

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

IN THE MATTER OF
INTERIM STORAGE
PARTNERS LLC

Docket No. 72-1050

July 6, 2020

(Consolidated Interim Storage Facility)

**FASKEN LAND AND MINERALS, LTD.'S AND PERMIAN BASIN LAND AND
ROYALTY OWNERS MOTION FOR LEAVE
TO FILE NEW AND/OR AMENDED CONTENTION**

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Now comes Fasken Oil and Ranch Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”) (collectively “Joint Petitioners”)¹, by and through undersigned counsel, who respectfully move the Atomic Safety Licensing Board (“ASLB”) for leave to file new Contention No. 5 in the above-captioned matter, filed concurrently with Petitioners’ Motion for Leave to Reopen the Record, and in support of their Motion for Leave to File New Contention No. 5, state as follows:

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(c)(1) and (f)(1), Joint Petitioners seek leave to file new Contention No. 5 based on the Interim Storage Partners LLC (“ISP”) draft environmental impact statement (“DEIS”)² and to contest newly disclosed and non-transparent analyses and material omissions and unforgiveable unknowns in ISP’s licensing application documents, which give rise to unaddressed technical and integration issues that the U.S. Nuclear Regulatory Commission (“NRC”) must resolve to properly review and analyze cumulative environmental impacts, as well as safety risks and the socioeconomic benefits of alternatives, to ensure that spent nuclear fuel (“SNF”) and high-level radioactive nuclear waste can be safely transported to, and stored at, the proposed ISP consolidated interim storage facility (“CISF”) in Andrews County, Texas over the entire course of the license term.³ This new information and the unresolved issues it brings to

¹ Fasken is a founding member of the Permian Basin Coalition of Land and Royalty Owners and Operators (“PBLRO”).

² Environmental Impact Statement for Interim Storage Partners LLC’s License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas, Draft Report for Comment, NUREG-2239 (May 2020) (ADAMS Accession No. ML20122A220), herein after “ISP DEIS.”

³ Consistent with 10 C.F.R. § 51.23(c), the ISP DEIS “serves as the site-specific review” conducted for the construction, operation and decommissioning of the proposed CISF for the period of its proposed license term. *See* ISP DEIS at 1-6. The initial proposed license term is for a period of 40 years, but ISP has indicated that it intends to seeks to renew the license and anticipates that SNF would be stored at the proposed CISF site for 60 to 100 years. *Id.* at 9-16. The NRC Staff’s cumulative impact analyses in the ISP DEIS alleges to have “considered these expansion phases in its impact analysis. . .and carries forth those impacts into the description of cumulative impacts. . . so as to conduct a bounded analysis for the proposed CISF project.” *Id.* at 5-11

light must be noticed, appropriately investigated, analyzed and fully disclosed in the ISP DEIS and final Environmental Impact Statement (“EIS”), and resolutions and risk-mitigation strategies delineated and implemented within the ISP Safety Analysis Report (“SAR”),⁴ as they inevitably implicate important legal issues, safety risks and environmental impacts relating to the transportation, construction, operation and decommissioning of the proposed CISF project.

As explained *infra*, the underlying faulty premises, with baked in layers of assumptions, based on unreliable data, uncertain variables and unknown transportation routes, render the cumulative impact analyses and ultimate conclusions regarding site evaluation factors, as well as preliminary agency recommendations for approval in the ISP DEIS, deficient. Not only do they vary significantly from ISP’s Environmental Report (“ISP ER”),⁵ but they are also misleading, inaccurate and inconsistent.

Transportation is key to any nuclear waste storage facility. Transportation is a functionally and financially interdependent cog in the wheel - an undeniably linked activity necessary to the proposed ISP CISF project. As such, cumulative analyses of transportation must be adequately and appropriately reviewed in a national context with respect to actual transportation routes and the varying status of the aging spent nuclear fuel to be stored. Moreover, transportation of such nuclear waste must be evaluated with respect to the regional surrounding area, its geologic characteristics, land use and nearby industry operations.

The potentially devastating impacts to communities along each and every transportation route cannot be insulated from consideration. Questions as to which entities will be taking title to the nuclear waste and which communities, states and/or business entities will be taking

⁴ WCS Consolidated Interim Storage Facility System Safety Analysis Report, Docket No. 72-1050, Rev. 2, (July 19, 2018) (ADAMS Accession No. ML18206A550), hereinafter “ISP SAR.”

⁵ WCS Consolidated Interim Storage Facility Environmental Report, Docket No. 72-1050, Rev. 3, (Feb. 17, 2020) (ADAMS Accession No. ML20052E152), hereinafter “ISP ER.”

responsibility / liability for incidents during transport must be answered and appropriately evaluated under National Environmental Policy Act (“NEPA”)⁶ and NRC regulations.⁷ Reliance on incomplete, uncertain and speculative sources of information and lack of transparency in such evaluations prevents proper public participation, precludes cumulative impact analyses NEPA and further violates NRC regulations.⁸ When dealing with multiple rounds of transporting the nation’s high-level radioactive waste in the absence of a permanent repository for same – a one size fits all approach, rooted in uncertainties as to transportation routes and layers of extrapolations as to potential radiation exposure risks, while failing to account for regional attributes of the nuclear waste’s final resting place is simply unacceptable.

II. PETITIONERS HAVE STANDING

If a petitioner has already satisfied the general standing requirements under 10 C.F.R. § 2.309(d), in the same proceeding for which a new contention is filed, the petitioner “does not need to do so again.”⁹ On August 23, 2019, the ASLB held that “Fasken and PBLRO have demonstrated standing” in the current proceeding.¹⁰ Thus, Petitioners have standing to bring Contention No. 5.

The proposed ISP CISF site is situated in the Permian Basin oil hub, one of the most vital petroleum resources for the nation’s energy, security and independence. As set forth in the Declaration of Tommy E. Taylor (Vice President of Fasken Management, L.L.C., which is the

⁶ The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, herein after “NEPA.”

⁷ See 10 C.F.R. §§ 72.90-108 (NRC Siting Evaluation Factor regulations, *e.g.*, 10 C.F.R. § 72.108 (“proposed ISFSI or MRS must be evaluated with respect to the potential impact on the environment of the transportation of spent nuclear fuel, radioactive waste, or reactor-related GTCC waste within the region”)).

⁸ See NRC Siting Evaluation Factors 10 C.F.R. §§ 72.90-108; §72.108 regarding necessary evaluation of transportation risks.

⁹ 10 C.F.R. § 2.309(c)(4).

¹⁰ See ASLB “Memorandum and Order” LBP-19-07 (August 23, 2019) (ADAMS Accession No. MLML19235A165), at 19 (“the Board concludes their proximity to the proposed facility is sufficient to confer standing on Fasken and representative standing on PBLRO. In light of the Commission’s direction to construe standing claims in favor of the petitioner, we agree with the NRC Staff’s original view that they both have shown enough. . .Fasken and PBLRO have demonstrated standing.”)

general partner of Fasken Land and Minerals, Ltd.), Fasken is a member of the PBLRO.¹¹ Petitioner PBLRO has 65 individual members and at least three being publicly traded corporations as well as numerous private companies with substantial oil and gas operations and leases and agricultural and ranching activities throughout the Permian Basin in southeast New Mexico and Texas.¹² Its members have been drilling and extracting oil in the region for over 80 years. A founding member owns land and minerals within two miles of the proposed ISP CISF.¹³

Fasken owns and/or leases property related to oil and gas activities located approximately 18 miles from the ISP site.¹⁴ Additionally, Fasken owns grazing property and operates significant agricultural operations nearby with considerable acreage. This property has been in the Fasken family for over one-hundred years.

Petitioners have a multitude of mineral leases surrounding the proposed CISF site and support the development of industry infrastructure and support services throughout the region. Both PBLRO and Fasken regularly utilize rail transportation and local highways to support their industries and have individuals frequently visit the region for work related purposes, including routine checks and maintenance on oil and gas production equipment and to monitor operations. Petitioners also have legitimate concerns regarding potential health effects of their employees, operations, and the communities in the region generally, including the costs associated with medical care and treatment of radiation-related conditions and the adverse financial impacts on property values and threats to ongoing extraction and mineral development, agricultural and ranching activities posed by the proposed ISP CISF.

III. LEGAL STANDARDS

¹¹ See Declaration of Tommy E. Taylor, attached hereto as Exhibit 1, hereinafter “Decl. Taylor.”

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

A. Petitioners Have Good Cause to File New Contention No. 5.

New or amended 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 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 than information previously available.¹⁵
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information¹⁶.

New or amended contentions regarding NEPA may be filed if there are data or conclusions in the NRC DEIS or final EIS or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents.¹⁷

If the NRC DEIS “contains data or conclusions. . . of the proposed action that differ significantly from those contained in the [ER] (an applicant's document), the petitioner [] may file an amended contention, or an entirely new contention, to challenge the new data or conclusions.”¹⁸ The use of a disjunctive phrase here indicates a “contention may therefore challenge a DEIS even though

¹⁵ The Commission has stated that “materially different” information is that which “differs significantly. . . from the information in the applicant's documents.” Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46, 562 at 46, 572 (Aug. 3, 2012). See also, Fla. Power & Light Co. (Turkey Point Units 6 & 7), LBP-, 86 N.R.C. 37, 48, *aff'd*, CLI-17-12, 86 N.R.C. 215 (2017) (in the context of late-filed contentions, “materially different” concerns the “type or degree of difference between new information and previously available information”).

¹⁶ See *In the Matter of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 N.R.C. 491, 491 (2012) (noting that “although ‘timely’ is not expressly defined by months or days in [NRC] regulations. . . typically [] 30 to 60 days from the initiating event [is considered] a reasonable deadline for proposing new or amended contentions.”); *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), 67 N.R.C. 460, 493 (2008) (30 days held as presumptive time frame for timeliness of late-filed contentions).

¹⁷ 10 C.F.R. § 2.309(f)(2). See *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 533 (2005) (“Our rules expressly allow timely amendment of NEPA contentions if there is significant new information or different conclusions in the DEIS that could not have been challenged previously”) (citing 10 C.F.R. § 2.309).

¹⁸ *In the Matter of Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), 72 N.R.C. 720, 729-730, LBP-10-24 (Dec. 28, 2010) (“*Calvert*”).

its ultimate conclusion on a particular issue. . . is the same as that in the ER, as long as the DEIS relies on significantly different data than the ER to support the determination.”¹⁹

Petitioners’ Contention No. 5 satisfies the requisite three conditions for good cause set out in 10 C.F.R. § 2.309(c)(1). The information forming the basis for new Contention No. 5 was not available prior to publication of the ISP DEIS on May of 2020. As discussed *infra*, the NRC for the first time relies on and cites to data in the DOE Yucca 2008 transportation analysis and discloses recently developed conclusions for the very first time in the ISP DEIS that significantly vary in material respects from information contained in ISP’s license application documents. Pursuant to the May 22, 2020 Order by the Secretary of the Commission “[p]etitions to intervene, hearing requests, and motions to admit contentions challenging the [ISP] DEIS will be deemed timely if filed on or before July 6, 2020.”²⁰ The foregoing Motion to admit contentions, based on information only recently published in the ISP DEIS, and filed on July 6, 2020 is timely. And Petitioners have demonstrated good cause to file same.

B. Petitioners New Contention No. 5 is Admissible

In addition to meeting the requirements of 10 C.F.R. § 2.309(c)(1), new or amended contentions must also satisfy the basic standards for admissibility under 10 C.F.R. § 2.309(f)(1).

This 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

¹⁹ *Calvert*, 72 N.R.C. at 730 (“The reverse is also true: a significantly different conclusion in the DEIS may be challenged even though it is based on the same information that was cited in the ER.”). *See also*, *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 533 (2005) (“Our rules expressly allow timely amendment of NEPA contentions if there is significant new information or different conclusions in the DEIS that could not have been challenged previously”).

²⁰ Commission “Order (Granting Motion for Extension of Time to File)” Docket No. 72-1050 (May 22, 2020).

scope of the proceeding;²¹

- 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;¹⁵
- v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue...together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;²² and
- vi) 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 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.²³

10 C.F.R. § 2.309(f)(1)(i-vi).

A contention may state an "issue of law or fact." A purely legal issue contention need not necessarily address every requirement of 10 C.F.R. § 2.309(f)(1), such as the requirement to provide "a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue."²⁴

²¹ Requires a significant link between the claimed deficiency in the application and the agency's ultimate determination whether the applicant will adequately protect the health and safety of the public and the environment. *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-17-07, 75 NRC 301 (2017) (citing *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179-80 (1998), *Aff'd*, CLI-98-13, 48 NRC 26 (1998)). See also, *Oconee*, CLI-99-11, 49 N.R.C. at 333-34 (to show that a dispute is "material" a petitioner must show that its resolution would make a difference in the outcome of the licensing proceeding).

²² At the contention admissibility stage, petitioners are not required to prove their case on the merits. *Fansteel, Inc.* (Muskogee, Okla. Site), CLI-03-13, 58 N.R.C. 195, 203 (2003).

²³ See, *U.S. Dept. of Energy*, CLI-09-14, 69 NRC 580, 588 (2009) (demonstrating a genuine dispute of fact or law requires a petitioner to show "specific ties to NRC regulatory requirements, or to safety in general"); *Nextera*, LBP- 17-07, 75 NRC 301 (finding "sufficient information" to demonstrate a genuine dispute to require inclusion of references to specific portions of the application that a petitioner disputes and for deficient applications, identification of alleged areas of deficiencies with supporting beliefs).

²⁴ 10 C.F.R. § 2.309(f)(1)(v). See *U.S. Dep't of Energy*, CLI-09-14, 69 NRC 580 at 588-91. ("We agree, for example, with the Boards' view in this proceeding that requiring a petitioner to allege 'facts' under section 2.309(f)(1)(v) or to

To satisfy basic contention admissibility requirements, a petitioner must “proffer at least some minimal factual and legal foundation in support of their contentions.”²⁵ Although a petitioner need not prove the merits of contentions at this stage, mere notice pleading of proffered contentions is insufficient.²⁶ Rather the NRC requires a petitioner read the pertinent portions of the license application, state the applicant’s position and the petitioner’s opposing view, and explain the disagreement.²⁷

As discussed in further detail below, Petitioners are filing new Contention No. 5 relating to the ISP DEIS to challenge newly disclosed conclusions relating to the transportation of nuclear waste, which contain glaring omissions, inaccuracies, and inconsistencies and new material facts regarding cumulative impacts and which also turn a blind eye to the geologic characteristics and ongoing and extensive oil and gas and mining extraction operations in the region of the proposed ISP CISF project, as well as the status of compliance with federal and state laws and approvals, which preclude a proper analysis of ISP’s licensing application under NEPA and NRC regulations. Reliance on a less-than-complete record and speculation in the context of licensing a facility to house the entire nation’s nuclear storage will not suffice. Petitioners’ Contention No. 5 implicates serious and important safety, transportation and environmental issues that the NRC must notice, disclose and appropriately address in the licensing of the proposed ISP CISF project.

C. NRC and NEPA Legal Standards

The overarching goal of the NRC is to avoid avoidable risks of harms. Its regulations promote that goal. As such, the NRC may only issue a license upon a finding that the proposed

provide an affidavit that sets out the ‘factual and/or technical bases’ under section 51.109(a)(2) in support of a legal contention—as opposed to a factual contention—is not necessary.”)

²⁵ *Oconee*, CLI-99-11, 49 N.R.C. at 334.

²⁶ *Fansteel, Inc.*, CLI-03-13, 58 N.R.C. 195 at 203.

²⁷ Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33, 168, 33, 170-71 (Aug. 11, 1989).

site complies with NRC siting evaluation factors.²⁸ More specifically, NRC regulations require that proposed sites “be examined with respect to the frequency and the severity of external natural and man[-]induced events that could affect [] safe operation.”²⁹ Pursuant to 10 C.F.R. § 72.108, license applicants for a “proposed ISFSI or MRS must [also] be evaluated with respect to the potential impact on the environment of the transportation of spent fuel, high-level radioactive waste, or reactor-related GTCC waste within the region.” It is further imperative that all information provided by a license applicant to the Commission is “complete and accurate in all material respects.”³⁰

Additionally, the NRC cannot grant a license for construction or operation of the proposed CISF project until it determines that applicable regulatory requirements of the Atomic Energy Act of 1954 (“AEA”),³¹ the National Waste Policy Act (“NWPA”)³² and NEPA requirements are satisfied.³³ Any NRC licensing action must be viewed through the lenses / from the perspective of congressional intent for authorizing federal agency actions under the respective legislations.

NRC regulations implementing NEPA reflect amendments designed to improve regulatory efficiency in environmental reviews and to provide for “more focused and therefore more effective” NRC NEPA reviews by focusing on “significant case[-]specific concerns.”³⁴

²⁸ See 10 C.F.R. §§ 72.40(a)(2), 72.90 – 72.108.

²⁹ See 10 C.F.R. § 72.90(b); see also 10 C.F.R. § 72.24(a) (requires applicants to provide a description and safety assessment of the site on which the ISFSI is to be located, “with appropriate attention to the design bases for external events.”); NUREG-1567 § 2.4.2 (requires applicants to identify products or materials produced, stored, or transported by nearby industries, and discuss “any potential hazards to the ISFSI from activities or materials” produced by nearby industries).

³⁰ 10 C.F.R. § 72.11(a).

³¹ The Atomic Energy Act of 1954, as amended, 42 §§2011, *et seq.* (“AEA”).

³² The National Waste Policy Act of 1982, as amended, 42 U.S.C. §§10101, *et seq.* (“NWPA”).

³³ See 10 C.F.R. §51.10(a) (Nothing in the NRC NEPA implementing regulations alter the cardinal requirement that license applications comply with all NRC regulations. Indeed, NEPA regulations must be carried out in a “manner which is consistent with the NRC’s domestic licensing and regulatory authority under the [AEA].”

³⁴ Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467 (Jun. 5, 1996); *id.*, 61 Fed. Reg. 66,537 (making minor clarifying and conforming changes and adding text omitted from Table B-1); Correction, 66 Fed. Reg. 39,277 (Jul. 30, 2001) (making further corrections to Table B-1).

NEPA mandates that federal agencies prepare an EIS before undertaking any “major Federal actions significantly affecting the quality of the human environment.”³⁵ The preparation of an EIS is meant to ensure that federal agencies “*will not act on incomplete information, only to regret [their] decision after it is too late to correct.*”³⁶ NEPA requires agencies to take a “hard look at environmental consequences” of the proposed action, and imposes a duty upon the agency to both “consider every significant aspect of the environmental impact of a proposed action” and “inform the public” of its analysis and conclusion.³⁷

Pursuant to NRC regulations, a draft EIS must “state how *alternatives considered* in it and decisions based on it will or will not achieve [NEPA] requirements,³⁸ . . . *identify any methodologies used and sources relied upon, . . . be supported by evidence that the necessary environmental analyses have been made . . . [and that] [t]he NRC staff [] independently evaluate and be responsible for the reliability of all information used in the draft [EIS].*”³⁹ In completing a draft EIS, the NRC is encouraged to cooperate with State and local agencies and “include consideration of major points of view concerning the environmental impacts of the proposed action and the alternatives, and contain an analysis of significant problems and objections raised by other Federal, State, and local agencies, by any affected Indian Tribes, and by other interested parties.”⁴⁰

Additionally, a draft EIS must include discussion of the cumulative effects for a proposed

³⁵ 43 U.S.C. § 4332(2)(c) (Including a detailed statement by the responsible official on “(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.”)

³⁶ *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989) (emphasis added).

³⁷ *Balt. Gas & Elec. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97, 103 (1983) (quoting *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 553 (1978)).

³⁸ Specifically, “Sections 101 and 102(1) of NEPA and of any other relevant and applicable environmental laws and policies.”

³⁹ 10 C.F.R. § 51.70(b) (emphasis added).

⁴⁰ 10 C.F.R. § 51.71(b).

project, defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and *reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.*”⁴¹

Cumulative effects, synonymous with cumulative impacts, can result from individually minor but collectively significant actions taking place over a period of time.

Draft and final EISs are government-sponsored documents that will subsequently be issued to other federal agencies, state agencies, and the public. Because the government stands by the reliability of the information and conclusions in its EISs, they are often used as references for a broad array of decisions. “To casually include information that has not been independently verified for its reliability and completeness by the NRC would violate both NRC regulations and NEPA’s fundamental purpose of informing the public about environmental issues.”⁴² Moreover, to protect the inclusion of information in an EIS from challenge in a licensing proceeding would violate NRC regulations governing public participation requirements.⁴³

IV. NEW CONTENTION NO. 5

ISP’s application fails to adequately, accurately, completely and consistently consider the cumulative impacts of transporting high-level radioactive waste and spent nuclear fuel to and the socioeconomic benefits of the proposed CISF project, which precludes a proper analysis under NEPA, and further nullifies ISP’s ability to satisfy NRC’s siting evaluation factors now and anticipated in the future and is in further violation of NRC regulations.

A. Basis for New Contention No. 5

Petitioners submit new Contention No. 5 to address materially different conclusions and

⁴¹ 40 C.F.R. § 1508.7 (emphasis added); Council on Environmental Quality (“CEQ”) Regulations.

⁴² *TVA, Intervenor’s Reply to Responses in Opposition to Motion for Leave to File Contention 4 (Inadequate Discussion of Environmental Impacts of Spent Nuclear Fuel Pool Fires) and Contention 5 (Impermissible Discussion of Energy Alternatives and Need for The Proposed SMR)*, Docket No. 52-047-ESP (June 22, 2018), (ADAMS Accession No. ML18174A075).

⁴³ 10 C.F.R. § 51.104

reliance on sources of data, information and statements, made for the very first time in the recent ISP DEIS, which materially mislead the public as to the ownership and responsibility, as well as the radiological risks and socioeconomic impacts, of transporting nuclear waste from decommissioned sites to the proposed ISP site (and inevitably decommissioning and presumably later moving to a permanent repository). Furthermore, the transportation cumulative impacts (as well as other analyses) fail to account for ongoing and extensive industry operations, recent seismic events, and uncertain geologic characteristics in the region of the proposed ISP CISF project that present real threats of subsidence and sinkholes to transportation and storage. Reliance on conjecture and unverified and speculative information in the ISP DEIS cannot reasonably form the basis for a proper evaluation of safety risks or environmental impacts of transporting nuclear waste through countless communities across the country, who deserve fair warning and adequate notice of potential consequences. Such obscurity as to ownership and responsibilities during transport further skew the socioeconomic cost and benefits of the proposed ISP project when compared to the alternatives in violation of NEPA and NRC regulations.

Petitioners assert transportation is a necessary and connected activity to the proposed CISF project that must be appropriately and adequately analyzed in NEPA cumulative impacts analyses, in light of costs and benefits of the proposed project, and in terms of the financial assurances in transporting, storing and then decommissioning and having multiple rounds of transportation for high-level radioactive waste. Petitioners dispute the data and conclusions presented in the recently published ISP DEIS as they omit material information, and present incomplete, inaccurate, unreliable and misleading information rendering the cumulative impact analyses flawed.

B. Facts Petitioners Intend to Rely on In Support New Contention No. 5.

According to the ISP DEIS, the NRC's analysis of potential cumulative impacts from the

proposed CISF project are “based on publicly available information on past, present, and reasonably foreseeable future projects; information in . . . [ISP ER and SAR]. . . ; responses to requests for additional information (RAI) (ISP, 2019); and general knowledge of the conditions in west Texas, southeast New Mexico, and in the nearby communities.”⁴⁴

The ISP DEIS considered a region of interest of 50-mile radius. For the proposed ISP CISF project, other past, present and reasonably foreseeable future actions in the vicinity of the proposed project include “livestock grazing; agriculture; oil and gas exploration and development and other mining; and solid, hazardous, and radioactive waste disposal.”⁴⁵

The ISP DEIS cumulative transportation analysis fails to consider regional geologic characteristics including the potential for seismicity, sinkholes and subsidence; fails to consider ongoing and extensive oil and gas and mining operations in the region; and further fails to acknowledge the potential of terrorist attack, sabotage, or even train derailment. ISP’s application misleads the NRC and the public regarding safety and environmental impacts of transporting nuclear waste across the country to the proposed CISF site in Texas and relies on underlying premises that are faulty or speculative at best. Such deficiencies include flaws in the underlying Yucca Mountain transportation analyses, misguided reliance on reference radiation dosing which fails to consider elevated risks for children, elderly and expectant mothers, unsubstantiated assumptions that a permanent repository will be built by 2048 and that infrastructure improvements will be made along with responsibility and liability for nuclear waste during transit or in the event of an accident. As a result, the ISP DEIS improperly evaluates the cost benefits of the proposed action and the No-Action alternative and fails to appropriately assess the cumulative impacts the

⁴⁴ ISP DEIS at 5-1.

⁴⁵ ISP DEIS at 5-1.

proposed CISF site will have on the environment, land use, and surrounding populations. Such inaccurate, incomplete and unreliable facts and information relied on include, but are not limited to, those listed in attached Exhibit 2. Petitioners reserve the right to amend and/or supplement same as additional relevant information becomes available.

C. Petitioners Raise Genuine Disputes of Material Fact and Law

i Transportation is Vital to the Proposed ISP CISF Project – A Connected Activity That Must Be Addressed and Fully Analyzed

NRC admittedly cannot execute or license the proposed ISP project without a change in congressional intent. It cannot fulfill its NEPA obligations to conduct an adequate independent analysis of cumulative impacts of transportation risks without evaluating the underlying variables. In terms of transporting nuclear waste – extrapolations based on prior facilities and the use of “representative routes” simply will not do and further prevent a proper assessment of cost and benefit scenarios in the ISP DEIS.

The NRC and the Department of Transportation (“DOT”) both exercise federal jurisdiction over the transportation of nuclear materials.⁴⁶ The transportation of nuclear waste to the proposed ISP CISF has a clear physical, functional and temporal nexus to the project. Such a storage facility would have no purpose unless it is supplied with something to store. “[F]ederal actions encompassed within a larger, private project” like rail transportation contracting can clearly be connected.⁴⁷ Transportation and storage in the context here are inextricably linked actions.

ii New and Significant Data and/or Conclusions in the ISP DEIS

1. Responsibility for Emergency Responses in Event of

⁴⁶ Under the NRC’s regulations, the transportation of “radioactive waste” away from a reactor must be included in environmental reports prepared for a reactor license. 10 C.F.R. § 51.52. The NRC set forth “[t]he environmental impacts of transportation of fuel and waste to and from the reactor, with respect to normal conditions of transport and possible accidents in transport,” in Table S–4 in the regulations. *Id.* § 51.52(6). See *Nuclear Info. & Res. Serv. v. NRC*, 457 F.3d 941, 944–45 (9th Cir. 2006) (“NRC and the [DOT] . . . co-regulate the transportation of radioactive material in the [U.S.]”).

⁴⁷ *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 301 F. Supp. 3d 50, 67 (D.D.C. 2018).

Accident and/or Radiologic Exposure

New and significant disclosures in the ISP DEIS relate to both transportation and socioeconomic cost and benefit analyses and hinge on the responsibility and costs for coordinating transportation, payments for needed infrastructure improvements and providing necessary emergency training for first responders in the case of an accident along the unknown transportation routes. The ISP ER states “DOE or private qualified logistics company will also be responsible for coordinating with federal agencies. . . regarding transportation of SNF. . . *If DOE is the shipper, the federal government, through DOE, is responsible* for providing emergency training to states, tribes, and local emergency responders along the transportation routes where SNF would be transported to the CISF.”⁴⁸

By contrast, however, the ISP DEIS for the very first time asserts that “the NRC Staff recognizes that if SNF is shipped to a CISF, *some States, Tribes, or municipalities along transportation routes may incur costs* for emergency-response training and equipment that might otherwise be eligible for funding under NWPA Section 180(c) provisions if DOE shipped the SNF from existing sites to a repository.”⁴⁹ Later it states that “*States are recognized as responsible for protecting health and safety during radiological transportation accidents.*”⁵⁰ It additionally states, without reasonable justification, that “[a]nother cost factor shared by the proposed CISF and the No-Action alternative is emergency preparedness along the SNF transportation route.”⁵¹ Instead of further investigating this significant change in the ISP DEIS, the NRC opted to end its cumulative impacts analysis, concluding that “[b]ecause needs of individual municipalities along transportation routes and the costs. . . vary widely, quantification of such would be speculative. . .

⁴⁸ ISP ER at 4-8. (*emphasis added*)

⁴⁹ ISP DEIS 4-74. (*emphasis added*)

⁵⁰ ISP DEIS at 8-11. (*emphasis added*)

⁵¹ ISP at 8-11.

.and is beyond the scope of this EIS.”⁵²

Petitioners dispute this omission and maintain that such information must be included, assessed and taken into consideration not only for the cumulative transportation impacts analysis, but also in terms of the purported socioeconomic benefits of the proposed ISP CISF project and with respect to the No-Action Alternative. Indeed, these costs and the responsibility for same could be substantial, just as the costs required for improvements of infrastructure to ensure safe transport.

2. Responsibility for Infrastructure Improvements

The very last revision to the ER and the ISP DEIS acknowledge that the “DOE or the SNF Title Holder(s) are. . . responsible for the transportation of SNF from the shutdown and decommissioned reactors across the country.”⁵³ However, there are significant and material differences in conclusions as to which entities would be responsible for payments to upgrade and improve rail and other infrastructure to ensure safe transport of nuclear waste across the country and on unknown, not-yet identified routes.

For example, the ISP ER states: “[s]tudies have been performed by the DOE to determine the level of work that would be needed to improve the infrastructure that would be required to remove SNF currently in storage at shutdown and decommissioned reactors for transport to an ISFSI or a geologic repository.”⁵⁴ By comparison, the ISP DEIS states some decommissioned reactor sites “may require local transportation infrastructure upgrades to remove the SNF from the site” for example “installing or upgrading rail track, roads, or barge slips necessary to transfer SNF offsite.”⁵⁵ Yet the ISP DEIS concludes without justification that such upgrades and the associated costs with same were not quantified or considered in the No-Action Alternative analysis, because

⁵² ISP DEIS at 4-75.

⁵³ See e.g., ISP ER at 3-8.

⁵⁴ *Id.*

⁵⁵ ISP DEIS at 4-10.

it: “(i) would be difficult to establish, (ii) would vary based on the individual generation sites, and (iii) would be a common need for both the proposed CISF and the No-Action alternative.”⁵⁶

These costs are part and parcel of the transportation necessary for proposed storage at the ISP CISF site and must be accounted for in the cumulative transportation analyses, any socioeconomic cost and benefit evaluation, and in terms of the No-Action Alternative. While NEPA does not require agencies to have a crystal ball to look into the future, it does require a reasonable “hard look” into the cumulative impacts – particularly given the gravity and seriousness of the nuclear waste cargo and costs at issue.

iii. Lack of Independent and Adequate NRC Review for Cumulative Impacts

As noted above, the ISP DEIS fail to adequately investigate and review cumulative impacts under NEPA and NRC regulations requiring an independent review and support of reliable data. The ISP DEIS further fails to identify, let alone accurately and completely analyze the cumulative impacts of, transportation routes from the decommissioned sites to the proposed ISP CISF site, improperly relying on representative routes conducted for purposes of other facilities.

The ISP DEIS, makes clear that the exact routes for transportation of the nuclear waste are unknown, speculating they will be determined at some unknown time in the future prior to shipment. As an alternative, the NRC based its evaluation on three representative routes. Despite the uncertainty and unknowns as to the myriad aspects of impacts involved with said transportation routes, the NRC Staff states that it “considers that representative or bounding routes applicable to a national SNF shipping campaign” that the DOE conducted in 2008 for Yucca Mountain and its analysis for a separate ISFSI site.⁵⁷ The NRC claims this should “provide sufficient information

⁵⁶ ISP DEIS at 8-11. Petitioners further dispute this statement, to the extent it lacks any significant discussion, supporting evidence or reasonable justification for the proposition this would be a common need.

⁵⁷ ISP DEIS at 3-8.

about potential transportation routes to support the analysis of impacts here.”⁵⁸

Surprisingly and in seemingly contradictory position, the ISP DEIS eliminates the analysis of alternatives that also meet the purpose and need for the proposed CISF action, a DOE integrated waste management system, because it would necessarily “include . . . other key infrastructure needed to safely manage SNF from commercial nuclear reactors. . . and the DOE has not released detailed information concerning the planned interim storage facilities, such as . . . SNF transportation options and details . . . that would allow this alternative to be analyzed in detail.”⁵⁹ The NRC concluded that the lack of information on transportation would be “details . . . needed for a comparison of environmental impacts,” so the alternative was eliminated.⁶⁰

This is new and material information, as it is the first of NRC’s citation to the DOE 2008 publication in the ISP DEIS, under its independent review of the license application. Reliance on the DOE publication for evaluation for the use of barges for sites not accessible by rail also appears for the first time in the ISP DEIS, with the NRC finding the supplemental mode of transportation did “not significantly change the minor radiological impacts from a national mostly rail SNF transportation campaign.” The NRC merely glossed over and did not fully evaluate the environmental impacts from transportation of SNF via barges or via heavy-haul trucks in the ISP DEIS. Similar to the infrastructure improvements, emergency responses along routes, turning a blind eye to supplemental modes of transportation, potential radiation exposure risks and environmental impacts is unacceptable.

Additionally, the NRC’s alleged “independent” investigation and review are not site-specific to the ISP site as the representative routes considered involve hypothetical shipments of

⁵⁸ ISP DEIS at 3-8.

⁵⁹ ISP DEIS at 2-22.

⁶⁰ *Id.*

nuclear waste to Deaf Smith, Texas. This location is notably outside the Permian Basin and fails to adequately take into account the regional issues discussed below.

**1. ISP DEIS is Based on Faulty Underling Premises and
Speculative, Inaccurate and Unreliable Information**
a. Faulty Underlying Premises

Contrary to statements in ISP's application documents, it is unlikely that a permanent repository will be built by 2048.⁶¹ Cumulative transportation impacts must account for this delay and the possibility of repackaging and returning to sender.

Assumptions as to impacted populations who live within 50-mile radius of the proposed ISP CISF and along any potential but not-yet-determined transportation routes are erroneous as they rely on reference dosing for healthy, white middle-aged male. Vulnerable populations of elderly, children, expectant mothers and the immune suppressed (especially in these trying times COVID-19) must be accordingly notified of the potential safety risks and costs of transporting nuclear waste and the potential for radiologic exposure over the course of the CISF project lifetime.

Previous statements in the ISP ER indicated that infrastructure improvements would be funded by the DOE. Truth of matter is that local communities and states will be forced to foot the bill for infrastructure improvements and also shoulder the responsibility for providing emergency responders and resources in the event of an accident. Furthermore, it is unclear how or if the Price-Anderson Act would cover liability for accidents in transit if the DOE does not take title and ownership of the nuclear waste. These issues must each be addressed and accounted for in the underlying investigation and analyses.

**b. Cumulative Transportation Impacts Fail to Consider
Regional Characteristics**

⁶¹ ISP's license application documents recognize same. *See e.g.*, ISP ER at Attachments 1-1 and 1-2.

The NRC's most recent cumulative transportation impacts analyses fails to adequately consider potential safety risks and environmental impacts and sorely lacks discussion of the unique and interdependent regional characteristics within the 50-mile radius of the proposed ISP CISF site. Regional consideration must be accounted for and incorporated into the cumulative transportation impacts analyses, including the effects of seismic events, sinkholes and subsidence on transportation infrastructure, during the transport and transferring of casks at the proposed ISP site and the associated increased safety risks for radiological exposure. A proper cumulative transportation analysis must also consider, in the context of the foregoing, the impact and gravity of transporting 40,000 tons and competing regional utilization and accident prevalence on rail systems, highways and access roads near the proposed ISP CISF site.

i. Seismicity, Subsidence and Sinkholes

The potential effects of seismicity, subsidence and sinkholes on transportation infrastructure and resulting increased safety risks and environmental impacts derived from same must be adequately analyzed and incorporated into cumulative transportation impact analyses. The NRC adopting previously conducted analyses based on representative transportation routes with baked in assumptions for other proposed but not actively operating facilities (e.g. Private Fuel Storage, Yucca Mountain) fail to properly analyze site-specific conditions and the 50-mile radius surrounding the proposed ISP CISF site.

The proposed ISP CISF site is located in one of the least stable regions of the Central Basin Platform from a structural geology standpoint that has “undergone more fault reactivation in its history” than the remainder of the Central Basin Platform. While there is no consensus between academia, government and industry as to the cause of the seismicity in the region – the fact remains that recently it has experienced an increase in seismic events. Within the past 30 days, there have

been several dozen earthquakes in the area..⁶² Additionally, in late March a magnitude 5.0 earthquake occurred within the 50-mile radius region of interest of the proposed ISP CISF site.⁶³ The ISP DEIS underestimates the potential risk for seismic events declaring the site has “less than 10% risk of fluid induced fault slip.”⁶⁴

Risk of seismic events in transporting heavy and extremely dangerous nuclear waste material throughout the Permian Basin and the potential for accidents in transferring the casks at the proposed ISP CISF and related impacts on regional industry transportation must be adequately analyzed and investigated.

ii. Oil and Gas and Agricultural Industry Operations and Use of Rails and Highways

Petitioners, as well as others in related industries, frequently and consistently rely on the cost-effective transportation infrastructure throughout the Permian Basin.⁶⁵ A proper cumulative impact analyses and assessment of siting evaluation factors must acknowledge these regional characteristics.⁶⁶ As illustrated in the newly disclosed ISP DEIS, all three of the hypothetical representative routes analyzed for cumulative impacts will be travelling along rail transportation that “serve oil, gas, agricultural and ranching industries in the region of the proposed CISF.”⁶⁷ The ISP DEIS also does a disservice in terms of its lackluster investigation and evaluations into regional highways and access road transportation cumulative impacts.

c. Cumulative Impacts Analysis Fails to Consider Potential for Terrorist Attacks, Derailments and Sabotage in

⁶² United States Geological Survey, Latest Earthquakes, last accessed July 6, 2020.

⁶³ D. Rice, *5.0 magnitude earthquake rattles West Texas: ‘Like the vibration of a train, but bigger,’* USA TODAY (Mar. 26, 2020), available at: <https://www.usatoday.com/story/news/nation/2020/03/26/el-paso-earthquake-5-0-magnitude-quake-rattles-west-texas/2916849001/>.

⁶⁴ ISP DEIS at ... (citations omitted).

⁶⁵ *See generally*, Decl. Taylor.

⁶⁶ Petitioners maintain their position that use of hypothetical or representative transportation routes in the context of the cumulative transportation impact analyses here is inadequate and inappropriate.

⁶⁷ *See* Dec. Taylor at ¶11.

Permian Basin

Given the extensive oil and gas, mineral resources, agricultural and ranching activities in the near vicinity of the proposed ISP CISF project, placing the nation's nuclear waste for interim storage in the Permian Basin puts a target on the nation's back in terms of national security – the likes of which has never been seen before. On top of a lack of adequate characterization of regional subsidence, seismicity and sinkholes, the anticipated subsequent transport and then re-transport of the nuclear waste through this sector, unnecessarily puts communities, industry and the nation at risk. Such compounded threats and risks cannot simply be ignored and must be evaluated given the volume of nuclear waste to be stored in the region given nearby facilities.

Moreover, given the experiences of regional geologic catastrophic subsidence in surrounding areas, possible derailment is a plausible event that must be considered in NRC's independent review and assessment of cumulative impacts.

iv. Improper Cumulative Analyses Taint the Socioeconomic Benefits and Costs Comparison and Artificially Narrow the Site Selection Process

The purpose and need of ISP's application is stated in such a way as to render the site selection process artificially narrow, and the NRC's inadequate cumulative impact investigation and evaluation of transportation is wholly deficient generally to provide any type of independent analysis, lacking any certainty as to the infrastructure improvement costs and, emergency response costs, and largely ignoring regional characteristics and land use and industry operations – tainting the well from a proper socioeconomic review and evaluation. A license applicant cannot “artificially narrow” the site selection process “as to circumvent the requirement that reasonable alternatives must be considered.”⁶⁸

⁶⁸ See ISP Memo and Order at 51; *see also*, *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-90-08, 32 NRC 201, 206 (1991).

Siting evaluation factors and selection of the proposed ISP CISF location cannot be premised on bias in an applicant's selection process without explanation, justification and supporting evidence of the underlying logic. Without a good faith effort in attempting to conduct a consent-based siting evaluation in violation of NEPA and NRC regulations, the ISP DEIS states: "NRC staff reviewed ISP's assessment process and determined that the ISP site-selection process. . . appears reasonable. . . [n]one of the three other potential CISF sites was clearly environmentally preferable. . . therefore, no other site was selected for further analysis in this EIS."⁶⁹

Summary of the impacts for transporting tens of thousands of metric tons of nuclear waste material over transportation infrastructure with substantial unknowns and inconsistencies as to improvements and necessary safeguards for transport, without definitively analyzing transportation routes, cannot reasonably serve as basis for developing a CISF that serves a national strategy to provide for the orderly transfer and/or storage of SNF. Let alone a proposed CISF that may become a permanent de facto storage solution.

The ISP DEIS fails to give appropriate weight to relevant regional characteristics that may influence both multiple rounds of transportation and ultimate storage at the proposed ISP CISF site in the Permian Basin. Without concrete evidence or valid citations and support, the ISP DEIS concludes that that the project will have SMALL cumulative impacts for transportation, land use along with nearly every other parameter considered. Without investigation and consideration to the issues cited herein, this shallow and superficial assessment lacks candor and falls short when considering the potential negative impacts and externalized costs that communities along the transportation routes and within the 50-mile region of interest will incur in the event of an accident or radiologic release of such high-level radioactive waste. NEPA and NRC regulations require transparent processes and depend

⁶⁹ ISP DEIS at 2-25.

on reasonable, fulsome agency reviews that will provide the pertinent facts and information to the public and enable a level of investigation and inquiry capable of assessing the reality of potential cumulative impacts of the proposed ISP CISF project.

v. ISP DEIS Cumulative Impact Analyses are Deficient in Violation of NEPA and NRC Regulations

A proper NEPA requires the agency take a “hard look” at the realistic benefits and legitimate costs – and NRC regulations likewise require the agency to reasonably consider alternatives in light of all siting evaluation factors, safety risks and environmental impacts for an ISFSI and MRS.⁷⁰ These regulations both warrant reasonable investigations. The NRC regulations specifically require application to be material, complete and accurate in all respects.⁷¹ Pursuant to 10 C.F.R. § 72.108, license applicants for “proposed ISFSI or MRS must be evaluated with respect to the potential impact on the environment of the transportation of spent fuel, high-level radioactive waste, or reactor-related GTCC waste within the region.” The examination in the recent ISP DEIS merely gives transportation issues a passing glance.

There are serious deficiencies in the cumulative impacts analyses of the ISP DEIS that lack of proper review of siting evaluation factors, extrapolating layer on top of layer of assumptions from previously conducted examinations and prior analyses for proposed operations (that are not currently and were never operable), employing uncertain and unknown variables as the fence posts for the transport and storage of nuclear waste – defies common sense. As a result of such deficiencies, the socioeconomic benefits of the proposed ISP CISF project are skewed and unreliable, and the public and communities along undisclosed transportation routes and rail lines are tangled in a web of speculation that they cannot afford to ignore. The ISP DEIS cumulative impact analyses are riddled

⁷⁰ 10 C.F.R. §§ 72.90-108.

⁷¹ 10 C.F.R. § 72.11.

with unspecified variables and parameters that have the potential to change the entire equation. Such secrecy in this context robs the public of a meaningful opportunity to participate and comment on the proceedings, including those that may be subject to or injured by safety risks, transportation, socioeconomic, and/or environmental impacts. Obscurity of these notable issues violates NRC and NEPA regulations (as well as other federal and state laws).

As discussed *infra*, Petitioners object to reliance on insufficient data, speculative agreements with unknown terms, omissions of material information, and further object to the improper conclusions drawn from same in the recent ISP DEIS. Petitioners further dispute the ISP DEIS disregard and failure to account for interdependent and unique regional factors and geologic characteristics to fully and appropriately analyze the potential cumulative impacts of the proposed project. Accurate, complete, and reliable inputs and information are necessary to fully assess the safety risks and cumulative environmental impacts of the proposed ISP CISF over the lifetime of the project.

An inventory of origination sites and transportation modalities will help communities to better understand the shipment numbers going through their communities by rail, truck and barge. The lack of details, at best a cursory discussion of transportation, in the proposal is problematic. Considerations of exact number of shipments to CISF; expected numbers of start clean/stay clean shipments (return to sender) and the number of shipments from CISF to a permanent repository based on operational lifespan of CISF is necessary to make a best estimate of risks to communities in the transportation corridor.

ISP's improper reliance on speculative and inaccurate information eliminates its ability to satisfy an applicant's necessary requirements to support their arguments with "appropriate and accurate references to legal authority and factual basis"⁵⁰ and evaluate crucial site evaluation factors.

NEPA and NRC regulations call for concrete evidence and facts based on the current state of knowledge. ISP DEIS failure to provide such material information, inevitably renders its underlying methodologies and analyses incomplete at best. such analyses impossible and falls short of the transparency and independent review required of the NRC and necessary to ensure public participation in the ISP licensing proceedings. ISP and the NRC cannot conclusory rely on representative routes, unknown liabilities and contracting with terms unknown and employ unreliable methodologies in assessing cumulative impacts and the No-Action Alternative.

V. CONCLUSION

Because the ISP DEIS and its licensing application documents are based on faulty premises and inaccurate and incomplete information. As a result, the ISP DEIS cumulative analyses and findings are deficient and in violation of NEPA and NRC regulations.

Dated July 6, 2020

/electronically signed by Allan Kanner

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**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

July 6, 2020

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I Allan Kanner certify that, on this 6th day of July, 2020, true and correct copies of Fasken's Motion for Leave to File New Contention No. 5, and attachments were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above-captioned proceeding.

/electronically signed by Allan Kanner

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