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 N.R.C. 26, 30 (1998). “Essential to establishing standing are findings of (1) injury, (2) causation, and (3) redressability.” *EnergySolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-11-3, 73 N.R.C. 613, 621 (2011). In other words, a petitioner must establish that (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (*e.g.*, AEA and the National Environmental Policy Act of 1969 (“NEPA,” 42 U.S.C. §§ 4321 *et seq.*)); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *Private Fuel Storage, L.L.C.*, LBP-98-7, 47 N.R.C. 142, 168 (1998) (citing *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 N.R.C. 1, 6 (1996); *see also Northern States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-12-24, 76 N.R.C. 503, 507-508 (2012) (citing *EnergySolutions*, CLI-11-3, 73 N.R.C. at 621). Both the Commission's Hearing Notice for this proceeding and its Rules of Practice require a petitioner to set forth: (1) the nature of its right under the Atomic Energy Act (AEA) to be made a party to the proceeding; (2) the nature and extent of its property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on its interest.⁶

“[T]he petitioner bears the burden to provide facts sufficient to establish standing.” *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 N.R.C. 133, 139 (2010). To demonstrate a distinct and palpable injury-in-fact sufficient to establish standing, the petitioner must demonstrate that the injury-in-fact is both “(a) concrete and particularized and (b) ‘actual or

⁶ License Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene; Order; Holtec International’s HI–STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919, 32,920 (Jul. 16, 2018); 10 C.F.R. § 2.309(d)(1).

imminent,' not 'conjectural' or 'hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 72 (1994). Where there is no current injury and a party relies wholly on the threat of future injury, the fact that one can imagine circumstances where a party could be affected is not enough. The petitioner must demonstrate that "the injury is certainly impending." *Northwest Airlines, Inc. v. Federal Aviation Admin.*, 795 F.2d 195, 201 (D.C. Cir. 1986) (emphasis in original) (citing *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). In the NRC licensing context, "unsupported general references to radiological consequences are insufficient to establish a basis for injury" to establish standing. *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), LBP-92-23, 36 N.R.C. 120, 130 (1992). The alleged injury, which may be either actual or threatened, must be both concrete and particularized, not "conjectural" or "hypothetical," and standing will be denied when the threat or injury is too speculative. *Sequoyah Fuels Corp.*, CLI-94-12, 40 N.R.C. at 72.

Where a petition seeks to base its claim to standing on economic loss, "what is necessary is a showing from the petitioner (or the individual it seeks to represent) that the purported economic loss has some objective fundament, rather than being based solely on the petitioner's (or affiant's) perception of the economic loss in light of the proposed licensing action." *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 N.R.C. 164, 184 (2012), citing *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 N.R.C. 413, 432 (generic, unsubstantiated claims regarding health, safety, and property devaluation impacts are insufficient to establish standing), *aff'd*, CLI-03-1, 57 N.R.C. 1 (2003).

Standing for competitors in NRC proceedings cannot be premised on economic injury. The Commission has held that it “find[s] no indication in the [Atomic Energy Act] of an intent to protect . . . a purely economic interest entirely unrelated to any radiological harm” to the petitioner.⁷ The D.C. Circuit upheld the Commission ruling, holding that “excluding competitors who allege only economic injury from the class of persons entitled to intervene in licensing proceedings is consistent with the Atomic Energy Act.”⁸ Cases that have upheld standing for competitors were based on the fact that the statutes involved in those cases were statutes that, unlike the AEA and the NWSA, were intended to regulate competition.⁹

B. Contention Admissibility Standards

All contentions, including those based on NRC environmental review documents, must meet the admissibility standards that apply to all contentions under 10 C.F.R. § 2.309(f)(1).

Specifically, contentions must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

⁷ *Quivara Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 11 (1998).

⁸ *Envirocare of Utah, Inc. v. NRC*, 194 F. 3d 72, 77 (D.C. Cir. 1999).

⁹ *See, e.g., KERM, Inc. v. FCC*, 353 F.3d 57, 60-61 (D.C. Cir. 2004); *Louisiana Energy and Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998).

- (vi) In a proceeding other than one under 10 C.F.R. § 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner’s belief.¹⁰

These standards are enforced rigorously. “If any one . . . is not met, a contention must be rejected.”¹¹ A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information.¹² Under these standards, a petitioner “is obligated to provide the [technical] analyses and expert opinion showing why its bases support its contention.”¹³ Where a petitioner has failed to do so, “the [Licensing] Board may not make factual inferences on [the] petitioner’s behalf.”¹⁴

Further, admissible contentions “must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].”¹⁵ In particular, this explanation must demonstrate that the contention is “material” to the NRC’s findings and that a genuine dispute on

¹⁰ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

¹¹ *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted); *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) (“These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements.” (footnotes omitted)).

¹² *See, e.g., Palo Verde*, CLI-91-12, 34 N.R.C. at 155; *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 260 (2009) (noting that the contention admissibility rules “require the petitioner (*not the board*) to supply all of the required elements for a valid intervention petition” (emphasis added) (footnote omitted)).

¹³ *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 N.R.C. 1, *aff’d in part*, CLI-95-12, 42 N.R.C. 111 (1995).

¹⁴ *Id.* (citing *Palo Verde*, CLI-91-12, 34 N.R.C. 149). *See also Private Fuel Storage*, LBP-98-7, 47 N.R.C. at 180 (explaining that a “bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;” rather, “a petitioner must provide documents or other factual information or expert opinion” “to show why the proffered bases support [a] contention” (citations omitted)).

¹⁵ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001).

a material issue of law or fact exists.¹⁶ The Commission has defined a “material” issue as meaning one where “resolution of the dispute *would make a difference in the outcome* of the licensing proceeding.”¹⁷

As the Commission has observed, this threshold requirement is consistent with judicial decisions, such as *Connecticut Bankers Ass’n v. Board of Governors*, 627 F.2d 245 (D.C. Cir. 1980), which held that:

[A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that “an ‘inquiry in depth’ is appropriate.”¹⁸

A contention, therefore, is not to be admitted “where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts.”¹⁹ As the Commission has emphasized, the contention rules bar contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation.²⁰ Therefore, under

¹⁶ 10 C.F.R. § 2.309(f)(1)(iv), (vi).

¹⁷ Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (emphasis added).

¹⁸ 627 F.2d at 251 (citation omitted); see also *Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI-98-14, 48 N.R.C. 39, 41, *motion to vacate denied*, CLI-98-15, 48 N.R.C. 45, 56 (1998) (“It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions.”).

¹⁹ 54 Fed. Reg. at 33,171. See also *Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2)*, ALAB-687, 16 N.R.C. 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 N.R.C. 1041 (1983) (“[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a of the [Atomic Energy] Act nor Section 2.714 [now 2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.”).

²⁰ *Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2)*, CLI-03-17, 58 N.R.C. 419, 424 (2003).

the Rules of Practice, a statement “that simply alleges that some matter ought to be considered” does not provide a sufficient basis for a contention.²¹ Similarly, a “mere reference to documents does not provide an adequate basis for a contention.”²²

Rather, NRC’s pleading standards require a petitioner to read the pertinent portions of the license application, including the safety analysis report and the ER, state the applicant’s position and the petitioner’s opposing view, and explain why it has a disagreement with the applicant.²³ If the petitioner does not believe these materials address a relevant issue, the petitioner is “to explain why the application is deficient.”²⁴ A contention that does not directly controvert a position taken by the applicant in the license application is subject to dismissal.²⁵ Furthermore, “an allegation that some aspect of a license application is ‘inadequate’ or ‘unacceptable’ does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect.”²⁶

III. PETITIONER HAS NO STANDING

To demonstrate that petitioner has standing to intervene in the present proceeding, it must demonstrate that it has suffered injury-in-fact and that its interests are within the “zone of interests” protected by either the AEA or NEPA. NAC has failed to do so and therefore the Petition should be rejected.

²¹ *Sacramento Mun. Util. Dist. (Rancho Seco Nuclear Generating Station)*, LBP-93-23, 38 N.R.C. 200, 246 (1993), *review declined*, CLI-94-2, 39 N.R.C. 91 (1994).

²² *Calvert Cliffs*, CLI-98-25, 48 N.R.C. at 348 (citation omitted).

²³ 54 Fed. Reg. at 33,170-71; *Millstone*, CLI-01-24, 54 N.R.C. at 358.

²⁴ 54 Fed. Reg. at 33,170. *See also Palo Verde*, CLI-91-12, 34 N.R.C. at 156.

²⁵ *See Texas Util. Elec. Co. (Comanche Peak Steam Electric Station, Unit 2)*, LBP-92-37, 36 N.R.C. 370, 384 (1992), *vacated as moot and appeal dismissed*, CLI-93-10, 37 N.R.C. 192, *stay denied*, CLI-93-11, 37 N.R.C. 251 (1993).

²⁶ *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, LBP-06-23, 64 N.R.C. 257, 358 (2005) (citing *Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4)*, LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990)).

A. Injury in Fact

The core of Petitioner's concern is that granting Holtec a license in this proceeding would potentially result in four types of damage to its economic interests. Specifically, Petitioner asserts that it would likely:

1. "be urged by Holtec, reactor licensees, or the NRC to provide its proprietary information to Holtec to evaluate and cure such conditions [requiring Holtec Proprietary information] as they arise; and/or
2. suffer harm to its business reputation for safety and reliability; and/or
3. be subject to harm to its proprietary interest in its own NRC CoCs; and/or
4. be subject to potential assertions of financial responsibility by third parties"

Petition at 5.

The common assumption in each of these postulated injuries is that Holtec will store NAC-supplied canisters in the HI-STORM UMAX casks to be used at the HI-STORE CISF. However, the present license application, if approved, would not allow storage of NAC canisters at the CISF. The application for a license includes proposed License Condition 9, which states in pertinent part: "Storage is authorized only in casks designed in accordance with Certificate of Compliance No. 1040, Amendments 0, 1 and 2, for the HI-STORM UMAX Canister Storage System."²⁷ The Certificate of Compliance for the HI-STORM UMAX cask does not permit storage of NAC canisters in the HI-STORM UMAX Vertical Ventilated Models. Appendix B (Approved Contents and Design Features) of the Certificate of Compliance No. 1040 only allows storage of two specific canister types: the Holtec MPC-37 and the Holtec MPC-89.²⁸

Therefore, the CISF license, if granted, would not allow storage of NAC canisters at the CISF, and thus NAC's alleged injuries are not credible, or even within the realm of possibility

²⁷ Proposed License (ML17116A107) page 1.

²⁸ HI-STORM UMAX CoC, Amd 2, Appendix B (ML16341B107).

absent the initiation and successful conclusion of a totally independent NRC licensing proceeding. If at some point in the future, Holtec were to seek authorization to store NAC's (or anyone else's) canisters in HI-STORM UMAX casks at the CISF, then Certificate of Compliance No. 1040 and the CISF license would need to be amended, and Petitioner could seek to participate in the proceedings to grant those amendments. The Petition should therefore be denied because Petitioner has not demonstrated that it has suffered any injury in fact entitling it to standing in the present proceeding.

B. Zone of Interests

NAC states that its interests as described in the Petition above are within the "zone of interests" protected under the Atomic Energy Act and NEPA.²⁹ They are not.

Petitioner asserts that "[t]he integrity and safety of NAC's proprietary information, products, and CoCs, and its financial well-being, are being put at risk by [the] application because the license sought would allow Holtec to store canisters supplied by NAC and other vendors without any involvement from those vendors, including through the consideration of critical design information to ensure the system as a whole can prevent a radiological release."³⁰ As established above, if Holtec is granted a license in the current proceeding, that license would not allow storage of NAC canisters at the CISF, so Petitioner's "zone of interests" analysis is moot on its face. However, even if we were to assume for the purposes of the Answer that Petitioner has asserted a cognizable injury-in-fact, we will nevertheless address the question of whether Petitioner's interests fall within the zone of interest of NEPA or the AEA.

²⁹ Pet. at 6.

³⁰ *Id.*

Petitioner alleges that its “standing arguments are directly related to the threat of radiological or environmental harm to its interests.” They are not. NAC further identifies those interests as being “the integrity and safety of NAC’s proprietary information, products, and CoCs, and its financial well-being.”³¹ Those interests are the ones which NAC would seek to protect. But as discussed, those interests are outside the zone of interests relevant to this proceeding.

In showing that its interests are “directly related to the threat of radiological or environmental harm” (emphasis added), Petitioner imagines the following sequence of events leading to the harm to its interests. First, Holtec is granted a license for the CISF in the present proceeding. Second, Holtec stores nuclear material in one or more of Petitioner’s canisters without adequate safety analysis. Third, sometime during the licensed life of the facility, a major nuclear incident occurs where Petitioner’s canister is damaged and radiation is released, presumably harming the environment, property, and lives. After all of this, the indirect effect of that damage is the injury of which Petitioner complains: damage to “the integrity and safety of NAC’s proprietary information, products, and CoCs, and its financial well-being.”³²

Under the Atomic Energy Act, a claim of injury that is “unlinked to a claim of radiological injury, is not among those interests arguably protected or regulated under the Atomic Energy Act.”³³ The purpose NEPA is to protect the environment, “not the economic interests of those adversely affected by agency decisions.”³⁴ Indeed, “parties whose motivation is solely economic self-interest and welfare are singularly inappropriate parties to be entrusted

³¹ *Id.*

³² *See id.* at 6.

³³ *Quivira Mining Co.*, CLI-98-11, 48 N.R.C. at 10 (1998).

³⁴ *Nevada Land Action Association v. United States Forest Service*, 8 F.3d 713, 716 (9th Cir.1993).

with the responsibility of asserting the public's environmental interest.”³⁵ An interest in “economic well-being vis-à-vis [] competitors is clearly not within the zone of interests” of NEPA, which was “not designed to prevent the loss of profits.”³⁶ Petitioner concedes this point.³⁷ While the fact that economic interest or motivation is involved will not preclude standing, the petitioner must also be threatened by environmental harm to be entitled to standing.³⁸ While it is indisputable that NEPA protects some economic interests, it only protects against those injuries resulting directly from environmental damage.³⁹ For example, if the licensing action in question destroyed a woodland area, those persons who would be deprived of their livelihood in a local timber industry could assert a protected interest under NEPA.⁴⁰

The alleged damage to Petitioner's interests does not fall within the zone of interest of NEPA or the AEA for three reasons. First, the damages alleged are not a result of environmental damage or radiation. Second, the alleged damage is purely damage to Petitioner's economic interests and are therefore outside of the zone of interest of the AEA and of NEPA. Third, the postulated damages are remote and speculative and require a very improbable sequence of events (including non-compliance with the license) to be credible. For all these reasons, the damages of which Petitioner complains are all outside of the zone of interest of the AEA and NEPA and should be rejected due to lack of standing.

³⁵ *Quivira Mining Co.*, CLI-98-11, 48 N.R.C. at 8 (citing *Churchill Truck Lines, Inc. v. United States*, 533 F.2d 411, 416 (8th Cir.1976)) (quotations omitted).

³⁶ *Id.*

³⁷ Petition at 6, n. 6.

³⁸ See *Quivira Mining Co.*, CLI-98-11, 48 N.R.C. at 9.

³⁹ See *Sacramento Mun. Util. District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 N.R.C. 47, 56 (1992).

⁴⁰ *Id.*

C. Real-World Consequences

Petitioner states that Holtec’s incorporation of “NAC-designed technology directly into the CISF” will result in real-world consequences that conceivably could harm Petitioners and those real-world consequences entitle them to a hearing.⁴¹ However, Petitioner has provided nothing to support the assertion that “Holtec intends to incorporate NAC-designed technology” into the CISF for which a license is being sought in this proceeding.⁴² The purpose of this licensing proceeding is to license the CISF to store two specific canister types: the Holtec MPC-37 and the Holtec MPC-89. There is no “NAC-designed technology” that is being licensed for use at the CISF, so the “real-world consequences” postulated in the Petition do not exist and do not provide a basis for standing in the present proceeding.

D. Traceability and Redressability

Petitioner claims that the harms described in its Petition above are “fairly traceable” to the licensing of the CISF, “because Holtec requires this license in order to handle NAC-designed canisters within its own storage system at the CISF, and it is through this license proceeding that the NRC and the public will have an opportunity to fully evaluate the radiological and environmental implications of its ‘universal’ cask approach.”⁴³ This statement is demonstrably incorrect.

As discussed above, the license sought in this proceeding would not authorize Holtec to use any canisters except the Holtec MPC-37 and the Holtec MPC-89. While the Environmental Report does state that “the storage cavity of HI-STORM UMAX is sufficiently large to accommodate every canister type in use in the United States at this time, utilizing the Holtec HI-

⁴¹ See Pet. at 7.

⁴² *Id.*

⁴³ Pet. at 7.

STORM UMAX Storage System would allow removal of any SNF from existing reactor sites as well as the decommissioned shutdown sites . . . ”⁴⁴, additional license proceedings to allow such use in the future would still be required. The “Universal Cask” approach is not being licensed in the present proceeding as Petitioner asserts. This proceeding is limited to licensing the CISF to store nuclear material contained in Holtec MPC-37 and Holtec MPC-89 canisters. Therefore, the harms described in the Petition, which are all related to use of NAC canisters at the CISF, are not “fairly traceable” to the licensing of the CISF because the license, if granted, would not authorize the storage of NAC canisters. Authorization to store NAC canisters at the CISF would in fact require the amendment of the UMAX Certificate of Compliance as well as the HI-STORE CISF license to include the amended UMAX Certificate of Compliance. Should Holtec seek to add that capability to the CISF, NAC would have the ability to participate before the NRC and raise the types of issues that it prematurely seeks to raise in the current proceeding.

Likewise, because there is no harm that will come to Petitioner if the license is granted in this proceeding, there is no harm that could be redressed by the NRC in this proceeding.

Based on the forgoing, Petitioner has not demonstrated that it will suffer any redressable harm if the license is granted in the present proceeding, and therefore NAC has presented no basis for standing in the present proceeding.

E. Discretionary Intervention

Petitioner argues that it qualifies for “discretionary intervention” under 10 C.F.R. § 2.309(e).⁴⁵ It does not. As discussed both above and below, NAC’s primary argument is that this proceeding involves the storage of spent fuel in NAC canisters in Holtec’s

⁴⁴ See Holtec CISF Environmental Report (“ER”) (Rev. 1) at pp. 2-5, 2-6 (ADAMS Accession No. ML18023A904) (Dec. 2017).

⁴⁵ Pet. at 8-10.

HI-STORM UMAX casks. As discussed both above and below, this argument is unsupported and incorrect. Because NAC's underlying assumption is wrong, none of the factors that Petitioner asserts support its participation in this proceeding. Since NAC's canisters are not at issue, NAC's claimed "direct, substantive insight on the application as it relates to NAC's proprietary systems and potential safety concerns"⁴⁶ is not relevant to any of the issues in this proceeding. Similarly, with NAC canisters not being relevant to the CISF proceeding, NAC has no "substantial business interest" in the proceeding. And, finally, where the NAC canister issues have no role or relevance in the CISF proceeding, NAC can have no "interests fundamentally tied to Holtec CISF licensing."⁴⁷

IV. NONE OF THE SUBMITTED CONTENTIONS IS ADMISSIBLE

- A. Both Contentions 1 and 2 are inadmissible because (i) Petitioner has not demonstrated that the issues raised in the contentions are within the scope of the proceeding and (ii) Petitioner has failed to show that a genuine dispute exists on a material issue of law or fact.**

The Petitioner's Contentions 1 and 2 are based on the assumed storage of NAC canisters in Holtec UMAX casks. Contention 1 states:

The Holtec CISF license application inadequately substantiates its design basis analyses concerning normal, off-normal, and accident events, which are required to demonstrate compliance with 10 C.F.R. Part 72, including Subparts E, F and G (and related acceptance criteria in NUREG 1567), as it lacks required design and safety information on the NAC canisters to be housed in the CISF UMAX casks.⁴⁸

Contention 2 states:

The Holtec CISF license application omits technical information required under NRC regulations, including but not limited to 10 C.F.R. § 72.24, about the design and safety performance of NAC canisters within its UMAX casks.⁴⁹

⁴⁶ Pet. at 8.

⁴⁷ Pet. at 8-9.

⁴⁸ Pet. at 10.

⁴⁹ *Id.*

However, as explained in our discussion regarding standing in section III of this Answer, if the NRC issues a license in this proceeding, it would not authorize storage of NAC canisters in the HI-STORM UMAX casks because Holtec has not requested approval to use NAC canisters at the CISF. To the contrary, Holtec’s application specifically only seeks authority to store the Holtec MPC-37 and MPC-89 canisters. Specifically, the CISF application includes proposed License Condition 9, which states in pertinent part:

Storage is authorized only in casks designed in accordance with Certificate of Compliance No. 1040, Amendments 0, 1 and 2, for the HI-STORM UMAX Canister Storage System.

This license condition is relevant to the admissibility of Contentions 1 and 2 because, as Petitioner concedes on page 14 of its Petition, “Holtec’s UMAX cask [Certificate of Compliance] currently only permits it to store two types of canisters in the cask—MPC-37 and MPC-89—both of which are Holtec’s pressurized water reactor and boiling water reactor fuel canisters, respectively.” The UMAX cask system is not approved to store the NAC canisters, and the current license proceeding is not seeking such approval. Nothing in the Petition challenges these facts. While the Environmental Report does state that “the storage cavity of HI-STORM UMAX is sufficiently large to accommodate every canister type in use in the United States at this time, utilizing the Holtec HI-STORM UMAX Storage System would allow removal of any SNF from existing reactor sites as well as the decommissioned shutdown sites . . . ”⁵⁰, this statement does not preclude the need to seek additional license amendments to allow such use in the future. The ER statement does not commit Holtec to seek these license amendments for NAC canisters, or any other canisters. Indeed, if at some point in the future, Holtec were to seek authorization to store NAC’s canisters (or anyone else’s canisters) at the CISF, then Certificate

⁵⁰ ER at 2-6; *see also* Pet. at 1-2, quoting CISF Safety Analysis Report.

of Compliance No. 1040 and the HI-STORE license would both need to be amended, and Petitioner could seek participation before the NRC to raise the issues that it now seeks to raise. Licensing the CISF to store NAC canisters is simply not part of the present proceeding.

Additionally, Holtec agrees with Petitioner that if, in the future, Holtec were to seek authority to use the HI-STORM UMAX system to store NAC canisters, then Holtec would need to perform the analyses required to demonstrate the safety of such use of the UMAX system. The fact that the CISF application does not include information on canisters that are outside the scope of this proceeding is irrelevant to any issue within the scope of this proceeding. Therefore, there is no genuine dispute of fact or law here to be adjudicated.

For all these reasons, Contentions 1 and 2 should be rejected because (1) Petitioner has not demonstrated that the issue raised in the contention is within the scope of the proceeding as required by 10 C.F.R. § 2.309(f)(1)(iii); and, (2) Petitioner has failed to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi).

B. Contention 3 is inadmissible because Petitioner has not demonstrated that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.

Here, Petitioner has put forward Contention 3 challenging the adequacy of the ER:

The Holtec CISF license application incorrectly omits a design alternatives analysis on the speculative grounds that the UMAX cask system is the only such system that is capable of including as contents all non-Holtec canister types.⁵¹

The ER is not required to include the type of alternatives analysis that NAC claims must be included in the ER. While the ER states that potential design alternatives would be to use the

⁵¹ Pet. at 14.

AREVA, NAC, and EnergySolutions systems” at the CISF, it does not examine these alternatives in detail, nor is it required to do so.

In order to support its primary purpose of protecting the environment, NEPA requires agencies, including the NRC, to take a “hard look” at the environmental impacts of a proposed action and alternatives to that action.⁵² This alternatives analysis entails an evaluation of “all reasonable alternatives” to the proposed Holtec facility design, and is the “heart of the environmental impact statement.” 40 C.F.R. § 1502.14.

The “hard look” required by NEPA is subject to a “rule of reason” such that the consideration of environmental impacts must address only those impacts “that are reasonably foreseeable or have some likelihood of occurring.”⁵³ The agency has broad discretion over the thoroughness of the analysis, and may decline to examine issues the agency in good faith considers “remote and speculative” or “inconsequentially small.”⁵⁴ Furthermore, NEPA does not call for a “worst-case” inquiry because it “creates a distorted picture of a project’s impacts and wastes agency resources.”⁵⁵ When a Federal agency such as the NRC is asked to sanction a specific plan, that agency should take into account the needs and goals of the parties involved in the application.⁵⁶

⁵² *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 N.R.C. 613, 719 (2009).

⁵³ *Southern Nuclear Operating Co.*, LBP-09-7, 69 N.R.C. at 719.

⁵⁴ *Id.*; see also *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 N.R.C. 29, 44 (1989) (citing *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739 (3d Cir. 1989)).

⁵⁵ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 N.R.C. 340, 352 (2002) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 354-55) (1989)).

⁵⁶ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (1991).

Moreover, “an [EIS] is not intended to be ‘a research document.’”⁵⁷ “NEPA does not call for ‘examination of every conceivable aspect of federally licensed projects.’”⁵⁸ Although “there ‘will always be more data that could be gathered,’ agencies ‘must have some discretion to draw the line and move forward with decision-making.’”⁵⁹ Accordingly, NEPA does not demand virtually infinite study and resources.⁶⁰ Therefore, it is insufficient for a petitioner to claim that more study or data should be included in the environmental analysis. If there are alleged errors or omissions in the environmental analysis, “in an NRC adjudication it is [the] Intervenors’ burden to show their significance and materiality.”⁶¹

Here, the CISF ER correctly sets out the alternatives currently available for storage of spent nuclear fuel: (1) the [n]o [a]ction [a]lternative and (2) the [p]roposed [a]ction.⁶² There are no other feasible alternatives, so considering deep geological storage or reprocessing (government-level initiatives) were not considered. Under the “no action” alternative, Holtec would not construct and operate the CISF, and spent nuclear fuel would continue to be stored at commercial reactor sites.⁶³ The proposed federal action subject to NEPA in this proceeding is the issuance of an NRC license under 10 C.F.R. Part 72 authorizing the construction and operation of the CISF.⁶⁴

⁵⁷ *Entergy Nuclear Generation Co. et. al.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 N.R.C. 202, 208 (2010) (citation omitted).

⁵⁸ *Private Fuel Storage*, CLI-02-25, 56 N.R.C. at 349 (quoting *Louisiana Energy Services L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 N.R.C. 77, 102-03 (1998)).

⁵⁹ *Entergy Nuclear Generation Co. et. al.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. 287, 315 (2010) (footnote omitted).

⁶⁰ *Id.* at 315.

⁶¹ *Exelon Generating Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 N.R.C. 801, 811 (2005).

⁶² ER at p. 2-1.

⁶³ *Id.*

⁶⁴ ER at p. 2-3.

The ER identifies alternative cask designs as design alternatives that were considered but eliminated. This decision was appropriate. The regulations of the Council on Environmental Quality implementing NEPA⁶⁵ do not call for the type of alternatives analysis that NAC would require. For example, NEPA calls for consideration of “reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.”⁶⁶ Contention 3 does not allege that the alternatives it would require would avoid or minimize any adverse effect. Under the Council on Environmental Quality regulations, the alternatives to be studied are those that involve unresolved conflicts concerning alternative uses of available resources.⁶⁷ Here too, NAC alleges no such adverse environmental impacts or unresolved conflicts.

Presumably, Petitioners would require Holtec to evaluate as design alternatives AREVA, NAC, EnergySolutions and Holtec systems other than HI-STORM UMAX, as well as the HI-STORM UMAX Canister Storage System. But Petitioner has failed to state why inclusion of such an analysis would be material to whether or not the NRC should issue a license for the CISF as required by 10 C.F.R. § 2.309(f)(1)(iv).

Since all of these systems are essentially in the same family of design solutions - comprising of canisters that are contained within casks - it is difficult to see what value such an evaluation would add to the decision on whether or not to license the CISF. Petitioner has offered no evidence how inclusion of such an analysis would be material to the findings the NRC must make to support the action that is involved in this proceeding – namely whether to grant Holtec a license for the CISF. Petitioners do not allege that any of the systems which it claims

⁶⁵ 40 C.F.R. §§ 1500 – 1508.

⁶⁶ 40 C.F.R. § 1500.2(e).

⁶⁷ 40 C.F.R. §§ 1501.2(c); 1502.1.

should be part of an alternatives analysis have lesser environmental impacts than storage using the HI-STORM UMAX system. The differences in environmental impacts between and among the various designs would likely be “inconsequentially small” and would not help the NRC decide on whether or not to license the CISO.⁶⁸ Moreover, such an analysis would likely require the disclosure of proprietary design information whose very non-disclosure Petitioner relies on to support its standing.⁶⁹

For all of the above reasons, Contention 3 is inadmissible and should be rejected because Petitioner has not demonstrated that the issue raised in Contention 3 is material to the findings the NRC must make to support the action that is involved in the current proceeding as required by 10 C.F.R. § 2.309(f)(1)(iv).

⁶⁸ The underground design of the HI-STORE UMAX necessarily *reduces* environmental impacts compared to an above ground design.

⁶⁹ *See, e.g.*, Pet. at 4-5.

V. CONCLUSION

For the foregoing reasons, Petitioner has failed to demonstrate its standing and to proffer an admissible contention. Consequently, the Commission should reject NAC's Petition.

Respectfully submitted,

/signed electronically by Jay E. Silberg /

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October 9, 2018

Counsel for HOLTEC INTERNATIONAL

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	Docket No. 72-1051
Holtec International)	
)	
HI-STORE Consolidated Interim Storage)	
Facility)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Holtec International’s Answer Opposing NAC International Inc’s Petition to Intervene and Request for Hearing on Holtec International’s HI-STORE Consolidated Interim Storage Facility Application has been served through the E-Filing system on the participants in the above-captioned proceeding this 9th day of October, 2018.

/signed electronically by Timothy J. V. Walsh/
Timothy J. V. Walsh