

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

HOLTEC INTERNATIONAL

(HI-STORE Consolidated Interim
Storage Facility)

Docket No. 72-1051

NRC STAFF ANSWER IN OPPOSITION TO SIERRA CLUB
NEW CONTENTION 30

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NRC Staff Answer in Opposition to Sierra Club New Contention 30

Introduction

The U.S. Nuclear Regulatory Commission Staff (Staff) submits this answer opposing the Sierra Club's motion to admit proposed new Contention 30.¹ For the reasons set forth below, the Commission should deny the proposed new contention because it fails to meet the requirements of 10 C.F.R. §§ 2.309(c)(1) and (f)(1) and 2.326 and is therefore inadmissible.

Background

On March 30, 2017, Holtec submitted an application for a specific license under 10 C.F.R. Part 72, requesting authorization to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF).² The proposed CISF would be located in Lea County, New Mexico. In its license application, Holtec requests authorization to store up to 8,680 metric tons of uranium in up to 500 canisters for a license period of 40 years.³

¹ *Sierra Club's Motion to File a New Late-Filed Contention and Contention 30* (Oct. 23, 2019) (ADAMS Accession No. ML19297D142) (Contention 30). Because Sierra Club's filing is not paginated, Staff's citations to the motion use the page numbers from the PDF version in the electronic hearing docket.

² Holtec's application materials, including a Safety Analysis Report (SAR), Environmental Report (ER), and proposed license, are available at: <https://www.nrc.gov/waste/spent-fuel-storage/cis/holtec-international.html>. Unless otherwise specified, all the NRC Staff's citations to the ER are to Revision 6 (ML19163A146), all citations to the SAR are to Revision 0H (ML19163A062), and all citations to the proposed license are to Revision 0A (ML17310A223) (Proposed License).

³ Proposed License at 1.

On March 19, 2018, the NRC published a notice in the *Federal Register* regarding the acceptance and docketing of Holtec's CISF license application.⁴ The NRC subsequently published a *Federal Register* notice of opportunity to request a hearing and to petition for leave to intervene.⁵ Sierra Club then filed a hearing request and petition to intervene, as did multiple other petitioners.⁶ On May 7, 2019, the Board denied all petitions and terminated the proceeding.⁷ Regarding Sierra Club, the Board held that Sierra Club had standing but had not submitted a proposed contention that met the requirements of 10 C.F.R. § 2.309(f)(1).⁸ The appeals of Sierra Club and four other petitioners are now pending with the Commission.⁹

On September 23, 2019, the U.S. Nuclear Waste Technical Review Board (NWTRB) issued a report, *Preparing for Nuclear Waste Transportation*.¹⁰ Sierra Club filed its new proposed Contention 30 on October 23, 2019.

⁴ Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 12,034 (Mar. 19, 2018).

⁵ Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919 (July 16, 2018).

⁶ *Petition to Intervene and Request for Adjudicatory Hearing by Sierra Club* (Sept. 14, 2008) (ML18257A228). The other petitioners are: Alliance for Environmental Strategies; Beyond Nuclear, Inc.; NAC International Inc.; Fasken Oil and Ranch, Ltd. and Permian Basin Land and Royalty Owners; and a group of joint petitioners led by Don't Waste Michigan.

⁷ *Holtec Int'l*, (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, 89 NRC 353, 461-63 (2019).

⁸ *Id.* at 461.

⁹ *See Sierra Club's Brief in Support of Appeal of LBP-19-4* (June 3, 2019) (ML19154A166). *See also NRC Staff's Answer in Opposition to Sierra Club's Appeal of LBP-19-4* (June 28, 2019) (ML19179A254); *Holtec International's Brief in Opposition to Sierra Club's Appeal of LBP-19-4* (June 28, 2019) (ML19179A330). Since the Board terminated the proceeding, the proposed new Contention is properly before the Commission.

¹⁰ U.S. Nuclear Waste Technical Review Board, "Preparing for Nuclear Waste Transportation: Technical Issues that Need to Be Addressed in Preparing for a Nationwide Effort to Transport Spent Nuclear Fuel and High-Level Radioactive Waste" (Sept. 2019) (ML19297D146) (NWTRB Report).

Discussion

I. Applicable Legal Standards

A. Standards for New Contentions

New contentions submitted after the initial date for hearing requests must meet the requirements of 10 C.F.R. § 2.309(c)(1). To do so, a party must demonstrate good cause by showing that the following three conditions are met:

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

The petitioner has the burden of demonstrating that any new contention meets the standards in 10 C.F.R. § 2.309(c)(1).¹¹

B. Reopening Standards

Pursuant to 10 C.F.R. § 2.326(a), the petitioner seeking to open a closed record must show that its motion (1) is timely; (2) addresses a significant safety or environmental issue; and (3) demonstrates that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.¹² Additionally, 10 C.F.R. § 2.326(b) requires supporting affidavits from experts or otherwise competent individuals accompany the motion “that set forth the factual and/or technical bases for the movant’s claim that the criteria of [§ 2.326(a)] have been satisfied. The affidavits must address each criterion of § 2.326(a) “separately ... with a specific explanation of why it has been met.”¹³ Commission rules of

¹¹ *AmerGen Energy Co. (Oyster Creek Nuclear Generating Station)*, CLI-09-7, 69 NRC 235, 260–61 (2009).

¹² 10 C.F.R. § 2.326(a).

¹³ 10 C.F.R. § 2.326(b).

practice also make it clear that the reopening standards, as well as the standards to file a new contention after the deadline, must be met when an entirely new issue is sought to be introduced after the proceeding has been terminated.¹⁴

C. Legal Requirements for Contention Admissibility

10 C.F.R. § 2.309(f)(1) establishes the “basic criteria that all contentions must meet in order to be admissible.”¹⁵ That section requires that each contention:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (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;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue . . . ; and
- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.¹⁶

The Commission has strictly applied these contention admissibility requirements in NRC adjudications.¹⁷ Failure to comply with any one of these criteria is grounds for the dismissal of a contention.¹⁸ The requirements are intended to “focus litigation on concrete issues and result in

¹⁴ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124 (2009) (citing 10 C.F.R. § 2.326(d)).

¹⁵ *Entergy Nuclear Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 572 (2006). *See also USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 436–37 (2006) (stating that the Commission “will reject any contention that does not satisfy the requirements”).

¹⁶ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

¹⁷ *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006) (citing *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-1, 55 NRC 1 (2002)).

¹⁸ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). *See also Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016).

a clearer and more focused record for decision.”¹⁹ The hearing process is reserved “for genuine, material controversies between knowledgeable litigants.”²⁰

Further, a petitioner must do more than assert generally that there are deficiencies in the application. A petitioner must identify all pertinent portions of the document it is challenging and state both the challenged position and the petitioner’s opposing view.²¹ To demonstrate a genuine, material dispute, the petitioner must address the specific analysis in the document and explain how it is incorrect.²² To show that a dispute is “material,” a petitioner must show that its resolution would make a difference in the outcome of the proceeding.²³

II. Sierra Club Fails to Meet the Standards of 10 C.F.R. § 2.309(c)(1)

Sierra Club bases Contention 30 on information in the NWTRB report issued on September 23, 2019, and filed its new contention thirty days later on October 23, 2019.²⁴ However, Petitioner’s new contention principally relies on information in the NWTRB report that was previously available, and thus does not satisfy 10 C.F.R. § 2.309(c)(1)(i). Central to Petitioner’s new contention that the environmental report (ER) inadequately discusses impacts of SNF transportation is its claim that SNF could not be removed from all reactor sites until approximately 2070 to 2100, and that this is not within the 20-year timeframe proposed by Holtec nor within the 40-year licensing period.²⁵ But information asserting that SNF might not meet transportation requirements until as late as 2100 was previously presented in 2013, as the

¹⁹ Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

²⁰ *Id.* (quoting *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 219 (2003)).

²¹ *Millstone*, CLI-01-24, 54 NRC at 358.

²² 10 C.F.R. § 2.309(f)(1)(vi).

²³ *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3) CLI-99-11, 49 NRC 328, 333–34 (1999).

²⁴ Contention 30 at 1-2.

²⁵ *Id.* at 7.

NWTRB report notes.²⁶ Petitioner cites to a discussion in the NWTRB report about “a condition outside the limits of the [Certificate of Compliance]” that would delay the removal of SNF from some reactor sites.²⁷ The report, citing to a presentation delivered at an NWTRB workshop in November 2013, describes that the increase in high burnup fuel and SNF stored in large canisters at reactor sites will take longer to cool to meet transportation requirements.²⁸ Petitioner quotes the report, which, based on this information from 2013, states that the SNF could be repackaged into smaller canisters to “remove SNF from all [reactor] sites by approximately 2070,” or without repackaging, “some of the largest SNF canisters storing the hottest SNF would not be cool enough to meet the transportation requirements until approximately 2100.”²⁹ Because this information was presented and publicly available nearly six years ago, Petitioner fails to show good cause as to why it did not raise its contention prior to the initial filing deadline. Because the contention relies on information previously available, Petitioner does not meet 10 C.F.R. § 2.309(c)(1)(i).

Petitioner also fails to meet 10 C.F.R. § 2.309(c)(1)(ii) because it does not show that the newly-available NWTRB report provides materially different information than what the ER already contains. The Commission has stated that materially different information is that which “differs significantly ... from the information in the applicant’s documents.”³⁰ Here, Sierra Club

²⁶ NWTRB Report at 77.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Contention 30 at 7 (quoting NWTRB Report at 77). The NWTRB report cites to a November 2013 presentation delivered at a public NWTRB technical workshop by Jeffrey Williams, director of the U.S. Department of Energy (DOE) Nuclear Fuels Storage and Transportation Planning Project. A workshop transcript, showing Williams discussing the timeframe for transporting all SNF from reactor sites at page 54, is publicly available at <https://www.nwtrb.gov/docs/default-source/meetings/2013/november/13nov18.pdf?sfvrsn=9>.

³⁰ Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 at 46,572 (Aug. 3, 2012); see also *Powertech (USA), Inc.* (Dewey-Burdock *In Situ* Uranium Recovery Facility), CLI-16-20, 84 NRC 219, 240 (2016), *aff’g* LBP-15-16, 81 NRC 618, 704–05 (2015) (stating that a contention fails to meet 10 C.F.R. § 2.309(c)(1)(ii) when the information is “not materially different from information already in the record”).

does not show that the NWTRB report provides information that, for purposes of the review of Holtec's application for a 10 C.F.R. Part 72 license, is significantly different than what the application already describes.

The NWTRB report describes "a condition outside the limits of the CoC" when it discusses a delay – highlighted by the Petitioner – in the removal of SNF from some reactor sites until 2070 to 2100 to allow time for SNF to cool to meet transportation requirements.³¹ But Sierra Club fails to demonstrate how this information is materially different from Holtec's application, because Holtec's application commits to storing SNF only in casks designed in accordance with the CoC for the HI-STORM UMAX storage system.³² The ER states that the HI-STORM UMAX storage system "is currently licensed by the NRC in accordance with 10 C.F.R. Part 72 and therefore complies with the NRC requirements for the independent storage of SNF."³³

ER section 1.4.1.3 further states that transportation of SNF from reactor sites to the proposed CISF requires a transportation package approved and certified by the NRC under 10 C.F.R. Part 71.³⁴ The CoC "ensures the transport packages are designed to maintain confinement of the SNF during shipping and ensure there will not be any radiological release caused by a hypothetical severe accident scenarios."³⁵ Because Holtec proposes to only use NRC-approved casks, concerns raised by Petitioner based on the NWTRB report over a delayed timeframe to transport SNF based on conditions outside the limits of a CoC fail to

³¹ NWTRB Report at 77.

³² Proposed License at 1 ("Storage is authorized only in casks designed in accordance with Certificate of Compliance No. 1040, Amendments 0, 1 and 2, for the HI-STORM UMAX Canister Storage System.").

³³ ER at 1-8.

³⁴ ER at 1-12.

³⁵ *Id.*

present materially different information. Therefore, Sierra Club does not show that it meets 10 C.F.R. § 2.309(c)(1)(ii).

In sum, Sierra Club does not demonstrate that the NWTRB report on which it bases its new contention offers any information that was not previously available or information materially different from what the application already describes. For these reasons, Sierra Club has not met the requirements of 10 C.F.R. § 2.309(c)(1)(i) and (ii), which is sufficient grounds to deny Petitioner's motion for failure to show good cause.

III. Sierra Club Fails to Meet the Reopening Standards

The motion must also be denied because Sierra Club fails to mention, let alone demonstrate that it satisfies, the applicable standards to reopen a closed record under 10 C.F.R. § 2.326. Under the Commission's longstanding practice, proceedings terminate, and the record is thereby closed, once all contentions have been decided.³⁶ In *Holtec*, the Board ruled that Sierra Club, as well as the other petitioners, failed to submit an admissible contention and denied their intervention petitions.³⁷ Accordingly, the ruling served to close the record of the proceeding, notwithstanding the subsequent appeals by the petitioners. In a licensing proceeding at the same procedural juncture as this one, in which a petitioner proffered new contentions pending its appeal of the Board's decision to deny its intervention petition, the Commission determined that "[t]he appropriate mechanism ... for [petitioner] to have sought to raise a new issue where, as here, the record of the proceeding had closed upon the Board's disposition of [petitioner's] original contentions was to address the reopening standards contemporaneously with a late-filed intervention petition."³⁸ The Commission held that the

³⁶ See, e.g., *Va. Elec. & Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 699 (2012); *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 NRC 132, 140-41 (2012); *Millstone*, CLI-09-5, 69 NRC at 124.

³⁷ *Holtec*, LBP-19-4, 89 NRC at 461-62.

³⁸ *Millstone*, CLI-09-5, 69 NRC at 124, *aff'd*, LBP-08-9, 67 NRC 421 (2008).

contentions were not litigable because the petitioner failed to address or meet the reopening standards.³⁹

Consistent with that precedent, upon rejecting all the petitioners' contentions, the *Holtec* Board declared that "[t]his proceeding is terminated."⁴⁰ Under well-established Commission rules of practice, when subsequently moving to admit a new contention, Sierra Club was obligated to show that it meets the reopening standards.⁴¹ The Commission has strictly enforced this rule, emphasizing that it "consider[s] reopening the record for any reason to be 'an 'extraordinary' action."⁴² However, Sierra Club neither acknowledges nor addresses those standards in its motion. It also fails to include affidavits, as required by 10 C.F.R. § 2.326(b), that address each of the 10 C.F.R. § 2.326(a) criteria separately "with a specific explanation of why it has been met."⁴³ The sole declaration that Petitioner provides to support its new contention does not mention 10 C.F.R. § 2.326(a) nor separately specify how Sierra Club satisfies each of its three criteria.⁴⁴

In sum, because Sierra Club does not address the 10 C.F.R. § 2.326 reopening standards, Sierra Club's proposed new Contention 30 must be denied on this basis alone.

IV. Sierra Club Fails to Meet the Contention Admissibility Standards

Sierra Club new Contention 30 states:

³⁹ *Id.* at 124–25.

⁴⁰ *Holtec*, LBP-19-4, 89 NRC at 463.

⁴¹ "The burden of satisfying the reopening requirements is a heavy one, and proponents of a reopening motion bear the burden of meeting all of [these] requirements." *Oyster Creek*, CLI-09-7, 61 NRC at 287 (2009) (quoting *Public Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), CLI-90-10, 32 NRC 218, 221 (1990); *La. Power & Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986)).

⁴² *Tenn. Valley Auth.* (Watts Bar Unit 2), CLI-15-19, 82 NRC 151, 156 (2015) (quoting *Entergy Nuclear Vt. Yankee LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 337–38 (2011).

⁴³ 10 C.F.R. § 2.326(b).

⁴⁴ Contention 30 at 7; Declaration of Robert Alvarez (Oct. 23, 2019) (ML19297D144) (Alvarez Declaration).

10 C.F.R. § 72.108 requires that the ER submitted by a license applicant must evaluate the potential impact on the environment of the transportation of the nuclear waste. A report issued by the DOE's Nuclear Waste Technical Review Board (NWTRB) identifies 18 technical issues regarding transportation of nuclear waste. These issues remain unresolved and pose barriers to the implementation of the Holtec CIS project. The issues identified in the NWTRB report are not discussed in Holtec's ER. The ER therefore does not adequately evaluate the environmental impact of the transportation of the nuclear waste from various reactor sites to the proposed CIS facility.

In Contention 30, Sierra Club asserts that Holtec's ER inadequately evaluates the environmental impact of SNF transportation from reactor sites to the proposed CISF, as required under 10 C.F.R. § 72.108, because it fails to discuss certain technical issues raised in the NWTRB report. Sierra Club identifies ER sections 3.9, 3.12, and 4.9 as inadequate in their evaluation of environmental impacts of SNF transportation. Petitioner asserts these ER sections fail to discuss technical issues concerning SNF transportation identified in the NWTRB report that may affect the timeframe for transporting SNF from *all* reactor sites.⁴⁵ Petitioner ultimately asserts that based on the NWTRB report, and assuming the Holtec CISF is licensed in 2021, "there is no likely scenario" that SNF could be transported to the CISF in the 20-year timeframe proposed by Holtec or within the 40-year licensing period.⁴⁶ To support its contention, Petitioner also relies on the declaration of Robert Alvarez and incorporates Alvarez's four conclusions regarding the NWTRB report.

- Long-distance transport of large quantities of SNF is unprecedented.
- Unresolved concerns about the integrity of high-burnup SNF in dry storage may cause prolonged onsite storage for several decades.
- There is a substantial lack of data regarding potential damage to SNF during transportation.
- Repackaging SNF for transport and disposal is an important missing element that has a major impact on the timing and implementation of a national SNF transportation program.⁴⁷

⁴⁵ Contention 30 at 6-7 (emphasis added).

⁴⁶ *Id.* at 7.

⁴⁷ *Id.* at 7-8; Alvarez Declaration at 1-2.

Sierra Club Contention 30 is inadmissible as the Petitioner raises concerns that are outside the scope of this proceeding, does not demonstrate that its claims are material to NRC's review, and fails to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact in accordance with 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi), respectively.

In raising concerns about the adequacy of the ER's consideration of environmental impacts from SNF transportation, Sierra Club faults the discussion of highway and railroad infrastructure in ER section 3.9 for not addressing the "technical adequacy of the containers in which the waste would be transported."⁴⁸ Sierra Club also asserts that ER section 3.12 is inadequate for not discussing public health and safety issues related to SNF transportation, and that ER section 4.9, in relying on the RADTRAN model, does not address unspecified "technical issues."⁴⁹

Holtec's application is for a specifically licensed ISFSI, not for a transportation package CoC.⁵⁰ While the regulations in 10 C.F.R. § 72.108 do require consideration of transportation impacts in the environmental review, it does not require that the ER prove the safety of transportation packages. In *Holtec*, the Board agreed with this assessment regarding a similar contention, stating that the requirements under 10 C.F.R. Part 71 "already address and preempt" these issues.⁵¹ Regarding Sierra Club's technical and public safety concerns with the adequacy of SNF containers, 10 C.F.R. 71.71(c) requires that applications for transportation package designs consider and evaluate the effects of various conditions, such as extreme temperatures, impacts from a drop, and "[v]ibration normally incident to transportation." In

⁴⁸ Contention 30 at 6.

⁴⁹ *Id.*

⁵⁰ Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919, 32,920 (July 16, 2018) ("The NRC received an application from Holtec for a specific license pursuant to part 72 of title 10. . .").

⁵¹ *Holtec*, LBP-19-4, 89 NRC at 415.

addition, 10 C.F.R. 71.73 requires applicants to demonstrate that the package can adequately address a variety of hypothetical accident conditions.⁵² Therefore, like the Board held in *Holtec*, this contention is inadmissible for failure to raise a genuine dispute with the application on a material issue of law or fact, as required under 10 C.F.R. § 2.309(f)(1)(vi).⁵³ Further, to the extent that Petitioner disputes the adequacy of NRC regulations to address the transportation of SNF, such a challenge is impermissible under 10 C.F.R. § 2.335(a).

Sierra Club also fails to demonstrate that it raises an issue within the scope of this proceeding as dictated by the Commission's hearing notice. To the degree that Sierra Club asserts that "[p]ublic health and safety must be adequately discussed in the ER" concerning transportation,⁵⁴ the safety of SNF transportation is governed by the standards in 10 C.F.R. Part 71 and through regulations issued by the U.S. Department of Transportation.⁵⁵ Consequently, to the extent the contention seeks to litigate generic safety concerns regarding offsite transportation of SNF (whether encompassing high burnup fuel or otherwise), such claims are outside the scope of this proceeding.⁵⁶

Petitioner also relies on the NWTRB report to support its assertion that SNF will not be able to be transported from reactor sites to Holtec's proposed CISF in the 20-year timeframe stated in its application or even in the 40-year licensing period. Petitioner cites to a statement on page 77 of the NWTRB report discussing the need to repackage SNF into smaller canisters to cool enough to meet transportation requirements. The report states, "DOE estimated that if

⁵² See 10 C.F.R. § 71.51(a).

⁵³ *Holtec*, LBP-19-4, 89 NRC at 415.

⁵⁴ Contention 30 at 6.

⁵⁵ See 10 C.F.R. § 71.0, "Purpose and scope." See also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-34, 50 NRC 168, 176–77 (1999) (noting that "shipment of spent nuclear fuel [is] governed by Part 71 and do[es] not require a specific license under Part 72").

⁵⁶ See *PFS*, LBP-99-34, 50 NRC at 176–77; *State of New Jersey* (Department of Law and Public Safety's Requests Dated Oct. 8, 1993), CLI-93-25, 38 NRC 289, 294 (1993); *Trustees of Columbia University in the City of New York*, ALAB–50, 4 AEC 849, 863 (1972) (noting that DOT regulations govern the safety of radioactive material transportation).

SNF was packaged from large casks and canisters to smaller standardized canisters, ... DOE could remove SNF from *all* nuclear power plant sites by approximately 2070. However, if no repackaging occurs, *some* of the largest SNF canisters storing the hottest SNF would not be cool enough to meet the transportation requirements until approximately 2100.”⁵⁷

Petitioner’s claim, however, fails to acknowledge the NWTRB report’s accompanying discussion regarding Technical Issue #13, which explicitly states that the technical issue does not currently preclude transportation of the many casks and canisters that meet CoC transportation requirements. In NRC proceedings, licensing boards have determined that the entire contents of a report relied on for a contention are subject to its scrutiny, including the portions that do not support the petitioner’s assertions.⁵⁸ Thus, material provided to support a contention faces careful examination by the board to determine whether it supplies adequate support for the contention on its face.⁵⁹ And reading the report’s entire discussion of Technical Issue #13 contradicts the Sierra Club’s claim, because it specifies that transportation of SNF is not precluded.

Page 76 of the report states this issue:

Technical Issue #13. Identify and correct (if needed) individual dry-storage casks and canisters with contents or physical conditions that do not meet the requirements specified in the NRC-approved transportation Certificate of Compliance.

Immediately following this issue statement, the report describes assumptions, conditions, and applicability of the issue, as follows:

a. This technical issue applies to some, but not all, dry-storage casks and canisters holding commercial SNF.

b. Because many of the dry-storage casks and canisters holding commercial SNF meet the CoC transportation requirements, this technical issue, by itself, does not preclude

⁵⁷ Contention 30 at 7 (quoting NWTRB Report at 77) (emphasis added).

⁵⁸ *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 n.30 (1996); rev’d in part on other grounds, CLI-96-7, 43 NRC 235 (1996).

⁵⁹ *Tenn. Valley Auth.* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 385 (2008) (citations omitted).

*DOE from beginning a transportation campaign—DOE can begin to transport the casks and canisters that meet the CoC requirements while it works to address this technical issue.*⁶⁰

Thus, the full context of Technical Issue #13 refutes Petitioner's assertion that "there is no likely scenario" that SNF could be transported to the proposed CISF in the timeframe proposed.⁶¹ To the contrary, in its discussion of Technical Issue #13, the NWTRB states that a SNF transportation campaign is not precluded because many SNF canisters meet CoC transportation requirements.⁶² The NWTRB explained that transportation of SNF can begin as some technical issues may be addressed quickly and others can be handled over time.

*It is important to note that, while all technical issues must be resolved before the nation's entire inventory of waste can eventually be transported, not all technical issues must be resolved before the first of the waste can be transported. In fact, some technical issues affecting existing waste may be resolved relatively quickly, allowing the waste to be moved early in the process. While this waste is being moved, more difficult technical issues can be addressed over time.*⁶³

Petitioner's assertions that transportation of SNF to the proposed CISF will not occur in the timeframe proposed by Holtec and that the ER does not adequately describe such transportation delays are not supported by the NWTRB report. A full examination of the report's discussion, which is subject to board scrutiny,⁶⁴ contradicts Petitioner's claim that technical issues are incompatible with the transportation of SNF to the CISF should NRC issue Holtec a license. Thus, Petitioner fails to demonstrate a genuine dispute with the ER on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Additionally, the proposed new Contention 30 is inadmissible because, contrary to 10 C.F.R. § 2.309(f)(1)(iv) and (vi), the conclusions from the Alvarez declaration that Sierra Club relies on do not provide sufficient information to show that the alleged omission of information in

⁶⁰ NWTRB Report at 76.

⁶¹ Contention 30 at 7.

⁶² NWTRB Report at 76.

⁶³ *Id.* at xxiii.

⁶⁴ *Yankee Nuclear*, LBP-96-2, 43 NRC at 90 n.30.

the ER regarding transportation of SNF to the CISF is material to the findings NRC must make in this proceeding or raises a genuine dispute with the application. A dispute at issue is “material” if its resolution would make a difference in the outcome of the licensing proceeding.⁶⁵ Based on Alvarez’s conclusions regarding the NWTRB report, Petitioner raises several transportation safety issues that are considered under 10 C.F.R. Part 71, as the ER and the NWTRB report explain. But Petitioner does not demonstrate how these issues, even taken at face value, would make a difference in the outcome of this licensing proceeding concerning Holtec’s application for a Part 72 license.

Describing Alvarez’s conclusions, Petitioner first asserts that because the transportation of thousands of metric tons of SNF is unprecedented “there is no assurance” of doing it safely and in the timeframe Holtec proposes.⁶⁶ Next, Petitioner raises concerns over transportation of high burnup fuel and potential delays associated with repackaging the hotter fuel that, according to Petitioner, the ER does not address.⁶⁷ Then, Petitioner faults the ER as inadequate for not discussing potential damage to SNF during transport.⁶⁸ Lastly, Petitioner asserts that the ER is deficient for not describing mitigation measures to repackage SNF containing high burnup fuel into smaller containers, which it claims will add costs and delay transportation to the proposed CISF.⁶⁹

⁶⁵ *Oconee*, CLI-99-11, 49 NRC at 333–34 (citing Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,172); *see also Nuclear Management Co.* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 748–49 (2005) (“‘Materiality’ requires that the petitioner show why the alleged error or omission is of possible significance to the result of the proceeding.”).

⁶⁶ Contention 30 at 8. Petitioner references the discussion in Technical Issue #1 of the NWTRB report to support this claim. This section alternatively states, “that transportation of SNF has been accomplished routinely and safely in many countries around the world, including the U.S., for decades.” NWTRB Report at 38.

⁶⁷ Contention 30 at 8-9 (referencing the discussion of Technical Issue #13 in the NWTRB report at 77-79).

⁶⁸ *Id.* at 10.

⁶⁹ *Id.* at 11-12.

Each of Petitioner's concerns relate to 10 C.F.R. Part 71 requirements, which Holtec's Part 72 license application is not required to address. Nor does the Petitioner demonstrate how these concerns contradict the application's acknowledgement that future SNF transportation would have to meet Part 71 specifications. ER Section 1.4.1.3 states that SNF transportation from commercial reactor sites to the proposed CISF "requires a transportation package that is approved and certified by the NRC in accordance with 10 C.F.R. Part 71."⁷⁰ The ER further describes that the CoC ensures transportation packages keep SNF confined during shipping and that no radiological release is caused by hypothetical severe accident scenarios.⁷¹ The Petitioner fails to explain how this reveals any dispute with the referenced portion of the NWTRB report about repackaging hotter SNF and related shipping delays, which states that "[n]otably, 10 C.F.R. Part 71 specifies limits on the maximum temperature for each transportation cask and limits on the maximum dose rate at the surface (or near the surface) of the cask in both normal and accident conditions."⁷² The report further describes that "[i]f conditions are found that do not meet the requirements of the transportation CoC, DOE (or the CoC holder) will have to address and correct those issues before the affected SNF can be transported."⁷³ In addition, Sierra Club references the NWTRB report's discussion of the loading curve requirement for Holtec's HI-STAR 100 transportation cask.⁷⁴ But in its Safety Analysis Report, Holtec indicates it would use a different transportation cask,⁷⁵ so it is unclear how any critique of the HI-STAR 100 would represent a specific dispute with the Holtec application.

⁷⁰ ER at 1-12.

⁷¹ *Id.*

⁷² NWTRB Report at 76.

⁷³ *Id.* at 79.

⁷⁴ *Id.* at 78; Contention 30 at 9. The NWTRB report explains that, "when plotted on a graph the values of [SNF] burnup versus initial enrichment create a curve called the 'loading curve.'"

⁷⁵ SAR § 4.3.4 at 4-19.

The Sierra Club has failed to demonstrate that the information described in the ER and the NWTRB report concerning SNF transportation shows a deficiency in the application that is material to the outcome of this licensing proceeding. Therefore, Contention 30 does not satisfy 10 C.F.R. § 2.309(f)(1)(iv).

For these reasons, Sierra Club has not demonstrated its new contention is within the scope of this proceeding, is material to NRC's review, or raises a genuine dispute with the applicant, in contravention of 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi). Thus, because Sierra Club has not demonstrated that Contention 30 meets all the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1), the Commission should find it inadmissible.⁷⁶

Conclusion

For the reasons set forth above, the Commission should deny admission of Sierra Club's new Contention 30.

Respectfully submitted,

/Signed (electronically) by/

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⁷⁶ See *Millstone*, CLI-01-24, 54 NRC at 358.

Executed in Accord with 10 CFR 2.304(d)

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Dated in Rockville, MD
this 18th day of November 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

HOLTEC INTERNATIONAL

(HI-STORE Consolidated Interim
Storage Facility)

Docket No. 72-1051

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC Staff Answer in Opposition to Sierra Club New Contention 30,” dated November 18, 2019, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding, this 18th day of November 2019.

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