March 21, 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 Late-Filed Sierra Club Contentions 27, 28, and 29

Pursuant to 10 C.F.R. §§ 2.309(i)(1), Holtec International ("Holtec") submits this opposition to Sierra Club's Motion[1] to file late-filed Contentions 27, 28, and 29.[2] The Board should find that Contentions 27, 28, and 29 are egregiously untimely, and that Sierra Club has failed to provide any good cause for its untimeliness under the late-filed contention standards in 10 C.F.R. § 2.309(c)(1)(i)-(iii). Consequently, the Atomic Safety and Licensing Board (the "Board") cannot entertain the late contentions. And, even if the Board should find good cause, Sierra Club has not met the standards for an admissible contention under 10 C.F.R. § 2.309(f)(1). As a result, the Board should reject late-filed Sierra Club Contentions 27, 28, and 29.

I. Legal Standards

The Commission's regulations explicitly prohibit the consideration of contentions filed after the initial deadline absent a finding of good cause for the late filing. Contentions filed after the intervention deadline "*will not be entertained* absent a determination by the presiding officer

[1] Sierra Club's Motion to File New Late-Filed Contentions 27, 28, and 29 (Feb. 25, 2019) (the "Motion").

[2] Sierra Club's Additional Contentions in Support of Petitioner to Intervene and Request for Adjudicatory Hearing (Feb. 25, 2019) (the "Late Contentions"). Attached to the Contentions is the February 23, 2019 "Expert Report and Curriculum Vitae of Robert Alvarez" (the "Alvarez Report").

that a participant has demonstrated good cause" for the late filing.[3] The good cause demonstration requires a petitioner to show that:

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

This means that "previously available information cannot be used as the basis for a new or amended contention filed after the deadline," including previously available information that is compiled for the first time in a new document.[5] A document that collects, summarizes, and places into context the facts or previously available information does not make that information new or materially different.[6] "To conclude otherwise would turn on its head the regulatory requirement that new contentions be based on information . . . *not previously available*,"[7] and also be "inconsistent with [the Commission's] longstanding policy that a petitioner has an *iron-clad obligation* to examine the publicly available documentary material . . . with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention."[8] "'There simply would be no end to NRC licensing proceedings if petitioners could disregard [the Commission's] timeliness requirements and add new contentions at their

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

[4] 10 C.F.R. § 2.309(c)(1)(i)-(iii).

[5] Final Rule, Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,566 (Aug. 3, 2012)

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

[7] *Id.* (quotation omitted) (emphasis in original).

[8] *Id.* (emphasis added) (quotation and footnote omitted).

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.'"[9]

Even if a petitioner is able to show the requisite good cause for the late filing, the late-contentions must still meet the Commission's admissibility requirements under 10 C.F.R. § 2.309(f)(1). Specifically, contentions must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
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> (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;
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> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
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> (vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.[10]

These standards are enforced rigorously. "If any one . . . is not met, a contention must be rejected." A licensing board is not to overlook a deficiency in a contention or assume the

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[9] *Id.* (quoting *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 271-72 (2009) (footnotes and internal quotation marks omitted)).

[10] 10 C.F.R. § 2.309(f)(1)(i)-(vi).

existence of missing information. Under these standards, a petitioner "is obligated to provide the [technical] analyses and expert opinion showing why its bases support its contention."[11] Where a petitioner has failed to do so, "the [Licensing] Board may not make factual inferences on [the] petitioner's behalf."[12]

Further, admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]."[13] In particular, this explanation must demonstrate that the contention is "material" to the NRC's findings and that a genuine dispute on a material issue of law or fact exists.[14] The Commission has defined a "material" issue as meaning one where "resolution of the dispute *would make a difference in the outcome* of the licensing proceeding."[15]

Furthermore, a statement "that simply alleges that some matter ought to be considered" does not provide a sufficient basis for a contention.[16] Similarly, "[m]ere reference to documents does not provide an adequate basis for a contention."[17] Rather, NRC's pleading standards

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[11] *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 N.R.C. 1, *aff'd in part*, CLI-95-12, 42 N.R.C. 111 (1995).

[12] *Id*. (citing *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149 (1991). *See also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998) (explaining that a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion" "to show why the proffered bases support [a] contention" (citations omitted)).

[13] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001).

[14] 10 C.F.R. § 2.309(f)(1)(iv), (vi).

[15] Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (emphasis added).

[16] *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).

[17] *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

require a petitioner to read the pertinent portions of the license application, including the safety analysis and the environmental report, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant.[18] If the petitioner does not believe these materials address a relevant issue, the petitioner is "to explain why the application is deficient."[19] "[A]n allegation that some aspect of a license application is 'inadequate' or 'unacceptable' does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect."[20] Likewise, mere speculation is not sufficient to raise a genuine dispute with the application.[21]

Finally, Commission regulations expressly provide that initial contentions "*must* be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee . . . ."[22]

II. Contention 27 is Inexcusably Late and Inadmissible

Sierra Club's late Contention 27 is grossly out of time, and Sierra Club provides no good cause for its untimeliness. To the extent that the Board even considers its admissibility, the

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[18] Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170-171 (Aug. 11, 1989); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001).

[19] 54 Fed. Reg. at 33,170. *See also Palo Verde*, CLI-91-12, 34 N.R.C. at 156.

[20] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 358 (2006) (citing *Florida Power & Light Co*. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990)).

[21] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 N.R.C. 215, 225 (2017).

[22] 10 C.F.R. § 2.309(f)(2) (emphasis added).

Board should find that late Contention 27 wholly fails to meet the Commission's admissibility requirements.

A. Sierra Club Provides No Good Cause for Late-Filed Contention 27

Contention 27 purports to challenge the High Burnup Fuel ("HBF") Aging Management Program ("AMP") that Holtec will employ at the HI-STORE consolidated interim storage facility ("CISF").[23] But Sierra Club could have raised any such challenge at the outset of this proceeding. Sierra Club has offered no good cause for its failure to do so. Consequently, the Board cannot even entertain Contention 27 pursuant to 10 C.F.R. §2.309(c)(1).

Chapter 18, Aging Management Program, of the Safety Analysis Report Rev. 0C (the revision in effect at the time hearing requests were due in September 2018)[24] includes descriptions of the various AMPs that Holtec will employ at the HI-STORE CISF. Chapter 18 "contains the essentials of the [AMP] for the HI-STORE CIS ISFSI" and describes the program that will "thwart gradual weakening of the safety margins associated with the aging of the facility."[25] Section 18.9, HBF Aging Management Program, explains that Holtec will implement a "program that monitors and assesses data and other information regarding HBF performance, to confirm that the design-bases HBF configuration is maintained during the period of extended operation."[26] That Section further explains that the HBF AMP will "rel[y] on a surrogate

[23] Late Contentions at 1.

[24] Licensing Report on the HI-STORE CIS Facility Rev. 0C (May 2018) (NRC ADAMS Accession No. ML18254A413) (hereinafter referred to as the Safety Analysis Report and cited as the "SAR Rev. 0C"). The subsequent revision of the Licensing Report (Jan. 2019) (NRC ADAMS Accession No. ML19016A488) is hereinafter referred to as "SAR Rev. 0E."

[25] SAR Rev. 0C at 18-1.

[26] *Id.* at 18-23.

demonstration program to provide data on HBF performance."[27] Sierra Club previously challenged none of this information.

In addition to the information contained in the SAR, further information on the Holtec AMPs was provided in a non-public report that accompanied the CISF Application. The publicly available SAR Section 18.1, Scoping Evaluation and Severity Index (page 18-4), states that an assessment of the primary components of the HI-STORE CIS (i.e., the multi-purpose canisters (MPCs), the Vertical Ventilated Modules (VVMs), the transfer casks, the ISFSI pad, and other important systems, structures, and components) is documented in SAR Reference [1.2.1].[28] Section 18.1 explains that Reference [1.2.1] "identifies the necessary inspection and monitoring activities to provide reasonable assurance that the [structures, systems, and components] will perform their intended functions for the duration of their License life. [29] Licensing Report Chapter 19, Consolidated References, identifies Reference [1.2.1] as the "Aging Assessment and Management Program for HI-STORE CIS," Holtec Report 2167378, Revision 0, dated March 2017." The introduction section to Chapter 19 explains that "[a]ll Holtec origin documents are proprietary subject to 10 CFR 2.390 protection from dissemination."[30] In addition, the Report was identified on the Holtec letter transmitting the Application to the NRC as "Attachment 10: Aging Assessment and Management Program for HI-STORE CIS, HI2167378RO (proprietary)."[31]

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[27] *Id.*

[28] *Id.* at 18-24.

[29] *Id.* at 18-4.

[30] *Id.* at p. 635.

[31] Holtec Letter to NRC, Holtec International HI-STORE CIS (Consolidated Interim Storage Facility) License Application (Mar. 30, 2017) (NRC ADAMS Accession No. ML17115A418).

The Notice of Opportunity for Hearing[32] provided a mechanism to seek access to "sensitive unclassified non-safeguards information," including proprietary information. Sierra Club did not avail itself of that opportunity, notwithstanding the extension of time provided by the Commission's August 20, 2018 Order in this proceeding,[33] to request the non-public Holtec aging management report (or any other non-public information).

In short, Sierra Club could have previously challenged information available in the Application, and requested the non-public aging assessment and management program report. Sierra Club offers no good cause for its failure to do so, rendering Contention 27 inexcusably late.

Sierra Club claims that the "new information" justifying late Contention 27 is that, during the January 23-24, 2019 oral argument on standing and contention admissibility, Holtec allegedly for the first time relied on its HBF AMP as a defense to Sierra Club's Contentions 14 and 20-23, which concern (in whole or in part) HBF.[34] This claim is not credible for multiple reasons. As previously discussed, Sierra Club had ample opportunity to formulate a challenge to the HBF AMP at the outset of this proceeding. Instead, Sierra Club ignored its "iron clad" obligation to review the information available on the HBF AMP.[35] And it also ignored the opportunity to request the non-public aging management report. The Commission's requirement in 10 C.F.R. § 2.309(f)(2) that initial contentions must be based on the application and other

[32] Holtec International's HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear, License Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene; Order, 83 Fed. Reg. 32,919 (July 16, 2018).

[33] Holtec International (Consolidated Interim Storage Facility) Order (Aug. 20, 2018) (NRC ADAMS Accession No. ML18232A577).

[34] Motion at 1; Late Contentions at 1.

[35] *Prairie Island*, CLI-10-27, 72 N.R.C. at 496.

available documents would be rendered meaningless if petitioners could claim the existence of new information anytime an applicant (or, as in this case, a Board member) refers to previously existing information in an application that was not otherwise considered or disputed by a petitioner.

Furthermore, the fact that the HBF AMP was discussed during the oral argument also does not make Contention 27 timely. First, Sierra Club completely mischaracterizes how the HBF AMP discussion transpired at the hearing.[36] On the first day of the hearing, Judge Trikouros asked Sierra Club's counsel a series of questions regarding HBF. Following Sierra Club's counsel's assertion that Holtec had not adequately justified that the HBF temperature will be below the standard set forth in applicable guidance (ISG 11 Rev.3), Judge Trikouros asked "have you seen the aging management program? . . . It's Chapter 18 in the SAR, but there's also a separate submittal of it. I forget which attachment it was to the license application. Do you feel that's adequate with respect to such things as the [cavity enclosure container (CEC)], as you mentioned earlier? Do you think the aging management program is adequate to accommodate these various effects?"[37]

Sierra Club's counsel did not deny knowledge of or the existence of the AMP, or otherwise claim that applying the AMP to its HBF contentions would be new information or materially different information. Rather, Sierra Club's counsel responded by claiming that the AMP is "totally voluntary, with no NRC oversight after the licensing period. That's our concern, that there's -- we're relying on Holtec's guess as to what they might need later on, if it's totally

[36] *See* Late Contentions at 2-3.

[37] Transcript of Oral Argument, Holtec International HI-STORE Consolidated Interim Storage Facility at p. 59 (Jan. 23-24, 2019) (Work Order No. NRC-0087) ("Transcript").

voluntary. We just don't have the assurance that it's really going to catch problems or to do anything about them sufficiently if they do find problems."[38] The following day, Holtec's counsel corrected Sierra Club's counsel's erroneous claim that the AMP was voluntary.[39]

Thus, the record is clear that a Board member asked Sierra Club questions about how the HBF AMP might apply to its HBF claims. Sierra Club's counsel alleged deficiencies in the AMP (i.e., the allegedly voluntary nature of the AMP)—that were nowhere raised in Sierra Club's initial intervention petition—which allegations were corrected by Holtec's counsel *the next day* on the record to state that the AMP is not voluntary. In short, Sierra Club is carelessly (if not intentionally) misleading the Board in claiming that the basis for Contention 27 is Holtec's counsel's statement at oral argument.

Second, a discussion at oral argument on the applicability of the HBF AMP to the issues at hand is not a sufficient ground to justify the late contention. This situation is analogous the NRC Staff asking an applicant questions in Requests for Additional Information ("RAI"). The existence of RAIs does not erase the petitioner's burden to timely "review the application and to identify *what* deficiencies exist and to explain *why* the deficiencies raise material safety [or environmental] concerns."[40] The fact that a Board member asked questions at a pre-hearing oral argument on the HBF AMP does make the HBF AMP new or materially different information. Particularly where, as is the case here, the HBF AMP has been sitting in plain sight.

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[38] *Id.* at p. 60.

[39] *Id.* at p. 286.

[40] *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3) CLI-99-11, 49 N.R.C. 328, 337 (1999) (emphasis in original).

Contention 27 raises a host raises a host of associated allegations. None is new information or timely raised. All are based on information that is years old, and could have been previously raised by Sierra Club:

- Whether the HBF AMP complies with DOE guidance from **2014.**[41]
- Whether the HBF AMP is voluntary and will receive adequate NRC oversight.[42]
- The purported omission of any discussion in the Environmental Report ("ER") on the HBF AMP.[43]
- Whether it is possible to monitor the impacts of decay heat from HBF on the internal environments of dry casks, according to a **2014** NRC study.[44]
- A statement from a **2016** Nuclear Waste Technical Review Board report that claims there is little or no data to support dry storage or transport of HBF.[45]

In summary, Sierra Club could have raised all of the foregoing claims and issues on, or related to, the HBF AMP at the outset of this proceeding. Consequently, the Board cannot entertain Contention 27.

B. Late-Filed Contention 27 is Inadmissible

As demonstrated above, Contention 27 is egregiously late and cannot be entertained by the Board. But even if the Board were to entertain it, Contention 27 is inadmissible. Contention

[41] Late Contentions at 4-6.
[42] *Id.* at 6-7.
[43] *Id.* at 7.
[44] *Id.* at 7 (citing the Alvarez Report).
[45] *Id.* at 7 (citing the Alvarez Report).

27 makes various assertions purporting to challenge the Holtec CISF HBF AMP, none of which raises a material issue or any genuine dispute with the Application on a material issue.

Contention 27 twice claims that "Holtec's Aging Management Program, SAR Chapter 18, only mentions high burnup fuel once, in Section 18.3."[46] This claim is obviously incorrect because it ignores the discussion of the HBF AMP in SAR Section 18.9, *HBF Aging Management Program*.[47] Indeed, later in Contention 27, Sierra Club acknowledges the existence of Section 18.9.[48] Sierra Club's failure to address information on HBF that is indisputably present in the SAR does not raise a genuine dispute on any material aspect of that information.[49]

Contention 27 further asserts that the Holtec aging management discussion in Section 18.3 "does not explain how the impact to the containers from the [HBF] will be addressed" and "simply refers to Appendix D of NUREG-1927, which provides a process for experimental demonstration for time periods beyond a 20-year licensing period." [50] Sierra Club further claims Holtec has failed to "set out in detail how it will" "comply with Appendix D."[51] Later in the Contention, Sierra Club similarly claims that the AMP "give[s] no assurance that the impacts of high burnup fuel will be adequately addressed" because of alleged "uncertainty about storage of high burnup fuel."[52] The alleged uncertainty stems from the purported inability to monitor the internal environment of a SNF canister, the alleged lack of data on the transportation and storage

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[46] *Id.* at 1, 3.

[47] SAR Rev. 0C at 18-23 (emphasis added). This discussion is essentially unchanged (if not identical) in SAR Rev. 0E Section 18.9 at 18-23.

[48] Late Contentions at 5.

[49] 10 C.F.R. § 2.309(f)(1)(vi).

[50] Late Contentions at 1.

[51] *Id.*

[52] *Id.* at 7-8.

of HBF, and the time needed for DOE to complete its HBF demonstration program.[53] Again, these assertions overlook, and thus fail to dispute, the discussion provided in Section 18.9, HBF Aging Management Program. They also overlook, and thus fail to dispute, the Holtec Report 2167378, "Aging Assessment and Management Program for HI-STORE CIS," access to which Sierra Club could have requested but did not. This is a problem of Sierra Club's own making. Sierra Club has offered no excuse for its failure to seek the report through the published procedures set forth in the hearing notice and reinforced through subsequent Commission Order.

Sierra Club also claims that Holtec has failed to comply with guidance on spent nuclear fuel-related AMPs contained in the 2014 DOE guidance authored by O.K. Chopra, et al., "Managing Aging Effects on Dry Cask Storage Systems for Extended Long-Term Storage and Transportation of Used Fuel-Revision 2."[54] In particular, Sierra Club claims that the Holtec AMP does not qualify for any of the four types of AMPs recommended by the DOE guidance because the HBF AMP will rely on a DOE demonstration program.[55] Sierra Club also claims that Holtec has provided "no indication" that the AMP accounts for ten elements recommended by the DOE guidance.[56]

Sierra Club nowhere shows that compliance with the DOE guidance is required or otherwise material to the findings the NRC must make in this proceeding. Therefore, this aspect of Contention 27 fails 10 C.F.R. § 2.309(f)(1)(iv). But even if compliance with the DOE guidance were material (or even relevant), Sierra Club has also failed to raise a genuine dispute on a material issue here for the same reason previously discussed: its failure to request access to

[53] *Id.* at 7-8 (citing Alvarez Report at 6-7 & n.19).
[54] *Id.* at 4 (emphasis omitted).
[55] *Id.* at 4-5.
[56] *Id.* at 5-6.

the non-public Holtec aging management report. Because Sierra Club inexplicably failed to avail itself of the opportunity to request the report, Sierra Club simply cannot say whether the Holtec AMP includes an AMP on HBF containing the elements that Sierra Club claims are missing.

Sierra Club next purports to challenge the AMP by claiming that it is voluntary.[57] This is not true. Holtec has committed to implement an AMP in its Application, and its commitment is binding. Commission regulations do not require an AMP for an independent spent fuel storage installation's initial license term. An AMP is required, however, for any renewed license.[58] More specifically, a license renewal application must include a (1) "[time-limited aging analyses (TLAAs)] that demonstrate that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation"; and (2) "description of the AMP for management of issues associate with aging that could adversely affect structures, systems, and components important to safety.[59]

Although the proposed HI-STORE CISF Application is for an initial license, Holtec has included an AMP to address the gap between the HI-STORM UMAX 20-year Certificate of Compliance and the requested 40-year initial license term CISF. The AMP explains:

> All the important-to-safety (ITS) SSCs scoped for aging management were granted a 20 year initial license under the HI-STORM UMAX license. HI-STORE SAR will be requesting a 40 year license. To ensure an uninterrupted performance of these ITS SSCs and their intended functions through the 40 year license period, all such ITS SSCs will be inspected and monitored per their respective AMP, and a concern-free service life of those SSCs will be established. Additional AMPs

[57] *Id.* at 6.

[58] 10 C.F.R. § 72.42(a)(1)-(2).

[59] *Id.*

are also included for those SSCs that are not part of the HI-STORM UMAX generic license.[60]

Holtec's commitment to implement an AMP will be binding on it. The proposed license for the CISF incorporates the Technical Specifications into the license and provides that the "licensee shall operate the installation in accordance with the Technical Specifications in the Appendix."[61] Proposed Technical Specification 5.5.4, Aging Management Program, states "the HI-STORE CIS shall have an aging management program in accordance with HI-STORE SAR Chapter 18."[62]

In short, there is nothing "voluntary" about these commitments or the established regulatory requirements. Sierra Club nonetheless asserts that the AMP is voluntary for two reasons (1) Holtec fashions its own program and (2) there is "no indication that there will be any NRC oversight of Holtec's execution of the program" "especially [] if the use of the facility extends beyond 120 years.[63]

Neither of these claims raises a genuine dispute on a material issue with the Application. Sierra Club points to no regulation or other authority prohibiting an applicant from developing its own an aging management program. Sierra Club's unsupported assertion of nonexistent NRC

[60] SAR Rev. 0C at 18-3.

[61] Proposed License for Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, SNM-1051 at 1 (Oct. 6, 2017) (NRC ADAMS Accession No. ML17310A223) ("Materials License SNM-1051").

[62] *Id.* at 5-5 (App. A).

[63] Late Contentions at 6.

oversight in the next century and beyond is nothing more than baseless speculation that is insufficient to support the admissibility of a contention.[64]

Sierra Club next claims that the HBF AMP is an environmental impact mitigation measure "addressed to the impacts of high burnup fuel," but that the Holtec HBF AMP is "deficient" and the ER has omitted a discussion of the environmental impacts of this allegedly inadequate mitigation measure.[65] This claim is not material, is unsupported, and fails to raise a genuine dispute on any issue, and thus fails the requirements of 10 C.F.R. § 2.309(f)(1). As previously discussed, Sierra Club cannot and does not raise a genuine dispute on any material issue with respect to the Holtec HBF AMP. Sierra Club simply has no basis to say that the HBF AMP is deficient because Sierra Club has failed to seek access to the non-public Holtec aging assessment and management program report. Further, Sierra Club provides no authority for its claim that the AMP is an environmental impact mitigation measure, or otherwise must be addressed in the ER's environmental impacts analysis. AMPs are intended to assure systems, structures, and components important to safety are continuing to perform their function.[66] That is why the AMP's are part of the SAR and not the ER. They are not measures undertaken to mitigate environmental impacts. Lastly, even if an analysis of the environmental impacts associated with the HBF AMP were required, Sierra Club has failed to provide any facts or expert opinion that such an analysis would make any difference here. "[S]imply alleg[ing] that some matter ought to be considered" does not provide a sufficient basis for a contention.[67]

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[64] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Station Units 6 and 7), CLI-17-12, 86 N.R.C. 215, 220 (2017) ("Contentions cannot be based on speculation but must have some reasonably specific factual or legal basis") (quotation omitted).

[65] Late Contentions at 7.

[66] *See* 10 C.F.R. § 72.42(a)(2).

[67] *Rancho Seco*, LBP-93-23, 38 N.R.C. 200, 246 (1993), review declined, CLI-94-2, 39 N.R.C. 91 (1994).

In sum, late Contention 27 falls far short of the Commission's stringent admissibility requirements in 10 C.F.R. § 2.309(f)(1). The Board should reject it.

III. Contention 28 is Inexcusably Late and Inadmissible

Sierra Club's late-filed Contention 28 should be rejected for the same reasons as late Contention 27. Sierra Club provides no good cause for the late filing of Contention 28 and falls short of the Commission's admissibility requirements.

A. Sierra Club Provides No Good Cause for Late-Filed Contention 28

Late-filed Contention 28 is inexcusably late for all of the same reasons as late-filed Contention 27. Late-filed Contention 28 seeks to challenge the adequacy of the HI-STORE Reinforced Concrete AMP in SAR Section 18.8.[68] This AMP includes actions related to sampling and testing of groundwater.[69] But Sierra Club should have raised any such challenge to the AMP at the outset of this proceeding, as it was required to do under 10 C.F.R. 2.390(f)(2). Sierra Club has offered no good cause for its failure to do so. Consequently, the Board cannot consider Contention 28 pursuant to 10 C.F.R. §2.309(c)(1).

SAR Rev. 0C Section 18.8 states that the Reinforced Concrete AMP "includes periodic visual inspections by personnel qualified to monitor reinforced concrete for applicable aging effects, and evaluate identified aging effects against acceptance criteria derived from the design bases."[70] Section 18.8 further explains that the "program also includes periodic sampling and testing of groundwater, and the need to assess the impact of any changes in its chemistry on the

[68] Motion at 1-2; Late Contentions at 8.
[69] SAR Rev. 0C at 18-22.
[70] *Id.*

concrete structures underground. Additional activities may include periodic inspections to ensure the air convection vents are not blocked."[71] In addition, the inspection of reinforced concrete structures will include "[g]roundwater chemistry monitoring to identify conditions conducive to underground aging mechanisms such as corrosion of steel and degradation due to chemical attack."[72] Sierra Club could have challenged all of this information at the outset of this proceeding in its intervention petition but inexplicably failed to do so.

And as previously explained in response to late-filed Contention 27, Sierra Club could have requested the proprietary Holtec Report, "Aging Assessment and Management Program," through the procedures set forth in the notice for request for hearing. Sierra club never made such a request.

Sierra Club's failure to challenge information that is plainly evident in the application, or to request access to non-public information related to the AMP, is a failure of its own making. Sierra Club offers no good cause for its failure to do so, rendering Contention 27 inexcusably late.

Sierra Club claims that the "new information" justifying its late contention is that, during the January 23-24, 2019 oral argument, Holtec allegedly for the first time relied on the Reinforced Concrete AMP as a defense to Sierra Club's contentions 15-19 concerning impacts to or from groundwater.[73] This claim is not credible for all of the same reasons as with late-filed Contention 27. Sierra Club had ample opportunity to raise any challenge it may have had with respect to the Reinforced Concrete AMP based on the information available (or available to

[71] *Id.*
[72] *Id.*
[73] Late Contentions at 8-9.

request). It is not new or materially different information when an applicant (or, as in this case, a Board member) points to previously available (and previously undisputed) information in an application at an oral argument.

Moreover, Sierra Club mischaracterizes the discussion that occurred at the oral argument. Holtec did not raise the AMP as a defense to Sierra Club Contentions 15-19. As the portions of the hearing transcript copied in Sierra Club's pleading makes clear,[74] a Board member inquired about the AMP as it might relate to groundwater. A Board member simply asking questions cannot render previously existing information "new" information. Otherwise petitioners would be alleviated of their burden "to review the application and to identify what deficiencies exist and to explain why the deficiencies raise material safety [or environmental] concerns."[75]

Late-filed Contention 28 raises a host of associated allegations, none of which constitutes new information or is otherwise timely, and each of which could have been previously raised by Sierra Club:

- Whether or not the Reinforced Concrete AMP complies with DOE guidance from **2014**;[76]

- Whether the Reinforced Concrete AMP is voluntary and will receive adequate NRC oversight;[77] and

[74] *Id.* at 9-10.
[75] *Oconee*, CLI-99-11, 49 N.R.C. at 337 (emphasis omitted).
[76] Late Contentions at 10-12.
[77] *Id.* at 13.

- The purported omission of any discussion in the ER on the Reinforced Concrete AMP.[78]

Sierra Club could have raised all of the foregoing claims and issues at the outset of this proceeding. Consequently, the Board should reject late-filed Contention 28 out of hand.

B. Late-Filed Contention 28 is Inadmissible

Even if the Board were to consider the inexcusably late Contention 28 (which it should not do), Contention 28 is inadmissible for essentially all of the same reasons as Contention 27.

Contention 28 states that Holtec's Reinforced Concrete AMP "does not explain how the impact to the containers from groundwater or impacts to the groundwater from leaking containers will be addressed" and "simply refers to Appendix D of NUREG-1927, which provides a process for experimental demonstration for time periods beyond a 20-year licensing period."[79] Sierra Club claims that, "[s]ince the Holtec CIS facility is expected to be in operation well beyond the 40-year licensing period, the Aging Management Program in the SAR, if it proposes to comply with accepted guidance, must set out in detail how it will do so.[80]

Contention 28 fails the Commission's admissibility standards for many reasons. First, the Contention fails to raise a genuine dispute on a material issue because the Reinforced Concrete AMP makes *no* reference to or mention of NUREG-1927 Appendix D. Nor would it,

[78] *Id.* at 13-14.
[79] *Id.* at 8.
[80] *Id.*

as that NUREG describes a demonstration program related to HBF. Sierra Club's mistaken confusion cannot raise a genuine dispute here.

Sierra Club alleges that the AMP fails to comply with the 2014 DOE guidance authored by O.K. Chopra, et al. (also referenced in Contention 27).[81] Sierra Club nowhere shows that compliance with the DOE guidance is required or otherwise material to the findings the NRC must make in this proceeding, and therefore fails the test of § 2.309(f)(1)(iv). Even if compliance with the DOE guidance were material, Sierra Club has also failed to raise a genuine dispute here. As previously discussed, Sierra Club failed to avail itself of the opportunity to request the non-public Holtec aging management report. Sierra Club therefore cannot say whether the Reinforced Concrete AMP contains the elements Sierra Club claims should be in it.

Similarly inadmissible for the same reasons as in Contention 27 are Sierra Club's claims that the Reinforced Concrete AMP is voluntary because Holtec can fashion its own program and that there will be no NRC oversight of the AMP, especially if the facility lasts beyond 120 years.[82] Holtec has committed to implement the AMP through the proposed license and technical specifications, which commitment is binding, whether or not Holtec fashions its own program. In any event, Sierra Club has not identified any authority or anything else that would prohibit Holtec from fashioning its own AMP. Any claim alleging non-existent NRC oversight decades or centuries into the future is baseless speculation that cannot support admitting the Contention.

[81] *Id.* at 10.
[82] *Id.* at 13.

Also inadmissible for the same reasons as in Contention 27 is Sierra Club's claim that the ER has failed to address the environmental impacts of the (purportedly) deficient AMP. Sierra Club cannot claim that the AMP is deficient because it has not bothered to request the non-public report detailing the AMP. Nor does Sierra Club provide any support for its claim that the AMP should be evaluated as a mitigation measure as that term is understood under the National Environmental Policy Act. And even if there were any basis for its claim, Sierra Club has failed to make any showing that such analysis would make any difference here.

Finally, late-filed Contention 28 is not admissible because it is not adequately supported by fact or expert opinion. Although Sierra Club included the Alvarez Report with its submission, Contention 28 makes no reference to that report. The Contention sets forth no facts or expert opinion that would support it.

IV. Contention 29 is Inexcusably Late and Inadmissible

Late-filed Contention 29 seeks to challenge the Holtec CISF project's funding assurance. But the proposed funding assurance has been available to challenge since before intervention petitions were due, and Sierra Club offers no cause (let alone good cause) for its failure to timely submit this challenge. Moreover, even if the Board were to consider Contention 29, it should rule it inadmissible because it fails to meet the Commission's admissibility requirements.

A. Contention 29 is Inexcusably Late

Late-filed Contention 29 purports to challenge the funding assurance of the HI-STORE project.[83] But Sierra Club could have raised any such challenge at the outset of this proceeding,

[83] *Id.* at 14.

and has offered no good cause for its failure to do so. Consequently, the Board cannot even consider Contention 29 pursuant to 10 C.F.R. §2.309(c)(1).

Sierra Club's sole basis for claiming that new or materially different information exists is that it did not believe statements in the Application that private utilities/nuclear plant owners may be customers of the project; instead, Sierra Club believed such statements were "a fig leaf to hide the real intent for DOE to take title to the waste."[84] But after Holtec purportedly "admitted that DOE could not legally be involved, that made the option of the reactor owners' involvement a new issue" according to Sierra Club.[85] Sierra Club claims that "the necessary reliance on the reactor owners to be financially responsible for the project did not exist prior to" Holtec's statements at oral argument that DOE could not take title to spent nuclear fuel and "be the financially responsible party." Sierra Club thus claims that it "had no reason to believe the option of the reactor owners' involvement was a serious proposal."[86]

Sierra Club's admitted failure to believe or take seriously information explicitly presented in the Application concerning the option of nuclear power plant owners as customers for the CISF does not excuse its failure to raise its financial assurance concerns at the outset of this proceeding. Sierra Club was obligated to base its initial contentions on "documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report, or other supporting document filed by an applicant or licensee, or otherwise available to petitioner."[87] This requirement would be rendered

[84] Motion at 2.
[85] *Id.*
[86] *Id.* at 3.
[87] 10 C.F.R. § 2.309(f)(2).

meaningless if petitioners could avoid it by claiming they just did not believe what was plainly evident from an application.

The fact that private utilities/plant owners may be customers for the project has been evident from the outset of this proceeding. The Application repeatedly stated that either nuclear plant owners from where the spent nuclear fuel originated and/or the DOE will be the customers for the HI-STORE facility:

- Proposed License Condition #17 states that "the construction program will be undertaken only after a definitive agreement with the prospective user/payer for storing the used fuel (*USDOE and/or a nuclear plant owner*) at the HI-STORE CIS has been established."[88]

- The note to Table 1.0.2 of the CISF SAR states: "in accordance with 10CFR72.22, the construction program will be undertaken only after a definitive agreement with the prospective user/payer for storing the used fuel (*USDOE and/or a nuclear plant owner*) at HI-STORE CIS has been established."[89]

- The Financial Assurance & Project Life Cycle Report states "[a]dditionally, as a matter of financial prudence, Holtec will require the necessary user agreements in place (*from the USDOE and/or the nuclear plant owners*) that will justify the required capital expenditures by the Company.[90]

[88] Materials License SNM-1051 at 2 (emphasis added).

[89] SAR Rev. 0C at 26 (emphasis added).

[90] ELEA Financial Assurance & Project Life Cycle Cost Estimates Report, HI-2177593 Rev. 0 at 3 (emphasis added) (Feb. 23, 2018) (NRC ADAMS Accession No. ML18058A608). This language remains unchanged in the

Sierra Club's claim of new information is further undermined because Holtec explicitly stated that nuclear plant owners may take title to spent nuclear fuel in its answer opposing Sierra Club Contention 1.[91] Among other statements, the Holtec Opposition explicitly stated in a bold text header, "**Contrary to the Contention, the Application is Based on the Assumption that Either DOE Or the Nuclear Plant Owner will Take Title to the Spent Fuel**."[92] In addition, the Holtec Opposition explained that one reference in the Environmental Report was being revised to make clear that either DOE or the plant owners would take title.[93] Even if it were credible for Sierra Club to not take seriously explicit statements in the Application (it is not), the option of nuclear plant owners taking title was made crystal clear in Holtec's October 9, 2018 opposition. Sierra Club therefore could have raised any challenge related to nuclear plant owners retaining title and the project's financial assurance months ago.

None of the other information relied on by Sierra Club or presented in the attached report from Robert Alvarez supports the timeliness of Contention 29. Sierra Club and Mr. Alvarez make claims that could have been raised previously, and/or rely on information that was available years if not decades ago:

- Whether or not reactor owners would want to retain title, or agree to retain title, to spent nuclear fuel and remain financially responsible for it;[94]

recently issued ELEA Financial Assurance & Project Life Cycle Cost Estimates Report, HI-2177593 Rev. 1 at 3 (Nov. 30, 2018) (NRC ADAMS Accession No. ML18345A143).

[91] Holtec International's Answer Opposing Sierra Club's Petition to Intervene and Request for Adjudicatory Hearing on Holtec International's HI-STORE Consolidated Interim Storage Facility Application at 17 (Oct. 9, 2018) ("Holtec Opposition").

[92] *Id.*

[93] *Id.* at 19.

[94] Late Contentions at 14-16.

- Whether it would be less expensive for reactor owners to store spent nuclear fuel at reactor sites;[95]

- Studies from **2015** and **2016** alleging the cost to store 5,000 MTU of spent fuel over an 80-year period to be $4.72 billion;[96]

- Reliance on the Commission's **1997** decision in *Louisiana Energy Services L.P.* (Claiborne Enrichment Center), 46 N.R.C. 294 (1997) and its discussion of the difference in the financial assurance requirements between 10 C.F.R. Part 70 and Part 50;[97] and

- Reliance on the Commission's **2000** decision in *Private Fuel Storage LLC* (Independent Spent Fuel Storage Installation), 52 N.R.C. 23 (2000).[98]

For all of the foregoing reasons, none of the information or claims made in Contention 29 is new or materially different from that previously available. Consequently, the Board should not entertain it.

B. Contention 29 is Inadmissible.

Even if the Board were to consider inexcusably late Contention 29, it falls short of the Commission's admissibility requirements for many reasons.

[95] *Id.* at 16.
[96] *Id.* at 16; Alvarez Report at 3-4 & n.8.
[97] *Id.* at 17.
[98] *Id.* at 17.

Late Contention 29 asserts that Holtec has failed to provide "reasonable assurance of funding" for the project allegedly because there is no evidence "as to whether a private utility that owns a nuclear reactor would agree to retain title to the waste."[99] Sierra Club further asserts that "the costs to a private utility would be so great that the utility would not want to retain title to the waste."[100] These assertions completely ignore the information clearly presented in Holtec's Application to demonstrate that Holtec—and not other third parties—meets the financial qualification requirements set forth in NRC regulations at 10 C.F.R. § 72.22(e). Sierra Club otherwise fails to challenge that information. Contention 29 therefore fails to raise genuine dispute on a material issue with the Application.

The Application includes as a separate document the "Holtec International & Eddy Lea Energy Alliance (ELEA) Underground CIS – Financial Assurance & Project Life Cycle Cost Estimates," Rev. 0 (the "Financial Assurance Plan"), which sets forth Holtec's financial qualifications to construct, operate, and decommission the plant as required under 10 C.F.R. § 72.22(e). A non-proprietary version of the Financial Assurance Plan (Rev. 0) has been available for review at NRC Accession No. ML18058A608 since before initial intervention petitions were due. In addition, the Notice of Hearing identified "Holtec's February 22, 2018, information submittal in response to proprietary information determination" as available at NRC ADAMS Accession No. ML18058A617,[101] which included the Financial Assurance Plan (Rev. 0).

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[99] *Id.* at 14; *see also id.* ("Holtec has not presented any evidence that the reactor owners would want to take on [the] responsibility" of "retain[ing] title and be[ing] financially responsible" for spent nuclear fuel).

[100] *Id.; see also id.* ("the financial implications of that scenario make it highly unlikely").

[101] 83 Fed. Reg. at 32,922.

Section 1.0 of the Financial Assurance Plan states that the "HI-STORE CIS in New Mexico, the subject of this report, is also *funded by Holtec in its entirety*."[102] Section 1.0 also explains that Holtec operates its business with a long-term view, and that "[t]he proof of long term commitment can be found in the Consolidated Interim Storage Facility in New Mexico (the focus of this report) and the SMR-160 reactor development program . . . *which are both being funded entirely by the Company*."[103]

The Financial Assurance Plan includes Table 1.1, which contains proprietary information demonstrating that Holtec has the financial wherewithal to fund the project.[104] The Financial Assurance Plan also describes Holtec's financial strength generally, such as "profitable in every year of operation since the Company's inception over 30 years ago"; "no long term debt"; a history of funding large projects "without any long term borrowing"; a "robust multi-billion dollar backlog" of work; "[a] [l]arge and diversified customer base"; and "140+ contracts active at this time," most of which are large contracts "giving the Company a predictable stable cash flow."[105] The Plan also references Holtec's "senior credit facility without any collateral requirement," which can be increased if needed.[106]

The Financial Assurance Plan adds, "[a]s can be inferred from the above narrative, Holtec International is well positioned to provide the financial assurance for the construction and oversight of Phase 1 of the CISF facility to include 500 HI-STORM UMAX canisters for the

[102] Financial Assurance Plan at 2 (emphasis added).
[103] *Id.* at 3 (emphasis added).
[104] *Id.* at 4.
[105] *Id.* at 2.
[106] *Id.* (emphasis omitted).

Storage of Spent Nuclear Fuel (SNF) and Greater-than-Class C (GTCC) waste from commercial reactors. Our commitment is based on *the willingness and capability of Holtec to fund the construction efforts of the CISF estimated to be in the range of ~$180 million*."[107]

The Financial Assurance Plan also states that the NRC's financial qualifications requirement regarding decommissioning "will be met by Holtec International." Specifically, "[a] decommissioning fund will be established by setting aside $840 per MTU stored at the HI-STORE facility. These funds, plus earnings on such funds calculated at not greater than a 3 percent real rate of return over the 40-year license life of the facility, will cover the estimated cost to complete decommissioning."[108]

Sierra Club challenges none of this information in the Financial Assurance Plan. Accordingly, late Contention 29 fails to raise a genuine dispute with the Application and is not adequately supported.

Instead of challenging the information described above, Sierra Club claims that Holtec is erroneously relying on private utilities/nuclear plant owners to provide financial assurance by retaining title to the fuel.[109] For alleged support, Sierra Club points to the following language in the Financial Assurance Plan: "Additionally, as a matter of financial prudence, Holtec will require the necessary user agreements in place (from the USDOE and/or the nuclear plant owners) that will justify the required capital expenditures by the Company."[110] But nothing in this text supports Sierra Club's claim that Holtec is relying on private reactor owners to accept

[107] *Id.* at 3 (emphasis added). In Rev. 1 of the Financial Assurance Plan, the construction cost estimate was increased to approximately $223 million. Financial Assurance Plan (Rev. 1) at 6.

[108] *Id.* at 5.

[109] Late Contentions at 14-16.

[110] *Id.* at 16 (quoting Financial Assurance Plan at 3).

the financial responsibility for the project. Rather, the quoted text states that Holtec—as would any good business—will ensure that it has customer contracts in place to generate revenues before Holtec makes the required capital expenditures. Ensuring that the company can earn revenues before investing in a project is "a matter of financial prudence," not a statement that a contract with any private utility is needed to fund it.

Sierra Club's claims are further undermined because the quoted text expressly states that expenditures will be made "by the Company," not any third party. And the very next sentence confirms that Holtec will use "its own resources" to launch construction: "if the NRC approves and the necessary contractual instruments are established insuring the minimum revenue stream needed to justify the facility, then Holtec will launch the construction *using its own resources* so as to bring the interim storage solution to the industry in the shortest possible time."[111]

Continuing to apply its incorrect premise, Sierra Club next claims that Holtec has failed to demonstrate the requisite financial assurance under 10 C.F.R.§ 72.22(e) because it has provided no indication that that reactor owners would be willing to accept financial responsibility for the project.[112] But that is not what section 72.22(e) requires. That rule requires Holtec to submit information showing that *Holtec*, as the applicant for the CISF, possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or that by a combination of the two will have the necessary funds available to cover specified costs for the project.[113] The rule simply does not require Holtec to show that third parties will want or be able to provide financial assurance for the facility.

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[111] Financial Assurance Plan at 3 (emphasis added).

[112] Late Contentions at 16.

[113] 10 C.F.R.§ 72.22(e).

Relying on data provided in Table 1 of Mr. Alvarez's report, Sierra Club asserts purported costs for consolidated storage of approximately 5,550 MTU of "stranded" spent nuclear fuel, and claims that reactor owners would not be willing to take responsibility for such financial liabilities.[114] Sierra Club once again fails to raise a genuine dispute with the Application here. 10 C.F.R.§ 72.22(e) requires that Holtec show that it can demonstrate financial assurance, not reactor owners. Furthermore, Sierra Club ignores the cost information specified for the proposed Holtec CISF in the Financial Assurance Plan, and otherwise fails to allege any flaw in that information. Holtec's Financial Assurance Plan provides Phase I estimated construction costs, estimated annual operating costs, and estimated decommissioning costs in accordance with 10 C.F.R.§ 72.22(e). For the first phase of the HI-STORE CISF, Holtec has estimated construction costs of $223,300,000 and estimated decommissioning costs of $23,716,000.[115] Annual operating costs are estimated at $27,300,000, and "[a]ll financial commitments related to annual operations will be tied to the sponsoring party's agreement with Holtec (viz., DOE settlement agreement)." Notwithstanding its assertion that the "documentation presented by Holtec thus far has not made [a] showing" of financial assurance,[116] Sierra Club nowhere provides any information addressing, let alone disputing, these cost estimates, or the statement that financial commitments related to annual operations will be tied to the sponsoring parties' agreements with Holtec.

Furthermore, the spent fuel storage cost estimates put forward by Sierra Club and Mr. Alvarez are unsupported. Neither Sierra Club nor Mr. Alvarez provide any explanation of, or

[114] Late Contentions at 16-17; Alvarez Report at 3-4 & Table 1.

[115] Financial Assurance Plan (Rev. 1) at 6. The Financial Assurance Plan (Rev. 0) initially estimated construction costs of $182,849,000.

[116] Late Contentions at 18.

support for, the cost estimates provided in Table 1, or otherwise attempt to relate these cost estimates to the proposed Holtec CISF. The Alvarez Report states that the "Sourc[es]" for Table 1 include "Waste Control Specialists, License Application, Docket 72-150." Aside from failing to specify where in the Waste Control Specialists application this information can be found, it is not clear or otherwise stated why Sierra Club would be referencing cost information for the Waste Control Specialists proposed facility. Table 1 appears to estimate costs for the storage of approximately 5500 MTU of spent nuclear fuel for up to 80 years by summing the storage costs for nine separate ISFSI sites. Table 1 does not explain what costs are represented by the numbers provided. No explanation is provided as to how adding costs for nine separate and distinct facilities would be comparable to the costs for a consolidated facility. Nor are the reactor-site estimates in Table 1 even logical: many of the values appear to be scaled based purely on the MTU in storage,[117] which cannot be accurate given the facility-specific and non-size dependent nature of operating and maintenance costs.[118] Thus, the values in Mr. Alvarez's Table 1 appear to be speculative or even wrong.[119] Sierra Club then compounds the error by "applying" those estimates to the 100,000 MTU of waste to be stored at the Holtec CISF by multiplying the Table 1 costs by 20 (presumably because CISF Phase One will store 1/20th of that amount).[120] Sierra Club provides no basis or support for its claim that the total cost for

[117] For example, according to Table 1, Duane Arnold has approximately 13.97 times the MTU of LaCrosse and 13.97 times the estimated cost at both 40 and 80 years. Likewise, according to Table 1, Oyster Creek has 19.8 times the MTU of LaCrosse and 19.8 times the estimated cost, while Yankee Rowe has 3.3 times the MTU of LaCrosse and 3.3 times the estimated cost.

[118] As demonstrated in the Application, Holtec does not anticipate O&M costs increasing based on the amount of fuel stored at the site. ER, Rev. 1 at 263.

[119] It is of note that Mr. Alvarez does not have the qualifications to perform an independent economic or financial analysis. He has no degree in economics, finance, or business. Indeed, the Curriculum Vitae accompanying his report is devoid of any degrees in any field. *See* Alvarez Report (Curriculum Vitae) at 4 ("EDUCATION – Attended the Dana School of Music in Youngstown, Ohio, 1964-68. Majored in music theory and composition.")

[120] Late Contentions at 16.

storing additional quantities of spent nuclear fuel can be estimated by applying a multiplier based entirely on the MTU to be stored.

Finally, Sierra Club erroneously claims that an evidentiary hearing is required to address its financial assurance concerns, relying on the Commission decision in *PFS*.[121] Sierra Club has put the cart before the horse, to say the least. A contention must be admissible before it is eligible for an evidentiary hearing. Sierra Club has not proffered an admissible contention here, for all of the reasons discussed above, foremost being its failure to dispute the financial assurance and cost information in the Application.

The *PFS* decision does not stand for the proposition that evidentiary hearings are required on financial assurance issues. Far from it. In *PFS*, the Commission was ruling on an interlocutory motion for summary disposition filed by the licensee, in which the financial assurance ruling had been directly referred to the Commission by the Board pursuant to 10 C.F.R. § 2.730(f).[122] Under Commission rules, a ruling of summary disposition requires an additional evidentiary hearing only when a Board finds, based on the papers filed, that there remains a genuine issue of material fact on a contention which has already been admitted.[123] The *PFS* decision does not stand for the proposition that contentions raising financial assurance issues are guaranteed an evidentiary hearing at the contention admissibility stage of the proceeding. Indeed, in *PFS*, the Commission remanded consideration of draft service contracts to the Board, holding that the licensee "would still be entitled to summary disposition" in the

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[121] *Id.* at 17-18 (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation) CLI-00-13, 52 N.R.C. 23 (2000) ("*PFS*").

[122] *PFS*, CLI-00-13, 52 N.R.C. at 25.

[123] *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 N.R.C. 370, 384-85 (2001).

case that "Intervenors do not raise further objections after reviewing the sample contract, or if the Board finds intervenors' objections insubstantial."[124] Thus, simply raising financial assurances does not automatically require an evidentiary hearing for an Intervenor. Sierra Club's interpretation of *PFS* is overbroad, and it does not raise a genuine dispute of fact on a material issue.[125]

Moreover, in *PFS*, the Commission held that that "outside of the reactor context[,] it is sufficient for a license applicant to identify adequate mechanisms to demonstrate reasonable [financial] assurance, such as license conditions and other commitments."[126] Holtec has done just that. Holtec has provided for such license conditions in its Application, which state:

> 18. The licensee shall:
>
> (1) include in its service contracts provisions requiring customers to retain title to the spent fuel stored, and allocating legal and financial liability among the licensee and the customers;
>
> (2) include in its service contracts provisions requiring customers to provide periodically credit information, and, where necessary, additional financial assurances such as guarantees, prepayment, or payment bond;
>
> (3) include in its service contracts a provision requiring the licensee not to terminate its license prior to furnishing the spent fuel storage services covered by the service contract.[127]

Nowhere does Sierra Club challenge, or even reference, these proposed license conditions on financial assurance. Sierra Club's bare claim that that "there is insufficient financial assurance that reactor owners would retain title to the waste and take financial responsibility" is insufficient to raise a material dispute. "[T]he mere casting of doubt on some aspects of proposed funding

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[124] *PFS*, CLI-00-13, 52 N.R.C. at 35.
[125] 10 C.F.R. § 2.309(f)(1)(vi).
[126] *PFS*, CLI-00-13, 52 N.R.C. at 30.
[127] Materials License SNM-1051 at 2.

plans is not by itself sufficient to defeat a finding of reasonable assurance" [128] and "[t]he Commission will accept financial assurances based on plausible assumptions and forecasts, even though the possibility is not insignificant that things will turn out less favorably than expected."[129] By ignoring the Application and failing to raise a specific issue with the existing license condition in the Application, Sierra Club again fails to raise a genuine dispute with the Application on a material issue of fact or law.

V. Conclusion

For all of the foregoing reasons, the Board should reject late filed Contentions 27, 28, and 29.

Respectfully submitted,

/Signed electronically by Timothy J. V. Walsh/

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Counsel for HOLTEC INTERNATIONAL

[128] *PFS*, CLI-00-13, 52 N.R.C. at 31.

[129] *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-04-10, 61 N.R.C. 131, 137-38 (2004) (quoting *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 N.R.C. 201, 222 (1999)).

March 21, 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 Late-Filed Sierra Club Contentions 27, 28, and 29 has been served through the EFiling system on the participants in the above-captioned proceeding this 21st day of March 2019.

/signed electronically by Timothy J. V. Walsh/

Timothy J. V. Walsh