BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF	)	
	)	Docket No. 72-1051
HOLTEC INTERNATIONAL	)	
	)	
(Consolidated Interim Storage Facility Project)	)	October 16, 2018

SIERRA CLUB'S REPLY TO ANSWERS FILED BY HOLTEC INTERNATIONAL AND NRC STAFF

Comes now Sierra Club and hereby submits this combined Reply to the Answers filed by Holtec International and the NRC Staff.

STANDING

Sierra Club agrees with the NRC Staff that Sierra Club has standing in this proceeding. The Staff notes that Sierra Club member Danny Berry is within a proximity of the proposed CIS facility that has been approved for standing in other cases. See Pacific Gas & Electric Co. (Diablo Canyon ISFSI), LBP-02-23, 56 NRC 413, 428 (2002) (finding 17 miles sufficient and noting other agency rulings approving standing for petitioners located within 10 miles of facility for spent fuel pool expansion proceedings); see also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163-64 (2000) (6 miles sufficient for standing in license transfer proceeding).

Sierra Club has standing through its members, however, beyond just proximity. Danny Berry, the closest member to the site, in his declaration, specifically said "[c]racks or leaks could occur if dry casks are allowed to sit in the ground where corrosive groundwater could cause leaks in the casks." This statement is supported by Sierra Club Contention 16, which is based on the declaration of George Rice, stating that brine has been found in the groundwater in the area of the CIS site and that brine can corrode the containers and cause them to leak.

Mr. Berry also states that oil and gas drilling in the area has created geologic faults that induce earthquakes that could cause the casks in the CIS facility to crack and leak radioactive material. That statement is supported by Sierra Club contention 11. It does not take any imagination to know that the scenarios Mr. Berry describes, supported by the Sierra Club contentions, are not speculative. There is a distinct possibility they could occur.

Plausible, even if unlikely, events that could cause injury provide standing. Armed Forces Radiobiology Research Inst. (Cobalt-60 Storage Facility, 16 N.R.C. 150 (1982); Ga. Inst. Of Tech. (Georgia Tech Research Reactor, 42 N.R.C. 111

(1995); CFC Logistics, Inc. (Cobalt-60 Irradiator), 58 N.R.C. 311 (2003).

Sierra Club members, Martha Singleterry, Gordon Dyer, Deanna Dyer, and Danielle Dyer, live in Carlsbad and Hobbs, New Mexico, respectively. Each member lives about 34 miles from the Holtec site. This is well within a zone that has been determined to provide standing where the storage of nuclear waste is involved. The most striking example, as discussed in Sierra Club's Petition to Intervene (p. 5), is the FEIS for Yucca Mountain. In that document the region of influence for public health and safety was 50 miles. That was for a waste storage project for spent nuclear fuel and high level radioactive waste, just as the Holtec CIS facility. Moreover, the Yucca Mountain project was for only about half of the amount of waste contemplated for the Holtec facility and with the safeguards of a permanent repository that the Holtec facility will not have.

Apart from the proximity of the Carlsbad and Hobbs residents to the Holtec site, Ms. Singleterry and the Dyers have presented very specific reasons why they will be impacted by the Holtec project. Their reasons are supported by Sierra Club's contentions.

Sierra Club members, Ed and Patty Hughs, own a cattle ranch immediately adjacent to the Union Pacific Railroad tracks. Even though 10 C.F.R. § 72.108 requires an ER to evaluate the environmental impact of the transportation of nuclear waste, Holtec did not disclose in any of its documentation the transportation routes on which the waste would be transported to the CIS facility. The Hughses note, however, in their declaration that the Union Pacific route adjacent to their cattle ranch is a major rail line and would be a likely prospect to bring nuclear waste from the northeast, where most of the nuclear reactors are located, into New Mexico. Further, the Hughses explain that a radioactive release from a rail shipment would contaminate the land, the grass, the water, and cattle, causing them significant economic damage. Although damage to economic interests does not always confer standing, economic damage resulting from environmental impacts does confer standing. Sacramento Mun. Util. Dist. (Rancho Seco Nuclear Generating Station), 36 N.R.C. 120, 130 (1992). The Hughses have satisfied this standing requirement.

Furthermore, the Hughses state in their declaration that they know of recent train derailments in New Mexico and that the rails and railbeds in New Mexico are not sufficient

to carry the heavy loads of spent nuclear fuel containers. These facts present a plausible scenario that is more than mere speculation. See, U.S. Army Installation Command (Scholfield Barracks, Oahu, Hawaii & Pohakuloa Training Area, Island of Hawaii, Hawaii), 71 N.R.C. 216 (2010).

Finally, Sierra Club member Jimi Gadzia has a financial interest in oil and gas rights in the area adjacent to or within 10 miles of the Holtec site. In addition, she lives within a half mile of the railroad line through Roswell, New Mexico. Ms. Gadzia's declaration explains how her financial interests in the oil and gas leases near the Holtec site would be impacted by a radioactive leak from the Holtec site. This statement is supported by the comments filed by Fasken Oil and Ranch (Sierra Club Petition, Ex. 7).

In addition, Ms. Gadzia's proximity to the rail line in Roswell and her explanation of the danger of radioactive release from containers being transported on the rail line provide a plausible scenario of injury. As noted above with respect to Ed and Patty Hughs, Holtec has not revealed what rail lines will be used to transport waste to the CIS facility, but it is obvious that the waste coming from the California and Arizona reactors would be transported on rail through Roswell.

So, every one of the standing declarations from Sierra Club members presents in sufficient detail a basis for standing based on injury in fact, as well as proximity. The enormous quantity of radioactive waste proposed to be stored at the Holtec facility, by itself, establishes a sufficiently "obvious" potential for offsite harm, establishing a proximity presumption. Pac. Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation, 56 N.R.C. 413, 427 (2002).

Sierra Club members have also established standing based on anticipated injuries from transportation of radioactive waste to the Holtec facility. This is not standing based just on proximity, as mischaracterized by Holtec, but based on facts showing injuries caused by licensing the Holtec CIS facility. See, Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), 54 N.R.C. 403 (2001).

The U.S. Supreme Court decision in Massachusetts v. EPA, 549 U.S. 497, 127 S.Ct. 1438 (2007), presents a further perspective on standing that is relevant here. In Massachusetts the plaintiffs challenged the EPA's failure to address climate change through the Clean Air Act. In finding that the plaintiffs had standing, the court first quoted

from Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691 (1962), that the basis of standing is whether plaintiffs have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination." In Massachusetts, the court noted that a party to whom the legislature has granted a procedural right to protect its concrete interests, such as the right to challenge agency action, has standing without meeting all the normal standards for redressability and immediacy. With respect to NEPA cases, the United States Court of Appeals for the Eighth Circuit, in Sierra Club v. Corps of Engineers, 446 F.3d 808 (8th Cir. 2006), explained that the injury-in-fact was not the consequences of the proposed federal action, but rather the "increased risk of environmental harm stemming from the agency's allegedly uninformed decision-making."

Based on the foregoing, Sierra Club has established standing in this case.

OVERARCHING ISSUES

Throughout the Answers to Sierra Club's contention filed by Holtec and the NRC Staff, there were several issues

that should be discussed generically as they pervade the Answers filed by Holtec and NRC Staff in this proceeding.

Continued Storage Rule and GEIS

The Continued Storage Rule, 10 C.F.R. § 51.23, and the GEIS, NUREG-2157, incorporated in the rule, purport to be a generic determination that spent nuclear fuel can be safely stored indefinitely. That does not mean, however, that there are no issues the NRC must consider in licensing a project such as the Holtec facility in this case. If there were no issues, this entire proceeding would be unnecessary.

In fact, § 51.23, by its terms, states, "This section does not alter any requirements to consider the environmental impacts of spent fuel storage during the term of . . . a license for an ISFSI in a licensing proceeding." Thus, the rule does not preclude contentions based on a requirement that on site storage is an alternative to be given substantial treatment.

In determining the applicability of the Continued Storage Rule to a particular project, it is also necessary to consider the assumptions on which the GEIS is based. The generic assumptions applicable to an ISFSI, GEIS, p. 1-15 – 1-17, are:

- Institutional controls, i.e., NRC regulation, will continue.

- A dry transfer system (DTS) will be built at each ISFSI location.

- The ISFSI facility and the DTS will be replaced on a 100-year cycle.

The GEIS also contains several assumptions specific to away-from-reactor storage, GEIS, p. 5-1 - 5-2:

- The ISFSI would store no more than 40,000 MTU.

- The ISFSI would be on a site of 820 acres, with the actual size of the storage facility being 99 acres. It should be noted that the Holtec facility would be on a site of 283 acres and a storage facility of 110 acres, storing over 4 times the amount of radioactive waste as the PFS project.

- There would be a DTS at the site.

- Construction and operation would be similar to the PFS facility in Utah.

- Location of an ISFSI would be approved on the basis of the factors in 10 C.F.R. Part 72, Subpart E, including adequate protection for design basis external events, population density, seismicity, and flooding potential.

- Location of an ISFSI will be chosen to minimize or avoid impacts to water, ecological, historic and cultural and other resources.

Because the Holtec project is not consistent with many of these assumptions, Holtec and the NRC Staff cannot use the Continued Storage Rule as a generic defense to Sierra Club's contentions.

In addition, because generic reliance on the Continued Storage Rule is an affirmative defense, and because Holtec and NRC Staff have asserted that affirmative defense and also engaged in site-specific factual disputes, they have waived the affirmative defense of the Continued Storage Rule.

Holtec admits in its ER, 1.1:

> This ER constitutes a site-specific analysis of the proposed CIS Facility at the southeastern New Mexico Site in Lea County. This ER incorporates relevant information and analyses from NUREG-2157 as appropriate, for purposes of completeness. For example, for most resources analyzed in Chapter 4 of this ER, there is a high-level comparison of the site-specific impact conclusions presented in this ER to the generic impact conclusions contained in NUREG-2157.

By purporting to rely on a site-specific analysis, Holtec has waived any reliance on the generic findings and conclusions of the Continued Storage Rule.

<u>Certification of the HI-STORE UMAX System</u>

Arguments that Sierra Club cannot question safety aspects of long-term use of the containers and the safety and environmental implications of the containers holding high burnup fuel because the UMAX system has been certified by the NRC have no basis. As explained in Sierra Club Contention 9, the certification for the UMAX system is based on the UMAX FSAR (Accession No. 16193A339). The certification is therefore limited by the assumptions and limitations in the UMAX FSAR.

So a generic defense to Sierra Club's contentions cannot be based on the certification of the UMAX system. Any defense must be based on specific provisions of the UMAX FSAR.

DOE or Nuclear Plant Owners Will Own the Waste

As explained in Sierra Club Contention 1, it has been Holtec's intention from the beginning to have DOE take title to the waste that would be stored at the CIS facility. Now Holtec has revised its documentation to propose that DOE or nuclear plant owners would take or maintain title to the waste. As further explained in Sierra Club Contention 1, the NRC would have no authority to license Holtec's facility if DOE owns the waste.

Because the ownership of the waste is a significant, or even dispositive, issue in this case, Holtec's documentation in support of its application must discuss and analyze all of the issues in terms of both ownership scenarios. If Holtec intends for DOE to take title, that would take, as the saying goes, an Act of Congress. On the other hand, if Holtec intends for the nuclear plant owners to retain title, the documentation must explain how that financing would occur. 10 C.F.R. § 72.22(e) requires the license application documents to show that "the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds or that by a combination of the two, the applicant will have the necessary funds." Because Holtec has constructed a smokescreen as to whether DOE is expected to own the waste (which is illegal) or if the nuclear plant owners will own it (which is unlikely), the Answers from Holtec and the NRC Staff are based on a tenuous factual scenario.

SUNSI

Sierra Club has explained in its contentions how it tried to obtain information from Holtec in order for Sierra Club expert, Dr. Marvin Resnikoff, to review Holtec's technical information. The Answers chastised Sierra Club for

not using the procedure set forth in the Federal Register notice of this proceeding to obtain the information. The Answers apparently were referring to the procedure for obtaining Sensitive Unclassified Non-Safeguards Information (SUNSI).

The SUNSI procedure requires that the request be made within 10 days after the Federal Register Notice by sending a letter to several places within the NRC. The request must contain specific information as to the need for the information and why a publicly available version will not suffice. Furthermore, the NRC will decide at that point if the requester, as a petitioner to intervene, is likely to establish standing in the licensing proceeding and that the requester has established a legitimate need for the information.

Then, only if those two conditions have been established to the NRC's satisfaction, will consideration be given to disclosing the information. Even if disclosure is granted, the requester must then be subject to whatever conditions the NRC places on disclosure, including the requester signing a non-disclosure agreement or a protective order. And, of course, all of this occurs while the 60-day

time period for preparing a petition to intervene and contentions is running.

Furthermore, the information was in Holtec's possession, so a SUNSI request to the NRC would not necessarily have provided the information to Sierra Club in any event.

This is not meaningful access to the information under the circumstances. Courts have found that the burden for contention admissibility may be lower where the information needed for the contention was in the hands of the licensee or NRC staff and was not made available to the petitioner. See, e.g., York Comm. for a Safe Env't. v. NRC, 527 F.2d 812, 815 n. 12 (D.C. Cir. 1975)(where the information necessary to make the relevant assessment is "readily accessible and comprehensible to the license applicant and the Commission staff but not to petitioners, placing the burden of going forward on petitioners appears inappropriate.")

Therefore, it should be no defense to Sierra Club's contentions that Sierra Club was not able to obtain the information.

CONTENTION 1

Sierra Club asserted in this contention that the NRC has no authority pursuant to the Nuclear Waste Policy Act (NWPA) or the Atomic Energy Act (AEA) to license the Holtec facility.

Holtec conditions the construction and operation of the CIS facility on the Department of Energy (DOE) taking title to the radioactive waste. This was made clear in the ER, 1.0 ("Phase 1 construction would begin after issuance of the license and after Holtec successfully enters into a contract for storage with the U.S. Department of Energy (DOE))." Holtec seeks to hedge on that statement by pointing to several places in its documentation where it says title will be taken by "USDOE and/or a nuclear plant owner." The reference to "a nuclear plant owner" is clearly a fig leaf to cover up the fact that the ultimate plan is for DOE to take title. Holtec, in its Answer, now claims that it will revise the ER to walk back its clear statement that construction of the CIS facility will not begin until DOE takes title to the waste. The revision would apparently add nuclear plant owners to the purported entities who would take title to the waste.

Significantly, however, neither Holtec nor the NRC Staff dispute Sierra Club's statement that DOE cannot

legally take title to the waste. They can't dispute it because the law is clear. And Holtec provides absolutely no indication that any nuclear plant owner would retain title to the waste. It strains credulity to believe that a nuclear plant owner would want to retain title. The point of a CIS is so the plant owner is relieved of responsibility for the waste. In fact, Holtec's Answer to Sierra Club Contention 6 clearly states that one of the alleged purposes of the proposed CIS facility is to "reduce the burden of interim storage on the owners of nuclear plants" (Holtec Answer, p. 39). If there is an intent for nuclear plant owners to retain title to the waste, that would certainly not reduce their burden.

Holtec's real intention for DOE to take title to the waste was openly revealed by Holtec officials as described in Sierra Club's Petition. Holtec seeks to minimize those statements by saying they were made before the license application was filed. That is all the more reason to believe that the reference to a plant owner in the SAR is simply an attempt to cover up Holtec's real intention.

The fact is that Holtec knew that a claim had been made regarding the proposed WCS facility that DOE ownership of the waste would be illegal. See, Beyond Nuclear's Reply to

Holtec International, Interim Storage Partners LLC, and NRC Staff Responses to Beyond Nuclear's Motion to Dismiss, p. 3-4. So, it seems clear that Holtec added the nuclear plant owners as maintaining ownership of the waste in order to evade the illegality of what it actually wants to do.

Holtec's Answer is simply disputing facts and the inferences to be drawn from the facts, primarily regarding the statements made by Holtec representatives that Holtec expects DOE to take title to the waste. That is a matter for the ASLB to determine at the adjudicatory hearing. The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

The NRC Staff claims that 10 C.F.R. §§ 72.32(a) and 72.46(d) refer to away-from-reactor ISFSIs, and therefore Sierra Club is attacking those rules, in violation of 10 C.F.R. § 2.335. But Sierra Club is not attacking those rules. Sierra Club is asserting that the NRC has no authority to issue a license for the Holtec facility because the proposal to have DOE take title to the waste is not authorized by the NWPA. Bullcreek v. NRC, 359 F.3d 536, 538 (D.C. Cir. 2004)("Congress, under Subtitle B [of the NWPA] limited the federal government's obligation to assist private nuclear generators with interim storage of spent nuclear fuel.").

In addition, as explained in Beyond Nuclear's Reply to Holtec International, Interim Storage Partners LLC, and NRC Staff Responses to Beyond Nuclear's Motion to Dismiss, filed in this docket on September 28, 2018, its claim essentially identical to Sierra Club's in this contention, could be raised in this licensing proceeding because "10 C.F.R. § 2.309(f)(1) specifically permits petitioners to present contentions that raise issues of law."

In addition to the restrictions of the NWPA, the AEA does not authorize the NRC to license a CIS facility. In its Petition Sierra Club cited 42 U.S.C. § 2133 in support of

this proposition. Holtec claims that 42 U.S.C. § 2141 authorizes the NRC to license the Holtec facility. On the contrary, that section supports Sierra Club's argument. It provides that the NRC is authorized to license the distribution of nuclear material by the Department of Energy. So § 2141 is inapplicable to the Holtec license in two respects. It applies to the distribution, not the storage, of nuclear material and it applies to the DOE, not a private company like Holtec.

Nonetheless, Holtec has made it clear that it intends for DOE to take title to the waste, which is not authorized by law.

CONTENTION 2

As explained in Sierra Club's contention, the purpose and need statement is important because it dictates the range of alternatives. By asserting that CIS is safer and more secure than storage at the reactor site, Holtec is minimizing, if not eliminating, a reasonable consideration of on site storage as an alternative. Even if the ER lists other alleged purposes for the CIS project, by minimizing on site storage Holtec is not giving substantial treatment to a reasonable alternative.

As the court said in Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991):

> [A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality. . . . Nor may an agency frame its goals in terms so unreasonably broad that an infinite number of alternatives would accomplish those goals and the project would collapse under the weight of the possibilities.

Contrary to Holtec's allegation, this is not an issue that requires expert opinion to determine that the purpose and need statement unfairly prejudices the alternative of on site storage. Sierra Club discussed the report on HOSS by Dr. Gordon Thompson to show how on site storage could be evaluated as an alternative if the purpose and need were properly stated.

In its Answer, Holtec is essentially arguing facts that would be litigated at a hearing. For example, Holtec's citing the Blue Ribbon Commission (BRC) report does not prove that on site storage may not be just as safe, or even safer, than a CIS facility. In fact, as shown in Sierra Club Contention 7, the BRC report states that on site storage can be operated safely. Nor is it "self-evident," as alleged in

Holtec's Answer, that the CIS facility would be safer than on site storage.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 3

The basis of this contention again is the purpose and need statement in the ER that CIS is safer and more secure than on site storage. The Continued Storage Rule clearly concluded that on site storage was safe. Sierra Club is not arguing that the Continued Storage Rule says that on site storage is safer than CIS, but that the Rule says it is just as safe. So, by claiming in the purpose and need statement

that CIS is safer and more secure than on site storage, the ER contradicts the Rule.

The point of this contention is that when the ER, 1.0, makes the unsupported statement that the CIS is safer and more secure than on site storage, when the Continued Storage Rule determined that on site storage was safe, the purpose and need statement unjustifiably prejudices the choice of alternatives.

The NRC itself has asserted consistently that both pool storage and dry cask storage at the reactor site is safe. For example, NRC Chair Kristine Sviniki made that assurance to Representative Darrell Issa in a November 14, 2017 letter (Accession No. ML17303B054).

This issue is material to NRC's environmental review because it impacts consideration of the purpose and need for the CIS project, and thus, the appropriate range of alternatives.

CONTENTION 4

The NRC Staff agrees that the analysis in the ER of the radiological harm from a transportation accident is inadequate. The Staff is incorrect, however, in believing that the contention does not adequately present the issue of the likelihood of a transportation accident.

First of all, Sierra Club has cited a 2010 report from the American Public Health Association that discusses the risks from transportation of radioactive material. It is not necessary at the contention stage to have an expert on every issue. Scientific reports are sufficient to provide facts in support of a contention. In addition, the contention refers to Marvin Resnikoff's statement that DOE's 2008 risk estimate does not incorporate recent information about rail fires and increased rail traffic.

The contention noted that the Continued Storage GEIS was based on an assumption of storage of 40,000 MTU of waste. Holtec claims in its Answer that the 40,000 MTU assumption was based on the PFS facility in Utah. That does not matter. The point is that the determination in the GEIS of safe storage was based on the assumption that 40,000 MTU would be stored. This assumption would be completely invalid for storage of an amount of waste over 4 times the assumed amount.

The responses to this contention are again an attempt to argue the facts, which is inappropriate at the contention stage. The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power

Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 5

This contention is not an attack on the Continued Storage Rule. The point of the contention is that the ER must consider the impacts of this particular facility if no permanent repository is found and this facility becomes a de facto permanent repository. The premise on which this project is being presented for licensing is that it will operate for up to 120 years until a permanent repository is found. In fact, the ER states that it is only considering impacts based on the 120-year time frame. Sierra Club simply asks that the ER consider the impacts of permanent storage at this site.

Furthermore, the Continued Storage Rule, which is based on NUREG-2157, was developed on the assumption that an away-

from-reactor storage facility would store up to 40,000 MTU of waste. NUREG-2157, p. 2-18. Since the Holtec facility is proposed to store at least 100,000 MTU, the Continued Storage Rule does not apply. The scope and applicability of the Continued Storage Rule must be limited by the assumptions upon which it is based.

CONTENTION 6

The no action alternative simply means that the Holtec CIS would not be licensed. But the no action alternative does not mean on site storage with no effort to make on site storage more safe. That is why Sierra Club suggests that the ER review the benefits of HOSS for on site storage.

Beyond that, however, contrary to Holtec's assertion, the discussion of the no action alternative in the ER, 2.1, does not follow the Continued Storage Rule. As explained in previous contentions, the Continued Storage Rule determined that storage at the reactor site is safe. The statement in the ER, 2.1, that "[t]he No Action Alternative would not be supportive of the Nuclear Regulatory Commission's (NRC) rulemaking on the Continued Storage of SNF" is not correct.

CONTENTION 7

Holtec has made the report of the Blue Ribbon Commission a significant, if not the primary, justification

for the proposed CIS facility. Holtec's Answer to Sierra Club's Contention 6 states, "major elements of the purpose of the proposed action are to advance the BRC's recommendation to develop consolidated interim storage as a strategic need, reduce the burden of interim storage on the owners of nuclear plants, particularly those that have ceased operation, and allow completion of decommissioning of those sites."

In addition, the ER, 2.1, discussion of the No Action Alternative, states that the No Action Alternative would not support the Continued Storage Rule and "the recommendations from the Blue Ribbon Commission on America's Nuclear Future to promote efforts to develop one or more consolidated storage facilities in the United States." That is a clear statement that Holtec considers the BRC report a primary justification for the CIS project.

It is important, therefore, that the ER accurately characterize what the BRC report says. It is thus an issue material to this licensing proceeding.

Holtec claims that Sierra Club is mischaracterizing the facts. As with preceding contentions, Holtec is arguing factual issues that are inappropriate at the contention stage. The ASLB should not address the merits of a

contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 8

The NRC Staff does not oppose admission of this Contention for hearing because the Holtec documentation does not specify the number of MTUs used in its calculation, which could vary depending on the contents of the canisters that the Holtec CIS facility would receive.

Holtec claims that the amount of waste stored in the first year of the project will be 8,680 MTU. That is from Table 1.0.1 in the SAR. But Holtec admits the ER clearly states that there will be 5,000 MTU stored the first year and a total of 100,000 MTU over 20 years. ER, 1.0. Holtec now claims the ER is in error and will be revised sometime

in the future. At this point, however, Sierra Club was entitled to rely on the statements in Holtec's documentation. Even if Holtec requests to be permitted to store up to 8,680 MTU in each of 20 phases, that does not mean that Holtec would actually store that maximum amount. For that matter, there is no assurance that the Holtec facility will actually receive even 5,000 MTU in the first or any subsequent phase. This is especially true if the WCS facility 40 miles to the east in Andrews County, Texas is also permitted and operates in competition with Holtec.

Holtec also claims, and significantly relies upon, the magic of compound interest to hope that it will have sufficient funds to undertake decommissioning. According to Holtec's Answer, interest at 3% would be sufficient to fund decommissioning. But there is no assurance that the fund would earn 3% interest. If we figure the interest earned at a 2% rate and using Holtec's 40-year time frame, that would be $840/MTU X 8,680 MTU X 1.02^{40} = $10,941,921. This is far below the $23,716,355 Holtec claims is needed just for decommissioning the first phase of the project.

In addition, Holtec's decommissioning cost estimate of $23,716,355 is just to decommission Phase 1 of the facility. Holtec & ELEA CIS Facility Decommissioning Cost Estimate and

Funding Plan, 8.0. Even at a 3% interest rate and assessing $840/MTU for the total amount of 173,600 now claimed by Holtec for all 20 phases of the facility, the total fund would be $303,211,523. This figure is based on $7,291,200 added to the fund each year, which would total $214,963,511 over the 20 phases of the project. Then there would be $88,248,012.26 of interest added during the last 20 years of the 40-year license period. So, $88,248,012.26 + $214,963.511 = $303,211,523.26. This would not cover the $474,327,100 stated in Sierra Club's contention that would be required to decommission the entire project.

Holtec also claims in its Answer that it will obtain a surety bond to help cover the decommissioning costs. There is nothing in the Financial Assurance & Project Life Cycle Cost Estimates, 2.2, Decommissioning Funding Assurance, that mentions a bond. And Holtec does not cite to anyplace in its documentation where it mentions obtaining a surety bond to fund decommissioning.

Furthermore, it is doubtful that a surety company would issue a bond for this project. Surety companies only issue surety bonds when there is no possibility of risk. Despite Holtec's claims to the contrary, this whole process would not be happening if there were no risk. In addition to the

inherent risk of any nuclear facility, there is the additional risk in this case that the plan for DOE to take title to the waste is illegal.

For all of these reasons, Holtec has not complied with 10 C.F.R. § 72.30.

CONTENTION 9

Sierra Club is not challenging the Continued Storage Rule by contending that the ER must examine the environmental impact of the containers being stored at the Holtec facility beyond their approved design and/or service life. The Continued Storage Rule and GEIS base their conclusions on assuming the effectiveness of NRC regulatory control. Continued Storage GEIS, NUREG-2157, p. 1-16. But as explained in Sierra Club's contention, NRC certification of the containers is based on a design life of 60 years and a service life of 100 years. So there is no regulatory control after those time periods. Therefore, the assumption on which the Continued Storage Rule is based makes the Rule inapplicable to storage of the containers beyond the regulatory period for which the containers are certified.

CONTENTION 10

NRC Staff and Holtec both claim that 10 C.F.R. § 61.55 requires disposal, not storage, of GTCC waste in a

repository or NRC approved land disposal facility. It is necessary, therefore, to review the definition of "disposal" in 10 C.F.R. § 61.2: Disposal means isolation of radioactive wastes from the biosphere inhabited by man and containing his food chains by emplacement in a land disposal facility. The definition of "land disposal facility" in 10 C.F.R. § 61.2: Land disposal facility means the land, building and structures, and equipment which are intended to be used for disposal of radioactive wastes.

This is indeed a circular definition. Disposal means placement in a facility intended for disposal. With respect to the definition of disposal, 10 C.F.R. § 61.2 does not define isolation. It is clear, however, that the intent is to keep the GTCC waste in a location where it will not pose a danger to people or the environment. And the fact that the containers at the Holtec facility will be buried in the ground certainly describes "isolation of radioactive wastes from the biosphere."

Furthermore, as Sierra Club has explained in other contentions, the Holtec facility could become a permanent location for the radioactive waste. That would be disposal by anyone's definition.

Additionally, as explained in Contention 1, the Holtec facility will not be an ISFSI as contemplated in Part 72. That is because with DOE taking title to the waste, that facility cannot legally operate as an ISFSI.

CONTENTION 11

NRC Staff and Holtec address this contention by presenting disagreement with the facts presented in Sierra Club's contention. As stated previously, this is not appropriate at the contention admission stage. Sierra Club has clearly stated the contention and presented facts, including scientific reports, citations to the deficient sections of the ER and SAR, and the comments of Fasken Oil and Ranch, Ltd.

The Stanford University report cited in Sierra Club's contention was published in February of 2018. This is more recent data than the 2016 data used in the SAR and ER. One of the more important points in the Stanford study is that due to increased fracking for oil and gas, new geologic faults are being induced, coming nearer to the Holtec site. It is the potential for earthquakes that is significant, not whether earthquakes have occurred. And it is the increase in fracking activity, not the past history of fracking, that increases the potential for earthquakes.

The contention certainly makes a "showing sufficient to require reasonable minds to inquire further." Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 554 (1978). The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 12

Determining the exact range of a protected species' habitat is difficult because the species is threatened or endangered. Sierra Club exhibits 8 and 9 show two efforts to describe the suspected habitat for the dunes sagebrush lizard. The point is that the Holtec site is within the general range of the dunes sagebrush lizard such that the ER should have made a more thorough evaluation of the lizard's

presence and the impacts to the lizard from the Holtec project.

NEPA requires a "hard look" at environmental consequences. Baltimore Gas & Elec. Co, v. NRDC, 462 U.S. 87 (1983). The facts presented by Sierra Club in this contention show that Holtec did not take a hard look to determine if the CIS project would have an impact on the dunes sagebrush lizard.

Holtec simply disputes the facts presented in Sierra Club's contention. Again, this is not the purpose of an Answer at the contention admissibility stage. The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 13

This contention is not a character contention as discussed in NRC decisions. A character contention is based on the required contents of an application for a license set out in the AEA, 42 U.S.C. § 2232(a). That section states:

> Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, and citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license.

Sierra Club's contention, on the other hand, does not attack Holtec's character, but rather the credibility of Tetra Tech, the preparer of the ER, and therefore, the reliability of the ER. As stated in Sierra Club's contention, an environmental document must be free of bias and doubts about the accuracy and reliability of its contents, citing Greene Co. Planning Bd. v. Federal Power Comm., 455 F.2d 412 (2d Cir. 1972) and Sierra Club v. Corps of Engineers, 701 F.2d 1011 (2d Cir. 1983).

Sierra Club's contention then recited in detail, over two pages, the deficiencies in the ER that show Tetra Tech's bias and willingness to prepare the ER so as to skew the review of the environmental impacts of the Holtec project.

Holtec may take issue with Sierra Club's demonstration of the deficiencies in the ER, but at the contention admissibility stage that disagreement is insufficient.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 14

When Sierra Club's contention referenced Chapter 6 of the SAR, it clearly stated the subject was the "thermal evaluation for the HI-STORM UMAX" system. There is no way there could be a question as to whether it was the HI-STORM system or the HI-STORE facility that was being discussed. By claiming that that is unclear, the NRC Staff is attempting to create an issue where there is none.

Sierra Club's contention is not challenging an NRC rule. It is challenging the discussion in the SAR to determine if the thermal parameters for the HI-STORM system at the Holtec facility will provide for adequate safety.

As stated in the contention it is significant that information needed to adequately evaluate how recent changes to the HI-STORM system might impact the safety of the CIS facility was redacted from the Holtec documentation. The NRC Staff suggests that the SUNSI procedure was available to Sierra Club to obtain this information. Frankly, the SUNSI procedure is onerous, burdensome, lengthy and expensive. The burden on a petitioner in presenting contentions is lessened where the information was in the hands of the licensee or NRC Staff and was not made available to the petitioner. York Comm. for a Safe Env't. v. NRC, 527 F.2d 812, 815 n. 12 (D.C. Cir. 1975)(where the information necessary to make the relevant assessment is "readily accessible and comprehensible to the license applicant and the Commission staff but not to petitioners, placing the burden of going forward on petitioners appears inappropriate.").

CONTENTION 15

The NRC Staff does not dispute this contention's claims regarding the presence of shallow groundwater nor the impact

of a radioactive leak into the groundwater. Rather, the Staff relies on the assertion that the containers holding the radioactive material will not leak. However, Sierra Club contentions 9, 14, 20, and 23 explain that there are issues that create a risk of leaks during storage.

In addition, the ER, 4.3.3, states that soils may be affected by spills and leaks of radiological and hazardous materials. The ER then goes on to claim that the facility is allegedly designed to prevent leakage, but the ER has still acknowledged leakage.

Once again, Holtec attempts to argue factual disputes regarding George Rice's facts and opinions. But Mr. Rice is qualified to make those statements and he has provided the bases for his statements and opinions. Factual disputes are not appropriate at the contention admissibility stage.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that

contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 16

The Answers to this contention mirror the Answers to Contention 15. There is sufficient information to raise the specter of leaks from the casks into the groundwater. Otherwise, the NRC Staff and Holtec are simply arguing factual disputes.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 17

The Answers to this contention mirror the Answers to Contention 15. There is sufficient information to raise the specter of leaks from the casks into the groundwater. Otherwise, the NRC Staff and Holtec are simply arguing factual disputes.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire, (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 18

The Answers to this contention mirror the Answers to Contention 15. There is sufficient information to raise the specter of leaks from the casks into the groundwater. Otherwise, the NRC Staff and Holtec are simply arguing factual disputes.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire, (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 19

Because the packer tests were not performed properly, the permeability of the Holtec CIS site cannot be properly assessed. The permeability of the site determines the extent to which radioactive material can enter the groundwater. This is stated in the contention.

Beyond that, the Answers to this contention mirror the Answers to Contention 15. There is sufficient information to raise the specter of leaks from the casks into the groundwater. Otherwise, the NRC Staff and Holtec are simply arguing factual disputes.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire , (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 20

This contention is based on the unique risks of high burnup fuel and lack of any discussion of these specific risks in the ER. NRC Staff points to section 4.9.3.2 of the ER as discussing the impacts of operating the Holtec facility. But there is nothing in that section that discusses the issues of high burnup fuel as set forth in this contention, based on information from Dr. Marvin Resnikoff. Further, NRC Staff indicate that the statements in section 4.9.3.2 of the ER "appear[]" to be derived from the Yucca Mountain SEIS, section 6.1.8. Section 6.1.8, in

turn, refers to radionuclide inventories in Appendix G of that document. But that does not address the cladding issues Dr. Resnikoff described in this contention.

The contention clearly states and explains that the ER and SAR must discuss and evaluate the risks of transporting and storing high burnup fuel for the reasons explained by Dr. Resnikoff in the contention.

Once again, the Answers attempt to argue factual disputes regarding facts and opinions. But Marvin Resnikoff, whose opinions form the basis of the contentions, is qualified to make those statements and he has provided the bases for his statements and opinions. Factual disputes are not appropriate at the contention admissibility stage.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire, (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny

intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 21

Like Contention 20, this contention is based on the unique risks of high burnup fuel, specifically with respect to transportation. 10 C.F.R. § 72.108 requires an ER to adequately discuss and evaluate the impacts of transportation of nuclear waste to a storage facility. Therefore, this contention is about safe transportation, not an attack on a regulation regarding the containers holding the waste.

Although NRC staff guidance ISG-11, Rev. 3, is not a regulation, it does provide a basis for determining what would prevent environmental impacts from transporting the radioactive waste.

Once again, the Answers attempt to argue factual disputes regarding facts and opinions. But Marvin Resnikoff, whose opinions form the basis of the contentions, is qualified to make those statements and he has provided the bases for his statements and opinions. Factual disputes are not appropriate at the contention admissibility stage.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear

Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire, (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 22

Like Contention 21, this contention is based on the unique risks of high burnup fuel, specifically with respect to transportation. 10 C.F.R. § 72.108 requires an ER to adequately discuss and evaluate the impacts of transportation of nuclear waste to a storage facility. Therefore, this contention is about safe transportation, not an attack on a regulation regarding the containers holding the waste.

NRC Staff point to pages 4.32 and 4.34 of the ER to claim that there was an evaluation of transportation risks. But those pages don't show that the specific issues identified by Dr. Resnikoff have been addressed, nor that

the issues were addressed in terms of real life accident conditions based on the specific facts of the Holtec project. That is what Dr. Resnikoff said must be done.

Once again, the Answers attempt to argue factual disputes regarding facts and opinions. But Marvin Resnikoff, whose opinions form the basis of the contentions, is qualified to make those statements and he has provided the bases for his statements and opinions. Factual disputes are not appropriate at the contention admissibility stage.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire, (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 23

Like the previous contentions, this contention is based on the unique risks of high burnup fuel. The contention describes the necessary steps to assure that the high burnup fuel will not have gross cladding defects.

NRC Staff claims that Section 9.2 of the SAR addresses this issue. It does not appear, however, that the specific issues identified by Dr. Resnikoff are addressed in the SAR.

Once again, the Answers attempt to argue factual disputes regarding facts and opinions. But Marvin Resnikoff, whose opinions form the basis of the contentions, is qualified to make those statements and he has provided the bases for his statements and opinions. Factual disputes are not appropriate at the contention admissibility stage.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), 28 NRC 440, 446 (1988); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988). What is required is that the intervenor state the reasons for its concerns. Public Service Co. of New Hampshire, (Seabrook Station, Units 1 & 2), 16 NRC 1649, 1654 (1982). The contention rules require only that contentions have "at least some minimal factual and legal foundation in support" and are not to be a "fortress to deny

intervention." U.S. Dept. of Energy (High Level Waste Repository), LBP-09-06 (May 11, 2009).

CONTENTION 24

In this contention Marvin Resnikoff has described the risk of shipping canisters containing radioactive material before it is adequately cooled. As Dr. Resnikoff states, Holtec has not explained how it will ensure that the containers received at the CIS facility will contain adequately cooled spent fuel.

The data and information necessary for Dr. Resnikoff to form a more detailed opinion are not available. As explained in a preceding reply herein, the SUNSI procedure suggested by NRC Staff is not a reasonable avenue under the circumstances to obtain the information needed to expand on the statements in the contention.

Once again, the Answers attempt to argue factual disputes regarding facts and opinions. But Marvin Resnikoff, whose opinions form the basis of the contentions, is qualified to make those statements and he has provided the bases for his statements and opinions. Factual disputes are not appropriate at the contention admissibility stage.

The ASLB should not address the merits of a contention when determining its admissibility. Vermont Yankee Nuclear

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CONTENTION 25

Sierra Club, pursuant to 10 C.F.R. § 2.309(f)(3), stated that it adopts all contentions presented by Don't Waste Michigan, et al. In that contention, Sierra Club did not designate a representative with authority to act on its behalf with respect to the Don't Waste Michigan contentions. Sierra Club now designates Terry J. Lodge as Sierra Club's representative with respect to the Don't Waste Michigan contentions.

CONCLUSION

Based on the foregoing, Sierra Club has established standing and its contentions are admissible.

/s/ *Wallace L. Taylor*

WALLACE L. TAYLOR
Law Offices of Wallace L. Taylor
4403 1st Ave. S.E., Suite 402
Cedar Rapids, Iowa 52402
319-366-2428;(Fax)319-366-3886
e-mail: wtaylorlaw@aol.com

ATTORNEY FOR PETITIONER

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF	)	
	)	Docket No. 72-1051
HOLTEC INTERNATIONAL	)	
	)	
(Consolidated Interim Storage Facility Project)	)	October 16, 2018

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of Reply to the Answers filed by Holtec International and the NRC Staff were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned proceeding.

/s/ *Wallace L. Taylor*

WALLACE L. TAYLOR
Law Offices of Wallace L. Taylor
4403 1st Ave. S.E., Suite 402
Cedar Rapids, Iowa 52402
319-366-2428;(Fax)319-366-3886
e-mail: wtaylorlaw@aol.com

ATTORNEY FOR PETITIONER