

The Staff's asseveration (NRC Staff Answer at 29) that repackaging "does not demonstrate that the claim, even if within the scope of the proceeding and taken as true, would materially alter the findings the NRC must make on this application" is flatly false. The Commission will issue a license under 10 C.F.R. Part 72 upon determining "that the application for a license meets the standards and requirements of the Act and the regulations of the Commission, and upon finding that "[t]he applicant's proposed operating procedures to protect health and to minimize danger to life or property are adequate." 10 C.F.R. § 72.40(a)(5). The Commission further must find that "[t]here is reasonable assurance that . . . [t]he activities authorized by the license can be conducted without endangering the health and safety of the public." 10 C.F.R. § 72.40(a)(13).

There is a likelihood that SNF repackaging will occur prior to shipping to WCS, but implementation of that policy increases the numbers of canisters to be delivered and the consequent need for contingency plans and remediation infrastructure at the CISF. There are health and safety implications. The factual support necessary to show that a genuine dispute exists is "a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." *Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994), quoting *Connecticut Bankers Association v. Board of Governors*, 627 F.2d 245 (D.C. Cir. 1980).

~~The reasonable specificity standard of contention pleading requires that an intervenor include a statement of the reason for his contention that either alleges that an applicant is not complying with a specified regulation, or alleges the existence and detail of a substantial safety issue on which the regulations are silent (a "regulatory gap"). *Public Service Co. of New*~~

~~Hampshire (Seabrook Station, Units 1 & 2), LBP-82-106, 16 NRC 1649, 1655-56 (1982); Shaw Areva MOX Services (Mixed Oxide Fuel Fabrication Facility 66 NRC 169, 207, LBP-07-14 (2007) (“The current existence of the uncertainty about the safety analysis of the system for liquid waste handling, referred to above, provides a sufficient basis to support the proffered contentions, given the other support the Petitioners have mustered.”).~~

~~Joint Petitioners have here articulated a contention based on the fact of uncertainty of regulation, a “regulatory gap contention,” because “a reasonably prudent person, accepting the facts as alleged, would be concerned.” *Public Service Co.* at 1655 fn. 5. Joint Petitioners have stated a contention of omission (*i.e.*, lack of regulatory certainty) that is worthy of admission until there is a precise regulatory determination of the TAD canisters’ design, where repackaging is to occur, and the means of that repackaging. At that point, there will be significant additional facts that may or may not fuel additional litigation over the adequacy of NEPA or Atomic Energy Act compliance.~~

B. Reply as to LLRW waste volume

The NRC Staff accuses Joint Petitioners of “unsupported speculation for their asserted disagreement with the applicant’s estimates” and for “fail[ing] to show how the greater volume would be sufficiently environmentally significant to be material to the NRC.”

ISP/WCS postulates a need for nearly \$1 billion worth of concrete for above-ground storage of 40,000 MTU of spent nuclear fuel. Joint Petitioners provided calculations suggesting a 100-to-200-fold difference in resulting volume of possible LLRW between official estimates and those rooted in west Texas reality. To Petitioners’ concrete calculations about concrete, they added other unquantified but weighty considerations, such as thousands of discarded, irradiated

supposed economic advantages of having the ISP/WCS CISF with an inexplicable listing of the expenses of operating the CISF for 40 years appearing as ER Table 7.4-2, p. 7-31. ~~Table 7.4-1, p. 7-30, supposedly represents the avoidance of reimbursements to utilities for storing spent fuel and return of all nuclear reactor brownfields to “greenfield” repurposes, even though ISP/WCS’s proposal suggests that it will strand some of the SNF canisters at reactor sites and will not “consolidate” 100% of the SNF at its facility. In Table 7.4-2, ISP/WCS portrays a clutch of vague and unexplained expenses, including “transportation infrastructure,” “Other: transportation, license fees,” and “Fuel Storage Facility.” By subtracting the Table 7.4-2 total from the Table 7.4-1 total, a \$1.6 billion benefit will supposedly be realized.~~

~~But Table 7.4-1 assumes that all Federal reimbursements to utilities will cease in Year 1 of the 20-year transportation phase of the project; they won’t. Table 7.4-1 assumes that 100% of the reactor site brownfields will be converted to “greenfield” usage, apparently without any serious or unexpected remediation, without the need for storing SNF canisters awaiting shipment to Texas for 60 years, and evidently without stranding any canisters at reactor sites because of damage, leakage or contamination problems with high burnup fuel. Table 7.4-2 likely assumes (since there is no explanation) that there will be zero ISP/WCS site accidents, no undue contamination, no need for a DTS system for unloading/reloading purposes into TAD canisters throughout the first century of operations, all in accordance with its chimerical belief that operations will proceed flawlessly under a “start clean, stay clean” regime for decades on end. It is not evident from ISP/WCS’s presentation in the ER whether the gross underestimation of the volume of low-level radioactive waste, discussed *supra*, involving 100,000 cubic yards more concrete than estimated, and hundreds or thousands of discarded SNF canisters as LLRW, are~~

~~reflected anywhere in the costs.~~

~~In their initial Petition to Intervene, Joint Petitioners proffered the declaration testimony of their expert, Robert Alvarez, who projected large and growing costs of repackaging at a centralized storage site. Using the Columbia Generating Station as a representative example of a nuclear power plant that one day will need to transport its spent nuclear fuel to a consolidation site, he estimated the expense of moving SNF into canisters to be moved “could involve cutting open 120 dry casks and repacking approximately 8,160 spent fuel assemblies into casks suitable for disposal” at additional costs of from \$272 million to \$915 million— for only a single reactor in the U.S. fleet.~~

~~ISP/WCS relies on flawed assumptions, to the extent they are even explained, and the corporation’s simplistic and largely unrevealed accounting contradicts NEPA requirements for cost-benefit analyses. ISP/WCS’s cost-benefit comparison does not “include consideration of the economic, technical, and other benefits and costs of” the alternatives to the WCS facility, as well as the proposed action. It does not address the scenario, for instance, of Federal governmental payments to ISP/WCS at the same time as Federal reimbursements to reactor site owners for storage rolls on for 20 years.~~

As for the relevance of the alleged cost-benefit comparison offered up by ISP/WCS, “[I]t is essential that the EIS not be based on misleading economic assumptions.” *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446, 448 (4th Cir.1996) (inflated estimate of recreation benefits versus adverse environmental effects). Moreover, misleading information about economic impacts can defeat the “hard look” function an EIS must fulfill. *South Louisiana Environmental Council v. Sand*, 629 F.2d 1005 (5th Cir.1980).

so arrangements either will be made offsite to accomplish the move of SNF from current storage canisters and casks at those sites to the repository canisters, or to do so at the CISF. If the CISF is needed for long-term or indefinite use, there will still be the need to swap out the canisters (a regulated, licensed activity).

~~The reasonable specificity standard of contention pleading requires that an intervenor include a statement of the reason for his contention that either alleges that an applicant is not complying with a specified regulation, or alleges the existence and detail of a substantial safety issue on which the regulations are silent (a “regulatory gap”). *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), LBP 82-106, 16 NRC 1649, 1655-56 (1982); *Shaw Areva MOX Services* (Mixed Oxide Fuel Fabrication Facility 66 NRC 169, 207, LBP-07-14 (2007) (“The current existence of the uncertainty about the safety analysis of the system for liquid waste handling, referred to above, provides a sufficient basis to support the proffered contentions, given the other support the Petitioners have mustered.”). Joint Petitioners assert that the fact of uncertainty of regulation, a “regulatory gap contention,” exists, because “a reasonably prudent person, accepting the facts as alleged, would be concerned.” *Public Service Co.* at 1655 fn. 5. At a minimum, Joint Petitioners have articulated a contention of omission (*i.e.*, lack of regulatory certainty) that is worthy of admission until there is a precise regulatory determination of the TAD canisters’ design, where repackaging is to occur, and the means of that repackaging. The Continued Storage GEIS must not be allowed to block consideration of the need for a DTS under these circumstances.~~

Contention 13: Any Anticipated Nuclear Reprocessing Activity Must Be Disclosed In The EIS And Included in Cumulative Effects Analysis

Joint Petitioners stated in their initial filing pleading that in 2008 DOE published a “Draft

Global Nuclear Energy Partnership Programmatic Environmental Impact Statement” (“GNEP PEIS;” DOE/EIS-0396), in which it expressed a preference for reprocessing of spent nuclear fuel under U.S. auspices, as a supposed nonproliferation policy. GNEP proposed to institute a framework for nuclear fuel services in order to dispense with each individual country’s need to develop its own enrichment or reprocessing facilities. GNEP PEIS p. I-3.

Now, the public’s success in squelching reprocessing plans a decade ago is being cited as the reason to not take prudent steps to ensure that the risks and expense of reprocessing are again exposed and dissected in the ER and DEIS.

~~During the GNEP era, Areva, the French national nuclear power corporation, actively promoted reprocessing in the U.S. Areva is now Orano, and is the lead partner in development of the Waste Control Specialists’ proposed CISE. This, alone, supplies strong justification for a “no reprocessing” provision to be included in a license for the CISE, if the Commission, decides to grant a license.~~

Contention No. 14: NEPA Requires Significant Security Risk Analyses for the Spent Nuclear Fuel and Greater-Than-Class-C Wastes Proposed for Interim Storage, And Associated Transportation Component, at ISP/WCS’s Texas Facility

The NRC Staff’s reprise of this Contention bears only a distant resemblance to what Joint Petitioners stated and the relief they seek.

Petitioners’ security expert, James David Ballard, Ph.D., pointed to the contemporary storage nearly five years of Department of Energy waste formerly bound for the Waste Isolation Pilot Project (WIPP), located some 40 miles from WCS in New Mexico. Some of those waste packages overheated in the west Texas sun and at one point, WCS made an *ad hoc* decision to partially cover them in shadier circumstances, to avoid an ignition threat. Dr. Ballard opined in