

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:)	
)	
Holtec International)	Docket No. 72-1051
)	
(HI-STORE Consolidated Interim Storage Facility))	
)	

**MOTION BY PETITIONERS 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 FOR LEAVE
TO FILE A NEW CONTENTION**

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(c), Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group (collectively, "Petitioners") proceeding by and through counsel, hereby move to file a new contention seeking a finding that Holtec International has made one or more material false statements and should be disqualified from the pursuit of a Nuclear Regulatory Commission license to construct and operate a consolidated interim storage facility ("CISF") for spent nuclear fuel ("SNF") in New Mexico.

Holtec recently published a contradictory and controversial statement upon which this Motion is based in a year-end report on its 2018 business ventures, *Reprising 2018* (Jan. 2, 2019) (emphasis added) (Exhibit 1 to the attached Contention 14). The report states:

While we endeavor to create a national monitored retrievable storage location for aggregating used nuclear fuel at reactor sites across the U.S. into one (HI-STORE CISF) to maximize safety and security, *its deployment will ultimately depend on the DOE and the U.S. Congress.*

Id. at 1 (emphasis added). By stating that deployment of the consolidated interim storage facility (“CISF”) “ultimately will depend on” the U.S. Department of Energy (“DOE”) and the U.S. Congress, Holtec contradicts multiple representations in its license application and pleadings in responses to Petitioners’ hearing request that ownership of the spent fuel transported to and stored at the Holtec CISF may lie with *either* the DOE *or* a private licensee. The true fact according to Holtec is that both economic involvement by the DOE, and Congressional action to change or revoke the Nuclear Waste Policy Act (“NWPA”), are prerequisites to Holtec’s ability to proceed to open and operate the CISF. The particulars of the material false statements attributed to Holtec by Petitioners are set forth in Petitioners’ Contention 14.

REQUEST FOR LEAVE TO SUBMIT A NEW CONTENTION

A. Applicable Standards

A petitioner may file a new contention if the presiding officer finds that the petitioner “has demonstrated good cause” by satisfying the following factors set forth in 10 C.F.R. § 2.309(c) : (i) the information on which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information. An amended contention generally is considered timely if it is filed within 30 days of the date upon which the new information became available. *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 N.R.C. 460, 493 (2008) (“Many times, boards have selected 30 days as [the] specific presumptive time period” for timeliness of contentions filed after the initial deadline).

Petitioners respectfully submit that it is appropriate to allow filing of the new contention because new information shows that material statements in a license application and surrounding representations are false or incorrect, and the Commission emphasizes the importance of “completeness and accuracy of information submitted by applicants and licensees” and demands “[n]othing less than candor.” *Randall C. Orem, D.O.*, CLI-93-14, 37 N.R.C. 423, 427 (1993) (citing *Petition for Emergency and Remedial Action*, CLI-78-6, 7 N.R.C. 400, 18 (1978); *Hamlin Testing Laboratories, Inc.*, 2 A.E.C. 423, 428 (1964), *aff’d*, 357 F.2d 632 (6th Cir. 1966); *Virginia Electric and Power Co. (North Anna Power Station, Units 1 & 2)*, CLI-76-22, 4 N.R.C. 480 (1976), *aff’d*, 571 F.2d 1289 (4th Cir.1978)).

B. Request for Leave to Submit New Contention

Petitioners seek to submit a new contention demonstrating that Holtec has made one or more material false statements in violation of § 186 of the Atomic Energy Act (42 U.S.C. § 2236) by the publication of the cited statements from the *Reprising 2018* report. There, Holtec contradicted application statements as well as assertions made in answer to DWM *et al.*’s Petition for Leave to Intervene. Holtec declared in *Reprising 2018* that:

While we endeavor to create a national monitored retrievable storage location for aggregating used nuclear fuel at reactor sites across the U.S. into one (HI-STORE CISF) to maximize safety and security, *its deployment will ultimately depend on the DOE and the U.S. Congress.*

Reprising 2018 at 1 (emphasis added). By stating that deployment of the CISF “ultimately will depend on” the DOE and the U.S. Congress, Holtec contravened insurances in its license application and in its responses to Petitioners’ hearing request that the CISF might be a completely private operation, without involvement by the DOE. The new story line from the *Reprising 2018* report acknowledges that both involvement by the DOE and Congressional

action to change or revoke the National Waste Policy Act are prerequisites to operating the facility.

The statement negates representations by Holtec’s counsel, statements made by Holtec corporate officials prior to submitting the license application, and statements in the Holtec Environmental Report that DOE ownership of spent fuel was neither optional nor aspirational, but was, instead, obligatory. The “either or” language in the license application falsely set up DOE and private ownership of spent fuel as competing alternatives, and is inconsistent with Holtec’s representations *outside* this licensing proceeding that DOE’s involvement in the project is essential.

C. Demonstration That the Factors in 10 C.F.R. § 2.309(c)(i) – (iii) Are Satisfied.

Petitioners satisfy the three-prong test for good cause to file a new contention based on new information, as follows:

(i) The information upon which the amended or new contention is based was not previously available.

The Reprising 2018 Report on which Petitioners rely was not publicly available until January 2, 2019.

(ii) The information upon which the amended or new contention is based is materially different than information previously available.

The statement in the Reprising 2018 Report materially differs from Holtec’s license application, which suggests that DOE may or may not be involved in the proposed CISF’s operation. The statement now shows that DOE involvement is a prerequisite. The statement also confirms that accuracy of statements made by Holtec officials prior to submitting the license application that DOE participation in the project is assumed. Finally, the statement shows that Holtec understands that DOE involvement

in the CISF project would be illegal under the NWPA unless Congress acts to amend the law.

(iii) The new contention has been submitted in a timely fashion based on the availability of the subsequent information.

The new contention is being filed within 30 days of Petitioners' having learned of the issuance of the Reprising 2018 Report, and therefore is timely. *Shaw AREVA MOX Services*, 67 N.R.C. at 493.

CONCLUSION

For the foregoing reasons, the ASLB should grant Petitioners' Motion and all their new Contention 14.

Respectfully submitted,

/s/ Terry J. Lodge

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January 17, 2019

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NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY**

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2019, the foregoing “MOTION BY PETITIONERS 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 FOR LEAVE TO FILE A NEW CONTENTION” was posted on the NRC’s Electronic Information Exchange System.

/s/ Terry J. Lodge
Terry J. Lodge
Counsel for Petitioners