

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board**

In the Matter of)	Docket No. 72-1051
Holtec International)	
(HI-STORE Consolidated Interim Storage Facility))	March 25, 2019
)	

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**COMBINED REPLY OF PETITIONERS DON'T WASTE MICHIGAN, *ET AL.* IN
SUPPORT OF MOTION TO AMEND THEIR CONTENTION 2 REGARDING
HOLTEC'S PROPOSED MEANS OF FINANCING THE PROPOSED CONSOLIDATED
INTERIM STORAGE FACILITY**

Now come 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 (collectively, "DWM, *et al.*"), by and through counsel, and reply in support of their "Motion to Amend Their Contention 2 Regarding Holtec's Proposed Means of Financing the Proposed Consolidated Interim Storage Facility." DWM *et al.* hereby reply jointly to Holtec International's ("Holtec's") "Opposition to Don't Waste Michigan, *et al.*'s Motion to Amend Contention 2" and the "NRC Staff Response to Don't Waste Michigan *et al.*'s Motion to Amend Contention 2."

Petitioners' amended contention addresses a recent judicial admission made by Holtec's legal counsel on January 24, 2019 before the Atomic Safety and Licensing Board concerning the financing of the proposed Consolidated Interim Storage Facility ("CISF"). As discussed below, neither Holtec nor the Staff make a credible case for things remaining unchanged as a result of

the statements of Holtec's legal counsel during the Albuquerque hearing.

A. Holtec's January 2019 Admission Is Still Contradicted By Application Statements

Holtec remains tardy in even acknowledging the change in its application documents.

Holtec's November 2018 Environmental Report (Rev. 3) still stated, as of the January 2019 NRC hearing that:

Holtec anticipates that the NRC would issue the Final Environmental Impact Statement (FEIS) and License in 2019. Phase 1 construction would begin after issuance of the license and *after Holtec successfully enters into a contract for storage with the U.S. Department of Energy (DOE) or utility*. Construction on Phase 1 is expected to begin in the first quarter of 2020 and be complete within 1.5 years.

In fact, as of this writing (March 25, 2019), there has been no further public domain-accessible amendment to the November 2018 Environmental Report.¹ Holtec is perpetuating, down to the present moment, the confusion it started in 2015 via corporate representations that the CISF would be entirely Department of Energy-subsidized.

Supposedly, the statement of Holtec's counsel at the January 24, 2019 contention admissions hearing before this Board was to render clear and unambiguous the perceptions of Holtec concerning the true state of the legal environment of its CISF proposal. Holtec's long-awaited concession finally stripped away from the project narrative the nonexistent option of a DOE contract for consolidated interim storage at Holtec, leaving in place only the financing mechanism of private utility payments to run the CISF.

B. The Unambiguous Admission Shifts Focus To Stability Of Private Funding

Holtec's confirmation that there presently exists only one possible means of financing

¹The NRC has not bothered to update its Holtec application documents page since March 30, 2018, so it's difficult to ascertain when application amendments take place. See <https://www.nrc.gov/waste/spent-fuel-storage/cis/hi/hi-app-docs.html>

implies considerably more significance for Holtec's vague pledge to construct all phases of the CISF, which appear in the "Holtec International & Eddy Lea Energy Alliance Underground CISF

- Financial Assurance and Project Life Cycle Cost Estimates, Rev.1 (Report No. HI-2177593)":

Additionally, as a matter of financial prudence, Holtec will require necessary user agreements in place (from the USDOE and/or the nuclear plant owners) that will justify the required capital expenditures by the Company. *However, 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.*

Id. at p. 3/9 (p. 4/10 of pdf) (Emphasis added). While this statement was known to DWM *et al.* well before Holtec's January 2019 redirection, since there will be no long-term, fixed commitment from U.S. taxpayers through the Department of Energy, the question arises as to what "minimum revenue stream needed to justify the facility" now means. Holtec's belated, unambiguous admission must be supported by "reasonable assurance" that a private financing mechanism can supplant the stability of a more-than-century-length taxpayer guarantee. The private-support mechanism will be expected to continue in effect for a much longer future period than the nuclear industry has even existed. As the Commission noted in *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), 44 NRC 8 (1996):

Generally, a "good cause" finding based on "new information" can be resolved by a straightforward inquiry into when the information at issue was available to the petitioner. In this instance, however, the answer to the "good cause" factor involves more than looking at the dates on the various documents submitted by the Petitioners. Instead, as the Petitioners suggest, *the inquiry turns on a more complex determination about when, as a cumulative matter, the separate pieces of the decontamination information "puzzle" were sufficiently in place to make the particular concerns they now espouse reasonably apparent.*

Id. at 26. Here, Holtec spun a dual-track financing narrative, never clearly revealing whether DOE or reactor owners will take title to the waste. It was a narrative opposed with very good

reason by DWM *et al.* and all the other putative intervenors, but Holtec, with the complicit NRC Staff, stoutly denied that there could be clarity, and contrived confusion. Holtec's long-overdue admission at the January hearing finally dispelled this befuddlement.

C. Differences Between Public And Private Financing Are Relevant

At the Albuquerque hearing, Holtec's counsel emphasized that to the company, the distinction between DOE taking title and private customer payment is "irrelevant" because "whether it's DOE hold title or the utilities hold title or Holtec holds title, the environmental impacts are going to be identical." Transcript of Proceedings 1/24/2019, pp. 250, 248 (Silberg).

Holtec would have the Atomic Safety and Licensing Board (ASLB) believe that the private utility sector is the equal of the full faith and credit of the U.S. Treasury, and that proceeding with an undisclosed financing scheme (if one exists) that has not been subjected to scrutiny is cost-equivalent to performing the investigation and analysis involved in actually planning ahead. That Holtec has yet to deal with the fact that 10,000+ giant rail-sized spent nuclear fuel containers can't fit into a repository and must be repackaged into 80,000 smaller TAD (Transportation, Aging, and Disposal) containers prior to emplacement in a final repository² comprises an enormous challenge requiring NEPA treatment.

²In support of DWM *et al.*'s Contention 3, addressing Holtec's gross underestimation of the volume of low-level radioactive waste the CISF will generation, Mr. Alvarez stated:

The current generation of dry casks being used at power plants was intended for short-term on-site storage, not for direct disposal in a geological repository. NRC has licensed 51 different designs for dry cask storage, 13 which are for storage only. None of the dry casks storing spent nuclear fuel are licensed for disposal. By the time DOE expects to open a repository in 2048, the number of large dry casks currently deployed is expected to increase from 1,900 to 12,000.

Repackaging for disposal may require approximately 80,000 "small" canisters. Existing large canisters can place a major burden on a geological repository—such as: handling, emplacement and post-closure of cumbersome packages with higher heat loads, radioactivity and fissile materials. Repackaging expenses rely on the transportability of

But the distinctions between a DOE-funded CISF and the ill-described private Holtec facility do not end there. The timing for shipment of high-burnup fuel to Holtec and associated requirements of shipment container integrity are interrelated and will be different if DOE is not directing the traffic. Private payers will have budget constraints and economic priorities that differ from, and will mean different timing of fuel movement, from a DOE-directed CISF. Holtec will build the first of 20 phases with its own money, while the other 19 phases are now funded by Holtec's magical aspirations. The deferral of an available dry transfer system until the end of the first century of storage operations, given TAD repackaging obligations and Atomic Energy Act public health and safety protection mandates, contradicts likely private- or self-insurance arrangements (as opposed to Price-Anderson Act coverage) warranted as coverage conditions. Posed the sole option of private utility payment, it is difficult to imagine that Holtec would embrace the use of double containment canisters for shipping high-burnup SNF despite the potentially important risk implications for human health and the environment since private investors (that is, Holtec itself, and/or private nuclear utility customers) will be highly motivated to take major short cuts on safety, in order to save money (that is, boost profits). Use of double versus single-wall canisters represents a potentially large difference in pricing, transport and management of SNF. There must be revelation and analysis of the environmental ramifications of economic choices dictated by a private, as opposed to governmental, financing stream.

the canisters, but more importantly on the compatibility of the canister with heat loading requirement for disposal.

<http://www.beyondnuclear.org/storage/kk-links/Alvarez%20SNF%20at%20closed%20reactors%20rev%202.pdf>, cited at p. 42 of "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 Request for Adjudicatory Hearing."

A showing of a “gross discrepancy” in the decommissioning cost estimate might suffice to establish a litigable issue. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 260 (1996) (quoting *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 9 (1996)). And “[a]ssumptions seriously at odds with governing realities will not be acceptable.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-21, 62 NRC 248, 298-99 (2003).

D. Conclusion

Holtec has finally taken the first step toward the realistic appraisal of its CISF proposal. The proposed second amendment of Petitioners DWM *et al.*’s Contention 2 should be admitted for adjudication in order to continue important movement in the direction of a fully disclosed and analyzed proposal.

Respectfully submitted,

___/signed electronically by/___

Terry J. Lodge

316 N. Michigan St., Suite 520

Toledo, OH 43604-5627

(419) 205-7084

tjlodge50@yahoo.com

Counsel for Don’t Waste Michigan, *et al.*

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019, the foregoing COMBINED REPLY OF PETITIONERS DON'T WASTE MICHIGAN, *ET AL.* IN SUPPORT OF MOTION TO AMEND THEIR CONTENTION 2 REGARDING HOLTEC'S PROPOSED MEANS OF FINANCING THE PROPOSED CONSOLIDATED INTERIM STORAGE FACILITY was deposited by me in the NRC's Electronic Information Exchange System.

____/signed electronically by/____
Terry J. Lodge
Counsel for DWM *et al.*, Petitioners