

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

In the Matter of)	
)	Docket No. 72-1051
Holtec International)	
)	ASLBP No. 18-958-01-ISFSI-BD01
(HI-STORE Consolidated Interim Storage)	
Facility))	

Holtec International’s Answer Opposing Motions by Sierra Club and Don’t Waste Michigan, Citizens’ Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group, to Adopt the Other’s Contentions

Pursuant to 10 C.F.R. § 2.323(c), Holtec International (“Holtec”) hereby answers and opposes two motions filed on January 11, 2019, in the HI-STORE Consolidated Interim Storage Facility (“CISF”) license proceeding, one motion filed by Don’t Waste Michigan, Citizens’ Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group¹ (collectively “DWM”), and the second motion filed by Sierra Club² (collectively with DWM, the “Petitioners”). Petitioners impermissibly seek to adopt the other petitioners’ contentions as their own. Sierra Club seeks to adopt all the contentions of DWM, and to designate Terry J. Lodge (counsel for DWM) as Sierra Club’s representative regarding these contentions.³ By separate Motion, DWM seeks to adopt all the contentions of Sierra Club

¹ Motion of Don’t Waste Michigan, Citizens’ Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace and Nuclear Issues Study Group to Adopt and Litigate Sierra Club Contentions (Jan. 11, 2019) (“DWM Motion”).

² Sierra Club’s Motion to Adopt the Contentions of Don’t Waste Michigan, Citizens’ Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Nuclear Issues Study Group, San Luis Obispo Mothers for Peace, and Public Citizen (Jan. 11, 2019) (“Sierra Club Motion”).

³ Sierra Club Motion at 1.

and to “re-allege and litigate them as their own.”⁴ DWM further states that Sierra Club “shall act as the primary party with respect to its contentions” and designates Wallace L. Taylor (counsel for Sierra Club) as DWM’s representative as to these contentions.⁵

Neither Petitioner has met the Commission’s requirements to adopt another petitioner’s contentions. Both Petitioners’ Motions fail to meet the requirements that 10 C.F.R. § 2.309(f)(3) imposes on a petitioner who wants to adopt another’s contentions. Consequently, the Atomic Safety and Licensing Board (the “Board”) should reject both Motions.

Before considering compliance with 10 C.F.R. §2.309(f)(3), NRC case law imposes additional requirements for adopting another petitioner’s contentions that neither Petitioner has met. Specifically, for Sierra Club or DWM to adopt the other’s contentions, it must first demonstrate it has standing and submit an admissible contention. A petitioner who has not submitted an admissible contention will not be allowed to adopt the contentions of other petitioners.⁶ Neither of the Petitioners has yet demonstrated its standing nor submitted an admissible contention in this proceeding. Therefore, neither Petitioner may adopt the contentions of the other.

Petitioners claim that the Board “may provisionally allow [two petitioners] to adopt each other’s issues early in the proceeding” where they “have independently met the requirements to participate in a licensing proceeding.”⁷ Petitioners, however, overlook the Commission’s “cautionary note” in its *Indian Point* decision:

⁴ DWM Motion at 1.

⁵ *Id.* at 1-2.

⁶ See *Entergy Nuclear Ops, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 N.R.C. 43, 65 (2008).

⁷ See DWM Motion at 2 (*citing Consol. Edison Co.* (Indian Point, Units 1 and 2), CLI-01-19, 54 N.R.C. 109, 131-133 (2001)).

We add a cautionary note. Although we are provisionally permitting incorporation of issues by reference here, where each Petitioner has shown substantial effort in preparing its own issues, we do not give carte blanche approval of the practice [of adopting another petitioner's contentions] for all contexts....For instance, ...*we would not accept incorporation by reference of another petitioner's issues in an instance where the petitioner has not independently established compliance with our requirements for admission as a party in its own pleadings by submitting at least one admissible issue of its own.*⁸

As Holtec has set forth in its answers to the initial petitions to intervene⁹, neither of the Petitioners has met the NRC's requirements for admission as a party and therefore may not adopt the contentions of the other.

In addition, DWM apparently seeks rights which go beyond the authority of 10 C.F.R. § 2.309(f)(3), in that it states that Sierra Club would be the "*primary party*" with respect to Sierra Club's contentions.¹⁰ This language suggests that DWM may envision its role as a "secondary" representative as to those issues, a suggestion that seems to be supported by the request that DWM be allowed to "re-allege and litigate" Sierra Club's contentions as their own.¹¹ The NRC regulation, however, clearly states that for adopted contentions, the sponsoring petitioner "shall act as *the* representative" or shall jointly designate "*a* representative who shall have the authority to act for the requestors/petitioners with respect to that contention."¹² In other words, there is a single representative for each contention, not multiple representatives.

⁸ *Indian Point*, CLI-01-19, 54 N.R.C. at 132-133 (emphasis added).

⁹ Holtec International's Answer Opposing Sierra Club's Petition to Intervene and Request for Adjudicatory Hearing, dated October 9, 2018, and Holtec International's Answer Opposing the Don't Waste Michigan [et al] Petition to Intervene and Request for Adjudicatory Hearing, dated October 9, 2018.

¹⁰ DWM Motion at 1 (emphasis added).

¹¹ *Id.*

¹² 10 C.F.R. § 2.309(f)(3) (emphasis added).

Moreover, the purpose of Petitioners' Motions is unclear. In their initial petitions, Petitioners already have sought to adopt the other's contentions.¹³ Holtec opposed both adoption attempts.¹⁴ Now, less than two weeks before oral argument, Petitioners resubmit their request in the form of stand-alone Motions. However, neither Motion addresses Holtec's previous response nor presents any new argument which could warrant the Board's consideration.

For all of the foregoing reasons, the Board should reject Petitioners' Motions.

Respectfully submitted,

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January 17, 2019

Counsel for HOLTEC INTERNATIONAL

¹³ See Petition of Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace and Nuclear Issues Study Group to Intervene and Request for an Adjudicatory Hearing at p. 88 (Sept. 14, 2018) ("Contention No. 13 . . . Pursuant to 10 C.F.R. § 2.309(f)(3), Petitioners move to adopt all contentions filed by the Sierra Club in this proceeding and to re-allege them as their own as if written herein."); and Petition to Intervene and Request for Adjudicatory Hearing by Sierra Club at p. 82 (Sept. 14, 2018) ("CONTENTION 25 . . . Pursuant to 10 C.F.R. § 2.309(f)(3), Petitioner moves to adopt all contentions filed by [DWM] in this proceeding and to re-allege them as their own as if written herein.").

¹⁴ See Holtec International's Answer Opposing the Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group Petition to Intervene and Request for an Adjudicatory Hearing on Holtec International's HI-STORE Consolidated Interim Storage Facility Application at pp. 89-90 (Oct. 9, 2018) (explaining that DWM's "contention" requesting that it be allowed to adopt all of Sierra Club's contentions was inadmissible and should be rejected); and Holtec International's Answer Opposing Sierra Club's Petition to Intervene and Request for Adjudicatory Hearing on Holtec International's HI-STORE Consolidated Interim Storage Facility Application at pp. 122-23 (Oct. 9, 2018) (explaining that Sierra Club's "contention" requesting that it be allowed to adopt all of DWM's contentions was inadmissible and should be rejected).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Holtec International’s Answer Opposing Motions by Sierra Club and Don’t Waste Michigan, Citizens’ Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group, to Adopt the Other’s Contentions has been served through the E-Filing system on the participants in the above-captioned proceeding this 17th day of January, 2019.

/signed electronically by Timothy J. V. Walsh/
Timothy J. V. Walsh