

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

IN THE MATTER OF: )  
 ) Docket No. 72-1051  
HOLTEC INTERNATIONAL )  
 )  
(Consolidated Interim Storage Facility ) March 18, 2019  
Project) )

**SIERRA CLUB’S REPLY TO HOLTEC’S OPPOSITION TO SIERRA CLUB’S  
MOTION TO AMEND CONTENTION 16**

Comes now Sierra Club and for its Reply to Holtec’s Opposition to Sierra Club’s  
Motion to Amend Contention 16, states as follows:

INTRODUCTION

Sierra Club’s Contention 16, as originally presented, alleged that Holtec’s ER does  
not contain any information as to whether brine continues to flow in the subsurface under  
the Holtec site. The contention was based on the information available at the time Sierra  
Club’s Petition to Intervene was filed.

The Requests for Information (RAIs) submitted to Holtec and Holtec’s Responses  
thereto presented new information that was not available when the original Contention 16  
was drafted. The information contained in Holtec’s Responses to the RAIs was not even  
set forth in Holtec’s Answer to the original Contention 16.

SIERRA CLUB’S MOTION TO AMEND CONTENTION 16 WAS TIMELY FILED

The Motion to Amend Contention 16 was filed within 30 days after Holtec’s  
Responses to the RAI’s identified in the Motion. Contrary to Holtec’s argument in its  
Opposition, it is Holtec’s Responses that constitute the new information, not the RAIs. So

it is the date the Responses were available that triggers the timeliness of the amended contention.

Although, as explained in Sierra Club's Motion, the RAIs did put the issue of brine in the groundwater in a new perspective and did place Holtec in a position where it had to address the issue, the RAIs by themselves did not provide new information. It was the information Holtec was forced to produce in response to the RAIs that constitute the new information.

The point is that Holtec's documentation submitted with its license application and its Answer to Sierra Club's Petition to Intervene did not provide the information the RAIs were able to force from Holtec. As explained in Sierra Club's Motion to Amend Contention 16 and the amended contention itself, the information in Holtec's Responses to the RAIs was not in any previous documentation.

Furthermore, the Declaration of Dr. Gordon Thompson is based on Holtec's Responses to the RAIs. Specifically, pages 20-26 of Dr. Thompson's declaration directly reference the RAIs and Holtec's Responses identified by Sierra Club and Don't Waste Michigan et al. in their motions to amend contentions. Holtec's claim that Dr. Thompson's declaration does not identify the RAIs and Holtec's Responses is proven wrong by a simple reading of Dr. Thompson's declaration. So Dr. Thompson's report is based on the new information upon which Sierra Club's Motion to Amend Contention 16 is based. The fact that Dr. Thompson included material in his declaration that places the RAIs and the Responses in a broader context does not make that material irrelevant. On the contrary, it adds to the relevance of the RAIs and Responses.

Holtec's Responses to the RAIs contended that there was no issue with brine in the groundwater because the containers holding the radioactive waste would not leak and Holtec's Aging Management Program would detect any leaks. Neither of these assertions were made in the ER or the SAR with respect to groundwater impacts. The SAR, 2.5, which purports to discuss the groundwater issues at the site, mentions the presence of brine but does not discuss the issues raised in the RAIs and Holtec's Responses. General, and largely unsupported, statements in other portions of the SAR that claim the safety of the containers holding the radioactive waste do not address the issues raised in the RAIs and Holtec's Responses. Nor does the ER, Rev. 3, discuss protection of the environment regarding brine coming into contact with the storage containers.

There is no mention of brine in the SAR, Chapter 18 describing the Aging Management Program. Nor was there any mention of the Aging Management Program in Holtec's Answer to Sierra Club's initial Contention 16. And there is no mention of the Aging Management Program in the ER, Rev. 3, with respect to the issues presented in Amended Contention 16. Thus, Holtec's reliance now in response the RAIs is certainly new information.

Finally, if, as Holtec claims, the information forming the basis of Sierra Club's Amended Contention 16 was always available, NRC Staff would not have asked for the additional information as set forth in the RAIs. Of course, according to Holtec there is never any new information. As shown herein, that is clearly wrong.

AMENDED CONTENTION 16 IS ADMISSIBLE

Holtec's "irrelevant and rambling" argument claiming Amended Contention 16 is not admissible does not really explain in concrete terms why the amended contention is not admissible. In fact, the amended contention explains in detail, based on Gordon Thompson's declaration, why Holtec's documentation, in the context of the RAIs and Holtec's Responses thereto, is inadequate. Dr. Thompson clearly references specific sections of the ER and SAR that are inadequate.

Ironically, Holtec complains that the amended contention is not a "concise" statement of the facts upon which the amended contention is based because significant portions of Dr. Thompson's declaration are set out in the contention. But if Sierra Club presented anything less, Holtec would complain that the contention did not present enough facts to support the contention. So, as usual, no matter what Sierra Club does in presenting its contentions, it is never right, according to Holtec.

Holtec also claims that, although the amended Contention 16 refers to the new information described herein, the basis for the amended contention has allegedly not changed from the basis for the original contention. The error in Holtec's argument is that the contention itself can change based on new information, without changing the general basis for the contention. So, the new information brings new facts to the contention, but does not change the basis.

In fact, it has been held that if an intervenor provides additional specific information that falls within the ambit of its original contention, it is not really an "amendment" at all. *Duke Energy Corp. (Catawba Nuclear Station, Units 1 & 2)*, 59 NRC 388, 391 (2004). The scope of a contention can be determined by considering the

contention together with its stated basis to identify the precise issue that an intervenor seeks to raise. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), 28 NRC 93, 97 & n. 11 (1988).

So, as long as the amended contention, together with its stated basis, does not change the scope of the contention, it is admissible. *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station). 71 NRC 479, 482 (2010). The scope of a contention is not changed as long as the focus of the contention is not changed and the amended contention does not add “a host of new issues and objections that could have been raised at the outset.” *Id.* In this case, the new information supporting the amended contention does not change the focus of the contention from the inadequate discussion of the impacts of brine in the groundwater, nor does it raise new issues, simply additional facts.

The amended Contention 16 explains exactly, primarily through Gordon Thompson’s declaration, why the Holtec documentation is inadequate in assessing the impacts of brine in the groundwater on the CIS facility. Dr. Thompson’s opinions are not speculation. He cites to specific sections of the ER and SAR and explains specifically why the discussion is inadequate. It is not speculation to note the safety and environmental problems that could occur and show why the Holtec documentation is inadequate in addressing those possibilities. That is exactly what Dr. Thompson did.

Holtec is again attempting to construct an almost impossible standard for an intervenor to meet in presenting a contention. Sierra Club set forth in its Petition to Intervene the standard for admissibility of contentions. That standard was concisely stated by the ASLB in the Yucca Mountain case:

The Commission therefore amended its rules to require that contentions have “at least some minimal factual and legal foundation in support.” That is all. That is what DOE agreed at oral argument is the standard. As the Commission emphasized in Oconee, the contention requirements were never intended to be turned into a “fortress to deny intervention.”

*U.S. Dept. of Energy* (High Level Waste Repository), 69 NRC 367, 453 (2009).

#### CONCLUSION

Amending a contention should be liberally construed as long as the amendment does not materially change the focus and scope of the original contention, or raise new issues. Sierra Club’s Amended Contention 16 easily falls within the parameters of this standard for amended contentions. Therefore, Amended Contention 16 should be admitted.

*/s/ Wallace L. Taylor*

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of Sierra Club's Reply to Holtec's Opposition to Sierra Club's Amended Contention 16 were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned proceeding.

*/s/ Wallace L. Taylor*

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