

March 15, 2019

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)
) Docket No. 72-1051
Holtec International)
) ASLBP No. 18-958-01-ISFSI-BD01
HI-STORE Consolidated Interim Storage)
Facility)

**Holtec Opposition to Don't Waste Michigan, et al.'s
Motion to Amend Contentions 4 and 7**

Pursuant to 10 C.F.R. § 2.309(i)(1), Holtec International (“Holtec”) submits this answer opposing the February 18, 2019 Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group's (collectively, “DWM's”) late-filed motion to amend its Contentions 4 and 7.¹ DWM has failed to meet the standards for late-filed contentions under 10 C.F.R. § 2.309(c)(1)(i)-(iii). And, even if DWM had met those standards, it has not met the standards for an admissible contention. As a result, the Board should reject DWM's late-filed motion to amend its contentions in addition to rejecting the original contentions.²

¹ Motion of Petitioners Don't Waste Michigan, et al. to Amend Their Contentions 4 and 7 Regarding Holtec's Decision to Have No Dry Transfer System Capability and Holtec's Policy of Returning Leaking, Externally Contaminated or Defective Casks and/or Canisters to Originating Reactor Sites (Feb. 18, 2019) (NRC ADAMS Accession No. ML19049A024) (hereinafter, “Motion”). Attached to the Motion is the Joint Petitioners' Amended Contentions 4 and 7 (Feb. 18, 2019) (the “ Amended Contentions”) and the Declaration of 12 February 2019 by Gordon R. Thompson for Submission to the US Nuclear Regulatory Commission Regarding an Application by Holtec International for a License to Construct and Operate a Consolidated Interim Storage Facility in Southeast New Mexico (Feb. 18, 2019) (the “Thompson Report”).

² In addition, the contention as originally submitted should be rejected for the reasons set forth in Holtec International's Answer Opposing the Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for

I. DWM’s Motion to Amend Contention 4 is Untimely and Inadmissible

DWM’s proposed amendment to Contention 4 is not based on new or materially different information and is therefore untimely. To the extent that the Board considers the admissibility of proposed amended Contention 4, it should find that the proposed amendment falls short of the Commission’s admissibility requirements.

A. DWM Has Failed to Demonstrate Good Cause for Its Late-Filed Motion to Amend Contention 4.

The Board should not consider DWM’s late-filed motion to amend Contention 4 because the motion is untimely, and DWM has failed to demonstrate the required good cause for its untimely filing. A motion for leave to file a new or amended contention after the intervention deadline “*will not be entertained* absent a determination by the presiding officer that a participant has demonstrated good cause” for the late filing.³ The good cause demonstration requires the petitioner to show that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.⁴

This good cause standard is intended to “act as a check to prevent petitioners from filing new contentions based on new information that is insignificantly different from previously

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 (Oct. 9, 2018) (NRC ADAMS Accession No. ML18282A509) (hereinafter, “Holtec Opposition”).

³ 10 C.F.R. § 2.309(c)(1) (emphasis added).

⁴ 10 C.F.R. § 2.309(c)(1)(i)-(iii).

available information.”⁵ But that is precisely what DWM has done here. The information upon which DWM bases its filing for amending Contention 4 was previously available and is not different, let alone materially different, from information already in the Holtec HI-STORE Consolidated Interim Storage Facility (“CISF”) License Application.⁶

DWM claims that its proposed amendment to Contention 4 is based on new information derived from Holtec’s responses to the NRC Staff’s RAI 9-3.⁷ DWM claims that Holtec’s RAI Response, “points out a serious inconsistency in what the Generic Environmental Impact Statement [for the Continued Storage Rule] says compared to Holtec’s conclusions concerning the prospects of accident conditions at the Holtec site.”⁸

This is not true. Holtec’s RAI 9-3 response did not reveal anything new concerning the prospect of accident conditions at the site. Holtec’s response amended one sentence in SAR Section 9.2.2 to align that language with other statements in the SAR.⁹ The amendment did not alter the substance of the affected sentence. NRC RAI 9-3 states in relevant part:

Section 9.2.2 of the HI-STORE SAR should consistently address off-normal conditions, in addition to the normal, off-normal and accident conditions while on-site. . . . This was not clearly addressed in the following sentence . . . and the text below is underlined for added emphasis.

Hence once the canisters have passed the receipt inspection, also discussed in Subsection 9.2.1, there is no credible normal or accident situation that

⁵ *Fla. Power & Light Co.* (Turkey Point Units 6 and 7), LBP-17-6, 86 N.R.C. 37, 48 n.9 (2017).

⁶ The original Holtec International HI-STORE CISF License Application (“Application”) is available at NRC ADAMS Accession No. ML17115A431.

⁷ Attachment 1 to Holtec Letter 5025038, HI-STORE RAI Responses, Round 1 Part 2 (NRC ADAMS Accession No. ML19016A481) (hereinafter, “Holtec RAI Response”).

⁸ Motion at 6. The Motion refers to the NRC’s Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, NUREG-2157 (Sept. 2014) (NRC ADAMS Accession No. ML14196A105) (hereinafter referred to as the “GEIS”).

⁹ Licensing Report on the HI-STORE CIS Facility Rev. 0E (NRC ADAMS Accession No. ML19016A488) (hereinafter referred to as the Safety Analysis Report and cited as the “SAR Rev. 0E”).

could challenge the integrity of the canister confinement integrity and result in a release of any radioactivity.¹⁰

To explain its request, the NRC Staff compared the above quoted statement from SAR Section 9.2.2 with a statement in SAR Section 9.2.1, which was not amended because it already addressed “[a]ll normal, off-normal and accident conditions relevant to confinement integrity”¹¹ In essence, the NRC Staff noted the omission of “off-normal” in Section 9.2.2 and requested that Holtec amend the oversight, which is precisely what Holtec did. In the Holtec RAI 9-3 Response, Holtec replied that

Section 9.2.2 has been revised to state that ‘no credible normal, off-normal or accident conditions’ could challenge the integrity of the canister confinement integrity and result in a release of any radioactivity.¹²

Thus, there is no new or significantly different information in the Holtec RAI Response. Notably, DWM *nowhere* explains how the addition of the three words materially altered the meaning of the revised sentence. Nor could it have provided such an explanation. It is not credible for DWM to claim that the addition of three words to Section 9.2.2 is new information that was not previously available or is materially different from information previously available, where that simply is not the case, and particularly where the same three words were used in a similar context in the immediately preceding SAR Section 9.2.1, as noted in the RAI. Similarly, the sentence immediately following the revised sentence in SAR Section 9.2.2 (which was not amended in response to the RAI) states that “[o]verall, from all operational activities, *no credible events are identified* that would result in a release of any radioactive materials into the work

¹⁰ Holtec International’s Application for Specific Independent Spent Fuel Storage Installation License for the HI-STORE Consolidated Interim Storage Facility for Spent Nuclear Fuel – First Request for Additional Information, Part 2 (Sept. 13, 2018) (NRC ADAMS Accession No. ML18257A240), Enclosure 1 at 5 (underlined text in original) (hereinafter “First NRC RAI Part 2”).

¹¹ *Id.*

¹² Holtec RAI Response at 5 (underlined text in original).

areas or the environment.” Thus, the same purported inference “concerning the prospects of accident conditions” at the Holtec site that DWM made from the Holtec RAI Response could certainly have been made from previously existing and unchanged language in the original, unamended Section 9.2.2.

Furthermore, essentially identical phrasing is present throughout Holtec’s license application in the versions of the SAR and the Environmental Report¹³ that existed at the time initial contentions were due. For examples:

- SAR Rev. 0C at page 491: “There is no breaching or opening of the confinement canister during storage operations. The integrity of the confinement system has been proven via analysis to be maintained during normal, *off-normal* and hypothetical accident *conditions* as discussed in Chapters 9 and 15 of this report” (emphasis added).
- ER Rev. 1 at 2-23 at Table 2.5.1: “The postulated design basis accidents include hazards from natural phenomena, such as earthquakes, floods, tornadoes, and hurricanes; and fuel handling-related accidents. The results demonstrate that the HI-STORM UMAX storage system can withstand the effects of all credible and hypothetical accident conditions and natural phenomena without affecting its safety function. There are no credible mechanisms (either from *off-normal* operations or from hypothetical accidents) that would result in the release of radioactive SNF contents, including airborne radioactive material, into the environment” (emphasis added).

¹³ Environmental Report on the HI-STORE CIS Facility Rev. 1 (Dec. 2017) (NRC ADAMS Accession No. ML18023A904) (hereinafter referred to as the “ER Rev. 1”).

- ER Rev. 1 at 6-7: “The potential impacts of accidents are presented in Section 4.13. The postulated design basis accidents include hazards from natural phenomena, such as earthquakes, floods, tornadoes, and hurricanes; and fuel handling-related accidents. The results demonstrate that the HI-STORM UMAX storage system can withstand the effects of all credible and hypothetical accident conditions and natural phenomena without affecting its safety function. There are no credible mechanisms (either from *off-normal* operations or from hypothetical accidents) that would result in the release of radioactive spent nuclear fuel (SNF) contents, including airborne radioactive material, into the environment” (emphasis added).

The above-quoted statements remain unchanged in the current versions of the SAR and ER.¹⁴

Where the purportedly “new information” a petitioner relies on “merely repeats what was already explained in past public filings,” it is not new or materially different to satisfy the standards set out in 10 C.F.R. 2.309(c)(1).¹⁵ As demonstrated above, not only was the very same information present in the same Section 9.2.2, but that information was also present throughout the original Application—providing petitioners with multiple opportunities to have raised this issue at the outset of this proceeding. Petitioners have an “iron-clad obligation to examine the publicly available documentary material . . . with sufficient care to enable it to uncover any

¹⁴ See SAR Rev. 0E at 14-1; Environmental Report on the HI-STORE CIS Facility Rev. 3 at 2-23, 6-7 (Nov. 2018) (NRC ADAMS Accession No. ML19016A493) (“ER Rev. 3”).

¹⁵ *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-15-1, 81 N.R.C. 15, 35 (2015).

information that could serve as the foundation for a specific contention.”¹⁶ DWM has failed in its obligation here.

Indeed, DWM recognizes this failure in its own filing. DWM’s expert, Dr. Thompson, states that “Holtec makes an *equivalent* assertion [to the Holtec RAI Response] in its ER (at Section 4.13.2).”¹⁷ ER Rev. 1 Section 4.13.2 states in relevant part,

The results of the evaluations performed in the FSAR demonstrate that the HI-STORM UMAX storage system can withstand the effects of all credible and hypothetical accident conditions and natural phenomena without affecting its safety function. While none of these events would result in release of any radioactive material¹⁸

To the extent DWM seeks to challenge any alleged inconsistency between this section of the ER (which was not amended in response to RAI 9-3) and the GEIS, it was obligated to have raised that challenge at the outset of this proceeding because the purported inconsistent language was in the version of the ER available at the time intervention petitions were due. All the information upon which DWM relies was previously available at the time DWM filed its petition.

DWM also asserts that “[t]he RAI responses . . . *put existing information in a new context.*”¹⁹ Even if true, this assertion is fatal to any claim of new or materially different information. The Commission has expressly ruled that a document that collects, summarizes, and places into context the facts or previously available information does not make that information new or materially different.²⁰

¹⁶ *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. 481, 496 (2010).

¹⁷ Motion at 7 (quoting the Thompson Report at 20) (emphasis added).

¹⁸ ER Rev. 1 at 4-56.

¹⁹ Motion at 11 (emphasis added).

²⁰ *Prairie Island*, CLI-10-27, 72 N.R.C. at 483 (2010) (reversing a Board ruling that would have “allow[ed] a petitioner or intervenor to delay filing a contention until a document becomes available that collects, summarizes and places into context the facts supporting that contention”).

And to the extent that DWM is raising a physical security issue,²¹ the general issue of potential terrorist attacks on the Holtec CISF facility was raised in Contention 11 of DWM's original petition.²² A contention will be ruled as untimely where the contention bore "substantial similarities" to a previously filed contention.²³ DWM could thus have raised its arguments concerning potential attacks long ago. The same is true with respect to DWM's present attempt to raise in its proposed amendment "the issues of whether there should be a 'return to sender' policy and a [Dry Transfer System (DTS)] capability during the operations and license period of the Holtec facility."²⁴ DWM previously raised issues concerning the start clean/stay clean plan and the absence of a DTS.²⁵

Finally, DWM's expert Dr. Thompson raises a myriad of issues in his report, all of which could have been previously raised, and cites to various reports and studies, none of which are new information (and in fact are many years or decades old). These include:

- The purported absence of a national strategy for managing SNF (citing a **2006** Thompson Report, a **2008** Thompson report, and a **2016** report from UK researchers);²⁶

²¹ Motion at 7 (referencing an "attack scenario that would result in a release of hazardous radioactivity").

²² Petition 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 to Intervene and Request for an Adjudicatory Hearing at 70-88 (Sept. 14, 2018) (NRC ADAMS Accession No. ML18257A334) ("DWM Petition").

²³ *Fla. Power & Light Co. (Turkey Point Nuclear Generating Units 6 and 7)*, LBP-17-2, 85 N.R.C. 14, 25 n. 12 (2017) ("Joint Intervenors raised contentions regarding reclaimed wastewater and RCW usage that bear substantial similarities to [petitioner's] newly proffered Contention 1 These contentions were rejected as inadmissible. [Petitioner] fails to show that its current assertions regarding reclaimed wastewater and RCW usage are based on new information that is materially different from that which was previously available.").

²⁴ Amended Contentions at 4-5.

²⁵ *See, e.g.*, DWM Petition at 47 (Contention 4), 61 (Contention 7).

²⁶ Thompson Report at 9-10.

- Potential adverse impacts of ISFSIs (citing, among other things, the **2014** GEIS, a **2009** Thompson Report, and a **2003** study from Pretzsch and Maier);²⁷
- Potential future operating environments for ISFSIs (citing among other things a **2005** Thompson Report, a **2002** study from Raskin, and a **2017** US Global Change Research Program);²⁸ and
- Purported lessons from the history of nuclear power (citing among other things reference material from **1981**, **1982**, and Thompson’s own reports from **2008**, **2013**, and **2014**).²⁹

For all of the foregoing reasons, the proposed amendment to Contention 4 is untimely, no good cause has been provided for the untimeliness, and the Board should therefore reject it.

B. DWM’s Amended Contention 4 is Inadmissible

Even if the Board were to find good cause for the late amendment to Contention 4 (which it should not do), the Board should nevertheless find that the amended contention falls far short of the Commission’s contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).

1. Amended Contention 4 Impermissibly Challenges the Continued Storage Rule and is Outside the Scope of This Proceeding.

The proposed amendments to Contention 4 are nothing more than further impermissible challenges to the Commission’s Continued Storage Rule (10 C.F.R. § 51.23) that rendered Contention 4 inadmissible as originally pled. DWM has not petitioned for a waiver of the rule, nor otherwise demonstrated that “special circumstances” exist “such that the application of the

²⁷ *Id.* at 11-15.

²⁸ *Id.* at 15-17.

²⁹ *Id.* at 17-20.

rule . . . would not serve the purposes for which the rule or regulation was adopted.”³⁰

Consequently, amended Contention 4 is outside the scope of this proceeding and is inadmissible.³¹

DWM Contention 4 as originally pled alleged that Holtec cannot rely on the Commission’s Continued Storage Rule and its underlying GEIS. DWM Contention 4 as originally drafted stated:

Contention 4: Holtec Does Not Qualify for Continued Storage GEIS Presumptions

Holtec has defined a site-specific spent nuclear fuel storage facility that does not qualify for the exclusions from NEPA scrutiny conferred by the Waste Storage GEIS. Consequently, severe accident mitigation during transportation to and from the Holtec CISO and at the CISO, and SNF and GTCC storage and management operations at the CISO site, may not be treated as generic issues and excused from consideration within the EIS.³²

DWM further asserted that such reliance was not appropriate because of two alleged differences between the proposed HI-STORE design and the away-from-reactor facility design assumptions used in the GEIS: the lack of a Dry Transfer System (DTS) at HI-STORE (purportedly needed to repackage any non-conforming spent fuel canisters that arrive at the CISO), and the larger volume of spent nuclear fuel proposed to be stored at HI-STORE.³³

The original Contention 4 is inadmissible because DWM had failed to petition for waiver of the Continued Storage Rule as required by 10 C.F.R. § 2.335(b).³⁴ Furthermore, none of the reasons cited by DWM preclude applicability of the Continued Storage Rule. More specifically,

³⁰ 10 C.F.R. § 2.335(b).

³¹ 10 C.F.R. § 2.309(f)(1)(iii).

³² DWM Petition at 46 .

³³ *Id.* at 47-48.

³⁴ *See* Holtec Opposition at 44.

(1) the analysis in the GEIS is not dependent on building a DTS, which the GEIS described as a “potential need,” and whose environmental impacts were included only to provide a complete picture of continued storage; and (2) nothing in the Continued Storage Rule nor the analysis in the GEIS limits their applicability to ISFSIs of a certain capacity.³⁵

DWM proposes to amend Contention 4 by adding the following assertion:

Holtec has created an issue of fact by claiming that its over-optimistic conclusion that there are no credible challenges to canister confinement integrity capable of causing radioactivity release is consistent with the GEIS.³⁶

Thus, DWM seeks to expand its challenges to the GEIS and the Continued Storage Rule based on another alleged inconsistency with the GEIS. But once again, DWM has failed to petition for waiver of the rule as required by NRC’s regulations. For this reason alone, the Board should reject amended Contention 4 out of hand.

2. Amended Contention 4 Mischaracterizes the Application and Thus Fails to Raise a Genuine Dispute on a Material Issue.

The bases for proposed amended Contention 4 are mischaracterizations by DWM and their expert, Dr. Gordon Thompson, of information clearly stated in the ER. Such mischaracterizations do not genuinely dispute the ER and do not give rise to an admissible contention.³⁷

DWM claims that ER Section 4.13.2 is “inconsistent with the statements in NRC’s GEIS,” which statements allegedly “concede[] that a credible accident or attack could release radioactive material, albeit with [a] low probability.”³⁸ In making this claim, Dr. Thompson and

³⁵ *Id.* 45-46.

³⁶ Amended Contentions at 1.

³⁷ *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 and 2), LBP-13-8, 78 N.R.C. 1, 30 (2013). *See also Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 N.R.C. 331, 363 (2009) (ruling inadmissible a contention based on mischaracterization of the license application).

³⁸ Amended Contentions at 3.

DWM are comparing apples and oranges. More specifically, they misstate information plainly presented in the ER, and then conflate discussion on *design basis* accidents in the ER with discussion on *beyond design basis* accidents in the GEIS.

ER Section 4.13.2 provides Holtec’s evaluation of environmental impacts from design basis events. ER 4.13.2. identifies numerous “accident events [that] are germane to the safety evaluation of HI-STORM UMAX system.”³⁹ The ER states that “[t]hese *design basis accident events* have been evaluated in Section 12 of the HI-STORM UMAX FSAR (Holtec 2017) to quantify the safety margins in the storage system.”⁴⁰ This is consistent with the requirements of 10 C.F.R. Part 72, which (in relevant part) requires that “[t]he design bases for these structures, systems, and components must reflect . . . [a]ppropriate combinations of the effects of normal and accident conditions and the effects of natural phenomena.”⁴¹ The ER summarizes the results of the evaluation as follows:

The results of the evaluations performed in the FSAR demonstrate that the HI-STORM UMAX storage system can withstand the effects of all credible and hypothetical accident conditions and natural phenomena without affecting its safety function. While none of these events would result in release of any radioactive material, some corrective action may be associated with the Design Basis Earthquake (potential reposition), 100 percent Blockage of Air Inlets (potential removal of blockage), and Burial Under Debris events (potential removal of debris). The FSAR analyses demonstrate that the requirements of 10 CFR §72.122 and of 10 CFR §72.106(b) and 10 CFR Part 20 would be met. Therefore, the impact of potential and hypothetical accidents is considered small.⁴²

Dr. Thompson’s analysis, however, points to the discussion of *severe* accidents in the GEIS. When Dr. Thompson asserts on page 20 of his Report that an inconsistency exists

³⁹ ER Rev. 1 at 4-56.

⁴⁰ *Id.* at 4-55 to 4-56 (emphasis added).

⁴¹ 10 C.F.R. § 72.122(2)(i), (B).

⁴² ER Rev. 1 at 4-56.

between the GEIS and Holtec’s analysis (e.g., “Holtec says the probability of a release is zero, while the GEIS says that this probability is low”) he refers to paragraph IV-2 of his own report. That paragraph, in turn, references GEIS Section 4.18.2.2, “Severe Accidents in Dry Cask Storage Systems and DTS.”⁴³ The introductory Section 4.18.2 explains that this “section describes *severe accidents, or beyond-design-basis accidents*, which are accidents that may challenge safety systems at a level higher than that for which they were designed, and assesses the environmental impact of severe accidents during continued storage.”⁴⁴ GEIS Section 4.18.2.2, in turn, discusses two probabilistic risk assessments that “consider risks to the public of severe accidents involving dry cask storage system operations,” which “considered a range of events that could result in sufficient damage to dry casks to cause radiological releases.”⁴⁵

There simply is no genuine dispute between the design basis accident analysis summarized in ER Section 4.13.2 and the severe accident analysis evaluated in GEIS 4.18.2.2, because the two discussions evaluate environmental impacts from different events. As a licensing board has explained in the reactor context, “severe accidents by their very nature are remote and speculative [and] the NRC distinguishes them from those events that must be accommodated by the plant design (‘design basis events’).”⁴⁶

Another mischaracterization by DWM of plainly available information in the Application relates to the CISF emergency response plan. DWM erroneously asserts that Holtec does “not

⁴³ Thompson Report at 11, n. 24.

⁴⁴ GEIS at 4-84 (emphasis added).

⁴⁵ *Id.* at 4-88. Elsewhere in the GEIS, the NRC Staff further distinguishes between credible accidents and non-credible accidents, with only the latter kind potentially resulting in release of radioactive material. See GEIS at 5-57 (“In addition to the credible events described above, for the [Private Fuel Storage Facility] the NRC also considered *an accident, not considered credible, in which a canister leaks*,” which impacts the NRC considered to be small) (emphasis added).

⁴⁶ *Tenn. Valley Auth.* (Watts Bar Nuclear Plant, Unit 2), LBP-09-26, 70 N.R.C. 939, 971 (2009).

have an on-site emergency response plan for radiological accidents.”⁴⁷ But this is not true, as even a cursory review of SAR Section 10.5, Emergency Planning, would reveal. Indeed, DWM’s expert does not assert that such a plan is non-existent. Rather, Dr. Thompson merely complains that Holtec has withheld its proprietary emergency response plan from public view.⁴⁸

These claims that an emergency plan is non-existent or unavailable ring hollow. SAR Section 10.5, Emergency Planning, references the Holtec CISF Emergency Response Plan and identifies it as application reference “[10.5.1].”⁴⁹ SAR Chapter 19, Consolidated References, identifies reference [10.5.1] as “Holtec CISF Emergency Response Plan, Holtec Report HI-2177535, dated March 2017,” which was submitted with the application.⁵⁰ SAR Chapter 19 also explains that “[a]ll Holtec origin documents are proprietary subject to 10CFR2.390 protection from dissemination except for Safety Analysis Reports which are available in redacted version in the Public Document Room.”⁵¹ As described in the Commission’s August 20, 2018 Order in this proceeding,⁵² the Notice of Opportunity for Hearing⁵³ provided a mechanism to seek access to “sensitive unclassified non-safeguards information,” including proprietary information. DWM failed to avail itself of that opportunity to request the non-public emergency planning report notwithstanding the extension of time provided by the Commission’s Order. Its failure to do so is a problem of its own making and does not raise a genuine dispute with the application.

⁴⁷ Amended Contentions at 4.

⁴⁸ Thompson Report at 25.

⁴⁹ Licensing Report on the HI-STORE CIS Facility Rev. 0C at 456 (May 31, 2018) (NRC ADAMS Accession No. ML18254A413) (hereinafter referred to as “SAR Rev. 0C”).

⁵⁰ SAR Rev. 0C at 648.

⁵¹ *Id.* at 635.

⁵² Order of the Secretary Denying the Request to Delay or Suspend the Sept. 14, 2018 Hearing Request Deadline (Aug. 18, 2018) (NRC ADAMS Accession No. ML18232A577).

⁵³ 83 Fed. Reg. 32,919 (July 16, 2018).

Moreover, a non-proprietary version of the Emergency Response Plan was provided to the NRC and made available in ADAMS on February 28, 2018—months before intervention petitions were due—at NRC Accession Number ML18058A605. Neither DWM nor Dr. Thompson acknowledge this public report, let alone challenge any of its contents.

In sum, DWM is attempting to fabricate disputes with the Application where no dispute exists, or has failed to dispute available information. DWM therefore has failed to raise a genuine dispute on a material issue to satisfy 10 CFR § 2.309(f)(1)(vi).

3. DWM’s assertions concerning evaluations involving potential terrorist attacks are beyond the scope of the proceeding.

The proposed amendments to Contention 4, and more specifically, the proposed amended bases of the contention, seeks to raise the specter of terrorist attacks.⁵⁴ But controlling Commission precedent holds that NEPA does not require an analysis of environmental impacts of a hypothetical terrorist attack. In the early 2000s, the Commission held that NEPA does not require a terrorism review, because the “environmental effect” of terrorism is too far attenuated from the NRC’s licensing action for the NRC’s licensing action to be the proximate cause of that impact.⁵⁵ Notwithstanding the Ninth Circuit’s decision in *San Luis Obispo Mothers for Peace v. NRC*, the Commission reiterated that “NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities” and determined that it would not apply the Ninth Circuit’s ruling outside of that Circuit.⁵⁶ The CISF site is in New Mexico, and therefore outside the Ninth Circuit’s jurisdiction. Consequently, no

⁵⁴ Amended Contentions at 3.

⁵⁵ See, e.g., *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-1, 57 N.R.C. 1, 6-7 (2003); *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 N.R.C. 144, 145-47 (2007); *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 N.R.C. 554, 566-568 (2008).

⁵⁶ *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 N.R.C. 124, 128-29 (2007).

NEPA analysis of the potential environmental impacts of hypothetical acts of terrorism is required in this proceeding.⁵⁷

4. Amended Contention 4 is Unsupported and Immaterial

At the very end of proposed amended Contention 4, DWM departs from its original claim that the CISF is not entitled to the presumptions offered by the Continued Storage Rule and GEIS, and that Holtec should therefore evaluate environmental impacts *after* the initial license term. Instead, DWM seeks to recast the Contention by claiming that certain environmental impacts “during the term of the license for Holtec” ought to be considered.⁵⁸ These environmental impacts are those associated with Holtec’s “return to sender” or start clean/stay clean plan, and the lack of a DTS.⁵⁹ Aside from being far afield from the original Contention 4, these claims are not supported. All DWM asserts is that there are environmental impacts “both positive and negative” that ought to be considered, but DWM nowhere explains what those impacts might be. A statement “that simply alleges that some matter ought to be considered” does not provide a sufficient basis for a contention.⁶⁰ Moreover, “[n]either mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention.”⁶¹ This claim therefore fails under 10 C.F.R. § 2.309(f)(1)(v). Nor does DWM explain how such analysis would make any difference in the environmental analysis, therefore failing 10 C.F.R. § 2.309(f)(1)(iii).

⁵⁷ To the extent DWM is attempting to challenge the capability of the proposed CISF to respond to threats and potential radiological sabotage, DWM has failed to address (let alone dispute) publicly available information in the Application on physical security and safeguards security (SAR Section 10.6) or the non-public HI-STORE Site Security Plan.

⁵⁸ Amended Contentions at 5.

⁵⁹ *Id.*

⁶⁰ *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).

⁶¹ *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-12-27, 76 N.R.C. 583, 595 (2012).

For all of the foregoing reasons, proposed amended Contention 4 is inadmissible.

II. DWM’s Motion to Amend Contention 7 is Untimely and Inadmissible.

DWM’s proposed amendment to Contention 7 is not based on new or materially different information and therefore is inexcusably late. Even if the Board does not reject proposed amended Contention 7 as unjustifiably late, it should find that the proposed amendment is not admissible.

A. DWM Has Failed to Demonstrate Good Cause for Its Late-Filed Motion to Amend Contention 7.

The Board should not consider DWM’s late-filed motion to amend Contention 7 because the motion is untimely, and DWM has failed to demonstrate the required good cause for its untimely filing.

Contention 7 as initially pled sought to challenge the Holtec “Start Clean/Stay Clean” policy to be employed at the CISF.⁶² Under this policy, incoming spent nuclear fuel canisters will be inspected and non-conforming canisters will be returned to sender. DWM seeks to amend Contention 7 based on Holtec’s RAI Response to NRC RAI 9-3 and RAI LA-1.⁶³

As demonstrated above in the discussion of proposed amended Contention 4 (*supra* Section I.A.), there is no new information or materially different information in Holtec’s response to NRC RAI 9-3 that was not previously available. Thus, Holtec’s response to NRC RAI 9-3 also does not support the late amendment of Contention 7.

The same is true with regards to Holtec’s response to RAI LA-1. There, the NRC Staff requested that Holtec “[j]ustify the absence of a time limit for a canister to be returned to the nuclear plant of origin, or other facility licensed to perform fuel loading procedures, in Appendix

⁶² DWM Petition at 61.

⁶³ Motion at 7; Amended Contentions at 8.

A to the proposed Materials License.”⁶⁴ Holtec’s response to RAI LA-1 states in relevant part, “If a canister fails the Krypton-85 test or helium leak test, it shall remain in the sealed HI-STAR 190 transportation cask in the rail spur staging area south of the Cask Transfer Building (CTB), until it is returned to the originating site or other facility licensed to perform fuel loading procedures. The HI-STORE CISF shall set a time limit for returning the canister by using measured dose rates from the loaded transportation overpack and ensuring the annual dose rates for the facility are maintained below 10 CFR 72.104 limits.”⁶⁵ Holtec then (1) updated Section 10.3.3.1 to include the use of the rail spur staging area procedures for canisters that do not pass the examination, and (2) added Section 5.5.5.b.3 to Appendix A of its proposed Materials License, which states:

If a canister fails the above acceptance test, it shall be kept within its sealed transportation overpack on site until it is returned to the originating site. The CISF shall set a time limit for returning the canister by using measured dose rates from the loaded transportation overpack and ensuring annual dose rates are maintained below 10 CFR 72.104 limits including contribution from any non-accepted canisters within transportation overpacks.⁶⁶

In attempting to explain why Holtec’s response to RAI LA-1 is materially different than information previously available, DWM states:

Holtec’s Response to RAI LA-1 assumes that at worst an arriving SNF canister would be leaking only small amounts with the canister mostly intact, and in circumstances that would allow the canister to be monitored, received, tested, repackaged, stored, shipped, and received somewhere else without any difficulty. To assume that no canisters will exhibit substantial damage or leakage during a 20-year transportation and delivery effort is unrealistic, according to Joint Petitioners’ expert witness, Gordon Thompson.⁶⁷

⁶⁴ Holtec RAI Responses at 1.

⁶⁵ *Id.*

⁶⁶ Revised Appendix A to Materials License No. SNM-1051, Technical Specifications for the HI-STORE Consolidated Interim Storage (CIS) Facility at 5-6 (Nov. 30, 2018) (NRC ADAMS Accession No. ML18345A138).

⁶⁷ Motion at 11.

Similarly, DWM and Dr. Thompson purport to challenge Holtec’s “highly optimistic” assumption that the non-conforming canisters would not exhibit substantial damage or leakage.⁶⁸ DWM does not explain how this perceived inference from the Holtec RAI response concerning the condition of the canisters is new or materially different information. The fact that non-conforming canisters might arrive at the Holtec site and be capable of being returned to their plant of origin has been evident from the start by Holtec’s “Start Clean/Stay Clean” plan. Indeed, DWM’s Contention 7 as initially drafted directly challenged the “Start Clean/Stay Clean” plan whereby nonconforming canisters might arrive and, after inspection, be returned to sender.⁶⁹

Indeed, throughout the application, Holtec shows that it has contemplated the arrival of non-conforming canisters at the CISF and that they would be returned. For example, SAR Section 3.1.4.6, Health Physics Operations, states “[i]n order to uphold the HI-STORE philosophy of ‘Start Clean/Stay Clean’ HP personnel ensure that contamination levels on the canisters of incoming shipments meet site requirements. Canisters exceeding the limits will be returned to the originating power plant for dispositioning.”⁷⁰ For another example, ER Section 4.12.2 states that the “CIS Facility plans to reject and return canisters that have unacceptable external contamination.”⁷¹

Moreover, DWM extensively discusses the “Start Clean/Stay Clean,” and the “return to sender” policies in their October 16, 2018 reply to Holtec’s Opposition, noting that “if shipping

⁶⁸ Amended Contentions at 9 (quoting Thompson Report at 26).

⁶⁹ *See, e.g.*, DWM Petition at 61 (“At the CISF, Holtec intends to implement a policy of rejecting and returning canisters that have unacceptable external radioactive contamination or structural damage”).

⁷⁰ SAR Rev. 0C at 198.

⁷¹ ER Rev. 1 at 4-47.

containers violate Holtec's 'site requirements,' whatever those are, or perhaps NRC's stated dose rate limits, they'll simply be removed from the site."⁷² Consequently, any claims regarding the fact that non-conforming canisters may be present on site and would be capable of being returned, could have, and should have, been raised long ago.

The bottom line is that DWM nowhere explains how the information in the Holtec RAI Response is new or materially different from information previously available. To the extent that DWM claims the RAI Response merely "put existing information in a new context,"⁷³ that is not sufficient to meet the good cause standard.⁷⁴

DWM claims that the proposed use of a "sequestration canister" in Holtec's Aging Management Program ("AMP") to isolate a leaking canister from the environment undercuts Holtec's "unwarranted optimism" about the conditions of the spent fuel canisters.⁷⁵ Again, any challenge to Holtec's assumptions about the condition of the canisters obviously could have been raised at the outset of the proceeding in light of the clearly stated intent that such non-conforming canisters would be transported offsite. Furthermore, Holtec's sequestration canister proposal has been part of its AMP in SAR Section 18.15, Recovery Plan, since the outset of this proceeding.⁷⁶

⁷² Combined Reply 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 to Holtec and NRC Answers at 46-47 (Oct. 16, 2018) (NRC ADAMS Accession No. ML18289B319).

⁷³ Motion at 11.

⁷⁴ *Prairie Island*, CLI-10-27, 72 N.R.C. at 483 (2010) (reversing a Board ruling that would have "allow[ed] a petitioner or intervenor to delay filing a contention until a document becomes available that collects, summarizes and places into context the facts supporting that contention").

⁷⁵ Amended Contentions at 9 (quoting Thompson Report at 26).

⁷⁶ SAR Rev. 0C at 604.

Any challenge to Holtec’s alleged “refusal to publicize emergency and contingency plans”⁷⁷ also could have been raised at the outset of this proceeding. As previously discussed in response to amended Contention 4, the Holtec CISF Emergency Response Plan was identified in the license application, and the NRC’s Request for Hearing provided an opportunity for petitioners to request access to non-public information. Any such complaint now is too little too late.

The proposed amended statement of Contention 7 also purports to challenge the lack of a dry transfer system (“DTS”) facility at the Holtec CISF. As previously discussed, this is not new information. And indeed, DWM has previously raised that challenge in Contention 4 as pled.

Finally, any claim that the U.S. lacks a national policy for handling the disposal of spent nuclear fuel (including the lack of standardized spent nuclear fuel containers)⁷⁸ was certainly not revealed by any of Holtec’s RAI responses, and is otherwise not new information. This general claim—its lack of relevance to the specific Holtec CISF project notwithstanding—could have also been raised at the outset of this proceeding.

The references relied on in the portions of Dr. Thompson’s report to support the proposed amendments to the bases of Contention 7 are also not new information. These include:

- A **2012** report from Carlsen and Raap;⁷⁹
- A **2016** report from Hambley et al.;⁸⁰ and
- Reports prepared by Dr. Thompson in **2006**, **2008**, and **2018**.⁸¹

⁷⁷ Amended Contentions at 6, 9 (quoting Thompson Report at 25).

⁷⁸ Amended Contentions at 9-13.

⁷⁹ Amended Contentions at 11 (quoting Thompson Report).

⁸⁰ Amended Contentions at 12 (quoting Thompson Report).

⁸¹ *Id.* at 12-13 (quoting from Thompson Report). Because none of the information in Holtec’s RAI responses is new or materially different, there is no foundation to support the timeliness of Dr. Thompson’s entire report.

As the Commission has made clear, “[t]here simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding.”⁸² That is the case here, as DWM could have raised this myriad of issues at the outset of this proceeding, but failed to do so. Thus, their motion to amend Contention 7 is untimely.

B. DWM’s Amended Contention 7 is Inadmissible

Even if the Board were to find good cause for the late-filing of the amended contention (which it should not do), the Board should nevertheless find that the amended contention falls far short of the Commission’s contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). DWM’s assertions are outside the scope of this proceeding, impermissibly challenge NRC regulations, and otherwise fail to raise a genuine dispute on a material issue. 10 C.F.R. § 2.309(f)(1)(iii), (vi).

Contention 7 as initially pled purported to challenge Holtec’s Start Clean/Stay Clean policy and states:

Contention No. 7: The ‘Start Clean/Stay Clean’ Policy Is Unlawful and Directly Causes a Public Health Threat.

Holtec’s “HI-STORE philosophy” of “Start Clean/Stay Clean,” whereby incoming shipments of canisters that are contaminated, leaking or otherwise compromised will be returned to the originating power plant for disposition, is illegal under NRC regulations and the Atomic Energy Act. It is unlawful to knowingly ship containers with radiation on exposed or external surfaces. Once delivered to the site, leaky and/or contaminated canisters must remain at Holtec—but Holtec expressly intends to return such canisters to their points of origin. Leaking or otherwise compromised shipping containers would likewise present an

Consequently, the Board should reject Dr. Thompson’s report in its entirety. All of the information contained in the Report could have been raised at the outset of this proceeding.

⁸² *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 272 (2009) (footnotes and internal quotation marks omitted).

immediate danger to the corridor communities through which they would travel back to their nuclear power plant site of origin, likely violating numerous additional NRC and DOT regulations.⁸³

Holtec opposed Contention 7 because (among other reasons) such assertions impermissibly challenged NRC regulations which “permit the transport of licensed materials so long as specified external surface radiation standards are met,” and DWM had failed to petition for waiver of those regulations.⁸⁴

DWM proposes to amend Contention 7 to add the following broad assertion, which is far afield from both the contention as originally pled, and equally far afield of the alleged new information in Holtec’s RAI response:

Holtec’s refusal to publicize emergency and contingency plans, as well as its insistence that there is zero potential accident or attack scenario that would result in a radiation release (and hence no need for dry transfer storage capability) reflects a lack of a national policy for handling and disposal of SNF and Holtec’s misperception as to the role of a CISF in national policy. The applicant’s non-credible positions on these matters takes them outside the coverage and shield of the Continued Storage GEIS and requires them to be scrutinized under NEPA and addressed in the Environmental Impact Statement. Holtec has created an issue of fact by claiming that its over-optimistic conclusion that there are no credible challenges to canister confinement integrity capable of causing radioactivity release is consistent with the GEIS.⁸⁵

Apart from being completely unrelated to Contention 7 as pled, none of these new assertions is admissible. First, DWM’s assertion regarding Holtec’s alleged refusal to publicize emergency and contingency plans is incorrect, as highlighted above in response to proposed amended Contention 4, and thus fails to raise a dispute on a material issue. The Application made clear that a non-public version of the Emergency Response Plan was submitted with the

⁸³ DWM Petition at 61.

⁸⁴ Holtec Opposition at 63.

⁸⁵ Amended Contentions at 6.

application, which DWM could have requested through the procedures set forth in the Notice of Hearing. A non-proprietary version of the Emergency Response Plan was provided to the NRC on February 22, 2018 and made available in ADAMS on February 28, 2018 at NRC Accession Number ML18058A605.⁸⁶ Where a petitioner’s contention is incorrect on its face, it does not raise a “‘genuine dispute . . . on a material issue’ for litigation as [the NRC’s] contention rules require.”⁸⁷

Second, DWM claims that Holtec is being “non-credible” in its assertion that “there is zero potential accident or attack scenario that would result in a radiation release (and hence no need for dry transfer storage capability)” because non-conforming canisters will be onsite.⁸⁸ Holtec did not previously claim that non-conforming canisters would not be present on site; the possibility that a non-conforming canister might arrive at the site is the basis for Holtec’s Start Clean/Stay Clean plan. What DWM fails to dispute is that Holtec’s statements concerning the lack of credible normal, off-normal, or accident conditions that could challenge canister integrity apply to the time frame *following* receipt and inspection of the canister at the site. This is clearly outlined in Holtec’s SAR at Section 9.2.2: “*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 that could challenge the integrity of the canister confinement system and result in a release of any radioactivity.*”⁸⁹ In other words, once a canister has passed the receipt inspection and testing, there are no credible normal, off-normal, or accident conditions that could

⁸⁶ 83 Fed. Reg. at 32,919, 32,922. (The July 16, 2018 Notice of Hearing identifies, “Holtec’s February 22, 2018, information submittal in response to proprietary information determination . . . ML18058A617”).

⁸⁷ *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-5, 61 N.R.C. 22, 34 (2005) (citing 10 C.F.R. § 2.309(f)(1)(vi)).

⁸⁸ Amended Contentions at 6, 8.

⁸⁹ SAR Rev. 0E at 9-7 (emphasis added).

challenge its integrity. Nowhere does DWM present a basis for challenging this statement. This statement does not apply to canisters that have been determined to be non-conforming.

Third, to the extent that DWM raises the issue of a lack of a national policy for spent nuclear fuel,⁹⁰ that is far outside the scope of this proceeding. Even “a generalized grievance regarding NRC policy” (let alone a national policy) would be outside the scope of this proceeding.⁹¹ Whether or not the United States lacks a national policy for the long term storage and/or disposal of spent nuclear fuel is irrelevant to the only questions at issue in this proceeding: whether Holtec has met applicable NRC requirements and the NRC should approve Holtec’s request for authorization to construct and operate the HI-STORE CISF “to store up to 8,680 metric tons uranium (MTU) of commercial spent nuclear fuel in the HI-STORM UMAX Canister Storage System for a 40-year license term” as set forth in the Notice of Hearing.⁹²

Fourth, far exceeding its boundaries as initially pled, the proposed amended Contention 7 now purports to challenge the applicability of Continued Storage Rule and the GEIS,⁹³ which challenge (as previously discussed) is impermissible absent a waiver, and should be rejected outright. Furthermore, all of the “non-credible positions” Holtec allegedly takes (lack of emergency plan, lack of any accident or attack scenario resulting in radioactive material release, lack of national spent nuclear fuel policy) that renders the Continued Storage Rule inapplicable, simply are not true or are irrelevant to this proceeding, as just discussed.

⁹⁰ Amended Contentions at 6, 9, 12-13.

⁹¹ *Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-16-5, 83 N.R.C. 259, 287 (2016).

⁹² 83 Fed. Reg. at 32,919.

⁹³ Amended Contentions at 6 (“The applicant’s non-credible positions on these matters takes them outside the coverage and shield of the Continued Storage GEIS . . .”).

Relying on Dr. Thompson’s unsupported statement, DWM claims that Holtec is making a “highly optimistic” assumption and showing “unwarranted optimism” that any non-conforming canisters that do arrive at the CISF would be “largely intact” and any leakage “would be small.”⁹⁴ They also claim that the potential capability to deploy a sequestration canister as part of the AMP (at Section 18.15, Recovery Plan) “undercuts” the alleged “unwarranted optimism.”⁹⁵ But neither Dr. Thompson nor DWM provides any support for these claims, or otherwise makes any showing how they are material to the findings the NRC must make. They provide nothing to suggest that the receipt of severely damaged and heavily leaking canisters is a credible or reasonable scenario. Indeed, the AMP states that the potential deployment of a sequestration canister is a “defense-in-depth measure” intended to address an “*extenuating situation*.”⁹⁶ DWM and Dr. Thompson offer no information to suggest otherwise. These claims also fail for the same reasons similar claims in Contention 7 as initially pled fail. As Holtec explained in its response to Contention 7, reactor licensees packaging spent fuel operate under NRC-approved QA procedures that would minimize the possibility that any defective canister would arrive at the away-from-reactor ISFSI.⁹⁷ DWM has provided no information or explanation why the Board should assume such QA procedures at the sites are inadequate or inadequately implemented, and hence why the arrival of severely damaged canisters should be assumed. In addition, with respect to the potential for damage to canisters while en route, the Commission observed that it “has determined generically that accidental canister breach is *not a*

⁹⁴ *Id.* at 8-9 (quoting Thompson Report at 26).

⁹⁵ Amended Contentions at 18-30.

⁹⁶ SAR Rev. OC at 18-30 (emphasis added).

⁹⁷ Holtec Opposition at 64-65 (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation) CLI-04-22, 60 N.R.C. 125, 138 (2004)).

credible scenario.”⁹⁸ Petitioners have not provided any factual or expert support positing a plausible scenario in which severely damaged canisters would be received at the CISF.

Relying again on another unsupported statement by Dr. Thompson, DWM claims that Holtec “accepts no responsibility for what happens to SNF at any location other than the site of the proposed CISF.”⁹⁹ This claim is also clearly outside the scope of this proceeding, which is to build and operate a CISF in New Mexico. Aside from the vagueness of Dr. Thompson’s reference to “any location other than the CISF,” the Application is not for the loading of the canisters at reactor sites or the shipment of the canisters to the CISF, or any other spent nuclear fuel related activity outside the CISF.

DWM’s proposed amendment to Contention 7 would also recommend the “articulation of a credible, coherent, long-range plan for responding to foreseeable contingencies affecting the proposed CISF, including . . . slowly developing situations.”¹⁰⁰ This assertion completely ignores, and therefore fails to dispute, Holtec’s proposed AMP, a summary of which is provided in SAR Chapter 18, “Aging Management Program.” The AMP discussion in the Application referenced the non-public “Aging Assessment and Management Program for HI-STORE CIS”, Holtec Report 2167378, Revision 0, dated March 2017,” which is identified as reference [1.2.1].¹⁰¹ DWM did not avail itself of the opportunity to request access to this report, under the same procedures discussed above with respect to the Emergency Response plan. Its failure to make such request does not raise a genuine dispute with the application.

⁹⁸ *Private Fuel Storage*, CLI-04-22, 60 N.R.C. at 137 (emphasis added) (footnote omitted).

⁹⁹ Amended Contentions at 9.

¹⁰⁰ Amended Contentions at 9 (Quoting Thompson Report at 25).

¹⁰¹ SAR Rev. 0C at 635.

Finally, proposed amended Contention 7 notes the “lack of standardization of SNF containers.”¹⁰² It is not clear how this circumstance supports any of DWM’s claims in the proposed amended Contention 7. And regardless of this lack of support, any challenges to storage system design impermissibly challenge NRC rules, and are thus outside the scope of this proceeding and cannot support an admissible contention. 10 C.F.R. 72.46(e) states in relevant part:

(e) If an application for (or an amendment to) a specific license issued under this part incorporates by reference information on the design of a spent fuel storage cask for which NRC approval pursuant to subpart L of this part [72] has been issued or is being sought, the scope of any public hearing held to consider the application will not include any cask design issues.

The HI-STORE application relies upon, and incorporates by reference, information submitted to and approved by the NRC for the HI-STORM UMAX System in Docket 72-1040.¹⁰³ In addition, 10 C.F.R. § 72.214 identifies the list of approved spent fuel storage casks. Certificate of Compliance No. 1040 is listed for the HI-STORM UMAX canister storage system.

¹⁰² Amended Contentions at 12 (quoting Thompson Report).

¹⁰³ See SAR Rev. 0C at 27 (Table 1.0.3: Systems and Documents Incorporated by Reference for HI-STORE).

III. Conclusion

For all of the foregoing reasons, the Board should reject the amended contentions.

Respectfully submitted,

/Signed electronically by Timothy J. V. Walsh/

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March 15, 2019

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March 15, 2019

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board Panel

In the Matter of)	
)	Docket No. 72-1051
Holtec International)	
)	ASLBP No. 18-958-01-ISFSI-BD01
HI-STORE Consolidated Interim Storage)	
Facility)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Holtec Opposition to Don't Waste Michigan et al.'s Motion to Amend Contentions 4 and 7 has been served through the EFiling system on the participants in the above-captioned proceeding this 15^h day of March 2019.

/signed electronically by Timothy J. V. Walsh/

Timothy J. V. Walsh