

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOLTEC INTERNATIONAL

(Consolidated Interim Storage Facility)

Docket No. 72-1051

**NRC STAFF'S RESPONSE TO DON'T WASTE MICHIGAN ET AL.'S MOTION
TO AMEND CONTENTIONS 4 AND 7**

INTRODUCTION

The Staff of the U.S. Nuclear Regulatory Commission (Staff) hereby responds to the motion of Don't Waste Michigan, et al. (DWM)¹ to amend DWM Contentions 4 and 7.² For the reasons set forth below, the Atomic Safety and Licensing Board (Board) should deny the proposed amended contentions because they fail to meet the requirements of both 10 C.F.R. § 2.309(c)(1) and (f)(1) and are therefore inadmissible.

BACKGROUND

On March 30, 2017, Holtec International (Holtec) submitted an application requesting a license for the construction and operation of a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF). On July 16, 2018, the NRC published a notice of opportunity to

¹ A consortium consisting of Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group.

² *Motion of Petitioners, Don't Waste Michigan et al., to Amend Their Contentions 4 and 7* (Feb. 18, 2019) (ML19049A023 (package)). The filing consists of a motion (ML19049A024) ("DWM's Motion"), proposed contention amendments (ML19049A024) ("DWM's Amended Contentions"), and the curriculum vitae and declaration of Dr. Gordon Thompson (ML19049A026 and ML19049A025, respectively).

request a hearing and to petition for leave to intervene in the *Federal Register*.³ On September 14, 2018, DWM filed a petition to intervene and proffered several contentions, including DWM Contentions 4 and 7.⁴ The NRC staff and Holtec filed responses to DWM's petition on October 9, 2018.⁵ On January 23–24, oral argument was held in Albuquerque, New Mexico.

On September 13, 2018, the NRC Staff issued requests for additional information (RAIs) to Holtec regarding the application, including the Safety Analysis Report, the Environmental Report, and the proposed license.⁶ On November 30, 2018, Holtec submitted responses to these RAIs, along with a revision to the Safety Analysis Report, Environmental Report, and proposed Technical Specifications.⁷ These documents from Holtec were made publicly available in ADAMS on January 17, 2019.⁸ On February 18, 2019, DWM submitted proposed amendments to its proposed Contentions 4 and 7.⁹

³ *Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel*, 83 Fed. Reg. 32,919 (July 16, 2018).

⁴ *Petition of Don't Waste Michigan et al. to Intervene and Request for Adjudicatory Hearing* (Sept. 14, 2018) (ML18257A334).

⁵ *NRC Staff's Consolidated Response to Petitions to Intervene and Requests for Hearing Filed by: Alliance for Environmental Strategies, Beyond Nuclear, Inc., Don't Waste Michigan, et al., NAC International Inc., and the Sierra Club* (Oct. 9, 2018) (ML18282A567) ("Staff Consolidated Response").

Holtec International's Answer Opposing the Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group Petition to Intervene and Request for an Adjudicatory Hearing on Holtec International's HI-STORE Consolidated Interim Storage Facility Application (October 9, 2018) (ML18282A509) ("Holtec's Response to DWM").

⁶ *Letter to K. Manzione re: Holtec International's Application for Specific ISFSI License for the HI-STORE Consolidated Interim Storage Facility for Spent Nuclear Fuel - First Request for Additional Information, Part 2* (Sept. 13, 2018) (ML18257A240).

⁷ *Holtec International HI-STORE CIS (Consolidated Interim Storage Facility) License Application Responses to Requests for Supplemental Information* (Nov. 30, 2018) (ML18345A153 (package)).

⁸ *Id.*

⁹ DWM's Motion.

LEGAL STANDARDS

I. Timeliness Standards for New and Amended Contentions

New or amended contentions submitted after the initial date for hearing requests must meet the requirements of 10 C.F.R. § 2.309(c)(1). To do so, a party must demonstrate good cause by showing that the following three conditions are met:

- (i) The information upon which the filing is based was not previously available;¹⁰
- (ii) The information upon which the filing is based is materially different from information previously available;¹¹ and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

The petitioner has the burden of demonstrating that any new or amended contention meets the standards in 10 C.F.R. § 2.309.¹²

II. General Requirements for Contention Admissibility

In addition to meeting the requirements of 10 C.F.R. § 2.309(c)(1), new or amended contentions must also satisfy the six contention admissibility requirements of 10 C.F.R. § 2.309(f)(1).¹³ That section requires that each contention:

¹⁰ Specifically, “new and amended contentions must be *based on new facts* not previously available.” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 493 n. 70 (2012) (affirming denial of contention challenging enhancement to an aging management program). *See also Crow Butte Res., Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-15-11, 81 NRC 401, 429 (2015) (rejecting a proposed contention where the purported new information was only “carried forward” from an application).

¹¹ The term “materially different” in the context of 10 C.F.R. § 2.309(c)(1)(ii) is distinct from that of the term “material to the findings the NRC must make” found in 10 C.F.R. § 2.309(f)(1)(iv). Here, “materially different” refers to the “type or degree of difference between the new information and previously available information.” *Fla. Power & Light Co.* (Turkey Point Units 6 and 7), LBP-17-6, 86 NRC 37, 48 (2017), *aff’d* CLI-17-12, 86 NRC 215 (2017).

¹² *See, e.g., Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 347 & n.9 (1998), *aff’d sub nom, National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000).

¹³ 10 C.F.R. § 2.309(c)(2).

- (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
- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

The contention admissibility requirements are “strict by design”¹⁴ and “do not permit . . . ‘notice pleading, with details to be filled in later.’”¹⁵ It is the petitioner’s burden to come forward with support for its contention.¹⁶ A board must reject a contention that rests on an incomplete or inaccurate reading of the application or the Staff’s review document.¹⁷ Finally, if a petitioner provides a document as a basis for a contention, the petitioner must explain the significance of the document and how it supports the contention.¹⁸

¹⁴ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

¹⁵ *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338 (1999).

¹⁶ *Oyster Creek*, CLI-09-7, 69 NRC at 260–61; *see also Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process*, 54 Fed. Reg. 33,168, 33,171 (August 11, 1989) (final rule).

¹⁷ *Cf. Georgia Institute of Technology* (Georgia Tech Research Reactor), LBP-95-6, 41 NRC 281, 300 (1995) (rejecting a contention based on mistaken reading of the Safety Analysis Report).

¹⁸ *See USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) (“references to articles or correspondence, without ‘explanation or analysis’ of their relevance, [do] not provide an adequate basis” for admitting a contention); *id.* at 457 (“it is not up to the boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; boards may not simply “infer” unarticulated bases of contentions”); *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 204–05 (2003) (stating that it is insufficient to refer generally to voluminous documents with no further analysis and supporting evidence showing why particular sections of those documents provide the basis for a contention).

Further, a petitioner must do more than assert generally that there are deficiencies in the application. A petitioner must identify all pertinent portions of the document it is challenging and state both the challenged position and the petitioner's opposing view.¹⁹ To demonstrate a genuine, material dispute, the petitioner must address the specific analysis in the document and explain how it is incorrect.²⁰ To show that a dispute is "material," a petitioner must show that its resolution would make a difference in the outcome of the proceeding.²¹

DISCUSSION

In Contention 4, DWM asserted that the generic impact findings of the NRC's Continued Storage Rule do not apply to the Holtec facility, necessitating a site-specific environmental analysis of certain environmental impacts. In Contention 7, DWM asserted that Holtec's site acceptance criteria will lead to the shipment of "leaky and/or contaminated canisters" that will "present an immediate danger" to members of the public near transportation routes.²² DWM now seeks to amend Contentions 4 and 7 by adding additional bases and information that, according to DWM, arise from Staff RAIs and Holtec's responses.²³ Specifically, with respect to Contention 4, DWM newly asserts that Holtec's statements on confinement integrity are "over-optimistic" and inconsistent with the Continued Storage GEIS.²⁴ In addition, with respect to

¹⁹ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002).

²⁰ 10 C.F.R. § 2.309(f)(1)(vi).

²¹ *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3) CLI-99-11, 49 NRC 328, 333-34 (1999).

²² *Petition of Don't Waste Michigan et al. to Intervene and Request for Adjudicatory Hearing* at 61 (Sept. 14, 2018) (ML18257A334).

²³ To the extent that the "new" information DWM asserts as the basis for the amended contentions is the content of the NRC staff's Requests for Additional Information, which were transmitted on September 13, 2018, more than five months before DWM's motion to amend, these contentions should be rejected pursuant to 10 C.F.R. § 2.309(c)(1)(iii).

²⁴ DWM's Amended Contentions at 1.

Contention 7, DWM newly asserts that Holtec's conclusions on accidents and attacks are "non-credible positions" that require additional scrutiny under NEPA.²⁵ In support of its motion to amend both contentions, DWM relies on RAIs 9-3 and LA-1; Holtec's response to these RAIs; and the Declaration of Dr. Gordon Thompson.²⁶

The Board should deny DWM's motion to amend Contentions 4 and 7 because DWM has not shown, with respect to either contention, that the contention as amended satisfies the "good cause" standards in 10 C.F.R. § 2.309(c)(1) and the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).²⁷

I. Amended Contention 4

A. DWM has not shown that the information on which it relies satisfies the "good cause" criteria of 10 C.F.R. § 2.309(c)(1)

In support of the proposal to amend Contention 4, DWM points to Holtec's response to RAI 9-3, namely a revision to the Safety Analysis Report Subsection 9.2.2 that changes the phrase "there is no credible normal or accident situation" to "there is no credible normal, *off-normal*, or accident *conditions*."²⁸ The amended contention cites similar statements in Subsection 4.13.2 of the Environmental Report, claiming that these statements contradict conclusions in the Continued Storage GEIS²⁹ and are inconsistent with the DOE's EIS for Yucca

²⁵ DWM's Amended Contentions at 6.

²⁶ DWM's Motion at 5–9.

²⁷ The Staff explained in its response to the original DWM petition why Contentions 4 and 7, as originally pled and supported by DWM, did not satisfy the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). The Staff does not repeat its arguments here. Further, as the Staff explained in its response to the original DWM petition, DWM has not demonstrated that it has standing, and therefore, its hearing request should be denied. Staff Consolidated Response at 36–39, 47–50.

²⁸ *Responses to Requests for Additional Information - Non-Proprietary*, at 4–5 (Nov. 30, 2018) (ML19016A481) ("RAI Responses"); *HI-2167374 HI-STORE CIS SAR Rev. 0E - Non-Proprietary*, at 9-7 (Nov. 30, 2018) (ML19016A488) ("SAR Rev. 0E").

²⁹ *NUREG-2157 Vol 1, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report*. (Sept. 2014) (ML14196A105).

Mountain. Joint Petitioners state that these “facts and conclusions” were not asserted in the earlier versions of the application and that the application revisions “give rise to new expert assessment.”³⁰

As discussed above, “materially different” under 10 C.F.R. § 2.309(c)(1)(ii) refers to the significance of the difference between the new and previously available information. DWM is correct that Holtec updated the SAR to include a conclusion in Section 9.2.2, in the discussion on confinement integrity, that no “off-normal . . . conditions” could challenge the confinement system and result in a release. However, when the RAI and Holtec’s response is viewed in context, the information DWM now seeks to challenge was already included in the application. The two relevant paragraphs of the revised section make this clear:

As discussed in Subsection 9.2.1 above, all radioactive material is stored and handled in seal welded canisters, and as presented in Chapter 1, all handling operations are performed either with single-failure-proof cranes, or using suitable impact limiters. Hence once the canisters have passed the receipt inspection, also discussed in Subsection 9.2.1, there is no credible normal, off-normal, or accident ~~conditions~~situation that could challenge the integrity of the canister confinement integrity and result in a release of any radioactivity.

Overall, from all operational activities, no credible events are identified that would result in a release of any radioactive materials into the work areas or the environment.³¹

In particular, as identified in both the revised discussion and in the Staff RAI,³² Holtec already made the same conclusions in Subsection 9.2.1, stating that the referenced HI-STORM UMAX bounds “[a]ll normal, off-normal and accident conditions” at the proposed facility.³³

³⁰ DWM’s Motion at 11.

³¹ SAR Rev. 0E at 9-7 (emphasis added; underlines and strikeouts added to show the changed information).

³² See Staff RAI 9-3 at 5.

³³ SAR Rev. 0 at 9-4 (ML17116A106); SAR Rev. 0E at 9-4.

Additionally, the application already contained numerous instances where the applicant makes similar claims because, in accordance with NRC requirements, applicants must demonstrate how the facility's design and operation meet applicable NRC standards under normal, off-normal, and credible accident conditions.³⁴

Additionally, DWM's claim that Holtec's response concerning off-normal conditions is new material is belied by the amended contention itself. As identified by Dr. Thompson, "Holtec makes an equivalent assertion in its ER (at Section 4.13.2)."³⁵ As such, Joint Petitioners have not demonstrated how this information is both new and materially different from the information that was previously available.

Finally, and even more fundamentally, regardless of whether the information cited by the Joint Petitioners is new, this allegedly new information is unrelated to the topics the contention actually purports to challenge, rendering it inadmissible under the "materially different" standard of 10 C.F.R. § 2.309(c)(1)(ii). The new material identified by the Joint Petitioners is Holtec's statement on the facility's ability to meet "off-normal conditions," but the issues identified in the amended contention appear wholly unrelated to those conditions. "Off-normal" is defined in the Standard Review Plan as "[s]imilar to the 'Design Event II' of ANSI/ANS 57.9," and refers to events that are "expected to occur with moderate frequency or once per calendar year."³⁶ In contrast, the events in the Joint Petitioners' proposed definition of "off-normal" appear to include sabotage and degradation of canisters after a "loss of institutional control of an ISFSI after about

³⁴ See, e.g., 10 C.F.R. 72.122; SAR Rev. 0E at 4-65, 5-5, and 6-1 (discussing criteria for adequacy with respect to "normal, off-normal, and accident conditions"); *NUREG-1567, Standard Review Plan for Spent Fuel Dry Storage Facilities, passim* (Mar. 2000) (ML003686776) (describing in numerous instances what events are included in term "off-normal" in various contexts).

³⁵ DWM's Amended Contentions at 3. Dr. Thompson goes on to say that the ER's statement in 4.13.3 is inconsistent with the GEIS and the Department of Energy's EIS for Yucca Mountain, assertions with no clear nexus to the RAI response and SAR revisions.

³⁶ *NUREG-1567* at Pages xxx, 15-1.

100 years of service,” and DWM does not explain how the changes it cites in the application would encompass either of those two categories of events.³⁷ Other arguments put forward by the Joint Petitioners, such as the adequacy of 10 C.F.R. § 51.23 and the Continued Storage GEIS, likewise contain no explanation of how they originate from the RAI responses and the associated changes to the application, and so Joint Petitioners have not articulated how these new arguments rely on any new or materially different information.³⁸

As a result, for each aspect of the proposed amended contention, the information relied upon by the Joint Petitioners was already present in the application in substantially the same form. Petitioners have the “ironclad obligation” to review the application for information that could support contentions.³⁹ Because the information is neither new nor materially different than what was previously included, DWM’s motion should be denied for failing to meet the 10 C.F.R. § 2.309(c)(1) standards.

B. DWM has not shown that the new information and arguments it raises satisfy the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1).

Even if it had been timely raised, Joint Petitioners’ amended contention does not meet the contention admissibility standards of 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi). Specifically, as was the case in the original petition, the Joint Petitioners’ claim of inconsistency with the GEIS

³⁷ DWM’s Amended Contentions at 4.

³⁸ Further, DWM does not explain the logical connection between the application’s revised statements regarding off-normal conditions and the bases DWM seeks to add to Contention 4 regarding Holtec’s “Start Clean/Stay Clean” policy or the alleged need for a dry transfer system, and the Joint Petitioners have not articulated how these concerns relate to any other new information. See DWM’s Amended Contentions at 4–5.

³⁹ See *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 312 (2012), *aff’d sub nom on other grounds, Beyond Nuclear v. U.S. Nuclear Regulatory Comm’n*, 704 F.3d 12 (noting that petitioners have an “ironclad obligation’ to review the Application thoroughly and to base their challenges on its contents.”).

does not raise a genuine dispute with the application, and issues related to the environmental impacts of terrorist attacks are beyond the scope of this proceeding.

As discussed in the Staff's original answer to DWM's Petition, 10 C.F.R. § 51.23 permits an applicant to omit a discussion of "the environmental impacts of spent nuclear fuel storage in . . . an ISFSI for the period following the term of the . . . ISFSI license."⁴⁰ However, the ER must evaluate the site-specific impacts of the proposed ISFSI for the licensed term.⁴¹ 10 C.F.R. § 51.23 thus represents a generic determination by the Commission, codified in a rule, as to the environmental impacts of storage of nuclear fuel beyond the license term. Here, the proposed license is for 40 years.⁴²

As a result, DWM has not demonstrated that any of its claims of inconsistency with the Continued Storage GEIS, NUREG-2157, represent a dispute with the application or otherwise challenge Holtec's site-specific analysis of environmental impacts during the licensed term. Instead, the contention challenges the applicability of the GEIS to the facility, a position at odds with the plain language of 10 C.F.R. § 51.23, and a claim that is barred absent a waiver under 10 C.F.R. § 2.335. For the same reason, Joint Petitioners' additional claim that consistency is required between this application and the Department of Energy's environmental impact statement related to a high-level waste repository with respect to impacts stemming from loss of institutional control after "about 100 years of service"⁴³ does not represent a genuine dispute with Holtec's application, which is only required to address the proposed 40 year license term.

⁴⁰ 10 C.F.R. § 51.23(b).

⁴¹ See 10 C.F.R. § 51.23(a); *Continued Storage of Spent Nuclear Fuel*, 79 Fed. Reg. 56,238, 56,260 (Sept. 19, 2014) ("The GEIS and rule do not satisfy the NRC's obligations under NEPA to analyze the environmental impacts of spent fuel storage during the term of a facility's license.").

⁴² *Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel*, 83 Fed. Reg. 32,919, 32,919 (July 16, 2018).

⁴³ DWM's Amended Contentions at 4.

Furthermore, to the extent that the amended contention seeks to challenge Holtec's description of the facility's response to off-normal conditions, either in the revised SAR or the Environmental Report, it is unclear what specific disagreement the Joint Petitioners have with these statements. As discussed above, "off-normal" in this context is a defined term that refers to particular events that occur with moderate frequency, not a catch-all term to encompass broad hypothetical scenarios like post-license term degradation and terrorist attacks.⁴⁴ It is the Petitioner's obligation to "read the application, state both the applicant and petitioner's views, and explain the disagreement."⁴⁵ In seeking to amend Contention 4, the Joint Petitioners have asserted concerns regarding terrorism and impacts of fuel storage beyond the licensed term, but they do not demonstrate how these concerns involve any dispute with the application's consideration of "off-normal" conditions, as required to show a genuine dispute under 10 C.F.R. § 2.309(f)(1)(vi). And for the same reasons explained in the Staff's answer to the initial contentions, the Joint Petitioners have not articulated how these issues are within the scope of this proceeding or are material to the findings that must be made by the NRC.⁴⁶

Consequently, because the contention, as amended, fails to demonstrate a genuine dispute with the application and raises issues outside the scope of this proceeding, the Board should find DWM's Amended Contention inadmissible.

⁴⁴ *NUREG-1567* at Pages xxx, 15-1.

⁴⁵ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001). Specifically, with respect to Petitioner's arguments related to environmental impacts of terrorist attacks and post-license degradation, these issues not within the scope of this proceeding. *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000); 10 C.F.R. § 51.23.

⁴⁶ 10 C.F.R. § 2.309(f)(1)(iii)-(iv). Staff Consolidated Response at 56-57.

II. Amended Contention 7

A. The amendment to Contention 7 is not based on new or materially different information.

In its motion to amend Contention 7, DWM seeks to rely on Holtec's response to RAI LA-1 as its basis for raising new challenges to the lack of a dry transfer system, the adequacy of aging management programs, withholding of the emergency response plan, and the adequacy of national nuclear waste policy. However, the amended contention is inadmissible as untimely because DWM does not show how this information is materially different from previously available information, contrary to 10 C.F.R. § 2.309(c)(1)(ii).

Holtec's response to RAI LA-1 added a new Section 5.5.b.3 to the proposed Technical Specifications, which would specifically require that canisters that do not meet the earlier acceptance criteria, namely the Krypton-85 test and the helium leak test, to be kept in the sealed overpack until returned to the originating site.⁴⁷

Joint Petitioners characterize this as new information that demonstrates that radioactive materials will migrate offsite. Ostensibly based on this change, DWM makes numerous new claims, including raising inconsistencies with the Continued Storage GEIS, asserting that the mention of a sequestration canister in the aging management program implies the potential for offsite impacts, stating that the Emergency Response Plan has been improperly withheld, and opining that the "United States lacks a coherent national strategy for managing [spent nuclear fuel]."⁴⁸ However, DWM does not show that any of these claims relies on information materially different from what was previously available.

Most notably, while DWM points to the requirement to perform Krypton-85 and Helium tests upon receipt of a transportation package as evidence that materials exceed the

⁴⁷ RAI Responses at 1–2.

⁴⁸ DWM's Amended Contentions at 6, 8–13.

requirements of Part 71, both tests were previously included in the proposed Technical Specifications.⁴⁹ DWM accordingly fails to show how the addition of Section 5.5.b.3 represents anything materially different from what was previously available with respect to its claims in Contention 7. For the same reason, Joint Petitioners have not identified how the RAI response creates any new basis for challenging the adequacy of those tests or the criteria for staging transportation packages onsite.⁵⁰ Additionally, because the applicant's mention of consideration of a sequestration canister was not altered by the RAI response, DWM does not explain how this information is new, or even how it logically relates to the subject of the original contention. For example, Holtec's discussion of a sequestration canister in Section 18.15 as a defense-in-depth measure during storage, after the canisters have been accepted, has not been changed since SAR Revision 0, and the Joint Petitioners have not clearly articulated what link exists between the use of a sequestration canister in storage and the proposed transportation package acceptance criteria.⁵¹ Accordingly, DWM has not shown why the RAI response represents any materially different information with respect to the contention's concerns regarding the likelihood or consequences of releases from canisters.

Finally, regarding the other claims raised in the amended contention, such as criticism of the withholding of the Emergency Response Plan and challenges to national spent fuel policy, DWM does not explain how these claims stem from the RAI response that the Joint Petitioners relies on as "new" information. In particular, contrary to Joint Petitioners' assertions, non-

⁴⁹ Cf. *Proposed HI-STORE Technical Specifications* at 5-5 to 5-6 (Nov. 30, 2018) (ML18345A138); *Proposed HI-STORE Technical Specifications* at 5-5 (Mar. 27, 2017) (ML17116A107).

⁵⁰ And to the extent that Petitioners are challenging Holtec's discussion and license terms on staging of transportation casks that *do* fail the acceptance criteria, the areas the contention raises do not articulate a clear basis as to what the dispute is with respect to the requirements of 10 C.F.R. Part 72.

⁵¹ Cf. SAR Revision 0, Section 18.14 at 18-28 (ML17116A106); SAR Revision 0E, Section 18.15 at 18-30 (ML19016A488). This subsection has been renumbered from 18.14 to 18.15 as a result of the inclusion of a new Subsection 18.11.

proprietary versions of the emergency plan have been available since the original submittal of the application in February 2018.⁵² Joint Petitioners therefore provide no reason why concerns about the emergency plan could not have been raised by September 14, 2018, the deadline established in the original notice published in the Federal Register.⁵³

B. Amended Contention 7 does not satisfy the contention admissibility standards of 10 C.F.R. § 2.309(f)(1).

Finally, even if amended Contention 7 had met the standards in 10 C.F.R. § 2.309(c)(1), it does not meet the Commission's contention admissibility standards of 10 C.F.R. § 2.309(f)(1) for essentially the same reasons discussed in the Staff's Answer to the original petition. The proposed amended contention raises numerous issues that are not within the scope of the proceeding because they either express generalized policy preferences or seek to raise challenges to impacts beyond the licensed term (like the need for repackaging for permanent disposal or for a dry transfer system) that, as explained in the staff's answer to the initial petition, represent challenges to the Continued Storage Rule.⁵⁴ These claims in the amended Contention 7 include:

- That Holtec has refused to publicize the emergency response plan or other types of contingency plans.⁵⁵

⁵² See *Application Documents for Holtec HI-STORE Consolidated Interim Storage Facility*, <https://www.nrc.gov/waste/spent-fuel-storage/cis/hi/hi-app-docs.html>; *Emergency Response Plan, Revision 0* (Feb. 23, 2018) (ML18058A605). No update was provided in response to the RAIs; however, another revision to the Emergency Response Plan has been submitted and made publicly available in ADAMS. See *HI-STORE Emergency Response Plan Rev 3 - Non-Proprietary* (Jan. 31, 2019) (ML19037A301).

⁵³ *Holtec International's HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel*, 83 Fed. Reg. 32,919, 32,919 (July 16, 2018).

⁵⁴ Staff Consolidated Response at 33–36.

⁵⁵ DWM's Amended Contentions at 6.

- That there is “a lack of national policy for handling and disposal of spent nuclear fuel” and that a dry transfer system is needed at the site to address this.⁵⁶
- That the Holtec does not accurately account for the “role of a CISF in national policy.”⁵⁷
- That Holtec’s mention of a sequestration canister demonstrates that it is “not serious about contingency planning.”⁵⁸

As summarized above, the Joint Petitioners have not demonstrated that these issues are within the scope of this proceeding. Generalized challenges to the United States’ policies for spent nuclear fuel are not within the scope of this proceeding, nor, as the Commission has determined, is analysis of the environmental impacts of terrorism.⁵⁹

DWM also asserts in passing that the existence of acceptance criteria and requirements for canisters represents “credible scenarios for accident or attack in the transportation and delivery of [spent nuclear fuel]”⁶⁰ and that not having a dry transfer system creates a “viable mechanism by which significant radioactive materials would migrate off-site.”⁶¹ Aside from bare assertions that the existence of acceptance criteria and the lack of a dry transfer system are evidence that radioactive materials will migrate off-site (or scenarios premised on terrorist attacks or impacts beyond the licensed term, both issues outside the scope of this proceeding), the Joint Petitioners have not explained why it is plausible that material which does not meet the site acceptance criteria will exceed radiation limits under Part 71 or Part 72. And

⁵⁶ DWM’s Amended Contentions at 6, 8–13.

⁵⁷ DWM’s Amended Contentions at 6.

⁵⁸ DWM’s Amended Contentions at 9.

⁵⁹ *GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station)*, CLI-00-6, 51 NRC 193, 207 (2000).

⁶⁰ DWM’s Amended Contentions at 8.

⁶¹ DWM’s Amended Contentions at 8.

the contention (including the passages it relies on from Dr. Thompson's declaration) neither acknowledges nor specifically disputes the portions of the application that contain the applicant's analyses of accidents or transportation impacts. Here, intervenors have not "develop[ed] a fact-based argument that actually and specifically challenges the application."⁶² Accordingly, these aspects of the amended contention also fail to provide a factual basis or show any genuine dispute with the application, contrary to 10 C.F.R. § 2.309(f)(1)(v) and (vi).

In sum, in addition to being untimely, the proposed amended contention is also inadmissible because it does not meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).

III. Additional Arguments in Thompson Declaration

As discussed above, DWM refers to the Thompson Declaration to support amended Contentions 4 and 7. The Thompson Declaration is 35 pages long, of which only six pages concern the referenced RAIs.⁶³ The majority of the arguments and information raised in the declaration do not appear to relate to the terms of Contentions 4 or 7 as originally pled, or as amended; in addition, several of Dr. Thompson's arguments (in addition to those discussed above in Section II) appear to challenge matters beyond the scope of the licensing action. For example, a large portion of the declaration appears to be an attempt to relitigate the Continued Storage Rule.⁶⁴ Other portions of the declaration pertain to the "History of Nuclear Power" and note "[u]njustified optimism, weak regulation, and the ignoring or suppression of inconvenient

⁶² 10 C.F.R. § 2.309(f)(1)(vi). *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-15-1, 81 NRC 15, 41–42 (2015) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)).

⁶³ See Thompson Declaration at 20–23, 25–26 (ML19049A025).

⁶⁴ See, e.g., *id.* at 5–14 (discussing among other things the feasibility of a permanent repository for SNF, the assumption of the existence of institutional controls, potential attacks to ISFSIs and assumed doses).

information” and “political influence” within the industry.⁶⁵ Such issues are beyond the scope of the licensing action and the arguments raised in DWM Contentions 4 and 7; accordingly, they do not satisfy 10 C.F.R. § 2.309(f)(1)(iii) and cannot support the admissibility of either of these amended contentions.

CONCLUSION

For the reasons described above, the Board should deny DWM’s motion to amend Contentions 4 and 7.

Respectfully submitted,

/Signed (electronically) by/

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Dated in Rockville, MD
this 14th day of March 2019

⁶⁵ *Id.* at 17–20.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOLTEC INTERNATIONAL

(Consolidated Interim Storage Facility)

Docket No. 72-1051

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing "NRC Staff Response to Don't Waste Michigan et al.'s Proposed Amendments to Contentions 4 and 7," dated March 14, 2019, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 14th day of March 2019.

/Signed (electronically) by/

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Dated in Rockville, MD
this 14th day of March 2019