

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF	)
	) Docket No. 72-1051
	)
HOLTEC INTERNATIONAL	)
	) February 25, 2019
(Consolidated Interim Storage	)
Facility Project)	)

**SIERRA CLUB’S MOTION TO FILE NEW LATE-FILED CONTENTIONS 27, 28,  
AND 29**

Comes now Sierra Club and in support of this Motion to File Late-Filed Contentions 27, 28, and 29, states as follows:

1. A hearing before the Atomic Safety and Licensing Board (ASLB) regarding the standing of the Intervenors and the admissibility of their contentions was held on January 23 and 24, 2019. During the January 24, 2019, session, Holtec’s counsel raised the Aging Management Program in Chapter 18 of the SAR as a defense to Sierra Club’s Contentions 15-19, regarding impacts to and from the groundwater in the area of the proposed CIS site, and Contentions 14 and 20-24, regarding the impacts of high burnup fuel (HBF). This was the first time Holtec had relied on the Aging Management Program as a defense to Sierra Club’s contentions.

2. At the hearing on January 24, Holtec also for the first time admitted that its assertion that DOE would take title to the radioactive waste was baseless because such an action would be illegal. Only one week before, Holtec’s ER, Rev. 3, was placed in ADAMS, with the addition of the nuclear plant owners as possible entities to retain title to the waste and be financially responsible for it, but still listing DOE as a possible titleholder. As Sierra Club had said previously, Holtec’s documentation appeared to

present the option of the reactor owners' involvement as a fig leaf to hide the real intent for DOE to take title to the waste. But when Holtec finally admitted that DOE could not legally be involved, that made the option of the reactor owners' involvement a new issue.

3. Sierra Club's new Contention 27, filed contemporaneously with this Motion, alleges that Holtec's Aging Management Program, Chapter 18 in the SAR, only mentions HBF once. The Aging Management Program does not explain how the impact to the containers of HBF will be addressed. The ER does not mention the Aging Management Program at all. Since the Holtec CIS facility is expected to be in operation well beyond the 40-year licensing period, the Aging Management Program in the SAR must set out how it will address the long-term storage of HBF.

4. Sierra Club's new Contention 28, filed contemporaneously with this Motion, alleges that Holtec's Aging Management Program, Chapter 18 in the SAR, only mentions groundwater testing and monitoring in connection with concrete structures, without explaining how the impact to the containers from groundwater or impacts to the groundwater from leaking containers will be addressed. There is only a reference to NRC guidance that provides a process for experimental demonstration for time periods beyond a 20-year licensing period. Since the Holtec CIS facility is expected to be in operation well beyond the 40-year licensing period, the Aging Management Program in the SAR must set out how it will address the impacts regarding groundwater beyond the 20-year period applied in the NRC guidance.

5. Sierra Club's new contention 29, filed contemporaneously with this Motion, alleges that the Holtec documentation does not provide any information that would indicate that private reactor owners would be willing to accept continued ownership of

the waste and the financial responsibility. Thus, Holtec has failed to provide reasonable assurance of adequate funding for the project.

5. The new Contentions 27, 28, and 29 satisfy the three-prong test in 10 C.F.R. § 2.309(c)(i)-(iii), as follows:

(i) The information upon which the filing is based was not previously available. Although the Aging Management Program was available earlier, Sierra Club had no reason to believe Holtec would claim that the Aging Management Program would be used as a defense to Sierra Club's contentions regarding HBF and groundwater impacts. The Aging Management Program was not raised in Holtec's Answer to Sierra Club's contentions, nor in any other context until the ASLB hearing on January 24, 2019. Likewise, the necessary reliance on the reactor owners to be financially responsible for the project did not exist prior to the admission by Holtec at the January 24 hearing that DOE could not take title to the waste and be the financially responsible party.

(ii) The information upon which the filing is based is materially different than information previously available. In its Answer to Sierra Club's contentions concerning HBF and groundwater, Holtec primarily raised a factual dispute with Sierra Club's experts. The Answer did not even hint that the Aging Management Program allegedly addresses Sierra Club's contentions. Prior to the January 24 admission by Holtec regarding DOE involvement, Sierra Club had no reason to believe the option of the reactor owners' involvement was a serious proposal.

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information. The new contentions are being filed within 30 days of Sierra Club having learned of Holtec's reliance on the Aging Management Program and its new

reliance on reactor owners' financial commitment on January 24, 2019, and therefore it is timely. *Shaw AREVA MOX Services*, 67 NRC at 493.

WHEREFORE, Sierra Club requests permission, pursuant to 10 C.F.R. § 309(c), to file Contentions 27, 28, and 29 as late-filed contentions.

/s/ *Wallace L. Taylor*

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of Sierra Club Motion to File New Late-Filed Contentions Contention 27, 28, and 29 were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned proceeding.

/s/ *Wallace L. Taylor*

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