Oral Argument Not Yet Scheduled

In the United States Court of Appeals for the District of Columbia Circuit

NO. 20-1187, consolidated with 20-1225, 21-1104, 21-1147

SIERRA CLUB, DON'T WASTE MICHIGAN, CITIZENS' ENVIRONMENTAL COALITION, CITIZENS FOR ALTERNATIVES TO CHEMICAL CONTAMINATION, NUCLEAR ENERGY INFORMATION SERVICE, SAN LUIS OBISPO MOTHERS FOR PEACE, and NUCLEAR ISSUES STUDY GROUP,

Petitioners,

vs.

U.S. NUCLEAR REGULATORY COMMISSION and UNITED STATES OF AMERICA,

Respondents.

On Petition for Review of a Decision of the United States Nuclear Regulatory Commission

PETITIONERS' REPLY BRIEF

WALLACE L. TAYLOR
4403 1st Ave. S.E., Suite 402
Cedar Rapids, Iowa 52402
319-366-2428; (Fax) 319-366-3886
wtaylorlaw@aol.com

TERRY J. LODGE, ESQ.
316 N. Michigan St., Suite 520
Toledo, Ohio 43604-5627
419-205-7084
tjlodge50@yahoo.com

ATTORNEYS FOR PETITIONERS

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GLOSSARY

AEA	Atomic Energy Act
CISF	Consolidated Interim Storage Facility
ER	Environmental Report
FEIS	Final Environmental Impact Statement
GEIS	Generic Environmental Impact Statement
LLRW	Low-level radioactive waste
NEPA	National Environmental Policy Act
NRC	Nuclear Regulatory Commission
NWPA	Nuclear Waste Policy Act
SNF	spent nuclear fuel

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The NWPA Prohibits the Licensing of the Proposed CIS Facility.

II. Holtec's Material False Statement Precludes Issuance of a License.

III. There Are Significant Geologic Impacts From the Holtec Proposal That Were Not Properly Discussed and Evaluated in the Holtec Environmental Report.

IV. Holtec Grossly Understated the Volume of Low-Level Radioactive Waste That Will be Generated During the Operational Life of the Holtec Facility.

V. The Continued Storage Rule Should Not Be Applied To Exempt the Holtec CISF From Site-Specific NEPA Analysis.

VI. Holtec's "Start Clean/Stay Clean" Policy is Unlawful and Directly Poses a Public Health Threat.

VII. SNF Transportation Routes Were Insufficiently Disclosed.

STANDARD OF REVIEW

Petitioners explained in detail the standard which the NRC claims that it applies to the admissibility of petitions for intervention. Pet. Br. p. 4-7. A contention supporting intervention is admissible if it presents sufficient facts and argument to show a "'reasonably specific factual and legal basis' for the contention," and based on more than "speculation." *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), 54 N.R.C. 349 (2001). In other words, although this standard requires somewhat more than simple notice pleading, it is akin to the standard for surviving a motion to dismiss in normal federal civil litigation.

It is clear from the NRC Staff Answer to Petitioners' Petition to Intervene, however, that the NRC is asking this Court to require the Petitioners to prove the merits of their contentions, with detailed facts and expert opinions at the threshold stage of the case. That position is a significant distortion of the longstanding admissibility standards set forth in Petitioners' petition. In order for the Court to understand why the NRC Staff's argument should not be accepted by the Court, Petitioners herewith describe how the regulation that governs NRC hearings, 10 C.F.R. § 2.309, works in reality.

The process starts with the applicant for a license submitting its application, accompanied by an environmental report ("ER") and safety analysis report ("SAR"). A prospective intervenor then has only 60 days to review the hundreds of pages of documents submitted by the applicant; determine what contentions should be submitted; find, consult with, and obtain written opinions from expert witnesses; and prepare detailed contentions to be submitted with the request to intervene.

If the intervenor successfully crosses those hurdles, it must then meet the "strict by design" standard for admissibility of contentions, memorialized in *Shieldalloy Metallurgical Corp.* (Amendment Request for Decommissioning of the Newfield, New Jersey Facility), 65 N.R.C. 341, 352 (2007). What this should mean is that a petitioner must show facts and issues to minimally form a basis for supporting the contention. What it means in reality is that a petitioner must posit an extensive claim, supported by detailed facts and expert opinion, which embodies all possible information known to the petitioner on the date the petition is filed. It also means that a petitioner is charged with knowing every word in the hundreds of pages of documentation submitted by the license applicant to ensure that the contention takes proper issue with the documentation. Furthermore, the petitioner is presumed to have reviewed and to have acquired intimate

knowledge of every document referenced in the license applicant's documentation. Finally, the petitioner is required to have intimate knowledge of information that does not appear in the license applicant's documentation nor is referenced in that documentation, but which nonetheless exists in the public domain.

It has been observed that the stringency of the NRC's Part 2 rules "may approach the outer bounds of what is permissible under the [Administrative Procedure Act]," *Citizens Awareness Network, Inc. v. NRC,* 391 F.3d 338, 355 (1st Cir. 2004). And NRC Staff almost always object to admissibility of a petitioner's contentions, as the Staff has done in its Answer here, rather than follow and lend proper credence to the NRC's longstanding contention admissibility standards as explained in Petitioners' Petition.

The upshot is that it is extremely difficult, if not virtually impossible, for a petitioner to surmount the barriers to intervention. The Atomic Energy Act's supposed "right" to a hearing is illusory. It does not take a cynic to suggest that the NRC does not want the public to intervene and delay, or Heaven forbid, stop a license from being issued.

ARGUMENT

I. The NWPA Prohibits the Licensing of the Proposed CIS Facility.

Sierra Club and Don't Waste Michigan (Joint Petitioners) adopt the arguments of Beyond Nuclear's Reply Brief on this issue by incorporating them by reference fully herein.

II. Holtec's Material False Statement Precludes Issuance of a License.

Joint Petitioners' argument on this issue is that Holtec made a false statement by claiming that it intended that reactor owners might keep title to the radioactive waste. The purpose of this false statement was to evade the illegality of the Department of Energy taking title to the waste.

First, the NRC responds that Holtec's claim that the waste would be taken by either the Department of Energy or the reactor owners was true. But it was not. That is the point of the "Reprising 2018" document. In that document Holtec admitted that its project relied on the federal government. That reliance would not be necessary if the plan could be accomplished by the reactor owners retaining title to the waste. And Holtec's initial Environmental Report did not include a reference to the reactor owners. It was only after the illegality of the Department of Energy taking title was raised as an issue that Holtec revised its documentation to include reactor owners.

The NRC next argues that the issue before the Commission was safety, not the ownership of the waste, so any false statement was not material. But

the legality of the proposed license was certainly before the agency. The NRC cannot issue a license for an illegal activity. This point was addressed in Beyond Nuclear's briefs, which Joint Petitioners have adopted. And, as Joint Petitioners explained in their opening brief at page 10-11, this point is also supported by the Atomic Energy Act, 42 U.S.C. § 2236. So Holtec has no intention that reactor owners would retain title to the waste. The plan is, and always has been, for the Department of Energy to take title, in violation of the Nuclear Waste Policy Act.

The NRC also claims that the "Reprising 2018" statement is ambiguous and does not show that Holtec's plan is to have the Department of Energy take title to the waste. But the "Reprising 2018" statement was absolutely clear in stating that "deployment [of the Holtec project] will ultimately depend on the DOE and the U.S. Congress." So it is clear that the Holtec project will not even be initiated unless the Department of Energy takes title to the waste or Congress changes the law. That position leaves no room for the possibility that the reactor owners would retain title to the waste that would be stored at the Holtec facility. Contrary to the NRC's argument, there is no other way to read the "Reprising 2018" statement.

Finally, the NRC contends that any false statement was not willful, but the NRC cites no authority for the proposition that a false statement must be

willful in order to impact a licensing decision. And Joint Petitioners' opening brief at page 13 pointed out that a false statement need not be knowingly false in order to preclude issuance of a license, citing *Virginia Electric & Power Co.* (North Anna Power Station, Units 1 & 2), 3 NRC 347 (1976). Even so, the fact that Holtec amended its ER to include reactor owners as taking title to the waste after the illegality of the Department of Energy taking title was exposed, shows that Holtec knew the statement was false.

In light of these facts, Joint Petitioners have satisfied the NRC's standards for contention admissibility.

III. There Are Significant Geologic Impacts From the Holtec Proposal That Were Not Properly Discussed and Evaluated in the Holtec Environmental Report.

The NRC claims that Holtec is only required to use information and data regarding earthquakes that were in existence at the time its application was filed. Therefore, argues the NRC, the 2018 Stanford study was irrelevant, and Holtec was not required to address it and the NRC was not required to consider it. But the NRC cites no authority for the assertion that a license applicant is not required to update its application with more recent relevant information. Rather, the NRC's obligation under NEPA to take a "hard look" is continuing in nature, even beyond the licensing stage. *Hydro Res., Inc.,* LBP-04-23, 60 NRC 441, 447-48 (2004) (citing *Marsh v. Oregon*

Natural Res. Council, 490 U.S. 360, 374 (1989)). This obligation is limited by a "rule of reason," which excuses the agency from supplementing an environmental report based only on "remote and highly speculative consequences." *Deukmejian v. NRC,* 751 F.2d 1287, 1300 (D.C. Cir.1984), *reh'g granted and opinion vacated on other grounds sub nom., San Luis Obispo Mothers for Peace v. NRC,* 760 F.2d 1320 (D.C.Cir.1985) and *on reh'g sub nom., San Luis Obispo Mothers for Peace v. NRC,* 789 F.2d 26 (D.C.Cir.1986). A supplemental EIS is needed where new information "raises new concerns of sufficient gravity such that another, formal in-depth look at the environmental consequences of the proposed action is necessary." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 28 (2006) (quoting *Wisconsin v. Weinberger*, 745 F.2d 412, 418 (7th Cir. 1984)); *Marsh v. Oregon Natural Res. Council,* 490 U.S. 374. The Stanford study, therefore, should have been considered by Holtec and the NRC.

The NRC also claims that the Stanford study is consistent with the information in the Environmental Report and the Safety Analysis Report. To the contrary, as Joint Petitioners noted in their opening brief at page 17, Holtec's Environmental Report, § 3.3.2, essentially dismisses the likelihood of earthquakes and the Safety Analysis Report, § 2.6, presents only

historical data and does not consider recent increases in oil and gas drilling-induced earthquakes, which is exactly the data contained in the Stanford study. So the NRC is clearly wrong on this point.

The NRC also claims that the impact of fracking was a new contention presented to the Commission. But, as set forth in Sierra Club's Contention 11 (Apx. P. 104-107), the impact of fracking was discussed at some length. So the issue was not raised for the first time on appeal to the Commission.

Finally, with respect to earthquakes, the NRC claims that Joint Petitioners did not show that new geologic faults were appearing closer to the Holtec site. In fact, Sierra Club's Contention 11, referring to the Stanford study, stated that the study showed "numerous faults in the area in and around the proposed Holtec site." (Apx. P. 103-104).

Sierra Club's Contention 15 stated that Holtec's Environmental Report relied on data from only one well that might produce relevant data. In order for the data to be relevant it had to be located at the interface of the alluvium and the Dockum formation. Although there were five wells, only one was at that interface. Joint Petitioners' expert, George Rice, explained why the data presented by Holtec was only relevant from one of the wells. The NRC responds that Mr. Rice overlooked the work plan in the Geotechnical Data Report, citing the 2020 Commission decision. NRC Brief at 68. However,

there is no mention in the 2020 Commission decision of the work plan. In fact, the Commission did not even discuss the issues, but remanded the groundwater contentions back to the Licensing Board for further consideration. On remand, the Commission did not address the evidence but just claimed that Sierra Club raised the same arguments as originally raised. But that was because the arguments were still the same and the Commission did not address them.

Sierra Club's Contention 16 stated that the Environmental Report did not adequately evaluate the presence and impact of brine in the groundwater. The NRC claims that the Environmental Report and the Safety Analysis Report mention the presence of brine in the groundwater and that is enough. But Sierra Club's expert, George Rice, stated that the Holtec documentation did not address the movement and flow of the subsurface brine. The NRC complains that Mr. Rice did not present any specific data. But he did not have time or opportunity in the short 60-day period for submitting contentions to make such a study. And besides, Mr. Rice's statement and Sierra Club's contention indisputably raise the issue to the extent required by the NRC's contention admissibility standards.

Sierra Club's Contention 17 stated that Holtec's documentation did not adequately discuss the presence of fractured rock at the Holtec site. The

NRC responds by saying that the documentation does mention the presence of fractured rock. But that is not the point of Mr. Rice's concerns. His point was that the Holtec documentation did not determine whether fractures are a potential pathway for contaminants and that dating the groundwater should be undertaken to determine groundwater flow to identify fractures. Again, the NRC is attempting to impose a higher standard for contention admissibility than its own precedents require.

Finally, Sierra Club's Contention 19 stated that packer tests to determine permeability were not performed correctly. The NRC again misapprehends its own precedents for contention admissibility, claiming that Sierra Club should have essentially performed its own packer tests. But, again, the NRC is not following the standard for contention admissibility. If the contention is admitted, then Sierra Club has the right to conduct its own tests, and through discovery, obtain more detailed facts about Holtec's testing. It is simply impossible and a violation of due process to require a prospective intervenor to do all of that in the 60-day window for submitting contentions. Indeed, such comprehensive preparation is not required for admissibility.

IV. Holtec Grossly Understated the Volume of Low-Level Radioactive Waste That Will be Generated During the Operational Life of the Holtec Facility.

The Petitioners demonstrated in this contention that there might be as much as an 8,000,000 ton understatement of the potential volume of low-level radioactive waste, including canisters and storage medium. While the NRC Staff and Holtec attempt to bulldoze an insurmountable mountain of obstacles to contention admissibility, they fail to respond to serious points raised by the Joint Petitioners. Holtec claimed in the ER that the volume of low-level radioactive waste would be "small." Up to 8,000,000 tons of irradiated material not noted in the ER defies categorization as "small." The Petitioners demonstrated that there would likely need to be a swap out of 100% of the canisters holding the waste, either to continue storing SNF at Holtec, or to ready the SNF for transport to an ultimate deep geological repository. Instead of responding to that point, Holtec and the NRC Staff deflect by saying the additional LLRW will not accrue within the initial 40-year licensing period. But ***all of the SNF*** is expected to be delivered within the first 20 years of operations. The deep geological repository might become available within that 40 year license period, and arrangements to transport the SNF from Holtec to the repository could begin or even be completed within the 40 year span of the license. Petitioners' expert, Robert Alvarez, attested that canisters would have to be replaced during the life of the Holtec facility. While the NRC's technical judgments and predictions

usually require deference from the courts, *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.,* 462 U.S. 87, 103, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983), that deference is required only when the NRC's "decision is reasoned and rational." *Dillmon v. Nat'l Transp. Safety Bd.,* 588 F.3d 1085, 1089 (D.C.Cir. 2009). Neither Holtec nor the NRC Staff sought in any way to include within the NEPA analysis any meaningful discussion of the Joint Petitioners' information concerning the prospect of the U.S. Department of Energy requiring new, standardized transport, storage and disposal canisters at the point of, or prior to, CISF storage. This change would have major implications for the transport of spent nuclear fuel from reactor sites and storage once at Holtec, and from Holtec to a final geological repository. The Petitioners certainly explained how this new information presents "a seriously different picture of the environmental impact of the proposed project from what was previously envisioned." *Blue Ridge Environmental Defense League v. Nuclear Regulatory Commission*, 716 F.3d 183, 196 (D.C. Cir. 2013). But neither the NRC nor Holtec see any reason for serious disclosure and discussion of this very important policy change under NEPA, even though it surely could be implemented within the initial 40 year license period.

The NRC and Holtec, as they have done on most of the Petitioners' issues, incorrectly argue the standard for admissibility of contentions, in a way that causes their adjudication on the merits even before discovery and disclosure has ensued. Petitioners are not required to prove their case, and certainly not beyond any doubt, at the contention pleading stage. That burden of proof is reserved for a hearing, following discovery and formal presentation of evidence.

V. The Continued Storage Rule Should Not Be Applied To Exempt the Holtec CISF From Site-Specific NEPA Analysis.

In order for the Holtec CISF to be benefited by invocation of the Continued Storage GEIS depends on the adequacy of the NRC's investigation of site-specific environmental impacts. The GEIS acknowledges that not all storage facilities will necessarily match the "assumed generic facility," and therefore when it comes to "size, operational characteristics, and location of the facility, the NRC will evaluate the site-specific impacts of the construction and operation of any proposed facility as part of that facility's licensing process." Continued Storage GEIS at 5-2. The site-specific evaluation must not "reanalyze the impacts of continued storage," because that is already covered by the GEIS and requires a waiver to challenge.

The problem for the NRC and Holtec is that in evaluating the site-specific operational characteristics of the Holtec facility, they did not analyze under NEPA the U.S. Department of Energy policy aim of requiring use of a standardized transport, storage and disposal canister for disposal of spent nuclear fuel, post-CISF at a permanent repository. DEIS p. iii (Apx. P. 657) (project bounded by assumption of 10,000 spent nuclear fuel deliveries). The Petitioners argued in their first brief that the Holtec CISF will store more than four times the spent fuel volume of the assumed generic CISF, and suggested that the assumed facility will be commensurately less prone to need a dry transfer system before 60 years of operations. Through the declaration of Petitioners' expert, Robert Alvarez, they detailed the likelihood of DOE's requirement of a single standardized canister for transport, storage and disposal, which would be considerably different than the present plan for Holtec to accept delivery of spent fuel in any of multiple transport canister types.

Neither the Continued Storage GEIS nor NRC regulations (according to the NRC Staff and Holtec) require analysis of a dry transfer system at this time because Holtec does not intend to build a dry transfer system during the initial license term. But the NRC's passivity as regulator under the circumstances will deny the public the factual advantage of the "hard look"

required under NEPA. The true scope and nature of the Holtec CISF project – and its consequent economic expense, of great importance in light of the immensity of the undertaking, is not accurately portrayed in the NRC Staff's and Holtec's portrayal.

VI. Holtec's 'Start Clean/Stay Clean' Policy is Unlawful and Directly Poses a Public Health Threat.

Holtec and the NRC Staff maintain that a defective canister arriving at the New Mexico CISF would be shipped back to the originating reactor site in an approved transportation cask, which is lawful so long as applicable radiation standards at 10 C.F.R. § 71.47 are met. But as Petitioners pointed out in their first brief (pp. 36-37), 10 C.F.R. § 71.47(b) cautions that "[e]ven this radiation limit [*ad hoc* external radiation standards set by the NRC] is not absolute; it can be exceeded if certain additional conditions are met." The Staff accuses Petitioners of "fail[ing] to advance a credible and adequately supported challenge to the determination that these conditions would, in the technical judgment of the NRC, provide reasonable assurance that the hazards about which they complain will not be experienced." NRC Br. p. 82. The NRC thus admits that *ad hoc* regulation of unanticipated radiation problems may be required in the event of a seriously compromised or leaky transport device, since Holtec is not being required to have dry transfer

system capability onsite to make it unnecessary to dispatch radioactive or leaking transport devices back to their points of origin.

Since the NRC admits the prospect of harm from return-to-sender (albeit the agency assures us, without evidence, that "reasonable assurance" will enshroud a leaky rejected canister or cask), the harm is not so "'remote and speculative' as to reduce the effective probability of its occurrence to zero," *State of New York v. Nuclear Regulatory Com'n*, 681 F.3d 471, 482 (D.C. Cir. 2012). So the NRC must consider return-to-sender, which is a mitigation strategy, in the Environmental Impact Statement by comparing it to the reasonable alternative mitigation of a dry transfer system (DTS). This is because the 10 C.F.R. § 72.40(a)(5) procedure that eschews dry transfer capability means that Holtec cannot provide "reasonable assurance that . . . [t]he activities authorized by the license can be conducted without endangering the health and safety of the public." 10 C.F.R. § 72.40(a)(13). The lack of a dry transfer system on hand to address the possible release of radioactivity signals that there would be no means of technologically mitigating a radiological accident with possible offsite consequences by any means except deporting the leaking or contaminated canister or cask. While the NRC's technical judgments and predictions require deference from the courts up to a point, *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.,*

supra, that deference is owed only when the NRC's "decision is reasoned and rational." *Dillmon v. Nat'l Transp. Safety Bd.,* 588 F.3d 1085, 1089 (D.C.Cir. 2009). The existence of the return-to-sender policy instead of requiring construction of a dry transfer system at this CISF, which would comprise the largest aggregation of highly-radioactive spent fuel on the planet, is not "reasoned and rational" and calls for a remand.

VII. SNF Transportation Routes Were Insufficiently Disclosed

Neither the NRC nor Holtec deny that NRC regulations require that the proposed Holtec project be evaluated for the environmental impact of the transportation of the radioactive waste. 10 C.F.R. § 72.108. There is no question in this case that the 95% or more of the spent fuel waste arriving by rail will have been transported over an existing route within the national rail grid. But the NRC and Holtec insist on having things both ways: (1) they have segmented – deliberately separated – the transportation campaign from the scope of the overall project; and (2) even as they have caused segmentation, as a booby prize, three token "representative" routes are discussed in case anyone objects.

The national rail grid has not been expanded for nearly a century and the entire universe of possible spent fuel rail delivery routes is well known. There will be at least 10,000 deliveries into the Holtec CISF and just as

many, if not indeed tens of thousands more, outgoing transports of the spent fuel to a permanent repository. The outgoing shipping route will duplicate the last several hundred miles of the incoming delivery route for each shipment.

The NRC and Holtec utterly ignore, but do not dispute, the testimony of Joint Petitioners' expert Alvarez who asserts that the spent fuel either at the reactor sites or at Holtec will have to be repackaged into smaller, standardized transport, storage and disposal canisters. This will directly and dramatically alter the numbers of trips, transport canisters and casks, and the need for special rail vehicles, scheduling of shipments and security arrangements. While the NRC and Holtec do not dispute that 100% of the spent fuel deliveries are to take place within the first 20 years of CISF activity, they make no mention of the variable of 10,000 up to 80,000 potential deliveries, This significant distinction means that spent fuel will travel literally hundreds of thousands or indeed, millions more miles than currently projected. There will potentially be thousands more unmentioned loads over a 20 year period on the national rail grid. The use of three "representative" routes means that the affected public, which numbers in tens of millions living within 50 miles of likely rail routes, will not learn years in advance about routing plans, nor will the public have a chance to critique or

propose better routing schemes and policies in response to that knowledge. Using three token routes simply does not honestly nor thoroughly explain or provide analysis of the environmental impacts of transporting spent nuclear waste from thousands of miles away from New Mexico to Holtec.

The point is, Holtec and the NRC well know where the existing nuclear plants are, and the rail lines from those plants. They also know that there may be a dramatic difference in the numbers of sizes of spent fuel shipments depending on whether the U.S. Department of Energy imposes standardized canisters on Holtec's plan and whether they are to be incorporated at the reactor sites or later, at Holtec's CISF. But NEPA requires the agency to determine what effects are reasonably foreseeable, and so the NRC must engage in reasonable forecasting and speculation. *Sierra Club v. DOE*, 867 F.3d 189, 198 (D.C. Cir. 2017).

It does not take any forecasting or speculation to determine where the waste will be coming from, and the routes to transport it to the Holtec facility are obvious. But Holtec and the NRC Staff deflect the contention by injecting a false element of mystery into determining the routes by deferring their identification for decades.

In *Sierra Club*, the petitioners were challenging a decision by the Department of Energy to approve liquid natural gas shipments and its

environmental review. The petitioners argued that the environmental review should have addressed the environmental impacts of each possible shipment of liquid natural gas. The court held that the agency was not required to predict where each shipment might come from, since there would be innumerable and at that point in time, possibly unknown sources of natural gas. The distinction between that scenario and knowing where the nuclear plants and rail lines are is obvious, where the known universe of nuclear reactor sites dictates the likely rail routes and the only variable is how many separate packages of spent fuel will be delivered via rail over 20 years. A serious radiological rail accident en route to or from Holtec (especially on a return route with a known contaminated or leaking SNF container) is certainly possible. The possible harm is not "so 'remote and speculative' as to reduce the effective probability of its occurrence to zero," so the NRC may not be allowed to "dispense with the consequences portion of the analysis." *New York v. Nuclear Regulatory Commission*, 681 F.3d 471, 482 (D.C. Cir. 2012). As Joint Petitioners pointed out in their opening brief, NEPA requires that the agency must review all future environmental impacts that are not completely speculative, and cannot simply claim that future impacts are too speculative to be evaluated. *New York v. NRC*; *Scientists' Inst. For Pub. Info., Inc. v. AEC*, 481 F.2d 1079, 1092 (D.C. Cir, 1973). But

the NRC Staff and Holtec treat the entire transportation enterprise as divinely incomprehensible. The device of segmenting transportation from CISF operations deprives emergency responders and millions who live or work within 50 miles of likely rail routes of important information about, and participation in, the most consequential radioactive transportation campaign in human history. The "hard look" forbids that.

CONCLUSION

Petitioners raised many issues of fact in their contentions that seriously criticize the adequacy of the identification and meaningful discussion of environmental impacts that will be caused as a result of the licensing of the CISF in New Mexico. The proposal is for a globally unprecedented aggregation of spent nuclear fuel for safekeeping, but oddly, none of the intervenors has been successful in raising a controverted issue that is sufficiently stated to warrant trial on the merits. This anomalous result arises from the consistent misapplication by the Nuclear Regulatory Commission of standards for the admission of contentions for adjudication. Reversal and remand of Joint Petitioners' contentions to the NRC for adjudication before the Atomic Safety and Licensing Board remains the only appropriate avenue of relief.

/s/ Wallace L. Taylor
Wallace L. Taylor, Esq.
4403 1st Ave. S.E., Suite 402
Cedar Rapids, Iowa 52402
319-366-2428; (Fax) 319-366-3886
wtaylorlaw@aol.com

/s/ Terry J. Lodge
Terry J. Lodge, Esq.
316 N. Michigan St., Suite 520
Toledo, Ohio 43604-5627
419-205-7084
tjlodge50@yahoo.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2024, I filed the foregoing Petitioners' Reply Brief in the Court's electronic case filing system, which according to its protocols would automatically be served upon all counsel of record.

/s/ Wallace L. Taylor
Wallace L. Taylor
Co-Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

The foregoing Petitioners' Proof Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5); the type-style requirements of Fed. R. App. P. 32(a)(6); the length limitation set forth in F.R.App.P. 27(d)(2)(a); and the applicable rules for the U.S. Court of Appeals for the District of Columbia Circuit. The Memorandum was prepared in 14-point, double spaced Times New Roman font using Libre. The Brief contains 4,663 words.

/s/ Wallace L. Taylor
Wallace L. Taylor
Co-Counsel for Petitioners