

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)

INTERIM STORAGE PARTNERS LLC)

(Consolidated Interim Storage Facility))

Docket No. 72-1050

September 9, 2019

**INTERIM STORAGE PARTNERS LLC’S MOTION TO DISMISS SIERRA CLUB’S
CONTENTION 13 AS MOOT AND TERMINATE THIS PROCEEDING**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323(a), Interim Storage Partners LLC (“ISP”), the applicant in the above-captioned proceeding, submits this Motion requesting the Atomic Safety and Licensing Board (“Board”) dismiss Sierra Club’s Contention 13 (“SC-13”) as moot. As admitted by the Board, SC-13 is solely “a contention of omission” as to “the five references in section 3.5.16 of ISP’s Environmental Report” (“ER”).¹ As discussed below, ISP has now supplemented its ER with copies of (or the applicable ADAMS accession numbers for) *all* references in ER Section 3.5.16.² As a result, the alleged omission has been cured, and SC-13 should be dismissed as moot. Furthermore, because SC-13 was the sole contention admitted in this proceeding, ISP respectfully requests that, upon dismissing SC-13, the Board terminate this proceeding.

¹ *Interim Storage Partners LLC* (Consolidated Interim Storage Facility), LBP-19-7, 90 NRC __, __ (Aug. 23, 2019) (slip op. at 54).

² Letter from J. Boshoven, ISP, to NRC Document Control Desk, E-55041, “Supplemental Information regarding References from the ISP Environmental Report (ER) Chapter 3, Description of the Affected Environment. Docket 72-1050 CAC/EPID 001028/L-2017-NEW-0002” (Sept. 4, 2019) (including attachments) (“Letter E-55041”).

II. PROCEDURAL HISTORY

On June 8, 2018, ISP requested that NRC staff resume their review of a license application for a Consolidated Interim Storage Facility (“CISF”) for spent nuclear fuel in Andrews County, Texas.³ On November 13, 2018, the Sierra Club filed a “Petition to Intervene and Request for Adjudicatory Hearing,” alleging 17 separate contentions.⁴ SC-13 claimed that ISP’s ER identified two species of concern—the Texas horned lizard and the dunes sagebrush lizard—but did not discuss the ecological studies or surveys used to determine the presence of the species at the site and the impact of the project on these species, and did not describe these ecological studies well enough to allow members of the public to access them.⁵ Following oral argument in Midland, Texas on July 10-11, 2019, the Board rejected all of Sierra Club’s other contentions, and narrowed and admitted SC-13 “solely as a contention of omission, insofar as none of the five references in section 3.5.16 of ISP’s Environmental Report is either sufficiently described to judge its technical adequacy or made publicly available.”⁶

On September 4, 2019, ISP submitted Letter E-55041 to the U.S. Nuclear Regulatory Commission (“NRC”) Staff.⁷ In Letter E-55041, ISP provided supplemental information for ER Chapter 3, “Description of the Affected Environment” and transmitted electronic copies of, or

³ Letter from J. Isakson, Submittal of License Application Revision 2 and Request to Restart Review of Application for Approval of the WCS CISF, Docket 72-1050 (June 8, 2018) (ML18166A003).

⁴ Sierra Club Petition to Intervene and Request for Adjudicatory Hearing (Nov. 13, 2018) (ML18317A411) (“Petition”).

⁵ *Id.* at 78-79.

⁶ *ISP*, LBP-19-7, 90 NRC at ___ (slip op. at 56).

⁷ *See* Letter E-55041. On September 5, 2019, counsel for ISP also submitted a letter to the Board which was served on all parties through the NRC’s E-filing system, informing them of the submission of Letter E-55041 and providing copies of the referenced studies or their ADAMS accession numbers. *See* Letter from P. Bessette, Counsel for ISP, to the Board, Licensing Board Notification Regarding ISP Letter E-55041 (Sept. 5, 2019).

provided ADAMS accession numbers for, the ecological studies referenced in ER Section 3.5.16 (six in total, as there are two for the National Enrichment Facility).⁸

III. THE ECOLOGICAL STUDIES REFERENCED IN ER SECTION 3.5.16 HAVE BEEN APPENDED TO THE APPLICATION, THUS CONTENTION SC-13 IS MOOT AND SHOULD BE DISMISSED

As explained by the Commission, “where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . . the contention is moot.”⁹ Contentions of omission rendered moot through this process are subject to dismissal.¹⁰ That is precisely the case here. SC-13 alleges the omission of particular information—specifically, the ecological studies referenced in ER Section 3.5.16.¹¹ And the Board admitted SC-13 “solely as a contention of omission.”¹² But these referenced studies have now been appended to the application, thereby curing the alleged omission.¹³ Thus, Contention SC-13 is now moot and should be dismissed.

IV. BECAUSE THE SOLE ADMITTED CONTENTION MUST BE DISMISSED, THIS PROCEEDING SHOULD BE TERMINATED

As Sierra Club’s sole contention must be dismissed as moot, there remains no pending contention—nor any other contested matter—before the Board in this proceeding. The Commission has explicitly held that a Licensing Board’s “jurisdiction terminates when there are

⁸ See Letter E-55041.

⁹ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 383 (2002) (citing *Duke Power Co.*, (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983)).

¹⁰ See, e.g., *Fla. Power & Light Co.* (Turkey Point Units 6 & 7), ASLB Memorandum and Order (Granting FPL’s Motion to Dismiss Joint Intervenors’ Contention 2.1 and CASE’s Contention 6 as Moot) at 5 (Jan. 26, 2012) (“Where, as here, the applicant subsequently includes in its application the allegedly improperly excluded information, the contention of omission has been cured and is subject to dismissal on grounds of mootness.”) (ML12026A438) (unpublished).

¹¹ Petition at 78-79.

¹² *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 56) (emphasis added).

¹³ See Letter E-55041.

no longer any contested matters pending before it.”¹⁴ Moreover, when “it is clear that no genuinely contested matter remains pending before the Board”—as is the case here—the mere possibility that a party may seek to raise a new contested matter in the future does not confer continuing jurisdiction.¹⁵ Accordingly, ISP respectfully requests that the Board issue an order terminating this proceeding.

V. CONCLUSION

As shown above, the alleged omission raised in SC-13, as admitted by the Board in LBP-19-7, is now moot because ISP provided the studies referenced in ER Section 3.5.16. For these reasons, SC-13 should be dismissed. And because there are no longer any contested matters remaining before the Board, this proceeding should be terminated.

¹⁴ *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-10, 81 NRC 535, 564 n.46 (2015).

¹⁵ *See Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-15-29, 82 NRC 246, 253-54 (2015).

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.
this 9th day of September 2019

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MOTION CERTIFICATION

Pursuant to 10 C.F.R. § 2.323(b), counsel for ISP certifies that a sincere effort was made to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this Motion, and to resolve those issues, and certifies that such efforts have been unsuccessful. Sierra Club opposes the Motion. The NRC staff agrees that the documents and references provided cure the omission identified in the Board's order. The NRC staff, therefore, supports the proposed motion.

Executed in Accord with 10 C.F.R. § 2.304(d)

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “Interim Storage Partners LLC’s Motion To Dismiss Sierra Club’s Contention 13 As Moot and Terminate This Proceeding” was filed through the E-Filing system.

Signed (electronically) by Ryan K. Lighty

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