

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Annie Caputo
David A. Wright
Christopher T. Hanson

In the Matter of

INTERIM STORAGE PARTNERS LLC
(WCS Consolidated Interim Storage Facility)

Docket No. 72-1050-ISFSI

CLI-20-13

MEMORANDUM AND ORDER

Today we address Sustainable Energy and Economic Development Coalition's (SEED's) appeal of the Atomic Safety and Licensing Board's denial of SEED's motion to file a late-filed contention in the proceeding regarding Interim Storage Partners LLC's (ISP's) application to build and operate a consolidated interim storage facility (CISF) in Andrews County, TX.¹ For the reasons described below, we affirm the Board's decision.

I. BACKGROUND

ISP proposes to locate its CISF adjacent to an existing low-level radioactive waste disposal facility owned and operated by Waste Control Specialists, LLC, which has partnered

¹ See Interim Storage Partners LLC, License Application, rev. 2 (July 19, 2018), at 1-1 (ADAMS accession no. ML18221A397 (package)) (License Application).

with ISP in the proposed CISF project.² If licensed, the CISF would be authorized to store up to 5,000 metric tons of waste in NRC-approved packages for up to forty years.³

The NRC published notice of ISP's application in August 2018 and offered interested persons an opportunity to request a hearing.⁴ SEED joined several other organizations (collectively, Joint Petitioners) in filing a hearing request with several contentions.⁵ The Board found that SEED demonstrated standing but denied Joint Petitioners' hearing request because none of the proposed contentions were admissible.⁶

Thereafter, SEED filed with the Board a motion for leave to admit an additional contention (Contention 17) based on the Nuclear Waste Technical Review Board (NWTRB) September 2019 report to Congress and the Secretary of Energy.⁷ The Board denied SEED's motion and found that SEED had not shown good cause for filing proposed Contention 17 after the deadline and that Contention 17 was inadmissible.⁸ In affirming the Board's decision on

² See *id.* at 1-4, 1-5.

³ WCS Consolidated Interim Spent Fuel Storage Facility Environmental Report, rev. 2 (July 19, 2018), at 1-1 (ML18221A405 (package)) (Environmental Report).

⁴ Interim Storage Partners Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070, 44,070-75 (Aug. 29, 2018), *corrected*, 83 Fed. Reg. 44,680 (Aug. 31, 2018) (correcting the deadline date for petitioners to request a hearing to October 29, 2018).

⁵ *Petition of Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, Sustainable Energy and Economic Development Coalition, and Leona Morgan, Individually, to Intervene, and Request for an Adjudicatory Hearing* (Nov. 13, 2018).

⁶ LBP-19-7, 90 NRC 31, 39, 87-109 (Aug. 23, 2019).

⁷ See *Motion of Intervenor Sustainable Energy and Economic Development Coalition for Leave to File Late-Filed Contention, and Contention 17* (Oct. 23, 2019), at 1-2 (SEED Motion); 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) (ML19297A235) (NWTRB Report).

⁸ LBP-19-11, 90 NRC 358, 362-68 (Dec. 13, 2019).

appeal, we do not reach the question of whether SEED has shown good cause for filing proposed Contention 17 after the deadline because SEED has not shown error in the Board's determination regarding the admissibility of Contention 17.⁹

II. DISCUSSION

A. Standard of Review

Our regulations allow a petitioner whose hearing request has been wholly denied to appeal.¹⁰ We afford substantial deference to the Board's threshold determinations on contention admissibility unless an appeal demonstrates an error of law or abuse of discretion.¹¹

B. SEED's Proposed Contention 17

In proposed Contention 17, SEED asserted that ISP's Environmental Report was insufficient because it did not account for the findings of the NWTRB Report.¹² SEED argued that the NWTRB Report "significantly alters . . . the scope of this proceeding" beyond the question of whether ISP's application to build and construct a proposed CISF meets our regulations.¹³ SEED asserted that, based on the NWTRB Report, a range of potential waste transportation and packaging issues must be addressed.¹⁴ According to SEED, these issues include: improvements to highways and rail lines that might be used for shipments; the deployment of dry transfer systems (DTSs) at reactor sites to repackage fuel into standardized

⁹ *Notice of Appeal of LBP-19-11 by Intervenor Sustainable Energy and Economic Development Coalition and Brief in Support of Appeal* (Jan. 7, 2020) (SEED Appeal).

¹⁰ 10 C.F.R. § 2.311(c).

¹¹ *See, e.g., Tennessee Valley Authority* (Browns Ferry Nuclear Plant Units 1, 2, and 3), CLI-17-5, 85 NRC 87, 91 (2017); *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-9, 83 NRC 472, 482 (2016).

¹² *See* SEED Motion at 5-20.

¹³ *Id.* at 4.

¹⁴ *See id.* at 5-7.

transportation, aging, and disposal canisters that DOE may develop in the future; and the actual timing and cost of future shipments, especially those involving high-burnup fuel.¹⁵ SEED claimed that ISP must evaluate these additional issues or the environmental effects of waste transportation to the site will be impermissibly segmented from those associated with building and operating the proposed CISF.¹⁶

The Board rejected SEED's argument and found that proposed Contention 17 did not raise a genuine dispute with the transportation evaluations already contained in ISP's application. The Board found ISP's Environmental Report addressed the potential environmental impacts of transporting spent nuclear fuel to the proposed CISF but that SEED did not challenge the discussion in the Environmental Report and moreover "fail[ed] to acknowledge or dispute any safety analyses, aging management plans or quality assurance programs described in ISP's application."¹⁷ The Board ruled that proposed Contention 17 therefore did not meet the threshold admissibility requirements of 10 C.F.R. § 2.309(f)(1)(vi).¹⁸

The Board also found proposed Contention 17 to be outside the scope of this proceeding. ISP did not seek approval for waste transportation, packaging, or repackaging activities like those addressed by the NWTRB Report.¹⁹ Instead, the Board determined that the proposed CISF would accept only NRC-approved transportation and waste packages, which the

¹⁵ See *id.* at 5-7, 9-11, 19-20.

¹⁶ See *id.* at 11-13.

¹⁷ LBP-19-11, 90 NRC at 367. ISP's evaluation of the environmental impacts of transporting spent nuclear fuel (including high-burnup fuel) is set forth in its Environmental Report. See Environmental Report at 4-9 to -10, 4-12, 4-16, 4-23.

¹⁸ LBP-19-11, 90 NRC at 367.

¹⁹ See *id.* at 366-67.

NTWRB Report acknowledged are currently in use and could be shipped in the near term.²⁰ New transportation and waste package designs would be reviewed separately under our regulations in 10 C.F.R. Part 71.²¹ Further, the title holders of spent nuclear fuel—which include private companies—would be responsible for transporting waste to the proposed facility, not ISP.²² Accordingly, the Board found SEED’s assertion that ISP must evaluate the impacts associated with the development and deployment of future packaging systems and transportation to be outside the scope of this proceeding.²³

On appeal, SEED argues (as it did before the Board) that the National Environmental Policy Act (NEPA) requires ISP to further evaluate the environmental effects of waste transportation and repackaging.²⁴ SEED also asserts that the Board impermissibly raised SEED’s burden to demonstrate the admissibility of proposed Contention 17.²⁵ However, SEED does not challenge the Board’s finding that ISP’s Environmental Report has already evaluated the expected impacts of transporting waste in NRC-approved packages to its proposed facility. SEED therefore does not show that the Board erred.

SEED also argues on appeal that proposed Contention 17 should be admitted because the NWTRB Report includes materially different information than what is in ISP’s application.²⁶ Specifically, SEED states that the NWTRB Report discusses DOE’s potential development of

²⁰ *See id.* at 366; *see also* NWTRB Report at xxiii, xxvii (noting that commercial spent nuclear fuel currently stored in NRC-approved dual-purpose storage and transportation canisters “likely could be shipped within a year or two” of developing a destination site and obtaining funding).

²¹ LBP-19-11, 90 NRC at 367-68.

²² *Id.* at 367.

²³ *Id.* at 367-68.

²⁴ *See* SEED Appeal at 17-19.

²⁵ *See id.* at 19.

²⁶ *See id.* at 15-17.

standardized waste canisters and the need for at-reactor DTSs to load waste from existing packages into those canisters, while ISP's application does not.²⁷ But as the Board explained, the NWTRB Report's recommendations—advice to DOE on how to advance its plans for nuclear waste transportation, storage, and disposal solutions at the Federal level—do not determine the scope of ISP's project or this licensing proceeding.²⁸ The NWTRB Report does not provide a legal basis to expand the scope of this proceeding beyond what our regulations require.²⁹ We see no error in the Board's reasoning.

Further, we do not agree with SEED that the Board's refusal to admit proposed Contention 17 will result in an incomplete evaluation of the project's environmental impacts under NEPA. As we have noted, ISP's application already evaluates the impacts of waste transportation to the proposed CISF during the proposed license term.³⁰ Moreover, the NRC's Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, as codified in our regulations, evaluates the environmental impacts of DTS construction and waste repackaging beyond the proposed license term.³¹ We would require separate safety and environmental reviews before we approve any future license application from DOE (or another

²⁷ *Id.* at 16.

²⁸ See LBP-19-11, 90 NRC at 366-67.

²⁹ *Id.*

³⁰ See note 17, *supra*. Although ISP's application does not analyze the impacts of building and operating a DTS to enable spent fuel repackaging at its facility, the Board found ISP was not required to do so; ISP does not seek authorization to construct or operate a DTS. See LBP-19-11, 90 NRC at 368. Our regulations do not require an applicant to address the impacts of spent nuclear fuel storage beyond the license term. See 10 C.F.R. § 51.23(b).

³¹ See "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel" (Final Report), NUREG-2157, vol. 1, ch. 5 (Sept. 2014) (ML14196A105); 10 C.F.R. § 51.23(b). The environmental impacts described in NUREG-2157 are deemed incorporated into the environmental impact statement for an independent spent fuel storage installation. 10 C.F.R. §§ 51.23(b), 51.80(b)(1).

entity) for new transportation or storage packages or for the construction and operation of a DTS.

II. CONCLUSION

For the foregoing reasons, we *affirm* the Board's decision denying SEED's motion for leave to file proposed Contention 17.

IT IS SO ORDERED.



For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 4th day of December 2020.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-20-13)** have been served upon the following persons by the Electronic Information Exchange:

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**WCS CISF - Docket No. 72-1050-ISFSI
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Dated at Rockville, Maryland,
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Office of the Secretary of the Commission