

Holtec-CISFEISCEM Resource

From: Kevin Kamps <kevin@beyondnuclear.org>
Sent: Tuesday, July 31, 2018 2:37 AM
To: Holtec-CISFEIS Resource
Subject: [External_Sender] P.S. Re: Re: Dr. Krishna P. Singh, President & CEO of Holtec International's letter to the NRC Chairman Kristine Svinicki, Re: HI-STORE CIS; NRC Docket #1051, Subject: Intervenor Group's letter dated July 19, 2018, dated July 30, 2018...
Attachments: 7 19 18 Scoping extension request July 2018.pdf; 6 13 18 2018.06.13 Letter from Environmental Organizations to Annette Vietti-Cook.pdf; 5 9 18 final Scoping extension demand ltr FINAL-2.pdf

P.S. In addition to my preceding email, it is further interesting to read Dr. Singh write that:

It should be noted that the signers of the July 19, 2018, letter do not even hail from the Eddy or Lea county communities; in fact, except for one signer, they are not even from the state of New Mexico.

I note that the letterhead on which he submitted his "public comment" letter reveals a Marlton, NJ address as Holtec International's HQ, not a NM one either.

Sierra Club, the largest environmental group in the country, with a Rio Grande Chapter representing large numbers of persons in New Mexico and West Texas, was a signatory of the July 19 letter. Numerous Sierra Club members and representatives, including its legal counsel Wally Taylor, who is very active in the Sierra Club Nuclear-Free Campaign at the national level, as well as John Buchser of Santa Fe, the immediate past chairman of the Rio Grande Chapter of the Sierra Club, who is interested in seeking solutions to sustainable use of water in New Mexico and West Texas, both provided oral public comments at the NRC meetings in NM in late April/early May. I know this, because I was there too, to witness it myself -- I also provided oral public comments, at each of the three meetings in Roswell, Hobbs, and Carlsbad, on behalf of our Beyond Nuclear members and supporters in New Mexico who were not able to be there themselves to provide their own personal public comments, although some of our local members and supporters did do so as well.

A number of other national groups which signed the July 19 letter also undoubtedly have members and supporters in NM, with organizational representatives who provided oral public comments at the NRC meetings on behalf of their own networks.

And actually, there were two signers from the State of NM, not just one:

Rose Marie Cecchini, MM
Director
Office of Peace, Justice & Creation
Catholic Charities of Gallup Diocese
Gallup, NM 87301

and

Susan Gordon, Coordinator
Multicultural Alliance for a Safe Environment (MASE)
PO Box 4524
Albuquerque, NM 87196

MASE has, as its core group of alliances, as described on its website <<https://swuraniumimpacts.org/contact/>>, the following:

- [Bluewater Valley Downstream Alliance \(BVDA\)](#) is a grassroots group made up largely of residents and property owners directly affected by groundwater pollution and radiation releases from the Homestake/Barrick Gold Mining Company uranium mill and tailings pile near Milan, NM and by the historic discharges of mining and milling waste from dozens of mines and two other uranium mills in the Ambrosia Lake Mining District northwest of Grants, NM.
- [Eastern Navajo Diné Against Uranium Mining \(ENDAUM\)](#) is a grassroots group opposing construction of the Crownpoint Uranium Project, a uranium in situ leach (ISL) mining operation proposed for two sites in Churchrock Chapter and two in Crownpoint Chapter of the Navajo Nation.
- [Laguna-Acoma Coalition for a Safe Environment \(LACSE\)](#) is a grassroots group of residents of Laguna and Acoma pueblos dedicated to assessing community and environmental health from impacts of past uranium development and protecting sacred cultural sites and areas, including Mt. Taylor, a mountain sacred to Indigenous peoples of New Mexico.
- [Post-71 Uranium Workers Committee \(Post '71\)](#) is a group of former uranium miners, millers, ore haulers, and drillers who aim to document health conditions among people who worked in the uranium industry after 1971 and to secure compensation for post 1971 uranium workers under the Radiation Exposure Compensation Act (RECA) as amended.

[Red Water Pond Road Community Association \(RWPRCA\)](#) is a grassroots organization of Diné families who have experienced and lived with the impacts of uranium mining and milling in the Church Rock mining area since the 1960s. Our mission is to restore the land and water contaminated by uranium mining, improve the health of community members, and protect and preserve the natural and cultural environment in which we live. RWPRCA is a nonprofit organization recognized under Navajo Nation laws including Fundamental Laws of the Diné, Title 1, Chapter 2.

Beyond Nuclear was honored to sign onto this letter in coalition with MASE and the Office of Peace, Justice & Creation, Catholic Charities of Gallup Diocese, as well as the other 35 organizations from many states across the U.S.

Numerous other organizations that signed the July 19 letter are from states or communities that would be directly impacted by large numbers of shipments of high-level radioactive waste to Holtec/ELEA's CISF in NM, an inherently high-risk undertaking. In fact, Holtec/ELEA's proposed 10,000 containers, to be shipped to NM, would dwarf the 2,500 to 3,000 irradiated nuclear fuel shipments that have been conducted in the U.S. since the beginning of the Atomic Age in the 1940s. Concerned organizations along the potential transport routes in most states, which Holtec has neglected to identify yet for the most part, obviously have a legitimate right to submit public comments in this proceeding. Holtec's Figure 4.9.1, TRANSPORTATION ROUTES FOR SNF [SPENT NUCLEAR FUEL], account for only four reactors: three at San Onofre, CA, and one at Maine Yankee. What about the other approximately 121 atomic reactors in the country (100 still operating, the rest permanently shut down)?

It is for just such reasons that our environmental coalition has requested a 90-day extension to the comment period, to get to the bottom of such questions as, what are the rail routes, road routes, and waterway routes that would or could be used, to ship up to 173,600 metric tons of highly radioactive irradiated nuclear fuel through most states, a large number of major cities, and the vast majority of U.S. congressional districts? Why has such information not yet been provided in Holtec's license application documents, such as the Environmental Report, and Safety Analysis Report?

Dr. Singh also chastised our coalition for waiting till 11 days before the current July 30 deadline to submit our request for a three-month extension. However, many of our same groups, as part of a 52-organization environmental coalition, also submitted a letter more than two months earlier, on May 9, 2018, requesting a six-month extension on the then deadline of May 29, 2018 -- that is, till the end of November 2018.

In that May 9 letter, our 52-group coalition also requested NRC hold public comment meetings in the following places:

Atlanta

Boston
Chicago
Cleveland
Dallas/Forth Worth
Detroit
San Antonio
Kansas City
Los Angeles
Miami
Minneapolis/Saint Paul
Nashville
New York/Newark
Omaha
Philadelphia
Pittsburgh
St. Louis
Tampa

The reason for that request was that each of those cities is located on one or more anticipated major irradiated nuclear fuel transport routes.

As the May 9 letter also explained, granting the extension, and granting the additional public meetings, would make this Holtec/ELEA CISF comment period commensurate with the U.S. Department of Energy's, in the 1990s, regarding the proposed permanent dump-site at Yucca Mountain during the equivalent environmental scoping phase. At that time, DOE held five public comment meetings in Nevada, just as NRC has held five public comment meetings in New Mexico. But during that proceeding two decades ago, an additional ten public comment meetings were held outside of Nevada, in transport impacted states. In this Holtec/ELEA CISF proceeding, NRC has held but one such meeting outside NM -- at its HQ in Rockville, MD. Even that was poorly publicly noticed by NRC. We did our best to spread the word, but even then, only a single member of the public attended in person -- although 70 (including myself) attended by phone, from across the U.S., including NM. (I myself was already in NM, preparing for the fast-approaching NM meetings in the southeast part of the state.) That showed the deep public interest nationwide, which has ever since called for more public comment meetings in transport corridor communities and states.

In fact, this proceeding deserves to have at least as many public comment meetings as the Yucca Mountain proceeding. After all, Yucca was and is limited to 70,000 metric tons of highly radioactive waste, only 63,000 metric tons of which would be commercial irradiated nuclear fuel. The Holtec/ELEA CISF, on the other hand, could be for as much

as 173,600 metric tons of highly radioactive waste, most of which would be commercial irradiated nuclear fuel. That is, Holtec/ELEA's CISF would be nearly three times bigger, with three times the shipments, as would Yucca, in terms of commercial irradiated nuclear fuel quantities. In that sense, this proceeding should have three times the number of public comment meetings across the country, as did the Yucca proceeding at this same environmental scoping stage. However, to be reasonable, we only requested an equal number, not three times as many, of public meetings.

The May 9 letter, attached, was also signed by numerous NM groups: Rose Gardner, Convenor, Alliance For Environmental Strategies, Box 514, 402 Avenue A, Eunice, NM 88232; Janet Greenwald, Convenor, Citizens for Alternatives to Radioactive Dumping (CARD), 215 Hartline SW, Albuquerque, NM 87105; Jay Coghlan, Executive Director, Nuclear Watch New Mexico, Alameda #325, Santa Fe, NM 87501; Joni Arends, Executive Director, Concerned Citizens for Nuclear Safety, P.O. Box 31147, Santa Fe, NM 87594-1147; Greg Mello, Executive Director, Los Alamos Study Group, 2901 Summit Pl. NE, Albuquerque, NM 87106; Eleanor Bravo, Nat'l Pipeline Campaign Manager, Food & Water Watch and Action, 7804 Pan American Fwy E NE, Suite 2, Albuquerque, NM 87109; and Sister Marlene Perrotte, Sisters of Mercy, 1004 Major Avenue NW, Albuquerque, NM 87107.

Unfortunately NRC rejected our request in a letter dated June 26, 2018. However, we did not learn of NRC's letter till July 5, 2018, when it was posted to this Holtec/ELEA CISF docket at NRC ADAMS. We do urge NRC to reconsider its rejection of our public comment deadline extension request, as well as our request for additional public comment meetings along transport corridors across the country.

(In addition, on June 13, 2018, another environmental coalition wrote NRC, requesting a deadline extension for public comments till October 30, 2018, due to the [regulations.gov](https://www.regulations.gov) website not functioning properly, or at all, throughout much of this public comment opportunity. This letter is also attached. Two national groups with significant membership and support bases in NM -- NIRS and Beyond Nuclear -- as well as two NM organizations (Nuclear Issues Study Group in Albuquerque, and Concerned Citizens for Nuclear Safety in Santa Fe), signed the letter. All four groups have been very active in the public comment period, in good faith, thus far, and were simply requesting more time, in order to make possible the generation of yet more quality public comments -- especially considering the road blocks to such, presented by NRC's [regulations.gov](https://www.regulations.gov) site not working properly. Contrary to Dr. Singh's allegations in his letter, our desire is to assert our rights under the National Environmental Policy Act, and Administrative Procedures Act, as concerned citizens of this democracy, on behalf of our members and supporters, in NM and beyond. Unfortunately, NRC has also rejected the requests

contained in this letter -- and Beyond Nuclear again urges NRC to reconsider its decision.)

In the first section of our 38-group coalition letter to NRC, we cited *Redaction of 25% of Holtec CISF Environmental Report Limits Public Commenting and Ongoing Preparations to Intervene in Licensing Proceeding*. See the letter, attached.

On July 30, 2018, Mining Awareness published a blog entitled

New Mexico: Native American Archaeological Site Which Holtec Tries To Hide In Its Environmental Report Is Over 1000 Years Old; Perhaps 8000 Years Old

This blog is posted online at <https://miningawareness.wordpress.com/2018/07/30/new-mexico-native-american-archaeological-site-which-holtec-tries-to-hide-in-its-environmental-report-is-over-1000-years-old-perhaps-8000-years-old-comment-tonight-by-1159-pm-et/>

Beyond Nuclear and other groups are concerned that significant Native American archaeological, cultural, sacred, and perhaps even burial sites may be at risk from the building and operation of the Holtec/ELEA CISF. With 25% of the ER concealed, specifically the cultural properties chapter, inexplicably for "security-related" reasons, concerned groups cannot comment or file intervention contentions in order to protect such Native American archaeological, cultural, sacred, and perhaps even burial sites. Now the Mining Awareness blog, and the documentation it has provided, deepens Beyond Nuclear's concern along these lines, a concern shared by many other groups.

Dr. Singh claims at the conclusion of his letter that his "...program...has overwhelming support in the local host communities in New Mexico." However, opponents to the Holtec/ELEA CISF outnumbered supporters at the microphone, during public comment meetings, by a 5-to-1 ratio. At the NRC HQ meeting mentioned above, opponents skunked supporters, 25 to 0. On May 21st and 22nd, at the NRC public comments meeting in Gallup, opponents outnumbered supporters by a count of 36 to 1, and at the one in Albuquerque, it was 63 to 6 in favor of opponents. Even at the Hobbs and Carlsbad "company town" NRC public meetings, opponents outnumbered supporters at the microphone, and significantly so in Roswell. Thus far, after a half-dozen public comment meetings, opponents have outnumbered supporters, 233 to 53, a nearly five-to-one ratio! And, in spite of Dr. Singh's disparaging remarks, in addition to the large

number of opponents' public comments at the microphone, the quality and creativity of their oppositional comments has also been remarkable and inspiring. Obviously, Holtec/ELEA do not have consent-based siting. This is further reflected by the growing number of NM municipal resolutions expressing opposition to the Holtec/ELEA scheme, including from Las Cruces, Albuquerque, Bernalillo County, Jal, and Lake Arthur, as well as a resolution from the NM Cattle Growers Association, in opposition to the Holtec/ELEA CISF, reveal the growing popular groundswell of opposition across the state. A growing number of NM state legislators, and even U.S. congressional delegation members, are expressing skepticism, asking important questions, and otherwise calling for the brakes to be applied to this unnecessarily rushed process -- just as our environmental coalition has requested, on more than one occasion, for a public comment deadline extension.

Thank you for considering our views, and for this opportunity to set the record straight, in light of the misrepresentations and inaccuracies contained in Dr. Singh's July 30, 2018 letter to the NRC Chairman, Kristine Svinicki. As the three attached environmental coalition letters, signed by NM groups and groups in many states across the country, reveal, we have simply attempted to take active part in good faith in this environmental scoping public comment period. That is the basis for our requests for extensions to the public comment deadline, and also for additional hearings in impacted transportation corridor communities and states.

Sincerely,

Kevin Kamps, Radioactive Waste Specialist, Beyond Nuclear

On Mon, Jul 30, 2018 at 11:59 PM, Kevin Kamps <kevin@beyondnuclear.org> wrote:

Re. Dr. Krishna P. Singh, President & CEO of Holtec International's letter to the NRC Chairman Kristine Svinicki, Re: HI-STORE CIS; NRC Docket #1051, Subject: Intervenor Group's letter dated July 19, 2018, dated July 30, 2018 [Document No. 5025033], I would like to set the record straight on a couple points.

Re: We can't identify any of the signers of the July 19, 2018 letter who attended the hearings in person.

I was there myself, representing Beyond Nuclear on behalf of our large number of members and supporters in NM. I attended the NRC HQ meeting by phone on April 25, 2018 (because I was already in NM, preparing for the next three meetings there), as well as attending, in person, the meetings in Roswell, Hobbs, and Carlsbad, in late April/early May 2018.

Re: The fact that this group has waited until 11 days before the expiration date of the public comment period to petition a three-month delay reveals their true intent, which is to use as many legal stratagems as possible to slow down the progress of our project.

Alas, a coalition of 52 groups had asked for the three-month extension in early May as well. This included numerous NM groups.

Sincerely,

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Beyond Nuclear aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abolish both to safeguard our future. Beyond Nuclear advocates for an energy future that is sustainable, benign and democratic.

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Federal Register Notice: 83FR13802
Comment Number: 3451

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Subject: [External_Sender] P.S. Re: Re: Dr. Krishna P. Singh, President & CEO of Holtec International's letter to the NRC Chairman Kristine Svinicki, Re: HI-STORE CIS; NRC Docket #1051, Subject: Intervenor Group's letter dated July 19, 2018, dated July 30, 2018...

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MESSAGE	17964	7/31/2018 2:36:55 AM
7 19 18 Scoping extension request July 2018.pdf	85216	
6 13 18 2018.06.13 Letter from Environmental Organizations to Annette Vietti-Cook.pdf		
145911		
5 9 18 final Scoping extension demand lttr FINAL-2.pdf	94974	

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July 19, 2018

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SUBJECT: Holtec International HI–STORE Consolidated Interim Storage Facility Project
Docket No. 72–1051 (Request for additional 90-day extension of scoping comment
period and delay of Federal Register announcement of intervention window)

Dear Members of the Commission:

Don't Waste Michigan, Sierra Club, Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Nuclear Information and Resource Services, Peace Action Wisconsin, Indigenous Rights Center, Hudson River Sloop Clearwater, Inc., TMI-Alert, Public Citizen, Bruce Peninsula Environmental Group, Portsmouth/Piketon Residents for Environmental Safety and Security, Physicians for Social Responsibility, HEAL Utah, SanOnofreSafety.org, Residents Organized For a Safe Environment, Nuclear Watch South, Uranium Watch, Cape Downwinders, Don't Waste Arizona, Multicultural Alliance for a Safe Environment, New England Coalition on Nuclear Pollution, On Behalf of Planet Earth, Rockland Environmental Group, Vermont Yankee Decommissioning Alliance, Citizens Awareness Network, North American Water Office, Nevada Nuclear Waste Task Force, Citizens' Environmental Coalition, Southern Alliance for Clean Energy, Ecological Options Network, Nuclear Energy Information Service, The Council of Canadians, and Catholic Charities of Gallup Diocese each questions and/or opposes the proposed Holtec International (Holtec) consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) being planned for southeastern New Mexico. Many of these organizations are planning to

intervene in the forthcoming Nuclear Regulatory Commission (NRC) license proceeding for the Holtec CISF.

We hereby request that the Commission extend the scoping comment period for the CISF proposal to October 30, 2018 from the present terminus of July 30, 2018. We further request a suspension of the just-announced 60-day period for submission of petitions for intervention and a hearing.

We make these requests: (1) to afford the public time to comment upon the anticipated disclosures by the NRC in response to a pending Freedom of Information Act (FOIA) request for some 144 pages, more than one-quarter (25%) of the 543-page Holtec Environmental Report (Rev. 1), which NRC Staff have indicated will occur on or before August 8, 2018; and (2) to remedy public frustrations with recurring technical problems with the NRC's systems for submission of public comments and the conduct of research in the ADAMS system. This gamut of difficulty contrives to block the NRC's receipt of public scoping comments and interrupts or slows complicated priority research activity, respectively. Notably, the FOIAonline portal was down for maintenance for more than a week which included July 5, 2018 when the FOIA request discussed in this letter was submitted, and when the requester followed instructions and submitted it directly to the NRC FOIA office, that office did not acknowledge receipt or otherwise act on the request until prompted to do so by the requester's July 11, 2018 followup correspondence.

**1. Redaction of 25% of Holtec CISF Environmental Report
Limits Public Commenting and Ongoing Preparations
To Intervene In Licensing Proceeding**

Holtec applied to the NRC by letter dated March 30, 2017 for license authorization to construct and operate a HI-STORE CISF for spent nuclear fuel storage on a 960-acre site in Lea County, New Mexico. Holtec intends initially to store 500 canisters (8680 metric tons) of SNF, followed by 19 additional phases, all aimed eventually at storing 10,000 canisters and 120,000 or more metric tons. It may be that more than 170,000 metric tons might end up at Holtec's facility. Even at 120,000 MT, the Holtec CISF would easily be the world's largest SNF interim site.

In December 2017, Holtec issued its Holtec Environmental Report on the HI-STORE CIS Facility ("CISF"), Rev. 1 ("ER"). In the 543-page ER, Holtec mentions two historic properties that could be directly affected by this project, but the ER does not explain where they are located, what they are, their significance, how they would be affected by the CISF, nor what measures are being considered to mitigate their destruction or alteration as a consequence of building and operating the CISF. Commencing at p. 321 of the ER, "Appendix C: Cultural Resources Communications and Survey Results," all of Appendix C (pp. 321-464) is redacted, and each page is marked "Security-Related Information Withheld under 10 CFR 2.390." It is probable that Appendix C contains the missing cultural resources information. Without it, the public has, at best, only a partial understanding of the possible environmental damage from CISF construction and operation, and further has no idea of proposed or possible mitigation steps.

The National Environmental Policy Act (NEPA) requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated. *Communities, Inc. v. Busey*, 956 F.2d 619, 625-26 (6th Cir.), *cert. denied*, 113 S.Ct. 408, 121 L.Ed.2d 332 (1992). Council on Environmental Quality regulations at 40 C.F.R. §1502.14(f) require an Environmental Impact Statement to “[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives.”

Don’t Waste Michigan (DWM) filed its FOIA request on July 5, 2018, seeking the cultural resources information as part of its investigation of certain aspects of the Holtec radioactive waste facility application, because DWM intends to comment on the plan and to formally intervene in the forthcoming NRC licensing proceeding. The requested information may possibly directly aid DWM in formulating contentions in support of its intervention petition. By letter dated July 11, 2018, the NRC FOIA officer denied DWM’s request for expedited processing and stated that the request would be answered “on or before August 8, 2018.”

On July 16, 2018, the NRC published a notice in the Federal Register which formally opens the licensing case and simultaneously commences the 60-day clock for filing of intervention petitions. The unavailability of 25% of the Environmental Report at present curtails scrutiny for public comments and investigatory review during the coming three weeks, and possibly beyond (depending on the NRC FOIA office response). It infringes upon the public’s right to know the complete picture and to decide how to best oppose the Holtec license. Potential intervenors and the public are likely to be put at a serious disadvantage in the licensing case, such as being forced to litigate FOIA requests during the same period of time they have to file contentions in the licensing case based upon the missing information.

2. Serial Unavailability of Regulations.gov and ADAMS

The Regulations.gov website, to which the NRC refers the public for online filing of scoping comments, approaches a third month of dysfunctionality and periodic unavailability. Despite formal complaint on June 13, 2018 by Beyond Nuclear of the site’s nonfunctioning circumstances that Regulations.gov had been inaccessible for comment filing for most of the preceding six weeks, the portal is not reliably operating even at present. Since the NRC touts the site as its preferred means of receiving comments, it is possible that members of the public who are blocked by repeated error notices and are either frustrated or unaware of the less-advertised direct email and snail mail submission options, then abandon the attempt to file comments.

Moreover, technical problems also keep cropping up in the NRC’s ADAMS online library. On July 11, 2018, ADAMS was completely and unexpectedly nonfunctioning for several hours. For over a month, ADAMS system ML hotlinks and full URL linkages inconsistently do not copy, which forces mechanical extra formatting in order for researchers to share documents with members of legal teams and interested members of the public. This includes Holtec CISF-related items, which are time-prioritized. Each day the public is hindered from providing electronic comments to NRC through these methods is a period of time that the scoping process, in fairness, must be extended.

3. The NRC Is Legally Obligated to Restore Fairness To the Scoping Stage of This Licensing Proceeding

Scoping is the initial phase of the overall EIS process under NEPA. *Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1022 (10th Cir.2002). Scoping is “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” 40 C.F.R. § 1501.7; *Citizens' Comm. to Save Our Canyons*, 297 F.3d at 1022 (goal of scoping is to “identify [] specific issues to be addressed and studied” during the EIS process (citing 40 C.F.R. § 1501.7)).

The scoping period serves “to notify those who may be affected . . . that the relevant entity is beginning the EIS process; this notice requirement ensures that interested parties are aware of and therefore are able to participate meaningfully in the entire EIS process, from start to finish.” *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1116 (9th Cir. 2002), citing *Northwest Coalition for Alternatives to Pesticides (NCAP) v. Lyng*, 844 F.2d 588, 594-95 (9th Cir. 1988).

Once it has formally initiated the scoping process, the NRC “may . . . [s]et time limits” for the scoping process and “[h]old an early scoping meeting or meetings.” 40 C.F.R. § 1501.7(b)(2), (4) (emphasis added). Those time limits must comply with 40 C.F.R. § 1501.8. *Id.*, § 1501.7(b)(1). Section 1501.8 does not “prescribe [] universal time limits for the entire NEPA process,” but instead authorizes agencies to set time limits, including limits on the scoping process that are “appropriate to individual actions” and “are consistent with the purposes of NEPA and other essential considerations of national policy.” *Id.* § 1501.8.

Council on Environmental Quality (CEQ) regulations do not set minimum time limits for the scoping period and do not require an agency to extend or reopen the scoping period. Congress intended that agency discretion, and not the courts, “be exercised in determining when extra procedural devices should be employed.” *Phillips Petroleum Co. v. U.S. EPA*, 803 F.2d 545, 559 (10th Cir.1986) (emphasis omitted) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 546 (1978) (internal quotation marks omitted)). A reviewing court can overturn an agency decision for failure to provide additional procedure when there are “extremely compelling circumstances.” *Vermont Yankee*, 435 U.S. at 543.

The signers of this letter suggest that there are “extremely compelling circumstances” present here that obligate the NRC to extend the scoping comment period until October 30, 2018, and further compel the delay of commencement of the intervention petition filing period until after interested parties have attained relief under FOIA. Fundamental concerns of fairness, coupled with NEPA’s expectation of maximal public participation and the high significance of the Holtec CISF, itself, as a policy determination, all militate in favor of altering the present deadlines.

Accordingly, the public requests the additional time to comment, investigate and prepare for the licensing case. Given the proximity of next steps in this proceeding, we request an

expedited decision from the NRC on these requests. Thank you very much.

Sincerely,

/s/ Terry J. Lodge

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/s/ Robert M. Gould

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/s/ Donna Gilmore

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/s/ Gene Stone

Gene Stone
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/s/ Diane Turco

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/s/ Stephen Brittle

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/s/ Kathryn Barnes

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/s/ Rose Marie Cecchini

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June 13, 2018

Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

SUBJECT: *Failure of Regulations.gov for comments on Scope of EIS for
Holtec International HI-STORE Consolidated Interim Storage
Facility Project, Docket No. 72-1051; NRC-2018-0052*

Dear Ms. Vietti-Cook:

On behalf of Beyond Nuclear, Concerned Citizens for Nuclear Safety and Nuclear Information and Resource Service, we are writing to lodge a complaint about the utter failure of the website “Regulations.gov” to provide a clear and reliable means for submitting comments on the scope of the Environmental Impact Statement (“EIS”) for the proposed HI-STORE Consolidated Interim Storage Facility, as noticed by the U.S. Nuclear Regulatory Commission at 83 Fed. Reg. 13,902 (Mar. 30, 2018) and 83 Fed. Reg. 22,714 (May 16, 2018). We request you to ensure the Regulations.gov system is functioning and then re-notice a 90-day opportunity to submit scoping comments. In the alternative, if you are unable to provide such assurance, we request that you issue a public explanation and provide an alternative primary means of submitting comments.

As noticed at 83 Fed. Reg. 13,902, the NRC opened the period for submitting comments on the scope of the Holtec EIS on March 30, 2018 and conducted scoping meetings around the country in April and May. The period for scoping comments originally was scheduled to close May 29, 2018 (*i.e.*, after 60 days). In response to a request from 52 organizations for an additional 120 days (*i.e.*, until October 30), the NRC partially granted the request by extending the deadline until July 30 (an additional 60 days). In both Federal Register notices, posting on Regulations.gov was offered as the primary means for submitting comments. 83 Fed. Reg. 22,714.

Members of the public have had difficulty using Regulations.gov between April and June. Although Regulations.gov worked some of the time, it was spotty. On May 1, at an EIS scoping meeting in Hobbs, New Mexico, Joni Arends of Concerned Citizens for Nuclear Safety notified the NRC orally that she and others had encountered difficulties submitting comments to NRC’s Regulations.gov docket. Similarly, between May 18 and May 31, Beyond Nuclear staff member Kevin Kamps tried to file comments on Regulations.gov a dozen times but was unsuccessful and received repeated error messages. On May 18, Leona Morgan of the Nuclear Issues Study Group also informed Beyond Nuclear that Regulations.gov was not working properly. Undersigned counsel for Beyond Nuclear tried multiple times on June 7, and also received error messages.

On May 22, 2018, Mr. Kamps notified the NRC Staff that Regulations.gov was not functioning and asked for more time to comment. E-mail from Kevin Kamps to Jill Caverly and Jose Cuadrado (Attachment 1). Cody Slama of the Nuclear Issues Study Group also notified the NRC of the problem at a May 22 scoping meeting in Albuquerque, and asked for an extension of the comment period. But the problem was not corrected, and the NRC did not add any time to the

comment period. Instead, the NRC wrote to Mr. Kamps that Beyond Nuclear's comments did, in fact, register on the website; and that if Beyond Nuclear had trouble submitting comments on Regulations.gov, it could file them by one of the other means identified in the Federal Register notice of May 16, 2018. E-mail from Jessie Quintero to Kevin Kamps (May 22, 2018) (Attachment 2); E-mail from Jessie Quintero to Kevin Kamps (May 23, 2018) (Attachment 3).

On May 31, 2018, Mr. Kamps wrote again to the NRC regarding the failure of Regulations.gov. E-mail from Kevin Kamps to Jill Caverly, et al. (Attachment 4). By e-mail dated June 1, 2018, Jill Caverly responded that she had verified that Beyond Nuclear's comments had registered on the Regulations.gov website, despite the error message. She also suggested that Mr. Kamps send comments by e-mail to Holtec-CISFEIS@nrc.gov. (Attachment 5). Mr. Kamps responded the same day that the continuing failure of Regulations.gov was unacceptable, and that Regulations.gov provides no information regarding alternative means of serving comments. (Attachment 6).

On June 11, 2018, Ms. Caverly wrote again to Mr. Kamps:

I have confirmed that regulations.gov did receive comments and was working during the time in which you were having difficulties submitting your comments. I can't explain why you were unable to see that your comments were successfully uploaded; perhaps your computer settings were causing the issues. Thank you for the information and for commenting.

(Attachment 7).

Given that at least four different people were unable to use Regulations.gov, using different computers on a variety of dates, it is clear that these individuals' "computer settings" were not the cause of their problems with the website, as suggested by Ms. Caverly. Instead, the problem is that the NRC accepted the ongoing dysfunction of Regulations.gov without seeking to correct it. This lack of concern for or attention to the mechanics of the commenting process is not acceptable in any proceeding, let alone a proceeding with such important public significance and nationwide public interest as the licensing proceeding for the proposed Holtec facility. If approved, Holtec's project would entail shipments of spent reactor fuel from all over the country to a site in New Mexico. Unsurprisingly, it has generated a great deal of interest and concern. Thus far, at the six public comment meetings NRC has held, 233 persons have spoken at the verbal comment microphone to register opposition to the Holtec proposal. On May 3rd, at the Carlsbad, NM meeting, Leona Morgan of the Nuclear Issues Study Group submitted more than 1,300 signed public comments from New Mexicans, expressing opposition to the Holtec proposal.

Given the great public significance of the issues raised by the Holtec application, it is extremely important for the NRC to offer members of the public a reliable means for commenting on the scope of the NRC's environmental review. It should not be necessary to try multiple methods before finding one that "works," or to make repeated attempts to use the primary method identified by the NRC. Under the circumstances, the NRC should ensure that Regulations.gov

Annette Vietti-Cook

June 13, 2018

Page 3

functions and re-publish the notice of opportunity to submit scoping comments within 90 days of the notice.

Thank you for your consideration.

Sincerely,

/s/ Diane Curran

Harmon, Curran, Spielberg & Eisenberg, L.L.P.

1725 DeSales Street N.W., Suite 500

Washington, D.C. 20036

240-393-9285

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Counsel to Beyond Nuclear

/s/ Terry J. Lodge

Terry J. Lodge, Esq.

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(419) 205-7084

Tlodge50@yahoo.com

Counsel to Don't Waste Michigan

/s/ Joni Arends,

Concerned Citizens for Nuclear Safety

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jarends@nuclearactive.org

Co-founder and Executive Director, CCNS

/s/ Tim Judson

Nuclear Information and Resource Service

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Takoma Park, MD 20912

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Executive Director, NIRS

Annette Vietti-Cook

June 13, 2018

Page 4

/s/ Leona Morgan

Nuclear Issues Study Group

202 Harvard Dr. SE

Albuquerque, NM 87102

505-879-8547

leonamorgan@icloud.com

Co-Coordinator, Nuclear Issues Study Group

Cc: NRC Commissioners

Jose Cuadrado

Jill Caverly

Jessie Quintero

Attachment 1

From: **Kevin Kamps** <kevin@beyondnuclear.org>

Date: Tue, May 22, 2018 at 3:41 PM

Subject: Regulations.gov re: Re: "Docket ID NRC-2018-0052" has not accepted my comments for over four days now

To: "Caverly, Jill" <jill.caverly@nrc.gov>, jose.cuadrado@nrc.gov, jose.cuadrado-caravallo@nrc.gov

Dear Ms. Caverly and Mr. Cuadrado,

I would like to call to your attention to a problem with www.regulations.gov, re: Docket ID NRC-2018-0052. I have tried for the past four days, since May 18, 2018, to submit comments online via this website. Every single time over the past several days, including about a half-hour ago, when I hit the submit button to submit my comments, I got the following error message back:

An unexpected error has occurred, please try your operation again. If you are still having problems, please contact us.

I have not had the time, due to other responsibilities, to contact [regulations.gov](http://www.regulations.gov). I was hoping that you could see to alerting the folks at www.regulations.gov of the need to fix this problem as soon as possible.

I would humbly request that NRC add as many days onto the July 30, 2018 deadline, to compensate the public for the inaccessibility of the www.regulations.gov site re: Docket ID NRC-2018-0052.

Thank you for addressing this problem as soon as possible. It is most unfortunate that at such a critical time -- the currently final scheduled NRC meetings for environmental scoping public comment -- that one of the major ways for the public to submit comments (via www.regulations.gov) is not even working.

As Susan Schuurman of the Albuquerque Center for Peace and Justice commented at the Carlsbad, NM NRC public meeting, how is the public supposed to be able to trust NRC to ensure highly radioactive waste is contained, safeguarded and secured indefinitely into the future, when the agency cannot even ensure the air conditioning is working properly in the meeting room?!

I would make the same point regarding the current, prolonged inaccessibility of the www.regulations.gov site, re: Docket ID NRC-2018-0052.

Given this inaccessibility presently, please forward this email as official public comment for the record re: Docket ID NRC-2018-0052, however that can happen.

Sincerely,

Kevin Kamps

--

Kevin Kamps
Radioactive Waste Specialist
Beyond Nuclear
6930 Carroll Avenue, Suite 400
Takoma Park, Maryland 20912

Cell: (240) 462-3216
Fax: (301) 270-4000
kevin@beyondnuclear.org
www.beyondnuclear.org

Beyond Nuclear aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abolish both to safeguard our future. Beyond Nuclear advocates for an energy future that is sustainable, benign and democratic.

Attachment 2

From: Quintero, Jessie Jessie.Quintero@nrc.gov
To: Kevin Kamps kevin@beyondnuclear.org
CC: "Caverly, Jill" <Jill.Caverly@nrc.gov>, "Cuadrado-Caraballo, Jose" Jose.Cuadrado-Caraballo@nrc.gov
Date: Tue, May 22, 2018 at 4:07 PM
Subject: RE: Fwd: Regulations.gov re: Re: "Docket ID NRC-2018-0052" has not accepted my comments for over four days now

Mr. Kamps,

Thank you for the heads-up about the issues with Regulations.gov. I have reached out to our coordinator for the site to see if she is aware of any issues with the Regulations.gov website, however, we do not manage that website.

In the same *Federal Register* notice published on May 16, 2018 that extended the comment period out until July 30, we also provided an email address which the public could use to submit comments. Therefore, if you are unable to use regulations.gov, you can submit your comments via email to Holtec-CISFEIS@nrc.gov.

I will submit your comment, as you requested, so that it is captured as a comment on the scope of the Holtec EIS.

Thanks,

Jessie Quintero

Attachment 3

From: Quintero, Jessie <Jessie.Quintero@nrc.gov>
To: Kevin Kamps kevin@beyondnuclear.org
CC: "Caverly, Jill" <Jill.Caverly@nrc.gov>, "Cuadrado-Caraballo, Jose" Jose.Cuadrado-Caraballo@nrc.gov
Date: Wed, May 23, 2018 at 8:32 AM
Subject: RE: Fwd: Regulations.gov re: Re: "Docket ID NRC-2018-0052" has not accepted my comments for over four days now

Good morning Mr. Kamps,

I heard back from our coordinator and she noted that there are four comments in the system, submitted by you on May 18, 2018, each with a different attachment. Your four comments will get processed with all the other comments submitted via Regulations.gov.

Thanks,

Jessie Quintero

From: Quintero, Jessie
Sent: Tuesday, May 22, 2018 4:08 PM
To: 'Kevin Kamps' <kevin@beyondnuclear.org>
Cc: Caverly, Jill <Jill.Caverly@nrc.gov>; Cuadrado-Caraballo, Jose <Jose.Cuadrado-Caraballo@nrc.gov>
Subject: RE: Fwd: Regulations.gov re: Re: "Docket ID NRC-2018-0052" has not accepted my comments for over four days now

Mr. Kamps,

Thank you for the heads-up about the issues with Regulations.gov. I have reached out to our coordinator for the site to see if she is aware of any issues with the Regulations.gov website, however, we do not manage that website.

In the same *Federal Register* notice published on May 16, 2018 that extended the comment period out until July 30, we also provided an email address which the public could use to submit comments. Therefore, if you are unable to use regulations.gov, you can submit your comments via email to Holtec-CISFEIS@nrc.gov.

I will submit your comment, as you requested, so that it is captured as a comment on the scope of the Holtec EIS.

Thanks,

Jessie Quintero

Attachment 4

From: Kevin Kamps [mailto:kevin@beyondnuclear.org]

Sent: Thursday, May 31, 2018 8:11 PM

To: Caverly, Jill <Jill.Caverly@nrc.gov>; Cuadrado-Caraballo, Jose <Jose.Cuadrado-Caraballo@nrc.gov>; jose.cuadrado-caravallo@nrc.gov; Cuadrado-Caraballo, Jose <Jose.Cuadrado-Caraballo@nrc.gov>

Cc: Quintero, Jessie <Jessie.Quintero@nrc.gov>

Subject: [External_Sender] Mr. Cuadrado and Ms. Caverly, please post these two sets of public comments at the www.regulations.gov, Docket ID NRC-2018-0052, as well as elsewhere on the official public comment record for Docket ID NRC-2018-0052

Dear Mr. Cuadrado and Ms. Caverly,

Please post the attached two sets of public comments, as official public comments at the www.regulations.gov Docket ID NRC-2018-0052, as well as everywhere else on the official public comment record for this proceeding.

As you'll see attached below, these public comments include:

1. Public comments that **Beyond Nuclear presented verbally at NRC's HQ meeting** on Wed., April 25th in Rockville, MD. They are entitled **"When It Comes to Highly Radioactive Waste Transportation Risks, We All Live in New Mexico!"** They call for NRC public comment meetings to be held in dozens of states across the U.S. that will be significantly impacted by many thousands of "Mobile Chernobyl" train, truck, and/or barge shipments on rails, roads, and/or waterways, under this scheme. These comments run to four pages in length. See the PDF format version, attached.

2. PUBLIC COMMENTS PREPARED AND SUBMITTED BY KEVIN KAMPS, RADIOACTIVE WASTE SPECIALIST, BEYOND NUCLEAR, IN OPPOSITION TO THE HOLTEC INTERNATIONAL/EDDY-LEA ENERGY ALLIANCE APPLICATION TO CONSTRUCT AND OPERATE A CENTRALIZED INTERIM STORAGE FACILITY FOR 173,600 METRIC TONS OF HIGHLY RADIOACTIVE IRRADIATED NUCLEAR FUEL IN SOUTHEAST NEW MEXICO: Much of the following was delivered verbally at the public comment microphone, albeit in segments due to short 4 to 5 minute time limits, at the NRC environmental scoping meetings held in Roswell (Mon., April 30, 2018), Hobbs (Tues., May 1), and Carlsbad (Thurs., May 3), New Mexico. See the PDF format version, attached.

The reason I am asking you to do this is because your www.regulations.gov site, re: "Docket ID NRC-2018-0052," has not worked for me since around 2:20pm Eastern time on May 18, 2018. I have tried to submit these additional sets of comments nearly a dozen times since, but the system has given back the following error message every single time:

An unexpected error has occurred, please try your operation again. If you are still having problems, please contact us.

[Per my May 22nd email to you:

Dear Ms. Caverly and Mr. Cuadrado,

I would like to call to your attention a problem with www.regulations.gov, re: Docket ID NRC–2018–0052. I have tried for the past four days, since May 18, 2018, to submit comments online via this website. Every single time over the past several days, including about a half-hour ago, when I hit the submit button to submit my comments, I got the following error message back:

An unexpected error has occurred, please try your operation again. If you are still having problems, please contact us.

I have not had the time, due to other responsibilities, to contact [regulations.gov](http://www.regulations.gov). I was hoping that you could see to alerting the folks at www.regulations.gov of the need to fix this problem as soon as possible.

I would humbly request that NRC add as many days onto the July 30, 2018 deadline, to compensate the public for the inaccessibility of the www.regulations.gov site re: Docket ID NRC–2018–0052.

Thank you for addressing this problem as soon as possible. It is most unfortunate that at such a critical time -- the currently final scheduled NRC meetings for environmental scoping public comment -- that one of the major ways for the public to submit comments (via www.regulations.gov) is not even working.

As Susan Schuurman of the Albuquerque Center for Peace and Justice commented at the Carlsbad, NM NRC public meeting, how is the public supposed to be able to trust NRC to ensure highly radioactive waste is contained, safeguarded and secured indefinitely into the future, when the agency cannot even ensure the air conditioning is working properly in the meeting room?!

I would make the same point regarding the current, prolonged inaccessibility of the www.regulations.gov site, re: Docket ID NRC–2018–0052.

Given this inaccessibility presently, please forward this email as official public comment for the record re: Docket ID NRC–2018–0052, however that can happen.]

Thank you for posting these two sets of public comments not only at the www.regulations.gov Docket ID NRC-2018-0052 site, but also everywhere else on the official public comment record for this proceeding.

Please acknowledge receipt of this email. And please provide a receipt that my comments have been posted at the www.regulations.gov Docket ID NRC-2018-0052 site, and also everywhere else on the official public comment record for this proceeding.

Sincerely,

Kevin Kamps, Radioactive Waste Specialist, Beyond Nuclear

--

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Radioactive Waste Specialist
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www.beyondnuclear.org

Beyond Nuclear aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abolish both to safeguard our future. Beyond Nuclear advocates for an energy future that is sustainable, benign and democratic.

Attachment 5

On Fri, Jun 1, 2018 at 12:33 PM, Caverly, Jill <Jill.Caverly@nrc.gov> wrote:

Hello Mr. Kamps,

I have forwarded your comments to be processed. My colleague Jessie Quintero did follow up on your email from May 22nd and verified that your comments were pending on [Regulations.gov](https://www.regulations.gov) at that time. I have asked NRC's contact for [regulations.gov](https://www.regulations.gov) resource to check that it is working today. You can also submit your comments via email to the Holtec scoping address at Holtec-CISFEIS@nrc.gov.

Thank you,

Jill Caverly

Attachment 6

From: Kevin Kamps [<mailto:kevin@beyondnuclear.org>]

Sent: Friday, June 01, 2018 1:20 PM

To: Caverly, Jill <Jill.Caverly@nrc.gov>

Cc: Cuadrado-Caraballo, Jose <Jose.Cuadrado-Caraballo@nrc.gov>; jose.cuadrado-caravallo@nrc.gov; Quintero, Jessie <Jessie.Quintero@nrc.gov>

Subject: [External_Sender] Re: Mr. Cuadrado and Ms. Caverly, please post these two sets of public comments at the www.regulations.gov, Docket ID NRC-2018-0052, as well as elsewhere on the official public comment record for Docket ID NRC-2018-0052

Ms. Caverly,

Yes, Jessie Quintero did email me, twice, on May 22nd. I was aware of that. But this has not led to repair of your dysfunctional [regulations.gov](http://www.regulations.gov) site re: the Holtec CISF docket, which was my primary and urgent request. As I informed you yesterday, your site is still not working. It has not worked since May 18th. That's a remarkable two weeks.

One of Jessie Quintero's emails on May 22nd informed me that several of my comments had posted successfully to the site on May 18th. But I had already known that. I had requested, and received, emailed receipts for those successfully posted comments. Then your site simply quit working. And it has not worked since. I have tried a dozen times to post comments to the site, between May 18th and May 31st, unsuccessfully, because the site is not functioning.

It goes without saying that this is unacceptable.

I also knew about the email option for submitting comments. Thanks to the request made by Joni Arends of CCNS at the Hobbs public comment meeting, this option was established. Why it should be necessary in the year 2018 to have to ask NRC to make an email option available, I do not understand. Please note that the reason that Joni Arends made that request in the first place, as she explained at the microphone, was because your [regulations.gov](http://www.regulations.gov) site was proving difficult for people who had spoken to her about it. There was obviously already problems being experienced a full month ago, by the time of the Hobbs meeting.

That there should be this much difficulty with the [regulations.gov](http://www.regulations.gov) site, in the year 2018, I also do not understand. Especially re: the May 18-May 31 dysfunctionality, despite my informing you of the problem as early as May 22nd. Why has NRC not fixed the problem yet, two weeks since it began, and a week and a half after I informed you of it?

The existence of the email option is beside the point. The error message at the [regulations.gov](http://www.regulations.gov) site does not announce to, or inform, readers/blocked commenters that there is an email option. Nor does it mention the snail mail option. Public commenters who are not in the know would just be stuck. Unless they were willing to invest the additional time -- in addition to the time they had just wasted, unsuccessfully trying to make comments on this NRC docket -- to contact [regulations.gov](http://www.regulations.gov), to seek a repair to the site.

Why does NRC not consider this a major problem, that one of its primary public comment mechanisms has not worked, since May 18th? If and when NRC repairs this problem, will another day of public comment be added to the current July 30th deadline, to compensate for every day that the [regulations.gov](https://www.regulations.gov) site has not worked?

Thank you in advance for answering my questions as soon as possible, and for repairing your broken [regulations.gov](https://www.regulations.gov) site as soon as possible.

Sincerely,

Kevin Kamps, Beyond Nuclear

Attachment 7

From: "Caverly, Jill" <Jill.Caverly@nrc.gov>

Date: June 11, 2018 at 2:37:49 PM CDT

To: 'Kevin Kamps' <kevin@beyondnuclear.org>

Cc: "Cuadrado-Caraballo, Jose" <Jose.Cuadrado-Caraballo@nrc.gov>, "jose.cuadrado-caravallo@nrc.gov" <jose.cuadrado-caravallo@nrc.gov>, "Quintero, Jessie" <Jessie.Quintero@nrc.gov>

Subject: RE: Re: Mr. Cuadrado and Ms. Caverly, please post these two sets of public comments at the www.regulations.gov, Docket ID NRC-2018-0052, as well as elsewhere on the official public comment record for Docket ID NRC-2018-0052

Hello Mr. Kamps,

I have confirmed that [regulations.gov](http://www.regulations.gov) did receive comments and was working during the time in which you were having difficulties submitting your comments. I can't explain why you were unable to see that your comments were successfully uploaded; perhaps your computer settings were causing the issues.

Thank you for the information and for commenting.

Jill Caverly

May 9, 2018

Kristine L. Svinicki, Chairman
Jeff Baran, Commissioner
Stephen G. Burns, Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop O-4F00
Washington, DC 20555-0001
Via email to Chairman@NRC.gov, CMRBARAN@nrc.gov, CMRBURNS@nrc.gov

Jose Cuadrado, Project Manager
Division of Spent Fuel Management
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Via email to jose.cuadrado@nrc.gov

Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Via email to annette.vietti-cook@nrc.gov

SUBJECT: Holtec International HI–STORE Consolidated Interim Storage Facility Project
Docket No. 72–1051 (Request for 180-day extension of scoping and public
period and addition of 18 public hearings)

Dear Members of the Commission:

Don't Waste Michigan, Sierra Club, Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Nuclear Information and Resource Services, Alliance For Environmental Strategies, Nuclear Energy Information Service, Public Citizen, Vernont Yankee Decommissioning Alliance, Uranium Watch, San Luis Obispo Mothers for Peace, Oregon Physicians for Social Responsibility, Sustainable Energy & Economic Development Coalition, New England Coalition on Nuclear Pollution, Ban Michigan Fracking, Hudson River Sloop Clearwater, Inc., Tennessee Environmental Council, Citizens for Alternatives to Radioactive Dumping, Great Lakes Environmental Alliance, Healthy Environment Alliance of Utah, Canadian Coalition for Nuclear Responsibility, Citizens' Environmental Coalition, Portsmouth/Piketon Residents for Environmental Safety and Security, Chesapeake Physicians for Social Responsibility, Nuclear Watch New Mexico, Physicians for Social Responsibility-Los Angeles, Don't Waste Arizona, Tri-Valley Communities Against a Radioactive Environment, Citizens Awareness Network, Friends of the Earth, San Clemente Green, San Luis Obispo County Grandmothers for Peace, Stand Up/Save Lives Campaign, Bruce Peninsula Environment Group, FLOW (For Love Of Water), Concerned Citizens for Nuclear Safety, Milwaukee Riverkeeper, Food & Water Watch/Food and Water Action, Ecological Options Network,

Occupy Bergen County, Citizens' Resistance at Fermi 2, Sisters of Mercy/Albuquerque, Crabshell Alliance, Nukewatch, On Behalf of Planet Earth, Coalition Against Nukes, Nuclear Age Peace Foundation, Cape Downwinders and Physicians for Social Responsibility are all organizations that question or oppose the proposed Holtec International (Holtec) consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) being planned for southeast New Mexico. Many of these organizations are planning to intervene in the forthcoming Nuclear Regulatory Commission (NRC) license proceeding for the Holtec CISF.

We hereby request that the Commission extend the scoping comment period for the CISF proposal by 180 days beyond the present terminus of May 29, 2018. The purpose of this request is to afford an opportunity for the convening of additional public comment hearings in 18 American cities likely to be affected by the large-scale transportation effort that will be caused by the Holtec project, and to allow members of the public additional time to undertake pre-filing investigation.

1. The Holtec CISF Plan Is Controversial

Holtec applied to the NRC by letter dated March 30, 2017 for license authorization to construct and operate a HI-STORE CISF for spent nuclear fuel disposal on a 960-acre site in Lea County, New Mexico. Holtec intends initially to store 500 canisters (8680 metric tons) of SNF, followed by 19 additional phases, all aimed eventually at storing 10,000 canisters and 120,000 or more metric tons. If the first phase is a guide, it may be that more than 170,000 metric tons might end up at Holtec's facility. Even at 120,000 MT, the Holtec CISF would easily be the world's largest SNF interim site.

Holtec plans to provide long-term SNF storage for up to 120 years,¹ or for however much time beyond 120 years it may take to develop a repository.² Holtec itself has recommended to the U.S. Department of Energy that a CIS facility "should have a minimum service life of 300 years,"³ all of which raises legitimate questions as to the possible permanence, fitness and suitability of the Holtec plan for storing high-level spent nuclear fuel in the New Mexico desert.

There is no civilian SNF generated in New Mexico. Tens of thousands of tons of dangerous radioactive waste will be transported into the state from hundreds, even thousands, of

¹Holtec International Environmental Report (ER Rev. 1), p. 13/543 of .pdf.

²According to the Holtec ER Rev. 1, p. 19/543 of .pdf: "Holtec anticipates the SNF could be stored at the CIS Facility for up to 120 years, *or until a permanent geologic repository is opened consistent with the NRC's Continued Storage Rule.*" (Emphasis added).

³Letter, Joy Russell, Holtec Vice-President, to DOE, "Response to RFI on Private Initiatives to Develop Consolidated SNF Storage Facilities," 1/27/2017, <https://www.energy.gov/sites/prod/files/2017/02/f34/Jan%2027%2C%202017%20-%20Joy%20Russell%20-%20Response%20to%20the%20RFI%20on%20Private%20Initiatives.pdf>

miles away, via barge, truck and railroad, followed a century later by a second massive effort of 10,000 more trips, taking the waste away to a permanent geological repository. The waste will pass through 75% of the nation's congressional districts en route to New Mexico. Many of the nation's largest metropolitan areas will endure hundreds of canister transports over decades. The ability of the thin-walled canisters to uniformly withstand travel-related vibrations, moderate jarring, severe accidents or sabotage is dubious.

Once the canisters are delivered, Holtec will store them in shallow concrete burial pits. The Holtec site is situated in a geologically troublesome area. Holtec will minimally monitor the suspect storage canisters in the hopes of avoiding dangerous spills, leakage and criticality for many decades. After 120 years—or longer--the aspiration is that the SNF will again be transported, this time to a final geological repository.

The CISF may have to accept a far larger volume of waste than can be accepted by the ultimate permanent repository. The Department of Energy had aimed to dispose of 63,000 metric tons of commercial power plant SNF in Yucca Mountain, which is only about half of what Holtec proposes to take in. If an undersized permanent geological repository is opened, the excess SNF waste will have to remain in New Mexico for an unknown period.

There is continuing support in the New Mexico legislature and among economic development advocates for reprocessing as a spinoff to the CISF. Reprocessing is a dirty and dangerous means of reclaiming the dangerous isotopes in the waste which may bring a major radioactive waste-producing complex to New Mexico. Holtec's "interim" CISF is undeniably a major component of an enormous undertaking that carries grave national policy and cost implications. The Holtec CISF's centrality to nationwide management of SNF means that additional, nationwide, scoping must be undertaken by the NRC.

2. NEPA Scoping to Date for the Holtec CISF Is Grossly Inadequate

The NRC's public involvement to date under the National Environmental Policy Act (NEPA) does not match the scale of policy, implementation and environmental concerns. On March 30, 2018, the NRC published in the Federal Register a notice of intent to prepare an environmental impact statement and conduct scoping on the Holtec International HI-STORE CISF project.⁴ A 60-day public comment period opened by the publication is slated to end on May 29, 2018. Only four public scoping hearings have been convened, including a national phone-in meeting at NRC headquarters in Rockville, Maryland, followed by three hearings in Roswell, Hobbs and Carlsbad, New Mexico, respectively.

This level of public engagement is grossly inadequate for a project of such magnitude. The scoping process for the CISF pales in comparison to the NEPA public outreach for the proposed Yucca Mountain repository. In 1995, the U.S. Department of Energy (DOE) undertook

⁴83 Fed. Reg. 13802 (March 30, 2018).

a 120-day effort consisting of public comments and scoping hearings for the Yucca draft EIS in 17 U.S. cities and Nevada:

To reach minority and low-income communities, DOE contacted news publications and radio stations that tend to service these communities to notify them of the scoping meetings and the locations of available information. In addition, DOE met with 13 Native American tribes and organizations and provided them the same information. DOE invited public interest groups, transportation interests, industry and utility organizations, regulators, and members of the general public to participate in the process. The Department mailed a series of information releases to Yucca Mountain stakeholders notifying them of the opportunity to comment on the scope of the EIS; sent press releases and public service announcements to newspapers and television and radio stations; and made information about Yucca Mountain, the EIS, and the scoping process available on the Internet (at www.ymp.gov) and in public reading rooms around the country.

In 1995, DOE held 15 public scoping meetings across the country (DIRS 104630-YMP 1997, p. 7). More than 500 people submitted more than 1,000 comment documents during the 120-day public scoping period. DOE considered all comments—oral and written—it received during the scoping process and grouped them in categories. . . .⁵

Holtec's Environmental Report, the basis for the Draft EIS, largely ignores the massive transportation effort that will be required for the facility to function. The minimal publicity efforts the NRC has conducted to date suggest that the agency may not adequately analyze the transportation implications, and will effectively segment those aspects from the waste storage parts of the proposal. The NRC's poor publicizing of the Holtec application is a far cry from the public involvement that characterized the Yucca Mountain scoping.

3. NRC Discretion to Limit Scoping Is Not Unbounded

The NRC's discretion to limit or restrict NEPA scoping efforts has boundaries.

Scoping is the initial phase of the overall EIS process under NEPA. *Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1022 (10th Cir.2002). Scoping is "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." 40 C.F.R. § 1501.7; *Citizens' Comm. to Save Our Canyons*, 297 F.3d at 1022 (goal of scoping is to "identify [] specific issues to be addressed and studied" during the EIS process (citing 40 C.F.R. § 1501.7)).

According to the Ninth Circuit, the primary purpose of the scoping period "is to notify

⁵"Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada," DOE/EIS-0250, Vol. 1, pp. 1-23, 1-24.

those who may be affected by a proposed government action which is governed by NEPA that the relevant entity is beginning the EIS process; this notice requirement ensures that interested parties are aware of and therefore are able to participate meaningfully in the entire EIS process, from start to finish.” *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1116 (9th Cir. 2002), citing *Northwest Coalition for Alternatives to Pesticides (NCAP) v. Lyng*, 844 F.2d 588, 594-95 (9th Cir. 1988).

To initiate the scoping process, the lead agency must publish a Notice of Intention (NOI) in the Federal Register “[a]s soon as practicable after its decision to prepare an [EIS].” 40 C.F.R. § 1501.7. In the notice, the agency must “[i]nvite the participation of affected Federal, State, and local agencies” and “[d]etermine the scope ... and the significant issues to be analyzed in depth in the [EIS].” *Id.* § 1501.7(a)(1), (2). The agency “*may* . . . [s]et time limits” for the scoping process and “[h]old an early scoping meeting or meetings.” *Id.* § 1501.7(b)(2), (4) (emphasis added). Those time limits must comply with 40 C.F.R. § 1501.8. *Id.*, § 1501.7(b)(1). Section 1501.8 does not “prescribe [] universal time limits for the entire NEPA process,” but instead authorizes agencies to set time limits, including limits on the scoping process that are “appropriate to individual actions” and “are consistent with the purposes of NEPA and other essential considerations of national policy.” *Id.* § 1501.8.

Council on Environmental Quality (CEQ) regulations do not set minimum time limits for the scoping period and do not require an agency to extend or reopen the scoping period. Congress intended that agency discretion, and not the courts, “be exercised in determining when extra procedural devices should be employed.” *Phillips Petroleum Co. v. U.S. EPA*, 803 F.2d 545, 559 (10th Cir.1986) (emphasis omitted) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 546 (1978) (internal quotation marks omitted)). Thus a reviewing court generally can overturn an agency decision for failure to provide additional procedure only when there are “extremely compelling circumstances.” *Vermont Yankee*, 435 U.S. at 543.

4. Much More Public Participation Is Warranted

We submit that Holtec’s CISF proposal presents “extremely compelling circumstances” that necessitate much greater NRC scoping outreach and solicitation of public feedback. This immense, expensive and long-duration SNF storage project requires perfect transportation and containment of extraordinarily deadly substances for centuries to come. The continued storage of SNF at reactor sites as an alternative to Holtec requires further consideration. The risks from even one major cask accident or act of sabotage, if it is accompanied by serious radiation leakage, could be more than the public is willing to accept just to have the waste concentrated in New Mexico.

Before the decision to move deadly SNF 20,000 times can be made, the American public outside of New Mexico should be afforded meaningful participation. We therefore request that the scoping period and comment opportunity for the Holtec CISF be extended from May 29, 2018 until November 30, 2018. During that period, we further request that the NRC convene

town hall-style public meetings and comment sessions in the following cities, each of which is located on one or more anticipated major SNF transport routes:

Atlanta
Boston
Chicago
Cleveland
Dallas/Forth Worth
Detroit
San Antonio
Kansas City
Los Angeles

Miami
Minneapolis/Saint Paul
Nashville
New York/Newark
Omaha
Philadelphia
Pittsburgh
St. Louis
Tampa

The possibility of a spent fuel leak, explosion, criticality or canister breach in any of these urban areas, and the questions of whether and how much Americans and the environment should bear the risks of this massive scheme, should be decided in a process that is truly national, visible and far more extensive.

We request an expedited decision from the NRC on these requests, given the fast-approaching May 29, 2018 deadline.

Thank you very much.

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