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**NUCLEAR REGULATORY COMMISSION**

Title: Holtec International  
(HI-STORE Consolidated Interim  
Storage Facility)

Docket Number: 72-1051-ISFSI

ASLBP Number: 18-958-01-ISFSI-BD01

Location: Albuquerque, New Mexico

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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

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Thursday, January 24, 2019

State Bar of New Mexico  
5121 Masthead Street NE  
Albuquerque, New Mexico

BEFORE:  
PAUL S. RYERSON, Chair  
GARY S. ARNOLD, Administrative Judge  
NICHOLAS G. TRIKOUROS, Administrative Judge

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## P R O C E E D I N G S

9:00 a.m.

1  
2  
3 CHAIR RYERSON: Good morning, please be  
4 seated. Welcome again, everyone. We're back here for  
5 the second day of oral arguments on the Holtec matter,  
6 Holtec International application to construct and  
7 operate an interim nuclear waste facility in Lea  
8 County, New Mexico.

9 I think the way we'll proceed this morning  
10 is, first, with Fasken. And then, I believe that --  
11 if the representative of the City of Carlsbad is here,  
12 we'll give you a few minutes to say what you would  
13 like to say.

14 And then, we will turn to Holtec, which  
15 will probably take quite a bit more time. And  
16 finally, the NRC staff.

17 Any questions about how we're proceeding  
18 today that we haven't addressed? Everybody's prepared  
19 to go forward? Good. Somebody -- yes, and a  
20 reminder, again, to turn off or silence your cell  
21 phones, will help a lot. Okay.

22 Well, let's begin, then, with the  
23 representative of Fasken, Mr. Eye.

24 MR. EYE: May it please the Panel, my name  
25 is Robert Eye. I represent Fasken and Permian Basin

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1 Land and Royalty Owners.

2 At a bare minimum, any decision concerning  
3 the establishment of a consolidated interim storage  
4 facility that would have the greatest concentration of  
5 radiation between here and the sun should be done in  
6 conformance with applicable law.

7 The application before you now does not  
8 meet this minimum test. Including any Department of  
9 Energy involvement in this proposal violates the  
10 Nuclear Waste Policy Act.

11 When Congress passed the NWPA, it  
12 recognized the real possibility that establishing a  
13 CISF without a deep geologic repository would  
14 effectively relieve the pressure off the imperative to  
15 establish a deep geologic repository.

16 Why did Congress, in the NWPA, require the  
17 repository be available and operational before  
18 allowing a CISF? Congress well recognized that  
19 putting a CISF into operation simply allowed a further  
20 delay in establishing a deep repository, kicking the  
21 can down the road farther.

22 And, yes, in 2019, there seems to be a  
23 doubt about whether this unambiguous intent of  
24 Congress, that clearly is manifested in the text of  
25 the NWPA, is being met by the application presented by

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1 Holtec.

2 This doubt raises all the familiar  
3 problems with reaching a final disposition on spent  
4 nuclear fuel in a deep geologic repository.

5 As plans are made to store 173,000 metric  
6 tons of spent nuclear fuel in Southeast New Mexico,  
7 durations of time for the use of this facility exceed  
8 100 years.

9 What is the public to make of this?  
10 Hearing these durations with no prospect of a deep  
11 geologic repository raises the issue of an adherence  
12 to the rule specified in the NWPA.

13 The Applicant and staff have been silent  
14 about this attempted end-run around the NWPA. This  
15 silence, coupled with the idea that the proposed CISF  
16 will be in operation for over 100 years, leads to the  
17 conclusion that a deep geologic repository is just so  
18 much pie in the sky.

19 The authors of the NWPA would be troubled  
20 and perplexed by this circumstance. They would be, I  
21 think, very disagreeable about how their careful  
22 sequencing and balancing in the NWPA has been  
23 disregarded in the Holtec application.

24 This application puts the cart before the  
25 horse. In doing so, the NWPA is violated. And that

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1 is why Fasken and PBLRO took the steps it did to file  
2 a motion to dismiss the application.

3 And I'm sure that there will be -- I sense  
4 that there may be some questions about that later, so  
5 I will turn and make a few brief statements about  
6 standing.

7 Fasken and PBLRO have standing. First, as  
8 discussed in the declaration of Tommy Taylor from  
9 Fasken, Fasken has mineral interests two miles from  
10 the Holtec site. These are mineral interests that  
11 represent a substantial business investment and they  
12 want to protect those.

13 This close proximity puts Fasken well  
14 within the zone of the 14 to 17 miles that we've  
15 discussed, we've heard discussed prior, that has been  
16 recognized as proximate distance to justify standing  
17 in the CISF context.

18 Fasken's interests, and the interests of  
19 their counterparts in PBLRO, are jeopardized by the  
20 Holtec proposal for its CISF.

21 Not only are the economic interests  
22 related to the mineral rights at stake, but, as Mr.  
23 Taylor points out in his declaration, there are  
24 concerns about the health and safety of people in the  
25 area who are exposed to this radiation.

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1           And then, indeed, that might force Fasken  
2           to incur further costs to accommodate a CISF. Fasken  
3           and other members of PBLRO work and live in that area.  
4           And Fasken, for example, has to dispatch workers out  
5           to that area, to tend to its interests.

6           Fasken recognizes that things like medical  
7           costs, lost productivity, and long-term viability of  
8           their business interests are directly at stake with  
9           the CISF that's proposed in this matter.

10           You heard yesterday about how oil and gas  
11           industry is so robust in the Permian Basin area that  
12           they can't find enough workers to fill all the  
13           available positions.

14           This is a sign of business activity that  
15           is not only enviable, but it helps sustain the economy  
16           of this area. The thousands of jobs that Fasken and  
17           its PBLRO counterparts offer are at stake, which  
18           ripples through the way of life of this entire area.

19           PBLRO's purpose, as stated in our papers,  
20           is to protect those interests from the hazards  
21           represented by the Holtec CISF. Accordingly, PBLRO  
22           has representative standing. With that, I will do my  
23           best to answer any questions that you have.

24           CHAIR RYERSON: Thank you, Mr. Eye. I  
25           think we put in our January 10 order two questions

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1 that really are directed at you, Questions 3 and 4.

2 Let's assume that your clients have  
3 standing, hypothetically, let's assume the Board  
4 concluded that. The issue that we see is -- and it's  
5 complicated by the procedural posture here. Let me go  
6 back a little bit.

7 You, on behalf of your clients, filed a  
8 motion to dismiss, as I recall, not a petition with  
9 contentions. And Beyond Nuclear filed both a motion  
10 to dismiss, and as a protective matter, a petition  
11 with one contention, fundamentally the same issue as  
12 the motion to dismiss.

13 Your motion was directed at the Commission  
14 through the Secretary. The Commission has in effect  
15 said that we should treat it, treat your motion, as a  
16 petition with a contention.

17 The problem that I see, I think the Board  
18 has concerns about, is that Commission case law is  
19 pretty clear that a Petitioner may adopt the  
20 contention of another Petitioner, but only if the  
21 Petitioner who wants to do the adopting has a  
22 contention of its own.

23 And in this instance, your motion  
24 essentially adopts the arguments presented by Beyond  
25 Nuclear's motion. And so, therefore, aren't we kind

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1 of stuck with the rule that you have not submitted a  
2 contention of your own?

3 MR. EYE: As we explained in our response,  
4 that I think addressed this, at least in part, it was  
5 never our intention to present a contention.

6 CHAIR RYERSON: Right.

7 MR. EYE: I mean, to us, this is a  
8 counterpart, a parallel, it's analogous to a Federal  
9 Rule of Civil Procedure 12(b) motion. It says, in  
10 effect, that the Commission lacks jurisdiction.  
11 That's a classic 12(b) motion.

12 If we conceive that a petition -- or  
13 rather, that a contention is necessary, we effectively  
14 have abandoned this idea that somehow you have -- that  
15 you don't have jurisdiction. We implicitly say, with  
16 this contention, you have jurisdiction to decide this  
17 case.

18 And indeed, it goes at the heart of our  
19 arguments that the issue of the NWPA's involvement in  
20 this case, although absent from the discussion from  
21 the Applicant and staff, is one that is extant and  
22 it's existential in this case.

23 A jurisdictional matter ought to be  
24 handled properly in the context of the motion to  
25 dismiss. I will grant you that it falls outside the

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1 strict formalities of contention practice, but so does  
2 the omission of discussions of the NWPA.

3 So, how do we respond to that? Do we  
4 essentially accede to the idea that the Commission has  
5 jurisdiction, submit a contention, and let it play  
6 out, only then to be confronted by a judge on appeal  
7 who says, it appears to us that in fact you recognized  
8 the NRC's jurisdiction over this?

9 So, we were caught -- one of the other  
10 counsel put it well yesterday, caught between the  
11 proverbial rock and hard place. The context of this  
12 is unusual, it's unusual for the Panel, the  
13 Commission, for the participants.

14 And we couldn't find another instance, and  
15 we looked, we couldn't find another instance where the  
16 Secretary had actually taken the step that was taken  
17 here, where they take a pleading, they send it back to  
18 the Panel, and they say, treat it in this way.

19 So, that lack of precedent puts us all  
20 into unknown territory, I suppose, or unchartered  
21 territory, to a certain extent. But we have to  
22 remember that the essential piece of this is to ask,  
23 has the Applicant conformed to the Nuclear Waste  
24 Policy Act?

25 Irrespective of the procedural means to

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1 get to that question, whether it's through a  
2 contention, whether it's through a motion to dismiss,  
3 the issue remains the same.

4 So, we certainly were not intentionally  
5 setting out to make this thing a procedural morass, we  
6 really were not. On the other hand, we had to make  
7 some judgment calls about how to proceed and this  
8 seemed like a logical way to proceed, to have it run  
9 more or less like a 12(b) motion would in civil  
10 practice in court.

11 CHAIR RYERSON: Yes. Beyond Nuclear's  
12 response to the Secretary's ruling was also to go  
13 directly to a Federal Court of Appeals, in Beyond  
14 Nuclear's case, the United States Court of Appeals for  
15 the District of Columbia Circuit.

16 Have you sought relief in the Court of  
17 Appeals in an interlocutory basis? Or have you sought  
18 any relief in the Court of Appeals?

19 MR. EYE: I'm sorry, I didn't hear the last  
20 part of your question.

21 CHAIR RYERSON: Have you sought to review  
22 the SECY's order in the Court of Appeals?

23 MR. EYE: We have not yet.

24 CHAIR RYERSON: Okay. Hasn't your -- do  
25 you still have time to do that?

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1 MR. EYE: We have not. We're here --

2 CHAIR RYERSON: Okay.

3 MR. EYE: -- and again, this is, frankly,  
4 this is a procedural scenario that only Franz Kafka  
5 could really completely appreciate.

6 (Laughter.)

7 MR. EYE: And it does leave us all a little  
8 uncertain about what steps ought to be taken.

9 So, partly respecting the fact that the  
10 Secretary sent this, sent our motion back to the Panel  
11 and ask that it be characterized and considered as a  
12 contention, in respect of that, and to have an  
13 opportunity to present our arguments to you, we hope  
14 in a persuasive fashion, we decided to pursue this  
15 route at this point.

16 And again, it is unusual. It's -- we're  
17 hoping that at some point procedurally, we get  
18 clarification. But I'm not actually counting on that.

19 CHAIR RYERSON: Okay. I think, if I  
20 understand your argument correctly, and I think I do  
21 better as a result of your comments right now, if you  
22 had filed a petition with one contention that adopted  
23 someone else's contention, it is pretty clear, I  
24 think, under Commission precedent, that you are out.  
25 That you can't just adopt somebody else's contention,

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1 you have to have one of your own.

2 But what you're saying is, I think, is  
3 that this is a very unusual, indeed unique, situation,  
4 where we, that is the Board, has been told to treat  
5 this as a contention, but this is unprecedented and  
6 perhaps the Commission's ruling on that issue was  
7 intended to apply to people who had intentionally  
8 filed contentions, but not to those who were told, you  
9 may have filed a motion, but it is a contention, it's  
10 going to be treated as a contention, so we should  
11 consider it in that light.

12 MR. EYE: Perhaps. I mean, but there are  
13 other ways to interpret what was done as well. So,  
14 again, we're working in sort of an unclarified  
15 context.

16 CHAIR RYERSON: Yes. But, I mean, what  
17 you're saying, I think, is that we should consider  
18 whether the Commission precedent applies in this  
19 unique situation. The Commission precedent in the  
20 normal situation is, I think, pretty clear.

21 But you are urging that we take a hard  
22 look at whether the Commission precedent, which would  
23 effectively throw you out, your client out, whether  
24 the Commission would really have intended for it to  
25 apply in this unique situation?

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1 MR. EYE: That is correct, Your Honor. And  
2 one other minor, I think relatively minor point here.  
3 I'm not sure that I really agree that we have adopted  
4 the contention of Beyond Nuclear. We adopted their  
5 legal argument, because they happen to support our  
6 client's interest.

7 The contentions have certainly the same  
8 intention, rely upon the same legal reasoning, but  
9 they're different parties, with different interests,  
10 that -- so, I don't really think that that point is  
11 controlling.

12 I don't think it's dispositive. I think  
13 what's dispositive is what you just articulated,  
14 Judge, in terms of trying to figure out what to do in  
15 this unusual context, where you have neither fish nor  
16 fowl. And yes, that is unusual.

17 The NRC's general practice for resolving  
18 these kinds of disputes is through contentions. So,  
19 all of a sudden, now, you get a party who throws a  
20 curve ball and raises a motion to dismiss.

21 It's not as if motions to dismiss are  
22 unusual or unheard of in various forms of practice,  
23 it's just that in this context, it's outside of what  
24 is normally expected.

25 CHAIR RYERSON: Okay. Thank you. Judge

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1 Arnold, did you have questions?

2 JUDGE ARNOLD: No questions.

3 CHAIR RYERSON: Judge Trikouros?

4 JUDGE TRIKOUROS: No questions.

5 CHAIR RYERSON: Thank you.

6 MR. EYE: Thank you.

7 CHAIR RYERSON: Well, let's deal with a few  
8 brief comments from the City of Carlsbad. Is that Mr.  
9 Shirley? Welcome, Mr. Shirley.

10 MR. SHIRLEY: Thank you, Your Honor. I  
11 appreciate the opportunity to speak to you today. And  
12 I apologize, my voice is a little rough today, so  
13 we're going to get through this though.

14 As you know, my name is Jason Shirley. I  
15 serve on the City Council in Carlsbad and I'm the  
16 designated representative to the Eddy-Lea Energy  
17 Alliance that is working with Holtec on this project.

18 Carlsbad has an official population of  
19 27,000 people, but is much larger in recent years, due  
20 to the expansion of the oil and gas in the region.  
21 Additionally, Carlsbad's approximately 35 miles away  
22 from the proposed Holtec HI-STORE Consolidated Interim  
23 Storage Facility.

24 Carlsbad has been keenly interested in the  
25 development of the Holtec site since the 2013 report

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1 from the President's Blue Ribbon Commission  
2 recommendation that a consolidated interim storage  
3 facility be established.

4 The CISF will have a real impact on our  
5 community and we expect that it will bring the  
6 following benefits to Carlsbad. That it will create  
7 several hundred jobs for our citizens. That those  
8 jobs will come with high salaries and raise local wage  
9 averages.

10 That it will generate significant tax  
11 revenue for the City of Carlsbad, improving our  
12 infrastructure and further diversifying our economy.  
13 It will not only benefit our region, but also provide  
14 a service for our nation in safely storing spent  
15 nuclear fuel.

16 We're familiar with living near a site for  
17 nuclear waste disposal, as we're located 25 miles from  
18 the existing Waste Isolation Pilot Plant Facility  
19 that's ran by the Department of Energy, which employs  
20 some 1,200 people and has a \$400 million annual budget  
21 that benefits the region very greatly.

22 Our constituents support the Holtec CISF.  
23 We know that we are a nuclear savvy community, with  
24 many years of experience in the field. We've seen  
25 success and we follow the science and we have a

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1 culture of safety in Carlsbad.

2 We also are here today to show our support  
3 for the Holtec CISF. It's welcome in our community.  
4 We look forward to the jobs, the revenue, the  
5 diversification, and the other benefits that it will  
6 create. Thank you so much for your time today.

7 CHAIR RYERSON: Thank you, Mr. Shirley.

8 MR. SHIRLEY: Yes, sir.

9 CHAIR RYERSON: And I'd just like to  
10 confirm, I believe we heard yesterday that the City of  
11 Hobbs will not be participating orally. Again, all of  
12 the petitions by local governments stand unopposed at  
13 this point. So, there's certainly no need to say  
14 anything today.

15 We will next move to Holtec. And just two  
16 comments to start. I don't know -- Mr. Silberg, will  
17 you be speaking?

18 MR. SILBERG: I will be making the opening  
19 statements.

20 CHAIR RYERSON: The opening statement. I  
21 don't know if you need extra time. We recognize it's  
22 five and a half, again, five and a half to one, at  
23 this point, perhaps is the way to characterize it, so  
24 our clocks might run a little slow on the ten minutes,  
25 if you need more time. But you may conclude that you

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1 really just want to answer the questions.

2 Either, Mr. Silberg, you or one of your  
3 colleagues probably should address, at the outset,  
4 either as part of your opening or right after it, the  
5 issue we asked for some comments on yesterday.

6 And what that related to was NAC's  
7 argument that if they are not in this proceeding to  
8 address the environmental report issues now, they will  
9 not have the same opportunity at a later time, if  
10 there's an amendment, hypothetically, that would  
11 permit the NAC canisters to be placed in the Holtec  
12 casks.

13 So, if either you, Mr. Silberg, could  
14 address that in addition to your general opening or  
15 one of your colleagues, we would appreciate that.  
16 Thank you.

17 MR. SILBERG: Good morning, Mr. Chairman,  
18 Members of the Board. Holtec International  
19 appreciates this opportunity to appear before you, as  
20 an important step forward towards the licensing of the  
21 Holtec HI-STORE Consolidated Interim Storage Facility.

22 We believe that this is a extremely  
23 important facility for this nation. Holtec is pleased  
24 to be able to sponsor it.

25 We're disappointed that we need it,

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1 because the Nuclear Waste Policy Act provided that the  
2 Department of Energy was supposed to start accepting  
3 spent nuclear fuel from the nuclear industry starting  
4 January 31, 1998, a day some of us say will live in  
5 infamy.

6 Because they have not met that obligation  
7 and because we do not have a permanent repository,  
8 facilities like this are necessary for a variety of  
9 reasons.

10 There are stranded spent fuel storage  
11 installations around the country. There will be more  
12 of them as time moves on, as plants are shut down,  
13 plants are decommissioned, and everything but the  
14 spent fuel is off the site.

15 Facilities like the Holtec facility will  
16 enable those sites to be finally returned to other  
17 productive uses. Both the utilities that own those  
18 sites and the jurisdictions in which those sites are  
19 located would desperately like that spent fuel to be  
20 stored safely and environmentally secure at another  
21 location.

22 This location is also a much more secure  
23 location than where many of the interim spent fuel  
24 storage sites are now located. Some of those are very  
25 near major metropolitan areas. There are many of them

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1 scattered around the country.

2 It is safe at those locations. We believe  
3 it is safe, the Commission has found that it is safe.  
4 But it would be better if it were in a more remote  
5 location, far away from metropolitan areas.

6 With those introductory remarks, let me  
7 first introduce the Holtec team. Our attorneys, from  
8 the Pillsbury Law Firm in Washington, myself, Jay  
9 Silberg, Tim Walsh, and Anne Leidich, my associates.

10 The Holtec management, project, and  
11 technical personnel here today: Joy Russell, who is  
12 the Senior Vice President and a member of Holtec's  
13 Executive Committee; Ed Mayer, who is our Project  
14 Director for the HI-STORE facility; and Kim Manzione,  
15 who is the Licensing Manager.

16 Let me give you a little bit of background  
17 about Holtec. The company was formed in the mid-  
18 1980s. Today, it designs, engineers, licenses,  
19 manufactures, and deploys its technology and services  
20 around the world. And while nuclear is the focus of  
21 Holtec, Holtec also provides technology for solar,  
22 geothermal, and fossil power industries.

23 Holtec's early focus was on heat exchanger  
24 technology. And today, over 120 power plants on four  
25 continents use these Holtec components.

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1           In 1992, Holtec launched its technology  
2           for dry storage of spent nuclear fuel. Among the  
3           first of that technology was the first licensed  
4           multipurpose canister for storage and transportation,  
5           the first dual-purpose metal cask, the first transport  
6           cask licensed for high burnup and MOX, mixed oxide,  
7           fuel, and the first double-walled canister for special  
8           storage.

9           The Nuclear Regulatory Commission has  
10          issued certificates of compliance under 10 CFR Part 72  
11          for four different Holtec dry storage technologies.  
12          Its dry storage systems were first installed in 2000  
13          and today, over 1,200 Holtec systems are in service,  
14          storing more than 62,000 spent fuel assemblies in 65  
15          nuclear sites in the U.S. and 51 nuclear sites abroad.

16          In addition to dry storage, Holtec is a  
17          leader in wet storage technology and is currently  
18          developing the design for a small modular nuclear  
19          reactor.

20          And more recently, Holtec has become  
21          involved in the nuclear plant decommissioning and has  
22          agreements with two utilities to own and decommission  
23          their reactors, including assuming the ownership of  
24          spent fuel.

25          The NRC staff is now reviewing the license

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1 transfer applications for those facilities. Once  
2 those transactions close, Holtec will, in essence,  
3 become a nuclear utility, owning spent fuel currently  
4 in dry storage and in pool storage.

5 Holtec manufactures all of its own  
6 equipment and has three U.S. manufacturing facilities,  
7 with more than 1,400,000 square feet of manufacturing  
8 space.

9 In addition to manufacturing dry storage  
10 systems, Holtec has also constructed spent fuel  
11 storage facilities and provides for moving spent fuel  
12 from pools to pads.

13 A little bit about the project. I think,  
14 as you've heard from representatives of the  
15 jurisdictions that will host the facility and we've  
16 worked with closely, Holtec has a well of local  
17 support for these facilities and a well of support  
18 around the state.

19 In 2015, the Governor of New Mexico wrote  
20 to the Secretary of Energy suggesting the  
21 consideration of an interim storage site in  
22 Southeastern New Mexico. In 2016, the House and  
23 Senate of the New Mexico Legislature both issued  
24 memorials in support of a CISF facility.

25 In April of 2016, the Eddy-Lea Energy

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1 Alliance, that you've heard John Heaton speak about  
2 yesterday, and the Cities of Carlsbad and Hobbs, and  
3 Holtec entered into a memorandum of agreement for the  
4 HI-STORE facility.

5 And in July of 2016, the New Mexico Board  
6 of Finance approved an option agreement for the sale  
7 of the HI-STORE site to Holtec.

8 As you've heard, the site is in Lea  
9 County, about 35 miles from Hobbs and about 35 miles  
10 east of Carlsbad. It's a little bit over 1,000 acres.  
11 The area is home to other nuclear projects, as you've  
12 heard, Urenco Uranium Enrichment Facility in Lea  
13 County and the DOE WIPP Facility in Eddy County.

14 The project itself will use Holtec  
15 canisters in the initial phase, with NRC certificates  
16 of compliance, that are loaded and welded shut at  
17 utilities, transported to the site unopened, and  
18 placed in subsurface vertical modules at the site.  
19 The canisters are not opened after being welded shut  
20 at the utility site.

21 The initial phase will be -- for which  
22 we've applied, is 8,680 metric tons or 500 casks, and  
23 the initial phase is limited to Holtec casks and  
24 canisters.

25 There may be subsequent phases. The site

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1 is capable of storing 100,000 metric tons of uranium,  
2 in 10,000 canisters. Holtec is not asking for a  
3 license beyond Phase 1. But because expansion is  
4 possible, the environmental report evaluates the  
5 environmental impacts for all phases.

6 And I would notice there have been a lot  
7 of discussion that the capacity is 173,000 metric tons  
8 of uranium, that is a number that is not correct. The  
9 capacity, as defined by Holtec, is 100,000 metric  
10 tons.

11 Studies at the site started in 2006, as  
12 part of the Global Nuclear Energy Partnership, a \$250  
13 million DOE project to develop advanced nuclear  
14 technologies.

15 HI-STORE is based on licensed technology  
16 which is currently installed and in operation. The  
17 HI-STORM UMAX, the underground storage, certificate of  
18 compliance was issued in 2015 and is currently in use  
19 at two U.S. nuclear plants.

20 I want to be very clear, because a lot of  
21 the discussion centers around the role of DOE. This  
22 project is not dependent on contracts with DOE and is  
23 not dependent on DOE ownership of the spent fuel.

24 I'm happy to respond to the questions you  
25 may have on that. But the short answer is if DOE is

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1 not entitled to hold title to commercial fuel, DOE  
2 won't be involved.

3 The NRC review of the application was  
4 filed in March of 2017. It was accepted for NRC  
5 review in March of 2018. Holtec has received four  
6 requests for additional information from the NRC  
7 staff. That process is well underway.

8 As to the petitions to intervene, we have  
9 carefully examined each one and have addressed in our  
10 submittals whether each has met the Commission's  
11 requirements for standing and contention  
12 admissibility, and we believe they have failed to meet  
13 those requirements.

14 Our answers to the petitions set forth our  
15 positions in detail and explain why the petitions do  
16 not meet the NRC standards. In the interest of time,  
17 we will not try to summarize our positions, as they  
18 are well set forth in our briefs, but we are very  
19 pleased to answer questions that the Board may have.

20 We thank the Board for being here, we look  
21 forward to answering your questions, and we look  
22 forward to dealing with you through the completion of  
23 this licensing facility.

24 I'd like also to ask the Board's  
25 permission, if we could sit at the front row, we'll be

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1 passing the microphone, if we could have the  
2 microphone back and forth between Tim and Anne and  
3 myself.

4 CHAIR RYERSON: Yes, I think that will work  
5 nicely.

6 MR. SILBERG: Thank you very much.

7 CHAIR RYERSON: We -- our space here is not  
8 what we originally intended and we're doing the best  
9 we can.

10 MR. SILBERG: We understand.

11 CHAIR RYERSON: Thank you.

12 MR. SILBERG: Let me first address the  
13 question you raised about the NAC issue. We believe  
14 that it's incorrect that if they're not in this  
15 proceeding, they will lack the opportunity to address  
16 the environmental report.

17 Right now, the application does not permit  
18 the storage of NAC casks or non-Holtec casks at this  
19 facility. We accept and are very clear, that in order  
20 for other vendors' casks to be stored at the site, we  
21 would need to amend the license and we would need to  
22 amend the certificate of compliance for the UMAX  
23 system, because right now, that is only licensed for  
24 Holtec casks.

25 It may well -- we may well file those

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1 applications. The casks, the underground facility,  
2 are large enough to accommodate canisters of any  
3 manufacturer. That's why we call it universal.

4 We recognize that NRC will have questions,  
5 we recognize that the licenses and the certificate of  
6 compliance may need to be amended. At those times, we  
7 will have to, as part of the application, determine  
8 whether there are any changes needed to the  
9 environmental documents that have already been  
10 submitted.

11 There will be an environmental statement  
12 in each application. That statement may be no change  
13 is required. If a change is required, our application  
14 will include that.

15 If the NRC staff disagrees with our  
16 conclusion, if that is our conclusion, that no changes  
17 to the environmental analysis are needed, the NRC can  
18 ask us additional questions or can provide that  
19 information on their own. We will have to deal with  
20 it.

21 If NAC believes that our conclusion, if  
22 that is our conclusion, that no changes to the  
23 environmental report are needed, they can challenge  
24 that conclusion in the appropriate forum, which may be  
25 a license amendment, it may be an amendment to the

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1 COC. They will have rights to participate, they will  
2 not be shut out.

3 Right now, their interests are not  
4 affected, because they're not in the application. We  
5 don't say, in the environmental report, that any NAC  
6 casks will be stored at the site.

7 We have tried to bound the environmental  
8 impacts by saying, here are the impacts for a fully  
9 developed site. If the site is less than fully  
10 developed, if we only build five phases instead of ten  
11 phases, we have bounded the environmental impacts. If  
12 we reach the full capacity of the site, we will have  
13 fully addressed the environmental impacts.

14 In no case are we shutting out NAC, if  
15 they have issues with their particular casks. But  
16 what we have looked at here is the capacity of the  
17 site, whether it's 100,000 tons in Holtec casks or  
18 100,000 tons in Walmart casks, whosever casks those  
19 are, we have evaluated it.

20 There's nothing unique about NAC, their  
21 interests are not affected, we're not saying good,  
22 bad, or indifferent about their technology.

23 So, our answer is, we don't think they  
24 need to be in this proceeding to protect their  
25 interests, we don't believe they have demonstrated

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1 that they have standing, and we don't believe that  
2 they have demonstrated an admissible contention.

3 CHAIR RYERSON: Thank you, Mr. Silberg.

4 MR. SILBERG: And at this time, if I could  
5 regain my seat and we'll go through --

6 CHAIR RYERSON: You may, it could be a long  
7 time at the podium otherwise. Let me -- I probably  
8 have fewer questions than my technical colleagues, so  
9 let me begin, again.

10 First, Mr. Silberg, you may -- you have  
11 every right not to respond on this point. There were,  
12 last week, motions to file new or amended contentions  
13 that seemed to be pretty closely related to Beyond  
14 Nuclear Contention 1 and Sierra -- Beyond Nuclear's  
15 only contention, and Sierra Club Contention 1.

16 And are you prepared to discuss those at  
17 all now or do you want to wait? You have until, I  
18 think, mid-February, February 11, something like that  
19 to respond to those.

20 MR. SILBERG: I can certainly discuss --  
21 let me turn on the mic here.

22 CHAIR RYERSON: Okay.

23 MR. SILBERG: I could certainly --

24 CHAIR RYERSON: That one should be working.

25 MR. SILBERG: I can certainly --

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1 (Laughter.)

2 MR. SILBERG: I missed my career as a rock  
3 singer.

4 (Laughter.)

5 MR. SILBERG: I can certainly discuss it  
6 and I think I would like to put in perspective some of  
7 the statements that have been made, because I think,  
8 for those who may not be familiar with the project,  
9 there's a lot of misinformation that we've heard.  
10 We've --

11 CHAIR RYERSON: Excuse me, if you're  
12 prepared to address them, then, to some extent, you  
13 have time respond in writing and then, there will be  
14 a reply.

15 But I must say, I was somewhat struck  
16 myself by what appears to be a Holtec document that  
17 was issued this month, and we hear from you that if  
18 DOE can't be involved, they won't be involved, but the  
19 Holtec document, I'm not quoting it, but loosely says,  
20 and of course, this Lea County Project will have to  
21 await action either by the Congress or by DOE. And  
22 that was confusing to me.

23 MR. SILBERG: Let me read you the sentence.  
24 And I will say that this is one sentence out of a six  
25 or seven page document. The sentence has been totally

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1 taken out of context by the Interveners.

2 What the sentence says is, quote, while we  
3 endeavor to create a national monitored retrievable  
4 storage location for aggregating used nuclear fuel at  
5 reactor sites across the United States into one (HI-  
6 STORE CISF) to maximize safety and security, its  
7 deployment will ultimately depend on the DOE and the  
8 U.S. Congress.

9 And it's that last phrase that seems to  
10 have gathered everybody's attention. Honestly, I  
11 think the sentence has been totally misconstrued by  
12 Petitioners.

13 The phrase in question, its deployment  
14 will ultimately depend on the DOE and the U.S.  
15 Congress, does not say that we need DOE approval to go  
16 ahead. It does not say that we need DOE to hold title  
17 to spent fuel. It does not say we need DOE to take  
18 over any aspect of this project.

19 What it says is that if DOE and the  
20 Congress make decisions, particularly with spent fuel  
21 storage and permanent storage, that will have an  
22 impact on this project, and its deployment will depend  
23 on that.

24 If, for instance, Congress and DOE decide  
25 to go ahead with Yucca Mountain, we pray that will

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1 happen -- and it's ironic that people would criticize  
2 this facility as, perhaps, reducing the incentive for  
3 a permanent disposal are among those who have fought  
4 toughest to keep us from Yucca Mountain.

5 Putting that aside, if Congress were to  
6 take steps to put in place permanent disposal or  
7 federal interim storage on a schedule that made the  
8 CISF, the Holtec HI-STORE project unnecessary,  
9 obviously that would have an impact on the Holtec HI-  
10 STORE project.

11 So, its deployment would ultimately depend  
12 on what DOE and Congress does. If we build Phases 1,  
13 2, 3, 4, 5, and Yucca Mountain becomes available, we  
14 won't build Phases 6, 7, 8, 9, and 10.

15 So, the obvious connection between the  
16 state of the DOE nuclear waste program and interim  
17 storage is clear in every way, because if we had  
18 interim storage in operation today, we wouldn't be  
19 here. We would be most pleased to be sending fuel  
20 directly to Yucca Mountain.

21 Unfortunately, we're not in that position.  
22 Utilities, after having contributed \$35 billion to the  
23 Federal Treasury to pay for Yucca Mountain, find that  
24 their money has dissipated.

25 \$7 billion has been spent on Yucca

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1 Mountain and there are people in Congress and in the  
2 outside community who would like that money to be  
3 thrown away, for Yucca Mountain to disappear forever.

4 If Yucca Mountain proceeds on a schedule  
5 which makes this facility unnecessary, in whole or in  
6 part, if some other permanent disposal facility were  
7 developed on a schedule which makes this facility not  
8 usable, in whole or in part, that would have an effect  
9 on the deployment of this facility.

10 That's what that statement means, nothing  
11 more, nothing less. The environmental report has been  
12 amended.

13 Rev 3, which was filed with the NRC in  
14 November, which is available, publicly available, has  
15 made clear that the few references in the report where  
16 it appeared that DOE would hold title to the fuel or  
17 would be responsible for the fuel that would come to  
18 Holtec, those references have been clarified, to make  
19 sure that it is either the utilities or DOE.

20 And the reason DOE is in there is, DOE may  
21 have the ability to take title. They don't know, we  
22 agree with that, for commercial fuel that they don't  
23 already have -- unless it's through an R&D program,  
24 because DOE has a few assemblies from commercial  
25 reactors that it took for R&D that are probably at

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1 Idaho National Labs.

2 But if Congress passes legislation that  
3 allows DOE to take title, Congress passes legislation  
4 which authorizes direct funding for this project, then  
5 sure, DOE could have a role. That isn't the situation  
6 now. We aren't depending on it, we don't assume it.

7 The statement that we heard yesterday,  
8 that having Option 1 and Option 2 means that both  
9 options are illegal just makes no sense at all.  
10 Severability clauses exist throughout private  
11 contracts and public statutes. There's no indication  
12 that putting DOE as a possible participant in this  
13 would make illegal private participation in the  
14 absence of DOE ability.

15 The environmental report, where these  
16 statements appear, is to describe, what are the  
17 environmental impacts?

18 If you look at it in that context, we  
19 don't need to address who owns the fuel at all,  
20 because whether it's DOE hold title or the utilities  
21 hold title or Holtec holds title, the environmental  
22 impacts are going to be identical.

23 So, the statements in the environmental  
24 report are useful for background information, but in  
25 terms of environmental impacts, and that is what the

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1 environmental report is there to do, those statements  
2 have no bearing and don't provide a basis for  
3 contention in this proceeding.

4 CHAIR RYERSON: I just want to be sure I  
5 heard you correctly, Mr. Silberg. You said that,  
6 today -- are you conceding that as of today, DOE  
7 cannot take title to spent nuclear fuel, that it  
8 doesn't already own, cannot take the power companies'  
9 spent nuclear fuel, take title to it, today, as the  
10 law currently stands?

11 MR. SILBERG: I agree with you in general.  
12 I would note that DOE has taken the position that it  
13 has authority under the Atomic Energy Act, under its  
14 research and development authority, to take spent fuel  
15 to study. And they have done that.

16 DOE has the core from Three Mile Island  
17 Unit 2 facility, sitting up in Idaho, they studied  
18 them. They have occasional assemblies, I believe they  
19 have one from North Anna. I think they may have one  
20 from Point Beach, that has been moved to Idaho and is  
21 being studied.

22 The high burnup fuel program that's being  
23 developed, already in effect, that's a DOE EPRI  
24 program. DOE is going to take fuel, I believe, from  
25 North Anna, in a cask.

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1           Eventually, that cask will be moved up to  
2 Idaho. They'll open it and confirm the high burnup  
3 fuel is not being destroyed, because it's high burnup  
4 fuel.

5           So, there are cases where DOE has title.  
6 But what we're talking about -- and those are very,  
7 very small quantities compared to the amounts we're  
8 talking about, and that's not the focus of this  
9 project.

10           But I will agree with you that, on their  
11 current legislation, DOE cannot take title to spent  
12 nuclear fuel from commercial nuclear power plants,  
13 under the current statement of facts, but that could  
14 change, depending on what Congress does.

15           CHAIR RYERSON: Yes, it could change, based  
16 on what Congress does. But I guess where I was coming  
17 was, I was going to suggest that this seemed to me  
18 like an ideal issue for a legal issue contention.

19           We did not, in the pleadings, have you  
20 position on the lawfulness of DOE's taking title.  
21 Now, we did have the staff's, which I think treated  
22 that issue as premature.

23           MR. SILBERG: But the reason we didn't put  
24 the legal position in is because it's irrelevant,  
25 because we don't depend on DOE's taking title. And we

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1 say we don't depend on DOE's taking title.

2 CHAIR RYERSON: But for Option 1, you do,  
3 don't you? Wouldn't you?

4 MR. SILBERG: If that were the case, but  
5 Option 1, as we've --

6 CHAIR RYERSON: Okay. So, in other words,  
7 Option 1 is a contingent option, based upon something  
8 happening --

9 MR. SILBERG: In the future.

10 CHAIR RYERSON: -- that makes it lawful?

11 MR. SILBERG: Correct.

12 CHAIR RYERSON: Okay. So, we don't need to  
13 argue whether it's lawful today, you --

14 MR. SILBERG: I don't think there's any  
15 dispute on the law, as to DOE's current authority to  
16 take title for other than R&D purposes.

17 CHAIR RYERSON: Okay. Other than what you  
18 characterized, I think, as a narrow research exception  
19 --

20 MR. SILBERG: Correct.

21 CHAIR RYERSON: -- you agree, Holtec  
22 International agrees that, under the Nuclear Waste  
23 Policy Act, today, DOE may not lawfully take title to  
24 spent nuclear fuel?

25 MR. SILBERG: Correct.

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1 CHAIR RYERSON: Correct. And the staff, I  
2 just have to turn to the staff on this, which consider  
3 the issue premature, does the staff agree with that?

4 MS. KIRKWOOD: Does the staff agree that  
5 it's premature or does the staff agree that it's  
6 unlawful?

7 CHAIR RYERSON: I'm sorry --

8 MS. KIRKWOOD: I just want to be sure I'm  
9 answering the right question. Are you asking if the  
10 staff agrees that it's premature --

11 CHAIR RYERSON: No.

12 MS. KIRKWOOD: -- or if the staff believe  
13 that it's unlawful?

14 CHAIR RYERSON: No. I -- you said it's  
15 premature.

16 MS. KIRKWOOD: Okay.

17 CHAIR RYERSON: You said it was premature.  
18 My question today, having heard Mr. Silberg's  
19 statement on behalf of Holtec International, does the  
20 staff agree that, as of today, it was unlawful, under  
21 the Nuclear Waste Policy Act, for DOE to take title,  
22 put aside the research exception, to generally take  
23 title to spent nuclear fuel?

24 MS. KIRKWOOD: The staff has not reached a  
25 position on that issue --

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1 CHAIR RYERSON: Okay.

2 MS. KIRKWOOD: -- at this time.

3 CHAIR RYERSON: All right. Well, we have  
4 Holtec's position. We may find that satisfactory. I  
5 don't think we probably -- well, we'll probably have  
6 a few minutes for everybody at the end, if we have  
7 time, and we can see, but it seems to me that, what I  
8 thought appeared to be just a fine legal issue  
9 contention is no longer necessary.

10 MR. SILBERG: I think we're all in violent  
11 agreement on this question --

12 CHAIR RYERSON: Okay.

13 MR. SILBERG: -- except perhaps for the  
14 staff.

15 CHAIR RYERSON: All right. Well, that --

16 MR. SILBERG: But I will note that in the  
17 litigation that arose out of the DOE breach of  
18 contract, we argued, going back to the 1990s, that DOE  
19 did have authority, other than the Nuclear Waste  
20 Policy Act, to take our spent fuel, as they were  
21 taking from research reactors, for instance, or Three  
22 Mile Island.

23 And DOE and the Courts, DOE argued that  
24 that was a unique Atomic Energy Act R&D authority and  
25 the Court generally agreed. We've conceded that since

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1       then.

2                   CHAIR RYERSON: Okay. Thank you. Okay.  
3 Well, let me move -- I have really just a few more  
4 questions and then, maybe we'll take a break after  
5 those and go to my technical colleagues.

6                   But on Sierra Club Contention 4, this is  
7 the challenge to, primarily a challenge to the  
8 consequences of an accident, a transportation  
9 accident, with respect to spent nuclear fuel.

10                   And the Sierra Club, I believe, relies  
11 upon the Lamb and Resnikoff study, based on the 2001  
12 Baltimore tunnel fire, and they're treating that as  
13 though it had been a nuclear accident, and the  
14 consequences of that.

15                   And the Sierra Club's position is that, at  
16 the very least, that raises a factual dispute for  
17 which there should be a hearing.

18                   And your position, as I understand it, is  
19 that you have cited the 2008 final supplemental  
20 environmental impact statement from the Department of  
21 Energy on the Yucca Mountain case, which was rather  
22 critical of that study, and which would be grounds  
23 for, I think, at the least, you would argue, at the  
24 least, saying that that is -- the Lamb and Resnikoff  
25 analysis represents a worst case basis, which the

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1 Applicant's environmental report does not need to deal  
2 with.

3 And my question for you, Mr. Silberg, is,  
4 is that apparent from the environmental report? I  
5 know the Commission has said that it is the  
6 Applicant's job to -- or not the Applicant's job, the  
7 Petitioner's job to read the application, read and  
8 study the application, but this is a citation in the  
9 application.

10 Does the application explain that position  
11 explicitly or would the Petitioner be required to read  
12 the application and then, read every citation in the  
13 application?

14 MR. SILBERG: Well, before we do that, and  
15 my colleagues are looking to see exactly what it says,  
16 let me make a number of other points.

17 CHAIR RYERSON: Okay.

18 MR. SILBERG: First of all, we don't think  
19 that the Lamb-Resnikoff study is material in this  
20 case, for a number of reasons. One is, there's no  
21 showing that that tunnel is on a rail route that will  
22 take fuel from anywhere to CISF.

23 Second, the larger criticism in the Lamb-  
24 Resnikoff study is that the fire that engulfed the  
25 train and the tunnel was more severe than the NRC

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1 requirements require, I believe it is an 1,800 degree  
2 maximum temperature.

3 The NRC Part 71 standards for  
4 transportation casks give a maximum temperature number  
5 that is below that. I believe it's 1,400 degrees  
6 Fahrenheit.

7 So, in essence, that's a challenge to the  
8 NRC's regulations for designing the casks. If they  
9 wanted to put in a claim for a waiver of the NRC Part  
10 71 standards, they could have done that.

11 In fact, the Part 71 standards should not  
12 be involved in this case. The transportation casks  
13 that Holtec would use have their certificates of  
14 compliance.

15 You don't challenge, in this case, in a  
16 licensing case, for a site-specific license, a  
17 certificate of compliance that's been adopted by the  
18 Commission in a rulemaking. If they wanted to  
19 challenge that, they're well beyond the time frame.

20 The Lamb-Resnikoff study is also  
21 inapplicable to this case, because the reason that  
22 tunnel fire was so intense were the contents of the  
23 cars.

24 Holtec will ship spent fuel by dedicated  
25 trains. There will be no contents that will be

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1 flammable of the type that created that fire in the  
2 tunnel.

3 So, that study, while it's interesting,  
4 and that was a very significant fire, has no relevance  
5 to spent fuel transportation.

6 And further, as we explained, there are  
7 requirements that the Federal Railway Administration  
8 review all the routes to make sure they are  
9 appropriate.

10 We believe that if the Baltimore tunnel  
11 were on a transportation route to the HI-STORE  
12 facility, that the FRA would review that route and if,  
13 in their expert judgment, they determined that it was  
14 an inappropriate route, we would bypass it. If they  
15 determined it was an appropriate and we needed to use  
16 it, we would feel free to use it.

17 So, for all those reasons, I think Lamb-  
18 Resnikoff is of no relevance in this case. It  
19 challenges the NRC regulation. Now, I don't know,  
20 have you guys -- I'll pass the mic to Tim Walsh.

21 CHAIR RYERSON: Yes.

22 MR. WALSH: Thank you, Your Honor. With  
23 respect to your question about if the environmental  
24 impact statement addresses this, Section 4.9.3.2,  
25 Accident Impacts, discusses how the Holtec analysis

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1 was tiered off of the Department of Energy final  
2 environmental impact statement.

3 So, the explicit reference is there. And  
4 while the ER doesn't specifically address the Lamb-  
5 Resnikoff report, that's what the analysis is based  
6 on. And the DOE analysis specifically addressed the  
7 higher estimates provided by Lamb and Resnikoff.

8 CHAIR RYERSON: Okay. But Sierra Club's  
9 counsel, if he read the application and the  
10 environmental report, he would have seen the citation,  
11 but he would not have been clued in in any way that  
12 the Lamb and Resnikoff suffered from the deficiencies  
13 that the supplemental environmental impact statement  
14 addresses?

15 MR. WALSH: Certainly, Sierra Club's  
16 expert, Dr. Resnikoff, would be intensely familiar  
17 with the criticism that's --

18 CHAIR RYERSON: Good point, sir.

19 MR. WALSH: -- levied against him.

20 CHAIR RYERSON: Okay, thank you. But --  
21 okay. A couple more questions. Sierra Club  
22 Contention 8, and this is a contention that I believe  
23 the NRC staff says is admissible, at least in part.

24 The calculation of the annual contribution  
25 to a fund for -- looking for the right word -- for

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1 closing out the facility, decommissioning the  
2 facility, Holtec -- I think the staff's principal --  
3 I believe Sierra Club saw an inconsistency between the  
4 numbers that were in, perhaps, the environmental  
5 report and in other parts of the application.

6 And the staff raised the issue whether --  
7 can we assume that every canister is full? They may  
8 vary in the amounts.

9 And so, from both those directions, there  
10 was some challenge to whether there isn't an  
11 admissible contention on whether the amount, the  
12 metric tons of uranium, at a certain amount, would  
13 give rise to the total decommissioning fund payment  
14 that you calculated. What is your response on that?

15 MR. WALSH: As explained in our response,  
16 Your Honor, they used the wrong number. And so, we  
17 detailed in our response their contention that --

18 CHAIR RYERSON: Excuse me, they would be  
19 the Sierra Club?

20 MR. WALSH: Yes, Your Honor, the Sierra  
21 Club. They used the wrong number in their calculation  
22 and we laid out the calculation for them in our  
23 response. And also, they overlooked the fact of the  
24 real rate of return, which was discussed yesterday.

25 CHAIR RYERSON: Yes, that, we understand.

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1 The real rate of return, they ignored. But there were  
2 two numbers in the application, weren't there?

3 JUDGE ARNOLD: Let me just say, the  
4 environmental report clearly says, 5,000 metric tons.  
5 And you used a capacity of 8,600-and-something metric  
6 tons, times the \$840 per metric ton. So, that  
7 confusion still exists.

8 MR. WALSH: I am confirming that the  
9 correct number was used in the decommissioning funding  
10 plan, but let me -- if you give me a moment, I can  
11 check.

12 MR. SILBERG: While Tim is looking, let me  
13 make one further point, in terms of the staff's, and  
14 I don't want to put words in their mouth, but the  
15 staff's response to the contention and finding of  
16 admissibility was made before it had the benefit of  
17 reviewing our response to the contention.

18 I don't know whether the staff would be in  
19 a position to say that cleared it up for them or not,  
20 but they did not have the benefit of that when they  
21 filed their contention responses.

22 CHAIR RYERSON: Well, while we're waiting,  
23 we might as well ask the staff. Thus far, the staff  
24 has not changed its position on anything, but let's  
25 ask whether the staff's review of Holtec's response

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1 has affected the staff's position?

2 In other words, the simple question, I  
3 should try to simplify this, does the staff continue  
4 to assert that the Sierra Club Contention 8 is, well,  
5 either is admissible or you would not oppose its  
6 admission?

7 MS. KIRKWOOD: Your Honor, at this point,  
8 the staff would like to change its position to take no  
9 position on the admissibility of that contention.

10 CHAIR RYERSON: The staff is taking note of  
11 the position. Are you changing -- you're changing  
12 your position to no longer oppose? I mean, you're  
13 changing the position that you consider the contention  
14 now not admissible?

15 MS. KIRKWOOD: We're -- initially, we had  
16 filed saying we found a portion of it admissible.

17 CHAIR RYERSON: Correct.

18 MS. KIRKWOOD: We're changing that to say,  
19 we're just not taking a position on that contention.

20 CHAIR RYERSON: You're not -- oh, you're  
21 not taking a position one way or the other?

22 MS. KIRKWOOD: Right.

23 CHAIR RYERSON: Okay. Thank you.

24 MR. SILBERG: Perhaps we can come back to  
25 that. Tim and Kim are both looking for the

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1 references.

2 CHAIR RYERSON: Okay.

3 JUDGE ARNOLD: Let me just clarify what I  
4 said, it's in the Chapter 1 Introduction to the ER.  
5 And it says, quote, Holtec is currently requesting  
6 authorization to possess and store 500 canisters of  
7 spent nuclear fuel, containing 5,000 metric tons of  
8 uranium.

9 However, if you look at your proposed  
10 license, it says, 8,680 metric tons. So, there seems  
11 to be a disjoint between the ER and the proposed  
12 license.

13 MR. SILBERG: Yes. My understanding is the  
14 appropriate number is 8,670 metric tons, I don't know  
15 if the 5,000 is still in there --

16 JUDGE ARNOLD: Well, the --

17 MR. SILBERG: -- in the ER.

18 JUDGE ARNOLD: The 5,000 is consistent with  
19 the eventual goal of 100,000.

20 MR. SILBERG: But that --

21 JUDGE ARNOLD: The 8,680 is consistent with  
22 the number Interveners were saying of 170,000.

23 MR. SILBERG: Right. And the assumption is  
24 that all canisters are equal, and all canisters are  
25 not equal. In fact, the early canisters, which will

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1 be Holtec, will have more fuel in them, because they  
2 have greater capacity than the average of other  
3 canisters.

4 So, on an average basis, the 173,000  
5 number is wrong, because the later canisters are  
6 expected to have less fuel than the earlier canisters.  
7 I think that's the clarification as to why there are  
8 different numbers.

9 CHAIR RYERSON: Thank you, Mr. Silberg. I  
10 think -- you're still researching an answer, is that  
11 correct?

12 MR. SILBERG: Yes.

13 CHAIR RYERSON: This could be, then, maybe  
14 a good time to take a little bit of an early break.

15 MS. CURRAN: Before we break, could I --

16 CHAIR RYERSON: Yes.

17 MS. CURRAN: -- have the microphone? I  
18 also have looked at different documents for the  
19 different numbers, about how many metric tons.

20 And I just want to read for Judge Arnold  
21 the sentence from Page 1-1 of the environmental  
22 report. It's in the middle of the page.

23 It says, Holtec is currently requesting  
24 authorization to possess and store 500 canisters of  
25 SNF, containing 8,680 metric tons of uranium, MTUs.

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1 So, that number, 8,680, appears on the first page of  
2 the environmental report. It is Revision 3, but I  
3 believe it's in earlier revisions as well. Thank you.

4 CHAIR RYERSON: Thank you. Let's -- we  
5 have a request here from NAC's counsel. I think we're  
6 going to take a break shortly, if you have a minute or  
7 two that you can respond, if you wish to respond.

8 MR. DESAI: A minute or two, thank you very  
9 much.

10 CHAIR RYERSON: Okay. Go right ahead,  
11 then.

12 MR. DESAI: So, the -- a lot of their reply  
13 regarding -- their answer regarding the question  
14 relates to the scope of the ER for an amendment. They  
15 say that there will be an ER for an amendment.

16 And our reply is they didn't say that that  
17 ER would get to facility design alternatives. I want  
18 to cite to just -- you will find a lot of cases that  
19 get to this point.

20 Turkey Point, LBP-90-16, 31 NRC 509,  
21 Westlaw didn't give you the page number for this one.  
22 31 NRC 509, the statement says the scope of the  
23 National Environmental Policy Act (NEPA) review is  
24 more limited than one performed prior to initial  
25 licensing.

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1           And it cites to other decisions, LBP-81-  
2           14, 13 NRC 677, and in other decisions, they get to  
3           the fact that an environmental review for an amendment  
4           is limited, it's linked to the consequences of that  
5           amendment.

6           For an amendment, for a cask-canister  
7           thing, it would be limited to a cask-canister  
8           infraction.

9           And that makes sense, because when you  
10          have a power plant, they get amendments all the time  
11          for their license, in the amendment proceeding, you  
12          don't get to go back in that amendment proceeding over  
13          design and litigate the design of the power plant.

14          In this case, the facility, the ER is  
15          going to govern the whole facility, they said that.  
16          So, whenever this amendment happens, Amendment 3 gets  
17          passed or later amendments that put in NAC, the  
18          facility will have been designed and will have been  
19          built. So, there's no ability to litigate the design  
20          alternatives.

21          And on the contra-side, look at it this  
22          way, if we challenge the design alternatives later,  
23          we're going to run into this ironclad obligation that  
24          is well discussed, because we know everything now.

25          We know that -- we know their design

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1 approach. We know it involves the universal casks,  
2 which they acknowledged is comprehensive, going to  
3 take other canisters. In addition to their point,  
4 look at 2.2.2.1 of the ER, which says what universal  
5 cask is in more detail.

6 And we're going to know all the  
7 information we need at this point to file a contention  
8 about the design alternatives analysis. So, later on,  
9 what are we going to really get out of this that's  
10 going to prevent us from running into this ironclad  
11 obligation analysis?

12 CHAIR RYERSON: Thank you, Mr. Desai. Mr.  
13 Silberg, did you want to say something before we take  
14 a break?

15 MR. SILBERG: I have two points. First, I  
16 didn't think we would get into a debate on individual  
17 contentions, but --

18 CHAIR RYERSON: Right.

19 MR. SILBERG: -- there is a -- again, I  
20 would like to respond to NAC counsel. The idea that  
21 we will have fully designed and built the facility  
22 when this issue might come up, we won't have built the  
23 facility Phases -- whatever phase we're seeking  
24 approval for won't have been built at the time that  
25 change comes forward.

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1           And the idea that we have to consider as  
2 a design action putting out competitors' facilities on  
3 our site makes, frankly, no sense at all. It's as if  
4 we wanted to build a reactor with a Westinghouse  
5 design and GE came and said we want you to evaluate  
6 putting a GE plant on that same site.

7           Well, that's not the purpose of this  
8 project. As we made very clear, the purpose of this  
9 project is to deploy Holtec technology. They want to  
10 talk about alternative technologies and alternative  
11 sites, it's not the competitor.

12           CHAIR RYERSON: All right. Thank you, Mr.  
13 Silberg. Let's take a break now, let's go to promptly  
14 at 10:30, and we will resume then. Thank you.

15           (Whereupon, the above-entitled matter went  
16 off the record at 10:12 a.m. and resumed at 10:30  
17 a.m.)

18           CHAIR RYERSON: Welcome back, please be  
19 seated. Mr. Taylor?

20           MR. TAYLOR: Chair, before we move on, may  
21 I clarify something that was discussed about the  
22 Baltimore tunnel fire and Dr. Resnikoff's report?

23           CHAIR RYERSON: Yes.

24           MR. TAYLOR: I believe Mr. Silberg made  
25 some comment before the break that Dr. Resnikoff's

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1 report --

2 CHAIR RYERSON: I don't think that mic is  
3 on.

4 MR. TAYLOR: Before the break, Mr. Silberg  
5 made a comment, I believe, as I understood it, that  
6 the Baltimore fire report by Dr. Resnikoff was  
7 irrelevant, because that was not a route that was  
8 being considered for the Yucca Mountain project.

9 It's my understanding that that report was  
10 a response to the 1999 Yucca Mountain EIS draft, which  
11 did have the Baltimore tunnel as part of the route to  
12 Yucca Mountain, and that, in response to Dr.  
13 Resnikoff's report, the route was then modified for  
14 the final EIS.

15 CHAIR RYERSON: Okay. Thank you, Mr.  
16 Taylor. Back to Holtec, I think you were looking for  
17 some information to give us.

18 MR. WALSH: Yes, Your Honor. With respect  
19 to the decommissioning of cost estimate, Table 9.1.4  
20 of the Decommissioning Funding Plan provides the  
21 Holtec estimate for the decommissioning cost for Phase  
22 1, \$23.7 million.

23 Section 2.2 of the separate document, the  
24 life cycle cost estimate says we need to collect \$840  
25 per MTU to meet those decommissioning costs. You have

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1 to use the 8,680 MTU number to get to that number.

2 So, that's why the decommissioning costs  
3 estimates that we provided were based on the intended  
4 capacity of Phase 1. And the ER Rev 3 does have the  
5 correct number, as far as holding 8,680.

6 CHAIR RYERSON: Okay. Thank you. I really  
7 -- I think I have one more area for questions myself,  
8 and then, I think there are some questions from some  
9 of my colleagues, particularly on the geology issues.

10 My question is on standing. I want to  
11 understand Holtec's position on the standing a little  
12 better. Holtec's position is that none of the six  
13 Petitioners has standing and NAC is kind of a  
14 different case.

15 But -- oh, I know, Beyond Nuclear has a  
16 member who lives a mile, I believe, from the facility  
17 and I'm not quite sure I fully understand Holtec's  
18 position on standing.

19 I guess my concern, to give it to you, is  
20 that, is Holtec arguably conflating the test for the  
21 admissible contention with the test for standing? I  
22 know the Commission tells us that when we consider  
23 standing, unlike when we consider contentions, we  
24 should be fairly lenient in finding standing.

25 And if someone lives a mile from the

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1 facility, do they have to establish a pathway, a  
2 possible leak from the facility, if you're putting all  
3 these metric tons of uranium practically in their  
4 backyard, doesn't that give them standing?

5           Would you like to explain a little more  
6 why even those who reside very close to the proposed  
7 facility, in your view, do not have standing?

8           MR. WALSH: Thank you, Your Honor. Yes.  
9 Our position is that the Commission requires a case-  
10 by-case analysis of standing in materials license  
11 cases. And specifically, it is the Petitioner's  
12 burden to show that they would be impacted by the  
13 facility. And in this case, they have not done so.

14           There are several reasons for our  
15 position. It is true that Petitioners are obligated  
16 to demonstrate some sort of plausible mechanism by  
17 which they would be impacted by the analysis. And  
18 there's Commission case law on that.

19           In particular, the U.S. Army Installation  
20 Command case, which is a case cited by several of the  
21 Petitioners, where the Commission rejected standing  
22 where it found that there was no obvious potential for  
23 offsite migration of the radionuclides in that case.

24           The Commission has also issued some  
25 rulings with respect to what type of dose has to be

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1 received in order to constitute a harm.

2 And their Energy Solutions case, CLI-11-3,  
3 says, mere potential exposure to minute doses of  
4 radiation within regulatory limits does not constitute  
5 a distinct and palpable harm on which standing can be  
6 founded.

7 The SAR, Table 7.3 of the SAR, gives you  
8 the dose at 1,000 meters, or a kilometer away, and  
9 that is 0.0848 millirem. And no one has asserted that  
10 they reside closer to that, there. And that's  
11 assuming continually 8,000-and-change hours of  
12 occupation. It's a 24/7, 365 day/year analysis.

13 There's been some discussion, too, about  
14 some of the case law in here. In particular, the 17-  
15 mile radius that was established in the Diablo Canyon  
16 and the Shearon Harris cases. Those cases are easily  
17 distinguishable from the one at present here.

18 Shearon Harris involved a spent fuel pool  
19 expansion proceeding. And in that case, the  
20 activities that were going to be licensed involved  
21 actual handling of bare fuel, having it shipped in in  
22 transportation casks, unloaded, and put into the spent  
23 fuel pool at the Harris plant site.

24 In the Diablo Canyon proceeding, while,  
25 yes, that was an at-reactor independent spent fuel

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1 storage installation, the licensed action there  
2 involved, first and foremost, an above-ground  
3 independent spent fuel installation, whereas the one  
4 we propose to build will be below-ground, and  
5 therefore, has a significantly different risk profile.

6 But in addition, the licensing action at  
7 Diablo Canyon involved the placement of spent fuel  
8 from the spent fuel pool into canisters, and then  
9 moving those canisters onto the pad.

10 Those operations are not present here in  
11 this proceeding. The canisters, as my colleague said  
12 in the very beginning, are going to come to the site  
13 sealed and will not be opened.

14 And so, our contention is that Petitioners  
15 have not demonstrated that that case ought to apply  
16 here. And again, I think it's incumbent upon the  
17 Petitioners to show, in a case-by-case scenario, why  
18 that ought to apply here, and we don't think it does.

19 CHAIR RYERSON: Okay. I guess the problem  
20 I potentially have with that position is that I have  
21 a hard time imagining who would have standing in your  
22 view.

23 You say that the canisters are not going  
24 to leak, the casks aren't going to leak. But can you  
25 tell me who might have standing? Can you think of

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1 anyone who would possibly have standing under your  
2 theory?

3 MR. WALSH: Your Honor, it's Petitioner's  
4 burden to demonstrate they have standing. We've laid  
5 out all the facts that are appropriate here.

6 CHAIR RYERSON: Okay. Thank you. All  
7 right. I think, Judge Trikouros, did you have some  
8 questions?

9 JUDGE TRIKOUROS: Yes. Fortunately, many  
10 of my questions have already been answered, which is  
11 convenient.

12 We started the discussion yesterday with  
13 the Don't Waste Michigan group, regarding their  
14 Contentions 5 and 12. And the -- I had asked the  
15 question, would subsidence on this site potentially  
16 cause damage to the UMAX storage system? And the  
17 answer, of course, came back, yes.

18 I will ask you the same question. And  
19 I'll add to it that, if you tell me that the design of  
20 the system incorporates subsidence as part of the  
21 design basis, then perhaps the answer to that question  
22 is no. But what is the correct answer?

23 MS. LEIDICH: The correct answer, we  
24 believe, is that there won't be subsidence on the  
25 site. And we've provided information in the

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1 environmental report, which also refers to the ELEA  
2 2007 report, which underwent a detailed analysis of  
3 the site itself, looking for evidence of subsidence.

4 And this is specifically the site, not  
5 West Texas, which Interveners or Petitioners have used  
6 as their basis for subsidence. They refer to West  
7 Texas, we're looking at the actual site itself.

8 And it goes back about 50 years worth of  
9 what they're looking at. And there has been no  
10 evidence of subsidence at the site that we have seen.

11 JUDGE TRIKOUROS: So, you're saying there  
12 won't be subsidence and you don't have to account for  
13 it for that reason? Okay.

14 MS. LEIDICH: We believe that it's not a  
15 credible threat.

16 JUDGE TRIKOUROS: It seems like, the SAR,  
17 I think agrees with you, on, I think it's Page 2-54,  
18 I mentioned it yesterday, seems to indicate the same  
19 as what you're saying.

20 However, the ER does have places where it  
21 seems to indicate that subsidence is possible, Page  
22 344-345. Again, that's a PDF reference. It's the  
23 section that says Pecos Valley Section and  
24 Physiographic Subregions.

25 It says solution subsidence depressions of

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1 varying sizes are common landscape features across  
2 this section, because of the dissolution of  
3 evaporating carbonate units. Also, I would --

4 MS. LEIDICH: I'm sorry, could you -- 344  
5 and 345 of the document that I'm looking at appear to  
6 be graphs.

7 JUDGE TRIKOUROS: Well, we may -- okay.  
8 So, this is a PDF document and the one I have is  
9 obviously different than the one you have. The  
10 section is called Pecos Valley Section and  
11 Physiographic Subregions. That's the section name.

12 MS. LEIDICH: Is it possible that you're  
13 looking at Rev 3 of the document?

14 JUDGE TRIKOUROS: No, I am not.

15 MS. LEIDICH: Oh, well, in the area, there  
16 has been subsidence, in the general Permian Basin  
17 region. Without looking at the document itself and  
18 finding the page, and I might have to get back to you  
19 a little bit later, I can't tell you specifically if  
20 this is near the Holtec site.

21 JUDGE TRIKOUROS: Okay.

22 MS. LEIDICH: We haven't seen subsidence  
23 near the Holtec site. However, in the overall Permian  
24 Basis region, there has been some.

25 It's typically more associated with the

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1 potash mining that occurs in the area, which is why,  
2 in Section 3-2, or Page 3-2 of the ER, we reference  
3 that Holtec holds the mineral rights for potash mining  
4 down to 5,000 feet, which is why they don't expect  
5 subsidence.

6           Once you get below that level, you don't  
7 expect subsidence to occur. And in fact, the  
8 Schafersman report itself indicates that activity  
9 below 3,000 feet would not result in subsidence. He  
10 says that on Page 15.

11           JUDGE TRIKOUROS: Okay. And I bring this  
12 up because, of course it's Don't Waste Michigan, two  
13 contentions specifically deal with this. We learned  
14 yesterday, from Mr. Lodge, that there's an RAI that  
15 was issued recently, well, I guess it was March, that  
16 dealt with this. And I hadn't seen the RAI or any  
17 answers. So, this was all news to me.

18           But subsidence would be a common mode  
19 failure, in risk parlance. It wouldn't potentially  
20 fail one canister, it would fail all canisters, all  
21 casks, perhaps I should say. So, it's a serious  
22 matter. And not one that should be lightly dismissed.

23           MS. LEIDICH: Your Honor, the RAI in  
24 question was issued in March of 2018, of last year.  
25 It was responded to in May of 2018. The Interveners

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1 or the Petitioners had the opportunity to address that  
2 RAI in their contention, if they so choose, and they  
3 did not. We can probably provide an ML number for you  
4 with a bit of looking.

5 In terms of the risk of subsidence, again,  
6 we do not believe that a risk has been substantiated  
7 at the site. We do not believe that Petitioners have  
8 put forth a risk.

9 And given that Holtec controls the mining  
10 rights down to 5,000 feet and that there has been no  
11 evidence of past subsidence, we don't consider this a  
12 risk that is credible.

13 JUDGE TRIKOUROS: Okay. But the Petitioner  
14 did put forth a challenge to that in Contention 5 and  
15 12, correct?

16 MS. LEIDICH: The Petitioner's --

17 JUDGE TRIKOUROS: And they do have an  
18 expert who supports their position.

19 MS. LEIDICH: The Petitioner's own expert  
20 indicates that there is no risk if the drilling occurs  
21 below 3,000 feet, and we own the mineral rights down  
22 to 5,000 feet.

23 JUDGE TRIKOUROS: With respect to hydraulic  
24 fracturing?

25 MS. LEIDICH: We own the potash mineral

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1 rights down to 5,000 feet. Potash mineral mining  
2 occurs about 5,000 feet, traditionally in the 1,000-  
3 2,000 range. As Petitioners even note in their own  
4 report, oil and gas drilling occurs much lower,  
5 generally 8,000 feet.

6 JUDGE TRIKOUROS: And what about Contention  
7 12, with respect to the geology below the site? Their  
8 expert, Dr. or Mr. Schafersman, I believe it is,  
9 indicates that the nature of the geology of the site  
10 is significantly different than what's mentioned in  
11 the ER.

12 I think I mentioned this yesterday, but  
13 comparing Section 3.3.3 of the ER with Section 2 of  
14 the, I guess I would refer to it as the Schafersman  
15 report, are in direct contradiction, with respect to  
16 the occurrence of karst in the geology of the site.  
17 And my understanding is that the karst geology does  
18 lead potentially to subsidence.

19 And also, subsidence has been shown to  
20 occur in the vicinity of the site. Now, you're saying  
21 it has not occurred at that exact spot --

22 MS. LEIDICH: And there's a lot of data to  
23 support that assertion. I don't read the  
24 Schafersman's report as asserting that there is karst  
25 specifically at the location. In fact, I believe he

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1 says that there is not.

2 What he does point out is that there is a  
3 Salado area below the site. I believe that he says it  
4 starts at 1,400 feet. And he alleges that the Salado  
5 area may grow into karst if there were leaking oil,  
6 fuel, oil field waters, old burn injection wells, or  
7 broken casing causing a dissolution cavity to develop  
8 in the Salado.

9 I don't see any specific references to  
10 particular karst formations at the site itself.  
11 However, I would say that these are all speculative,  
12 he's assuming that a series of events may occur that  
13 have not occurred at the site.

14 And all of this, again, is contrary to the  
15 evidence at the site that there has been no subsidence  
16 there.

17 I don't see anything in the Schafersman's  
18 report that specifically points towards karst at this  
19 specific site. He does say, of course, that it's in  
20 West Texas and it's in other areas of the Permian  
21 Basin, which we do not dispute.

22 I will make a note that the basic geologic  
23 data on Page 13 of the Schafersman's report, to the  
24 extent that you are relying on it, this is geologic  
25 data for Well CP975. That is not at the Holtec site,

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1 that's actually at the border with Texas. It's  
2 somewhat unclear from the report where that's located.

3 JUDGE TRIKOUROS: Yes. I'm not relying on  
4 it, I'm -- the Petitioners are relying on it. Okay.  
5 Well, I understand. But we do have a contention, we  
6 do have two contentions, that deal with this and they  
7 are supported by expert opinion.

8 MS. LEIDICH: Well, we disagree that the  
9 Schafersman's report supports the existence of karst  
10 at the site or subsidence at the site.

11 JUDGE TRIKOUROS: But right now, we're not  
12 in a hearing, we're --

13 MS. LEIDICH: Well, if the Petitioner's own  
14 documents can be reviewed to whether or not they  
15 support the contention, in fact, the Petitioner's  
16 documents that are put forth in support of a  
17 contention should be reviewed to determine whether or  
18 not it presents an adequate basis for factual or  
19 expert support.

20 JUDGE TRIKOUROS: Okay. That's fine. At  
21 this point, that's enough. But I will, again, remind  
22 you that we were told yesterday that staff is looking  
23 at this, as well.

24 MS. LEIDICH: Just as one last comment,  
25 again, that RAI was from last year and it has been

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1 responded to. We can get you the ML number, if you  
2 wish.

3 JUDGE TRIKOUROS: Yes, I hope --

4 MS. LEIDICH: We'll look for that.

5 JUDGE TRIKOUROS: -- you can. Yes. All  
6 right. Okay. I'm going to jump around a little bit  
7 at this point and ask --

8 MS. LEIDICH: If it's geology, it's still  
9 me.

10 JUDGE TRIKOUROS: No, no, no, it's --

11 (Laughter.)

12 JUDGE TRIKOUROS: I have other questions  
13 that -- do you want to -- how do you want to do this?

14 CHAIR RYERSON: Why don't you continue,  
15 Judge Trikouros?

16 JUDGE TRIKOUROS: Okay. All right. I'm  
17 just going to try and fill in gaps that I have. With  
18 respect to the start clean stay clean question, if a  
19 canister doesn't meet the receipt and inspection  
20 procedures that Holtec has, the plan is to ship it  
21 back to the sender.

22 Would there be -- and of course, it would  
23 have to meet the requirements of 10 CFR Part 71. If  
24 it doesn't, if it can't be shipped back, and I assume  
25 that that may happen, there's no indication that it

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1       couldn't happen, what would happen at that point?

2                   MR. WALSH: Your Honor, we don't anticipate  
3       it happening at all.  If a canister is found to be  
4       leaking or damaged in any way, it will be shipped back  
5       in an NRC-approved transport cask.  And it must be  
6       shipped in accordance with Part 71.

7                   And we can't imagine a circumstance where  
8       a canister that doesn't meet our requirements would  
9       not be -- when inserted into the transportation casks  
10      would not be sufficiently protective.

11                  But we would take whatever steps are  
12      necessary to ensure that it could be transported back  
13      to its originating site.

14                  JUDGE TRIKOUROS: Do you have the ability  
15      to, for let's say canning or anything like that, at  
16      the Holtec facility?

17                  MR. WALSH: No, we do not.

18                  MR. SILBERG: I will make one further  
19      point, that is, you can insert a Holtec canister into  
20      a sleeve, if there's a problem with the canister,  
21      before it's put into the vertical shaft.

22                  The shaft has enough clearance to support  
23      an additional over-canister over the canister before  
24      it's permanent or temporarily set in the vertical  
25      shaft.

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1 JUDGE TRIKOUROS: Okay.

2 MR. TAYLOR: Your Honor, I don't know if an  
3 objection is appropriate, but this is the first time  
4 we're hearing --

5 JUDGE TRIKOUROS: Can somebody --

6 CHAIR RYERSON: Excuse me, you might ask  
7 for the opportunity to speak.

8 MR. TAYLOR: I'm sorry, I apologize. If I  
9 may be heard for a moment, Your Honor?

10 CHAIR RYERSON: Yes.

11 MR. TAYLOR: Thank you. This is the first  
12 time we're hearing this information. We're trying  
13 this case, we're trying things on the merits, so it  
14 seems. Certainly, there is a problem of conflating  
15 standing and merits kinds of issues, that I've been  
16 hearing this morning.

17 But this is new information, and a  
18 representation of counsel, certainly nothing we've  
19 seen in the documentation that there's some sort of  
20 mitigating methodology that's available, if there is  
21 a troubled canister that is delivered to the site.  
22 Thank you.

23 CHAIR RYERSON: Is that your point, that --

24 MR. TAYLOR: Yes.

25 CHAIR RYERSON: Okay, thank you.

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1 MS. LEIDICH: Your Honor, we have an ML  
2 number available for you for that RAI response, if  
3 you're ready. This was RAI 2-2, and the ML number is,  
4 ML18150A330.

5 JUDGE TRIKOUROS: That was ML18150A30?

6 MS. LEIDICH: A330.

7 JUDGE TRIKOUROS: A330, good. Okay, thank  
8 you.

9 MS. LEIDICH: Thank you.

10 JUDGE TRIKOUROS: Okay. In your answer to  
11 Contention 23, you state, the system allows for ready  
12 retrieval of the spent fuel from the storage system  
13 for further processing or disposal. Can you tell me  
14 what you mean by further processing or disposal?

15 MR. WALSH: Your Honor, that simply means  
16 removing it from the storage module and sending it to  
17 a repository, as is the hope one day. Taking the  
18 canister out of the module and sending it to its  
19 ultimate disposition.

20 JUDGE TRIKOUROS: Regardless of its  
21 condition?

22 MR. WALSH: It's supposed to meet the  
23 staff's Interim Staff Guidance 2 on retrievability.  
24 That's why we state that in there. In the matter of  
25 transportation, the canister will have to be inspected

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1 again to meet the requirements of Part 71.

2 JUDGE TRIKOUROS: All right. So, what you  
3 mean is, shipping it offsite to a disposal facility?  
4 That --

5 MR. WALSH: Correct.

6 JUDGE TRIKOUROS: That's what that means,  
7 okay. That's fine.

8 With respect to high burnup fuel, is  
9 meeting the requirements of Interim Staff Guidance 11  
10 Rev 3, we talked about this yesterday with, perhaps,  
11 Mr. Lodge, is that sufficient to maintain safe storage  
12 for, let's say, the service life, 100-year service  
13 life? Just simply meeting those temperature  
14 requirements are sufficient?

15 MR. WALSH: We believe it's sufficiently  
16 protective of the cladding, yes, Your Honor. In  
17 addition, we also meet the ambient temperature  
18 requirements as well, too, with some margin.

19 So, there is less likelihood -- at the  
20 site itself. Therefore, there is less likelihood of  
21 potential degradation due to temperature-induced  
22 degradation.

23 JUDGE TRIKOUROS: All right. So, from your  
24 point of view, as long as you maintain the fuel within  
25 certain temperature limits, high burnup fuel can be

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1 treated the same as lower burnup fuel?

2 MR. WALSH: Yes. In addition, Your Honor,  
3 I would also like to correct something from yesterday.  
4 There is the aging management program for high burnup  
5 fuel, which is not a voluntary program, as was stated.  
6 It will be part of the license requirements of the  
7 facility.

8 That is a program that's going to,  
9 basically, incorporate data that is learned from the  
10 Department of Energy and EPRI, and we'll take whatever  
11 protective actions are necessary. But the assertion  
12 yesterday that it's a voluntary program is flat wrong.

13 JUDGE TRIKOUROS: Okay. I guess we did  
14 discuss that yesterday with Mr. Lodge. And you're in  
15 a position to implement anything that comes out of  
16 these research programs that are underway?

17 MR. WALSH: Yes, that is our position.

18 JUDGE TRIKOUROS: All right. Thank you.

19 JUDGE ARNOLD: I've got a question along  
20 that line. Concerning high burnup fuel, now, your  
21 canisters are certified for the storage of high burnup  
22 fuel, right?

23 MR. WALSH: Correct.

24 JUDGE ARNOLD: And the transportation casks  
25 are certified for transportation of high burnup fuel?

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1 MR. WALSH: Correct.

2 JUDGE ARNOLD: Now, is it your assertion  
3 that these certifications pretty much put all of the  
4 questions on high burnup fuel out of the scope of this  
5 licensing action?

6 MR. WALSH: The design related issues are  
7 outside the scope of this action. We still have to  
8 evaluate, as we did, the environmental impact of  
9 storing and transporting spent nuclear fuel. And  
10 that's what we did.

11 JUDGE ARNOLD: Okay. I'm just wondering,  
12 what -- is there some rule that tells us that these  
13 issues being certified are no longer within the scope  
14 --

15 MR. WALSH: Yes.

16 JUDGE ARNOLD: -- of this?

17 MR. WALSH: Yes, Your Honor. Rule 72.46(e)  
18 of the Commission regulations deals with the storage  
19 question.

20 And it specifically states that if an  
21 application for a specific license incorporates by  
22 reference a design of a spent fuel storage cask for  
23 which NRC approval under Subpart L has been issued or  
24 sought, the scope of any public hearing to consider  
25 the application will not include any cask design

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1 issues.

2 And then, with respect to transportation,  
3 it's a similar analysis, but different rules apply.  
4 Because we have the transportation certification and  
5 we are allowed to transport spent fuel under the  
6 general license, that general license is not subject  
7 to challenge in this proceeding.

8 JUDGE ARNOLD: Thank you.

9 JUDGE TRIKOUROS: Okay. Let me continue  
10 with high burnup fuel discussion. There's a table in  
11 the UMAX FSAR, it's Table 5.0.1. There's also a Table  
12 7.1.1.

13 And the Table 5.0.1 and the subsequent  
14 table define what they call a design basis fuel  
15 burnup. Actually, it says, design basis fuel burnup,  
16 cooling time, and enrichment.

17 The Table 5.0.1 is referring to an MPC-32  
18 and also the MPC-37 canister. And it has a burnup of  
19 45 gigawatt days per metric ton uranium, which is  
20 defined as the threshold where high burnup fuel  
21 begins. It also has a cooling time of five years and  
22 it has an enrichment of 3.6 percent, which is less at  
23 issue here.

24 What -- and the other table, 7.1.1, has a  
25 burnup of also 45 gigawatt days per metric ton, a

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1 cooling time of eight years.

2 And I guess my question is why would you  
3 set a design basis to be the minimum threshold of high  
4 burnup fuel? And I -- okay.

5 Before you answer that, there is also, in  
6 the certificate of compliance document, let's see if  
7 I can give you the exact reference, this is  
8 certificate of compliance for the MPC-37 canister.  
9 That certificate of compliance had some appendices  
10 attached to it. Appendix B is entitled the Approved  
11 Contents and Design Features.

12 So, for MPC-37 canister, the maximum  
13 enrichment is five percent, which is certainly  
14 acceptable. The cooling time is greater than or equal  
15 to three years, which is also acceptable.

16 But the assembly average burnup is less  
17 than or equal to 68.2 gigawatt days per metric ton,  
18 which means, of course, it could be 68.2. So, how do  
19 you reconcile -- and this Appendix B is the references  
20 given for what should be acceptable to your site, for  
21 an MPC-37.

22 There's also the MPC-89 portion of that,  
23 very similar, but it's 65 gigawatt days per metric  
24 ton, so it's slightly less.

25 So, you have a design basis assembly of 45

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1 and you have assemblies coming in that are at, let's  
2 say, 65 or perhaps more gigawatt days, how does that  
3 all work?

4 MR. WALSH: Just to confirm, you referenced  
5 Table 5.0.1 from the UMAX FSAR, and --

6 JUDGE TRIKOUROS: Yes.

7 MR. WALSH: -- you mentioned also a Table  
8 7.1.1, is that in the same document?

9 JUDGE TRIKOUROS: I believe so, yes. In  
10 fact, it is.

11 MR. WALSH: That might be the HI-STORE.

12 JUDGE TRIKOUROS: I believe it's identified  
13 as the UMAX FSAR.

14 MS. LEIDICH: We don't have a Table 7.1.1  
15 in the UMAX FSAR.

16 MR. WALSH: We recommend that we take a  
17 moment to --

18 JUDGE TRIKOUROS: Oh, let me take that  
19 back. The first table is the UMAX FSAR. The second  
20 table is the --

21 MR. WALSH: HI-STORE?

22 JUDGE TRIKOUROS: -- CISF, yes, that's  
23 correct, FSAR.

24 MR. WALSH: Can we take a moment to  
25 research and get back to you?

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1 JUDGE TRIKOUROS: Sure.

2 MR. SILBERG: We could either do that over  
3 the lunch break and continue now, or take the break  
4 now --

5 JUDGE TRIKOUROS: It might be better to do  
6 that, to give you the time to do that, unless it's  
7 going to be real quick.

8 CHAIR RYERSON: Yes, so, I mean, do you  
9 want to continue with your other questions now?

10 MR. SILBERG: I think we have the answer.

11 JUDGE TRIKOUROS: Okay, good. Excellent.

12 MR. WALSH: The answer is that source terms  
13 and doses are based on a combination of burnup,  
14 enrichment, and cooling time. The chosen mix is  
15 reasonably bounding. Burnup alone does not determine  
16 dose for the spent fuel.

17 JUDGE TRIKOUROS: Okay. But it is a  
18 factor.

19 MR. WALSH: Yes, it is.

20 JUDGE TRIKOUROS: It's not --

21 MR. WALSH: Yes.

22 JUDGE TRIKOUROS: -- all, but it is a  
23 factor.

24 MR. WALSH: Yes. But the certification for  
25 the UMAX system is up to -- is capable of storing the

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1 MPC canisters. That is specifically stated in the  
2 certification for the UMAX.

3 JUDGE TRIKOUROS: All right. So, in other  
4 words, the -- that 65 or 69, depending on which  
5 canister it is, can be accommodated safely and the  
6 fact that the UMAX Table 5.0.1 calls that a design  
7 basis assembly of 45 is not what goes into the  
8 analyses?

9 The analyses are done to accommodate the  
10 higher burnup, the highest burnup you can accommodate,  
11 which apparently is 65, for the MPC --

12 MR. WALSH: Hold on one second, Your Honor.  
13 We'll come back to this, Your Honor.

14 JUDGE TRIKOUROS: Okay. All right, that's  
15 fine. Your ability to retrieve canisters under all  
16 conditions of storage, I believe those are your words,  
17 certainly, they're referenced by the staff at various  
18 times and we just talked about that, your  
19 environmental -- your onsite radiation protection  
20 program is capable of accommodating any condition of  
21 the canister, when it's retrieved for disposal? Is  
22 that correct?

23 MR. WALSH: Yes.

24 JUDGE TRIKOUROS: That's correct?

25 MR. WALSH: Yes.

1 JUDGE TRIKOUROS: So, no matter what  
2 cracking you might see, no matter how much failed fuel  
3 there may in a canister, you can retrieve it safely  
4 and send it off for disposal?

5 MR. SILBERG: I assume that there's a  
6 credibility issue here. One can postulate the  
7 meteorite the hitting the cask dead-on --

8 JUDGE TRIKOUROS: Let me correct that. I'm  
9 talking about all normal conditions of storage over a  
10 long period of time.

11 MR. SILBERG: Correct.

12 JUDGE TRIKOUROS: Okay.

13 MR. SILBERG: That's correct.

14 JUDGE TRIKOUROS: Because we are -- we do  
15 have the service life issue of -- or the defined  
16 service life of 100 years --

17 MR. SILBERG: Yes.

18 JUDGE TRIKOUROS: -- or perhaps even more.  
19 All right. Thank you. If a leak occurs in the  
20 canister while it's in the UMAX enclosure, can it be  
21 identified?

22 MR. SILBERG: We wouldn't expect any leaks,  
23 but the aging management program is specifically in  
24 the application to deal with those kinds of  
25 circumstances.

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1 JUDGE TRIKOUROS: Okay. And I do believe,  
2 from what I've seen, that you would lift the canister  
3 out of the enclosure and inspect it as you bring it  
4 out, at various levels, to see if there's any  
5 cracking, is that correct?

6 MR. SILBERG: The monitoring would be  
7 visual. There's an annulus between the canister and  
8 the cask wall. And the monitoring would be done  
9 visually, remotely visual --

10 JUDGE TRIKOUROS: Correct.

11 MR. SILBERG: -- we're not sending any  
12 people down there, but we'll send equipment down  
13 there.

14 JUDGE TRIKOUROS: Right. So, you'd be  
15 lifting the canister out and visually inspecting the  
16 canister?

17 MR. SILBERG: Well, I think you might  
18 visually inspect it before you'd lift it.

19 JUDGE TRIKOUROS: So, you could send a  
20 camera down --

21 MR. SILBERG: Yes.

22 JUDGE TRIKOUROS: -- and visually inspect  
23 it? Okay. Can a leaking canister be repaired?

24 MR. SILBERG: The answer is that it's  
25 outside the scope, because there are no credible leak

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1 paths.

2 (Laughter.)

3 JUDGE TRIKOUROS: Okay. I take that as a  
4 no.

5 MR. SILBERG: At the present time, it's not  
6 within the scope of this license application.

7 JUDGE TRIKOUROS: Hypothetically, if a leak  
8 did occur, could you put it inside another container?

9 MR. SILBERG: That's what we talked about  
10 before, where you have the encapsulation and the  
11 vertical casks have enough clearance to insert an  
12 over-canister, over the canister and inside the  
13 vertical module.

14 JUDGE TRIKOUROS: So, any assertion that  
15 you had no way to handle a leaking canister is  
16 incorrect?

17 MR. SILBERG: That's right. The question  
18 was can you repair a cask? And that's really outside  
19 the scope. But that's not to say that you can't take  
20 steps to remedy a problem, even if something happens  
21 that we don't consider credible, which is a leak  
22 through the cask.

23 JUDGE TRIKOUROS: Right. Can you remove  
24 the fuel from a cracked canister and put it in another  
25 canister?

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1 MR. SILBERG: If you have the right  
2 facility, yes. But that's not part of the design of  
3 HI-STORE.

4 JUDGE TRIKOUROS: Okay. Well, I think  
5 you've answered my next question, have you seen any  
6 cracks in canisters in the past? And it sounds like  
7 you said no.

8 MR. SILBERG: No, there have been none.  
9 The question about removing fuel is the dry transfer  
10 storage discussion we had yesterday. It is a  
11 technique that is possible, but it is not part of the  
12 design.

13 The design would have to go through a  
14 licensing process. That's been stated very clearly in  
15 the continued storage rule that adding any DTS would  
16 be a license event.

17 JUDGE TRIKOUROS: Okay. I guess, the  
18 problems at San Onofre, are they applicable here? The  
19 -- I'm not very familiar with the problems at San  
20 Onofre.

21 MR. SILBERG: Yes, the answer is, we  
22 believe, no. The standoff pins are no longer being  
23 used in current manufacture. There are all of, I  
24 think, 42 casks that have those. The problems in San  
25 Onofre, we do not think are relevant at this site.

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1 JUDGE TRIKOUROS: Okay. The aging  
2 management program, not specifically the high burnup  
3 fuel one, but the standard aging management program  
4 does include testing of groundwater, and can you tell  
5 me what that means?

6 Because we have an outstanding contention  
7 that claims that there's groundwater there that you  
8 have not -- that you don't know is there, so to speak.

9 MR. SILBERG: Well, we have existing wells  
10 that have been monitored that have identified  
11 groundwater. The results of that are set forth in the  
12 application.

13 I don't know off the top of my head what  
14 the aging management plan says on that specific topic,  
15 we can certainly find that information and get it to  
16 you.

17 JUDGE TRIKOUROS: Yes, it didn't have a lot  
18 of details. It basically said you would be testing  
19 the groundwater, it didn't identify -- I don't think  
20 it identified specific wells or anything like that.

21 I don't even think it identified the  
22 groundwater specifically, if it was talking about  
23 aquifers or -- but again, we've been through so much  
24 material, I can't remember the details of that.

25 But if there were near-surface

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1 groundwater, do you believe that the aging management  
2 program would capture that?

3 MR. SILBERG: We do.

4 JUDGE TRIKOUROS: Okay. And in terms of  
5 cracking of the concrete support plate, the bottom  
6 concrete support plate, if there were a crack in that,  
7 water would get into the annulus between the canister  
8 and the UMAX enclosure wall. Do you monitor that for  
9 moisture?

10 MR. SILBERG: Well, first of all, my  
11 understanding, and I stand to be corrected by our  
12 technical experts, is that groundwater is not at the  
13 level of the bottom of the vertical canister. I don't  
14 know how far below it is -- okay. We don't have the  
15 number, but it is not at the level or above the level.

16 So, A, there is no mechanism for getting  
17 water. B, there is no mechanism for concrete  
18 cracking. Whether or not we monitoring the bottom of  
19 the annulus or the bottom of the vault for water -- we  
20 don't currently monitor that.

21 JUDGE TRIKOUROS: You don't monitor that?

22 MR. SILBERG: No.

23 JUDGE TRIKOUROS: But you can put a camera  
24 down there to look at the canister wall, so,  
25 therefore, if you saw water, I assume that you would

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1 take action?

2 MR. SILBERG: We would indeed.

3 JUDGE TRIKOUROS: Okay.

4 MR. SILBERG: And to our knowledge, those  
5 kind of requirements are not imposed on the current  
6 in-operation UMAX systems at U.S. plants.

7 JUDGE TRIKOUROS: Okay. With respect to  
8 the question of brine being in groundwater, I believe  
9 that your aging management program groundwater testing  
10 does include brine testing, is that correct?

11 MS. LEIDICH: Yes, that is correct.

12 JUDGE TRIKOUROS: Okay. If there were a  
13 crack in a spent fuel storage canister, and I  
14 understand there's never been one and you don't  
15 anticipate one, would that result in the release of  
16 radioactive material or would there be a need for  
17 further fuel damage internal to the canister for a  
18 serious release?

19 MS. LEIDICH: To the extent that there's  
20 been allegations of a release that's liquid-based, we  
21 don't believe there's any mechanism for there to be  
22 such a release, given that there is no liquid stored  
23 at the facility. In terms of -- I'm not sure, in  
24 terms of dose, is that the other question?

25 JUDGE TRIKOUROS: Well, it's, if there were

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1 moisture in the annular region and it caused the  
2 corrosion of the canister and your canister cracked,  
3 there would be no liquid release, there would only be  
4 fission product gas release, correct?

5 MS. LEIDICH: That is correct, there are no  
6 liquids.

7 JUDGE TRIKOUROS: Okay. The -- we have a  
8 contention that talks about the near-surface  
9 groundwater. Do you have anything more to add on  
10 that, regarding the presence of near-surface  
11 groundwater?

12 MS. LEIDICH: In terms of near-surface  
13 groundwater, we believe that the only groundwater that  
14 has been located was in Well ELEA-2, I think is the  
15 number. And it was first identified at a depth of 90  
16 to 100 feet and, of course, it welled up to about 35  
17 feet, I want to say.

18 But the other wells that were drilled,  
19 including in the GEI report, did not encounter any  
20 groundwater at those levels. They were looking for  
21 groundwater as they went down.

22 As we detail in our response, they took  
23 spoon samples, but there was no other groundwater at  
24 or near surface level that was identified at the  
25 facility.

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1 JUDGE TRIKOUROS: Okay. And I think your  
2 answer to that contention, I think it's Contention 15,  
3 Sierra Club Contention 15 --

4 MS. LEIDICH: Yes, we detailed that.

5 JUDGE TRIKOUROS: -- supports that, yes.

6 MS. LEIDICH: Yes.

7 JUDGE TRIKOUROS: Okay. There was a  
8 discussion yesterday regarding hypothetical accident  
9 conditions versus real-life accident conditions.

10 Can you address that, with respect to what  
11 you've done for your canister and cask design? Do you  
12 do any kind of computer code analyses? Is that part  
13 of your design basis?

14 MR. SILBERG: Well, certainly, computer  
15 code analyses are part of that basis.

16 JUDGE TRIKOUROS: Okay. That would be  
17 hypothetical accident?

18 MR. SILBERG: For transportation casks, we  
19 have physical tests, yes.

20 JUDGE TRIKOUROS: Okay. So, for what were  
21 termed hypothetical accident conditions, you do  
22 computer code analyses? For real-life accident  
23 conditions, you put these canisters and casks through  
24 physical testing requirements, as required by the  
25 regulation?

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1 MR. SILBERG: That's correct.

2 JUDGE TRIKOUROS: Okay.

3 MR. SILBERG: And there are many, many  
4 tests that have been done on canisters, casks, over  
5 the years. That data is certainly included in the way  
6 that these new casks are analyzed.

7 We don't necessarily test to failure every  
8 cask design, but there have been those tests in the  
9 past. And the results of those tests are certainly  
10 incorporated in how casks are designed.

11 JUDGE TRIKOUROS: The thermal analyses that  
12 you do to assure that you don't exceed the, I'll say  
13 the high burnup fuel temperature limits, but I mean it  
14 for both high burnup and non-high burnup fuel, those  
15 analyses, are they computer code analyses or do you do  
16 any actual testing?

17 MR. SILBERG: Computer analyses.

18 JUDGE TRIKOUROS: Okay. Do you do any kind  
19 of data to capture when they're in the enclosure, to  
20 make sure that your computer code is correct?

21 MR. SILBERG: We have benchmarked, in the  
22 context of the UMAX design, there have been  
23 benchmarking tests that are done.

24 JUDGE TRIKOUROS: Okay. So, you have  
25 experimental data that you correlate your computer

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1 codes against?

2 MR. SILBERG: Yes.

3 JUDGE TRIKOUROS: Okay.

4 MR. SILBERG: I apologize for turning  
5 around, but I don't like to give those technical  
6 answers, based on my technical knowledge.

7 JUDGE TRIKOUROS: Please, I'm happy to have  
8 you turn around as much as you need to. The Sierra  
9 Club Contention 21, that's dealing with this question  
10 of transportation of high burnup fuel and that they  
11 would be dealt with on a case-by-case basis. Can you  
12 say anything regarding that, as it applies to your  
13 storage facility?

14 MR. SILBERG: Well, as I understand it, the  
15 certificates of compliance for UMAX, for the  
16 transportation casks, and for the canister all include  
17 high burnup fuel.

18 So, to that extent, they are currently  
19 licensed, been approved by the NRC, obviously. And at  
20 the present time, there's no more that is required.  
21 We have met the NRC's tests, we have met the  
22 regulatory criteria.

23 JUDGE TRIKOUROS: Okay. The -- you also  
24 answered earlier that all of the new research that's  
25 going on, that you're plugged into that research and

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1 that you would be required to make changes as  
2 indicated by that data?

3 MR. SILBERG: As necessary, the aging  
4 management program will incorporate the results of the  
5 DOE EPRI program on high burnup fuel. Those results  
6 will be incorporated as appropriate.

7 JUDGE TRIKOUROS: You don't have your own  
8 demonstration program for high burnup fuel?

9 MR. SILBERG: No.

10 JUDGE TRIKOUROS: All right. Okay.

11 MR. SILBERG: I think that the DOE EPRI  
12 program is intended to be an industry-wide program,  
13 with wide participation by the utility vendor  
14 community, DOE, and EPRI.

15 I believe the NRC is an observer to that  
16 program, or perhaps even a participant in it.  
17 Certainly, they're aware, in detail, of what's going  
18 on.

19 JUDGE TRIKOUROS: All right. The Interim  
20 Staff Guidance seemed to imply that they had a fairly  
21 active role in it, because they -- I think that's part  
22 of the case-by-case basis discussion. But --

23 MR. SILBERG: That's right.

24 JUDGE TRIKOUROS: -- a number of these  
25 questions are going to have to be asked again. What

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1 about transportation within the facility, in terms of  
2 Contention 21? Is that --

3 MR. SILBERG: Well, generally, I don't know  
4 in this particular case, but transportation within a  
5 facility, a Part 50 facility, where you're moving  
6 casks from the reactor building out to the SOC, those  
7 don't require Part 71 approval, is my understanding.

8 They're all done under the Part 72  
9 license, the transportation down the hallway or using  
10 the vertical crawlers, as appropriate, are reviewed by  
11 the NRC. But I don't believe that it's part of a Part  
12 71 program, if that's what the question is.

13 JUDGE TRIKOUROS: Yes, that was the  
14 question. Part 71 does not apply?

15 MR. SILBERG: Correct, until you go  
16 offsite.

17 JUDGE TRIKOUROS: Yes, correct. Okay. I  
18 think I'm okay for now. Thank you very much.

19 MR. SILBERG: Thank you.

20 CHAIR RYERSON: Judge Arnold?

21 JUDGE ARNOLD: I do have some questions,  
22 and I'll be asking some questions similar to Judge  
23 Trikouros, too difficult to filter them out.

24 Having to do with Sierra Club Contention  
25 2, the issue of safer and more secure, do you explain

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1 in the environmental report what you mean by that?

2 MR. SILBERG: Yes, we do. We explain why  
3 we believe, although at-reactor storage is safe, has  
4 been designated by the NRC as safe, overall basis, the  
5 HI-STORE facility will be safer and more secure. More  
6 secure, because it's remote. It's safer because it's  
7 underground, among other reasons.

8 JUDGE ARNOLD: Did you intend for that  
9 statement to be inclusive of the transportation of  
10 fuel, or just once it's at your facility?

11 MR. SILBERG: No, it includes  
12 transportation. And for that, we rely on the generic  
13 analyses that say, transportation of spent fuel is a  
14 minor environmental impact.

15 JUDGE ARNOLD: Concerning Sierra Club  
16 Contention 4, having to do with transportation from  
17 the reactors to the CIS, they fault your dependence on  
18 NUREG-1714, saying it is only for the regional  
19 transportation, not across the whole country. You  
20 state, in your --

21 MR. SILBERG: Is 1714, is that the PFS EIS?

22 JUDGE ARNOLD: Let me --

23 MR. SILBERG: I believe it is.

24 JUDGE ARNOLD: Let's see, an ISFSI in  
25 Tooele County --

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1 MR. SILBERG: Yes. Tooele.

2 JUDGE ARNOLD: Tooele, okay.

3 MR. SILBERG: Close enough.

4 JUDGE ARNOLD: What exactly -- now, in your  
5 response, you said that looked at more than just the  
6 region.

7 MR. SILBERG: Yes. My recollection is the  
8 contention said that that EIS only dealt with local  
9 transportation, and that's incorrect.

10 JUDGE ARNOLD: Okay. Now, in this  
11 contention, Petitioners appear to have a credible  
12 analysis of the radiological consequence of a  
13 transportation accident occurred while shipping spent  
14 fuel.

15 On Page 25 of their petition, they  
16 compared the results of that analysis to the results  
17 of your analysis and find their results to be orders  
18 of magnitude, 1,250 times the result that you have.

19 How can we not consider that a material  
20 dispute of fact with the application?

21 MR. SILBERG: We believe you have to look  
22 at the document that they rely on to determine whether  
23 it is material to this proceeding. And we've had some  
24 discussions about why we respectfully submit that it  
25 is not.

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1 JUDGE ARNOLD: Okay.

2 MR. SILBERG: If they submit a material  
3 document, even though, by a PhD, even though it looks  
4 like a credible report and it may be a credible  
5 report, if it's not material to this case, it can't  
6 support the admission of a contention.

7 JUDGE ARNOLD: Okay. Concerning this  
8 analysis, I think it was yesterday, you said, or maybe  
9 it was today, the temperature in that tunnel was  
10 greater than the temperature required for the  
11 certification of the casks, correct?

12 MR. SILBERG: That's my recollection, yes.

13 JUDGE ARNOLD: And you said that, somehow,  
14 using that fire would be a challenge to the rules?

15 MR. SILBERG: Using the temperature of that  
16 fire to say that our transportation is inadequately  
17 analyzed is a challenge to the rule. Also, the  
18 conditions, as we discussed earlier, of that fire are  
19 not relevant, for the reasons we discussed.

20 JUDGE ARNOLD: Okay. I'm more familiar  
21 with the reactor world than spent fuel, but in the  
22 reactor world, it's been demonstrated several times  
23 now that actual accidents sometimes do exceed the  
24 design accidents.

25 And so, it seems to me, we've got a

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1 historical fact that a fire on a railroad in a tunnel  
2 can exceed the design temperature. Does acknowledging  
3 historical fact constitute a challenge to a design  
4 specification?

5 MR. SILBERG: Yes, and you have to also  
6 look to see whether that event is relevant, as we  
7 described earlier.

8 The magnitude of that fire was a result of  
9 the combustibles. The combustibles in that tunnel on  
10 that day are not what you would have with  
11 transportation of spent fuel.

12 Whether the design is sometimes exceeded  
13 in real-life, we nevertheless have an NRC regulation.  
14 If the Petitioners thought that that regulation was  
15 inadequate, they should have sought a waiver under the  
16 Commission's procedures. They did not do that.

17 This is not new information. They've  
18 known about the Resnikoff analysis. They've known  
19 about the Baltimore tunnel fire. If they wanted to  
20 challenge the applicability of the regulation in this  
21 case, they had more than enough time to do so.

22 JUDGE ARNOLD: Okay. Concerning  
23 Petitioner's claim that the railroad infrastructure is  
24 deteriorating, when it comes time to move spent fuel,  
25 will you be permitted to make use of any railroad

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1 track that is in place and available? Or is there  
2 some inspection, do they look to see if the tracks  
3 have recently been certified?

4 MR. SILBERG: Yes. As we discussed in our  
5 response, the Federal Railway Administration does that  
6 function for transportation routes over the rail.

7 This will not be the first rail  
8 transportation of spent nuclear fuel in this country.  
9 Those procedures have been in place, they've been  
10 exercised.

11 We've had, perhaps, hundreds of shipments  
12 over rail of spent nuclear fuel in this country.  
13 We've had thousands of shipments over the road in this  
14 country. Worldwide, it's even greater.

15 But, yes, the rail infrastructure for a  
16 particular route will be inspected at the time a route  
17 is chosen and the time the shipments will take place.

18 JUDGE ARNOLD: Okay. So, a railroad track  
19 that is today in excellent condition, but is in the  
20 future, deteriorated, that could be okay for shipment  
21 now, but not okay when you go to the Part 71 shipment  
22 process, and it would be precluded from use?

23 MR. SILBERG: And vice versa.

24 JUDGE ARNOLD: So, yes. So, now is not a  
25 good time to be determining the condition of railroad

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1 tracks for future use?

2 MR. SILBERG: Now would be a very bad time  
3 to do that.

4 JUDGE ARNOLD: Okay.

5 MR. SILBERG: In this context.

6 JUDGE ARNOLD: Sierra Club Contention 9,  
7 the ER must examine the environmental impacts of the  
8 containers being used beyond their approved service  
9 life. Do you anticipate there will be any time where  
10 you have spent fuel stored in a container whose  
11 certification has expired?

12 MR. SILBERG: No, because we would apply to  
13 extend that certification, at which point, it would be  
14 reviewed by the Nuclear Regulatory Commission.

15 JUDGE ARNOLD: And you have a system in  
16 place that will assure that's done?

17 MR. SILBERG: We are obligated to be -- our  
18 license conditions, one, is when a license expires, we  
19 will file in advance, because we want to take  
20 advantage of the timely renewal doctrine.

21 Also, this brings into play the continued  
22 storage rule, because we do not have to look at  
23 environmental impacts beyond the license life.

24 JUDGE ARNOLD: Concerning Sierra Club  
25 Contention 11, concerning the potential consequences

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1 of an earthquake, does historic data account for the  
2 possibility that recent and future oil and gas  
3 drilling may affect earthquake frequency or severity?

4 MS. LEIDICH: We believe that it does.  
5 There's been drilling in the area, as is mentioned in  
6 the expert report used by Petitioners, for over 40  
7 years, I think over 50 years.

8 There's no reason to believe that the  
9 current historic data does not encompass drilling. In  
10 fact, the expert report put forth by Petitioners does  
11 not have any more recent earthquakes than the 2012  
12 earthquake that we already analyzed for.

13 In addition, we believe that the report  
14 put forth by Petitioners does not support that there  
15 will be more earthquakes in that region going forward.  
16 If you read it in a great level of detail, it actually  
17 finds a low fault potential in the area of the Holtec  
18 site. So, we don't believe it even supports their  
19 assertions.

20 JUDGE ARNOLD: Does it support any increase  
21 in the severity of ground motion of earthquakes?

22 MS. LEIDICH: No.

23 JUDGE ARNOLD: Okay. You have some sort of  
24 design ground motion?

25 MS. LEIDICH: Yes. In fact, there is the

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1 design ground motion for the HI-STORM facility, which  
2 is, I believe, between 0.7G and 1G, depending on the  
3 acceleration and the orientation of the ground motion.

4 The bounding analysis for the site has  
5 been referred to as 0.25 in every direction. That is  
6 far greater than what the USGS returns for the site,  
7 which is only 0.04 to 0.06G. So, the UMAX HI-STORM  
8 design well bounds any potential impacts from the  
9 site.

10 JUDGE ARNOLD: Okay. So, you're saying,  
11 the design ground motion is not a close fit to  
12 historical data, but it in fact has some margin?

13 MS. LEIDICH: It is significantly larger.

14 JUDGE ARNOLD: Okay.

15 CHAIR RYERSON: Judge Arnold and I have  
16 agreed that this might be a good time for lunch.  
17 We're obviously not going to finish this morning, I'm  
18 very optimistic we will finish today.

19 So we'll take an early lunch again, I  
20 think, because there's no cafeteria in this building,  
21 people have to go out for lunch. We'll take about an  
22 hour and a half. So why don't we plan to reconvene  
23 promptly at 1:15? Thank you.

24 (Whereupon, the above-entitled matter went  
25 off the record at 11:42 a.m. and resumed at 1:15 p.m.)

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1 CHAIR RYERSON: Welcome back and please be  
2 seated. Almost there. A couple of items before Judge  
3 Arnold continues his questioning of Holtec.

4 I wanted to alert the NRC staff of the  
5 questions I will have, when we get to you, in case you  
6 need to either think about them or look them up. My  
7 principal area of questioning pertains to the filing  
8 that you made on October 9.

9 I believe the staff either would have  
10 admitted, in whole or in part, or at least would not  
11 have opposed the admission of six contentions, two of  
12 which are essentially the same.

13 And we've talked a little bit over the  
14 last two days about possible changes of position on  
15 some of those.

16 And I think it would be useful to go  
17 through, not now, but when we get to you, go through  
18 exactly what your position is today on the  
19 admissibility of those six contentions, and if you've  
20 changed on any others as well.

21 But we'll do that later, I just wanted you  
22 to know we're going to ask about that. And then, I  
23 think before Judge Arnold continues, there was an  
24 answer Holtec was going to give to Judge Trikouros on  
25 one point.

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1 MR. WALSH: Yes, thank you, Your Honor.  
2 Before the lunch break, Judge Trikouros asked a  
3 question about the design basis fuel analysis from the  
4 UMAX FSAR and the HI-STORE FSAR.

5 And you quoted the numbers from Table  
6 5.0.1 of the UMAX and Table 7.1.1 from the HI-STORE.  
7 So, the -- and that this was tied into the high burnup  
8 fuel, if I understand your question correctly.

9 The design basis in those documents did  
10 use a 45 gigawatt day burnup for the calculations.  
11 It's important to note, first of all, that the burnup  
12 level of the fuel isn't necessarily bounding. And  
13 that's the purpose of the design basis calculation, to  
14 get us a bounding number that will reasonably  
15 approximate a high dose rate.

16 And so, we used the design basis numbers  
17 in the calculations, the high burnup number, the  
18 number of years of cooling, and the enrichment level  
19 of the fuel, as the basis for our calculations.

20 We need to look at multiple parameters of  
21 the fuel in order to give us what we think is a  
22 reasonably conservative dose estimate for these  
23 purposes.

24 At the end of the day, the NRC found the  
25 analysis that we performed to meet the requirements

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1 that are stated in the certifications for both the  
2 UMAX and the -- in the UMAX FSAR, which is three years  
3 minimum cooling time, 68 gigawatt days burnup, and  
4 five percent max enrichment.

5 The key phrase in the NRC's conclusion in  
6 the certification is that the analyses we performed,  
7 and this is from Section 6.4.4 of the staff's safety  
8 evaluation report, is that with the analyses that we  
9 performed and the conservative loading assumptions  
10 that we use, i.e., the canister is always going to be  
11 inside a system, we meet the requirements as stated in  
12 the certification. And therefore, we met the  
13 regulations set forth in 10 CFR 72.104.

14 JUDGE TRIKOUROS: So, the analyses in the  
15 SAR, the two SARs, are conservative, with respect to  
16 the certification? In other words, the 68 gigawatt  
17 days per metric ton fuel comes into the facility, it  
18 meets the requirements of the SAR?

19 MR. WALSH: Correct.

20 JUDGE TRIKOUROS: Okay. That's what I  
21 needed to know. And that included the three-year  
22 cooling time, the --

23 MR. WALSH: Yes, it has --

24 JUDGE TRIKOUROS: -- five percent enrich --

25 MR. WALSH: -- to meet the combination of

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1 the parameters, yes, Your Honor.

2 JUDGE TRIKOUROS: Right. Okay. Thank you.

3 CHAIR RYERSON: Judge Arnold?

4 JUDGE ARNOLD: Okay. Sierra Club  
5 Contention 12 has to do with the dunes sagebrush  
6 lizard. Now, on Page 50 of the petition, the Sierra  
7 Club states, the 2007 report 2.6.1.1 lists the sand  
8 dune lizard as likely to be present at the site and  
9 vicinity.

10 Now, that's a report that you referenced.  
11 Could you explain this in the context of your  
12 conclusion that that lizard is not present on your  
13 site?

14 MR. WALSH: Yes, Your Honor. My  
15 understanding of the report was that it found that it  
16 had not been observed, but also that the habitat that  
17 the lizard would seek out was also not present at the  
18 site, as well, too.

19 So it wasn't just based on a no-sighting  
20 criteria, it was we don't have the type of habitat  
21 that that lizard would prefer on the site.

22 JUDGE ARNOLD: Okay. Concerning Sierra  
23 Club Contention 18, the Holtec ER has not adequately  
24 determined and discussed the possibility that waste  
25 contaminated groundwater would reach the Santa Rosa

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1 formation.

2 Now, does -- is it the certification of  
3 the HI-STORM system that states there is no plausible  
4 scenario for the release of radioactive material?

5 MS. LEIDICH: I believe that that occurs in  
6 several different locations in the application,  
7 including in the SAR for the HI-STORE facility itself.

8 JUDGE ARNOLD: Okay.

9 MS. LEIDICH: But I'll have -- I can get  
10 you a specific reference, if you would like.

11 JUDGE ARNOLD: Yes, please.

12 MS. LEIDICH: It might take me a moment.

13 JUDGE ARNOLD: All of this spent fuel  
14 that's going to be stored there is in the form of  
15 unprocessed, straight from the reactor spent fuel?

16 MS. LEIDICH: That is correct.

17 JUDGE ARNOLD: Okay. Could you briefly  
18 describe what material the greater-than-Class-C waste  
19 is? I mean, this is storage of spent fuel, greater-  
20 than-Class-C.

21 MR. SILBERG: Typically, greater-than-  
22 Class-C waste would include activated metal components  
23 of reactor vessel belt region, typically. Also, might  
24 have resins that are above the low level waste Class  
25 C. I think people tend to down-blend that now, so

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1 that's much less significant.

2 JUDGE ARNOLD: Okay. And will any of the  
3 stored waste be in liquid form?

4 MR. SILBERG: No.

5 JUDGE ARNOLD: No?

6 MR. SILBERG: Let me also note that this  
7 phase, Phase 1 of the application, does not include  
8 GTCC.

9 JUDGE ARNOLD: Oh, okay. Thank you.

10 MR. SILBERG: GTCC is greater-than-Class-C  
11 waste.

12 JUDGE ARNOLD: Let's see, concerning Sierra  
13 Club Contention 20, it's a high burnup fuel question.  
14 Appendix B of the certificate for the MPC-37 says that  
15 it's an average burnup of 68.2 gigawatt day per metric  
16 ton. I assume, then, that there would be some higher  
17 burnup and some lower burnup to come up with that  
18 average?

19 MR. WALSH: That's my understanding,  
20 correct.

21 JUDGE ARNOLD: Okay. And concerning Sierra  
22 Club Contention 21, having to do with no experimental  
23 support for the safe transportation and storage of  
24 high burnup fuel.

25 Let's see. Actually, what I want to get

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1 into is what is the actual meaning to us of the  
2 certification of the HI-STAR 190?

3 MR. WALSH: The certification of the HI-  
4 STAR 190 means that it has been certified by the NRC  
5 to be capable of transporting fuel at the burnup level  
6 specified in the certification.

7 So, it's -- and this certification is  
8 based on extensive analyses and tests, which go into  
9 that process: criticality, shielding, thermal  
10 evaluations, effective vibrations on the fuel, on the  
11 structural integrity.

12 And the certification essentially says  
13 that there's not expected to be any damage in normal  
14 or accident conditions because of those.

15 JUDGE ARNOLD: Now, we already know that  
16 the certification includes some limitation on the  
17 burnup. Are there other limitations in this  
18 certification on use of that?

19 MR. WALSH: For the HI-STAR 190?

20 JUDGE ARNOLD: Yes.

21 MR. WALSH: They are nearly identical to  
22 the ones we've just discussed. And give me a moment.  
23 I think they're essentially identical.

24 Minimum cooling time of three years,  
25 maximum gigawatt days of 68, I think that's for the --

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1 if you're transporting MPC-37, which is the  
2 pressurized water reactor fuel assemblies. And I  
3 think it's a little bit lower for the BWR. And  
4 maximum five percent enrichment.

5 JUDGE ARNOLD: Is there a limit on the mass  
6 of material in it?

7 MR. WALSH: I think it's limited by the  
8 number of fuel assemblies that can be transported, 37  
9 for the MPC-37 and 89 BWR for the MPC-89.

10 JUDGE ARNOLD: Okay. Is the safe  
11 transportation of high burnup fuel dependent upon the  
12 cladding remaining intact?

13 MR. WALSH: I do not believe so, but let me  
14 double-check that, Your Honor. First of all, there is  
15 -- the design and the analyses supporting the  
16 certification demonstrate, and the temperature  
17 limitations also apply as well, too, which is the  
18 primary driver for cladding degradation, show that  
19 they're going to -- the expectation that there will be  
20 no integrity issues for the cladding during transport.

21 So, the basis for the confidence in that  
22 is the underlying designs. But at the end of the day,  
23 you can still transport it if the fuel, if something  
24 happens to the fuel while in transport.

25 JUDGE ARNOLD: Okay.

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1 MR. SILBERG: Let me add a little bit to  
2 that. Transportation of solid fuel is permitted. In  
3 fact, it's specifically called out in the standard  
4 contract for high level waste and spent fuel between  
5 the utilities and DOE.

6 JUDGE ARNOLD: Thank you.

7 MS. LEIDICH: Your Honor, I have a  
8 reference also for the SAR, where it says that there  
9 are no liquid effluents. That's on Page 193.

10 JUDGE ARNOLD: Okay, 193. This might have  
11 been asked already. Sierra Club Contention 23, Holtec  
12 has not described how degradation that leads to gross  
13 ruptures in the fuel would be detected. Do you have  
14 the capability to detect a gross failure of the  
15 cladding? Of the fuel?

16 MR. WALSH: The answer to that question is  
17 that we demonstrate that we can't have degradation for  
18 the cladding of the fuel. And we certified the design  
19 to maintain the temperatures below which cladding is  
20 expected to occur.

21 And in addition, the design basis heat  
22 load and the ambient temperatures for the facility  
23 itself are below those certified for the UMAX system.  
24 Therefore, we expect, at the facility itself, there  
25 will be more margin protecting against such

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1 temperature.

2 JUDGE ARNOLD: You earlier talked about the  
3 aging management plan. To what extent could that  
4 affect it or just can't?

5 MR. WALSH: My understanding of the aging  
6 management plan is that it's going to be based on  
7 research ongoing with the Department of Energy and  
8 EPRI, and the results of that research, we will take  
9 whatever actions are deemed necessary to address the  
10 findings from that research. That's the basis of the  
11 aging management plan for high burnup fuel.

12 JUDGE ARNOLD: Joint Petitioners Contention  
13 2 has to do with reasonable assurance for funds to  
14 cover the cost of construction, operation,  
15 maintenance, and decommissioning.

16 You talk about the \$840 per metric ton.  
17 Is there any way that you could end up receiving any  
18 spent fuel without having assurance of receiving that  
19 \$840 per metric ton?

20 MR. SILBERG: That would be a part of the  
21 contractual agreement between the owners of the fuel  
22 and Holtec. Stuff would not get on the road until  
23 that contract was in force.

24 JUDGE ARNOLD: This has to do with Joint  
25 Petitioners -- again, about the -- I'm a little lost.

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1 JUDGE TRIKOUROS: While you're searching,  
2 can I ask a quick question?

3 JUDGE ARNOLD: Go ahead.

4 JUDGE TRIKOUROS: Your answer about the  
5 fuel won't move unless there's a contract in place,  
6 does that include the plants you own?

7 MR. SILBERG: We would be on the hook for  
8 that, whether there's a contract or not, since it's  
9 our fuel.

10 JUDGE TRIKOUROS: Okay.

11 MR. SILBERG: I think the answer would be  
12 yes.

13 JUDGE TRIKOUROS: Yes, thank you.

14 JUDGE ARNOLD: Okay. This concerns Joint  
15 Interveners Contention 3, the environmental report is  
16 incorrect, in that it contains a gross underestimation  
17 of the volume of low level radioactive waste.

18 I looked in the environmental report and  
19 I couldn't find a quantification of the weight, of the  
20 mass of low level waste. All I found was small  
21 quantities of it. Did you provide a number in the ER?

22 MR. SILBERG: No, we did not. But I would  
23 note that the assumption that all the tons of concrete  
24 and steel that are used in the facility will become  
25 contaminated by low level waste is without any

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1 substance.

2 JUDGE ARNOLD: Well, they challenged your  
3 underestimation of the volume, and you're saying you  
4 never gave the volume.

5 MR. SILBERG: Well, we said it was small,  
6 and they said it's everything. And it's clearly not  
7 everything.

8 JUDGE ARNOLD: Okay. Well, for an  
9 industrial facility, what is a small volume? Is it  
10 cubic feet, cubic yards?

11 MR. SILBERG: I guess you could -- the  
12 units of measurement would depend, but --

13 JUDGE ARNOLD: For an industrial activity,  
14 what can -- how big can it be and still be considered  
15 small?

16 MR. SILBERG: I guess it depends on the  
17 industrial activity. How much it would be in this --  
18 if you're asking us to quantify it at this point in  
19 time, I can't do it on the fly.

20 JUDGE ARNOLD: Okay.

21 MR. SILBERG: But I will say, experience  
22 with decommissioning nuclear facilities indicates that  
23 not every cubic yard of concrete and piece of steel  
24 that's in the reactor building becomes contaminated as  
25 low level waste.

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1 JUDGE ARNOLD: Concerning Joint Petitioners  
2 Contention 5, about the mineral interests below the  
3 site, on Page 54 and 55 of their petition, the  
4 Petitioners claim that you have failed to include in  
5 the ER information required by 10 CFR 72.90 and 94.

6 On Page 56 of your answer, you addressed  
7 the first of these and you stated where you had the  
8 72.90 information, but I didn't see any answer to the  
9 Petitioners' claim on 72.94 in your reply.

10 In fact, 72.94 requires the region must be  
11 examined for both past and present manmade facilities  
12 and activities that might endanger the proposed ISFSI  
13 and the information concerning the potential  
14 occurrence and severity of such events must be  
15 collected and evaluated for reliability, accuracy, and  
16 completeness.

17 MS. LEIDICH: That's correct. And we  
18 believe that we have evaluated the past and present  
19 activities that would endanger the proposed facility,  
20 as we have stated before.

21 There is no danger to the proposed  
22 facility, at least not that's been established by  
23 Joint Petitioners, and the facility itself has been  
24 designed such that it can withstand significant  
25 earthquakes.

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1 JUDGE ARNOLD: Would that information be in  
2 the environmental report or the safety analysis  
3 report?

4 MS. LEIDICH: There was a comparison of the  
5 ground acceleration for the site and the UMAX facility  
6 in the safety analysis report.

7 JUDGE ARNOLD: Joint Petitioner Contention  
8 3, your future reprocessing facility, what plans do  
9 you have to reprocess the spent fuel?

10 MS. LEIDICH: We have no plans to reprocess  
11 the spent fuel.

12 JUDGE ARNOLD: Joint Petitioner Contention  
13 9, potential transportation routes. Actually, we've  
14 covered that adequately already.

15 Joint Petitioners Contention 11 has to do  
16 with transportation routes and it touches on  
17 terrorism. Do you anticipate that your facility might  
18 accept spent fuel from San Onofre or Diablo Canyon or  
19 any place within the jurisdiction of the Ninth  
20 Circuit?

21 MR. SILBERG: It's certainly possible.

22 JUDGE ARNOLD: Should this happen,  
23 hypothetical, will you rely on the current ER for that  
24 transportation or will you be addressing the Ninth  
25 Circuit requirement somewhere else?

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1 MR. SILBERG: Well, we don't think the  
2 Ninth Circuit applies. I do believe we have addressed  
3 terrorism, either directly or by reference to other  
4 reports, many of whom have talked about terrorism.

5 This is a facility that's located not in  
6 the Ninth Circuit and we think that the appropriate  
7 circuit to look at would be the circuit in which the  
8 facility is located or the D.C. Circuit, as provided  
9 for by the Atomic Energy Act and other statutes.

10 JUDGE ARNOLD: And you believe that for  
11 spent fuel that's being transported within the  
12 jurisdiction of the Ninth Circuit?

13 MR. SILBERG: Because the facility and the  
14 licensing action involves a facility that is not in  
15 the Ninth Circuit.

16 MS. BONINE: Could you repeat that answer?

17 MR. SILBERG: Sure. This facility is not  
18 in the Ninth Circuit and therefore, the appropriate  
19 circuit law to look at is the law of this circuit.

20 The NRC has said that, but for the Ninth  
21 Circuit, it will apply the court decisions primarily  
22 out of the U.S. Court of Appeals for the Third  
23 Circuit, and that will be the ones that NRC applies,  
24 except as to those facilities, and the NRC Policy  
25 Statement specifically says facilities, as do cases

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1 that have referred to that Policy Statement. We're  
2 not licensing a facility in the Ninth Circuit.

3 JUDGE ARNOLD: I'm done with my questions.

4 CHAIR RYERSON: Judge Trikouros, did you  
5 have any more questions for Holtec?

6 JUDGE TRIKOUROS: No.

7 CHAIR RYERSON: Thank you. NRC staff, did  
8 you want to make a brief opening?

9 MS. KIRKWOOD: We do not, Your Honor.

10 CHAIR RYERSON: You do not? Okay. Well,  
11 let me get back to the questions I tried to alert you  
12 to. You have a microphone? No, you're getting one.  
13 Okay.

14 MS. KIRKWOOD: And, Your Honor, if it's  
15 okay, we were planning to do the same thing that  
16 Holtec did.

17 CHAIR RYERSON: I'm sorry?

18 MS. KIRKWOOD: We were going to do the same  
19 that Holtec did and pass our --

20 CHAIR RYERSON: Pass, yes, that's fine.  
21 Well, I have in front of me your filing on October 9,  
22 and I think we've asked you some of these questions  
23 yesterday or earlier today, but it would be helpful to  
24 run through, one final time, what the NRC staff's  
25 position now is on the admissibility of contentions.

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1 I think, on October 9, I believe there  
2 were six contentions that you either thought were  
3 admissible, in whole or in part, or at least you  
4 weren't opposing the admissibility of them. And let  
5 me run through them.

6 I think, NAC -- and also, the NAC  
7 contention you addressed, but in effect, you said it  
8 was moot from your standpoint, because you would not  
9 find NAC as having standing.

10 MS. KIRKWOOD: Correct.

11 CHAIR RYERSON: But you, nonetheless, you  
12 independently looked at the admissibility of its  
13 contentions.

14 And NAC Contention 3, I believe relates to  
15 the adequacy of the analysis of alternative designs.  
16 And do you still think that that contention is at  
17 least potentially admissible?

18 MS. KIRKWOOD: We do, Your Honor.

19 CHAIR RYERSON: You do? Okay. Then, on  
20 the two contentions that are really very similar, at  
21 least in part, Beyond Nuclear's sole contention and at  
22 least the first portion of Sierra Club Contention 1.

23 I believe you felt that those were  
24 admissible, again, in part, the Sierra Club in part,  
25 and have -- in view of the corrections, as Mr. Silberg

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1 has described them, to the ER or otherwise, have you  
2 changed your position on that?

3 MS. KIRKWOOD: It's not so much, I would  
4 say, that we've changed our position, Your Honor, but  
5 I think it may have been overtaken by events, because  
6 with the revision to the ER, the portion of the  
7 contention we had found admissible appears to be moot.

8 CHAIR RYERSON: Okay.

9 MS. KIRKWOOD: But I know that -- I believe  
10 Beyond Nuclear is planning to, then, amend the  
11 contention.

12 CHAIR RYERSON: I'm sorry?

13 MS. KIRKWOOD: I understood that they were,  
14 then, going to file an amendment, based on that change  
15 to the ER --

16 CHAIR RYERSON: Oh, they're going to --

17 MS. KIRKWOOD: -- to the contention.

18 CHAIR RYERSON: Okay.

19 MS. KIRKWOOD: Which is what we talked  
20 about yesterday.

21 CHAIR RYERSON: So, your position is, if  
22 there's an inconsistency, it would be admissible, but  
23 at the moment, you don't see an inconsistency in view  
24 of the change? In a -- your position is the same, but  
25 events have transpired?

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1 MS. KIRKWOOD: Yes. Our position on that  
2 contention is, other than the inconsistency, the  
3 Petitioners have not identified how the issue they are  
4 raising is material to a finding that the NRC must  
5 make.

6 CHAIR RYERSON: Right. And your position  
7 on the lawfulness of what we've been calling Option A  
8 or Option 1, I believe you used the word premature to  
9 address that, but that apparently is no longer  
10 necessary to address. Is that -- am I wrong?

11 MS. KIRKWOOD: There's still an option  
12 contained in the application, option -- just certain  
13 --

14 CHAIR RYERSON: Correct, but --

15 MS. KIRKWOOD: -- Option 1 being that DOE  
16 would take title.

17 CHAIR RYERSON: Correct.

18 MS. KIRKWOOD: Correct.

19 CHAIR RYERSON: But counsel for Holtec  
20 International has represented, and correct me if I'm  
21 misrepresenting what you represented, but has now  
22 represented that Holtec International's position is  
23 that, at the present time, DOE could not, consistent  
24 with the Nuclear Waste Policy Act, take possession of  
25 the nuclear waste, except with an exception, narrow

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1 exception, fairly narrow, for research materials.

2 MS. KIRKWOOD: Yes, I did hear them say  
3 that.

4 CHAIR RYERSON: Okay.

5 MS. KIRKWOOD: That option is still  
6 contained in their application.

7 CHAIR RYERSON: Right. I -- we understand,  
8 but the -- you were initially concerned, the staff was  
9 initially concerned about an apparent inconsistency  
10 between the language in the environmental report and  
11 in the rest of the application.

12 And that appears to have been, we'll hear,  
13 perhaps, one last time from Beyond Nuclear, but that  
14 appears to have been cured for the present time. Is  
15 that correct?

16 MS. KIRKWOOD: Yes.

17 CHAIR RYERSON: You're not disagreeing with  
18 that?

19 MS. KIRKWOOD: No, I --

20 CHAIR RYERSON: Okay.

21 MS. KIRKWOOD: -- believe that that has --

22 CHAIR RYERSON: Okay.

23 MS. KIRKWOOD: -- been cured.

24 CHAIR RYERSON: Let's move to Sierra Club  
25 Contention 4, and if I characterize you correctly, the

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1 staff thought that that contention would be admissible  
2 in part.

3 It would be admissible in so far as it  
4 dealt with the potential consequences of a nuclear  
5 accident in transportation, but not as to the  
6 likelihood of such an accident. And has your position  
7 changed at all on that?

8 MR. GILLESPIE: No, Your Honor, our  
9 position has not changed.

10 CHAIR RYERSON: Not changed? Okay. And I  
11 think there was only one more contention that the  
12 staff would have argued is at least admissible in  
13 part.

14 And that was Sierra Club Contention 8, the  
15 decommissioning plan, based upon an apparent  
16 inconsistency between the numbers, between how many  
17 metric tons of uranium would be multiplied by the  
18 amount that Holtec was proposing. And has your  
19 position changed on that?

20 MS. KIRKWOOD: Yes, Your Honor. We are no  
21 longer taking a position --

22 CHAIR RYERSON: Right.

23 MS. KIRKWOOD: -- on that contention.

24 CHAIR RYERSON: So, you're no longer --  
25 that's right, you said that earlier today. No longer

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1 a position, you're not opposing --

2 MS. KIRKWOOD: Right.

3 CHAIR RYERSON: -- but you're not taking a  
4 position.

5 MS. KIRKWOOD: We're not taking a position.

6 CHAIR RYERSON: Okay. And I'm sure you  
7 would have told me if this were the case, but of the  
8 40 or so other contentions, or the total of 40  
9 contentions, you haven't changed your position, the  
10 staff's position on any other contentions as a result  
11 of the filings or the arguments today?

12 MS. KIRKWOOD: No. The Sierra Club and  
13 Beyond Nuclear both added a final contention regarding  
14 adopting one another's contentions, and I think that's  
15 -- I don't know.

16 It's not really a standalone contention.  
17 We don't have any objection, based on their latest  
18 filing, to the adoption, if they each had contentions  
19 admitted.

20 CHAIR RYERSON: Right. There was some  
21 filings about that, there were motions about that. I  
22 think, from the Board's standpoint, yes, the Board has  
23 the power to tell them that, one, we'll be pursuing  
24 certain contentions and the other contentions -- I  
25 think a major reason that a party would want to adopt

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1 another party's contentions is that one party may not  
2 be here, for whatever reason. The Board decides they  
3 don't have standing, potentially, or that they drop  
4 out.

5 And I take it that, in that situation, the  
6 NRC staff doesn't see any problem with someone who has  
7 previously adopted the contentions of the other  
8 participant or party, pursuing those contentions, to  
9 the extent, of course, they're admissible.

10 MS. KIRKWOOD: Correct.

11 CHAIR RYERSON: Okay.

12 MS. KIRKWOOD: Correct.

13 CHAIR RYERSON: All right. I think that is  
14 all I have. Judge Arnold, do you have questions for  
15 the staff?

16 JUDGE ARNOLD: Sure, a few. I've asked  
17 some of the Petitioners here, and I'll ask you too, to  
18 your knowledge, does the Department of Energy  
19 currently hold title to spent fuel and greater-than-  
20 Class-C waste?

21 MS. KIRKWOOD: Yes, Your Honor.

22 JUDGE ARNOLD: Is it a significant amount?  
23 Do you know about how much?

24 MS. KIRKWOOD: May I have a moment to  
25 confer with my -- yes, we would consider it a

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1 significant amount, both Fort St. Vrain and TMI.

2 JUDGE ARNOLD: Okay. So, the condition in  
3 the application that they accept waste from the DOE  
4 would permit them to accept this waste that the DOE  
5 currently holds, correct?

6 MS. KIRKWOOD: The condition in the  
7 application --

8 JUDGE ARNOLD: In the application, they say  
9 they'll either take it from the DOE or from the  
10 individual plants. This part one, taking it from the  
11 DOE, would allow them to take the significant spent  
12 fuel and greater-than-Class-C waste that currently DOE  
13 holds title to, correct?

14 MS. KIRKWOOD: Just one moment. Your  
15 Honor, neither of those are stored in UMAX designs, so  
16 they're outside of this application, because this  
17 application would only allow them to take waste or  
18 spent fuel that is stored in a UMAX design.

19 JUDGE ARNOLD: Okay. Concerning Sierra  
20 Club Contention 2, the issue of safer and more secure  
21 versus safe and secure. In order to grant the  
22 license, does the staff have to find that this  
23 facility is safer and more secure or do you only need  
24 to know it's safe and secure?

25 MS. KIRKWOOD: We don't need to find it

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1 safer and more secure, no. I'll just go with that.

2 CHAIR RYERSON: This has to do with safe  
3 transportation of high burnup fuel, Sierra Club  
4 Contention 21.

5 On Page 71 of their petition, the Sierra  
6 Club references Interim Staff Guidance ISG-11 for  
7 support for their assertion that the NRC staff is  
8 still working on the safety question concerning high  
9 burnup fuel and its transportation.

10 But this staff guidance is dated 2003. Do  
11 you know if this is the latest word from the NRC  
12 concerning high burnup fuel?

13 MR. GILLESPIE: Your Honor, it's not the --  
14 well, it is the latest finalized guidance, I believe,  
15 on this subject. There's ISG-11, that was issued in  
16 the time frame that you mention.

17 There was also a draft RIS that was  
18 published, that I think Legal has referenced as part  
19 of the HI-STAR application. And there's a draft  
20 NUREG, 2224, that finalizes some of this guidance, but  
21 it's currently not in final form.

22 JUDGE ARNOLD: So, would you say the  
23 Interim Staff Guidance is currently behind the state  
24 of the art?

25 MR. GILLESPIE: Your Honor, I would not go

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1 that far. With respect to transportation, the Interim  
2 Staff Guidance 11 states that it would be done on a  
3 case-by-case basis, and that's still the current  
4 state.

5 JUDGE ARNOLD: Thank you.

6 MS. BONINE: Could you repeat his answer?  
7 It's really hard to understand what he's saying.

8 MR. GILLESPIE: Okay, I apologize.

9 MS. BONINE: Speak slower, if you could  
10 talk slower.

11 CHAIR RYERSON: Okay. We'll try to do  
12 that, everyone, okay? Thank you.

13 MS. BONINE: Are you going to repeat the  
14 answer?

15 MR. GILLESPIE: I can repeat the answer.

16 CHAIR RYERSON: Go ahead.

17 MS. BONINE: Thank you.

18 MR. GILLESPIE: The question was whether  
19 Interim Staff Guidance 11 was currently behind the  
20 state of the art. But the Interim Staff Guidance 11  
21 states that it will be evaluated on a case-by-case  
22 basis and that is still currently how things are done.

23 MS. BONINE: And that's according to ISG-11  
24 or this draft --

25 CHAIR RYERSON: Excuse me, ma'am?

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1 MS. BONINE: I'm sorry.

2 CHAIR RYERSON: No --

3 MS. BONINE: It's just hard to hear, he's  
4 still mumbling.

5 CHAIR RYERSON: Maybe if you went for the  
6 --

7 MS. BONINE: And these --

8 CHAIR RYERSON: Excuse me. Excuse me.  
9 Thank you for alerting us that you're having  
10 difficulty hearing, but the participants are only the  
11 ones who are here. Would you try the podium? Perhaps  
12 that will work better, to repeat the answer.

13 MR. GILLESPIE: Yes. So, the question that  
14 was received was whether Interim Staff Guidance 11 was  
15 behind the state of the art.

16 Currently, Interim Staff Guidance 11, the  
17 guidance that is in there states that it will be  
18 evaluated on a case-by-case basis, and that is still  
19 the method in which the NRC is doing these reviews.

20 CHAIR RYERSON: Thank you.

21 MS. BONINE: So, the answer is yes?

22 JUDGE ARNOLD: This -- okay. A question on  
23 Joint Petitioners Contention 11. Once again, this is  
24 about transportation of fuel and terrorism.

25 And do you believe that transportation of

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1 spent fuel through the jurisdiction of the Ninth  
2 Circuit Court will require further environmental  
3 evaluation?

4 MR. GILLESPIE: Your Honor, no, the  
5 facility itself is located outside the Ninth Circuit.  
6 Licensees already have a general license to ship fuel  
7 throughout the country, under the provisions of the  
8 general license in Part 71 and approved COCs and  
9 approved packages.

10 CHAIR RYERSON: Judge Trikouros, do you  
11 have further questions for the staff?

12 JUDGE TRIKOUROS: I do. In many cases,  
13 you heard the questions and answers that Holtec  
14 provided. So I just want to make sure. Where you  
15 never identified any problem with those answers, I'm  
16 going to assume that you're okay and agree with them.  
17 Is that a fair assumption? Or should I ask questions  
18 over again?

19 MS. WASE: Your Honor, Alana Wase. If  
20 you're referring at least to the geological  
21 groundwater questions, the technical questions, we  
22 agree with Holtec's responses.

23 JUDGE TRIKOUROS: Okay. That's fine.  
24 I'll make that assumption and I'll only ask you the  
25 questions that I want to hear you actually say yes to

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1 separately. All right. Let me start --

2 MS. KIRKWOOD: Wait. Just -- sorry. I  
3 don't want to interrupt you. I just want to be clear.  
4 We don't agree with every word they said in general.

5 JUDGE TRIKOUROS: All right. Let's  
6 proceed and I'll try and get through as many of these  
7 as I can directly to you. All right. With respect to  
8 what happens if a canister doesn't pass the receipt  
9 and inspection criteria when it arrives at Holtec,  
10 namely that the canister is contaminated or damaged in  
11 some way or whatever the receipt and inspection  
12 requirements are as provided in the SAR, it doesn't  
13 meet them.

14 And I had asked the question and the  
15 answer was that it would be shipped back to the  
16 sender. And I'd asked the question, I believe, well,  
17 what would happen if, in fact, it was unable to meet  
18 the transportation requirements for shipment back to  
19 the center? And the answer was that it would be  
20 placed in a transportation canister that was available  
21 for that purpose and would then be able to be shipped  
22 back. Do you have any problem with that?

23 MR. GILLESPIE: No, Your Honor.

24 JUDGE TRIKOUROS: Okay.

25 JUDGE ARNOLD: Would the NRC be notified

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1 if they received something that they could not store?

2 MR. GILLESPIE: I'm not sure. It would  
3 depend on the details of the technical specifications,  
4 I believe. Whether that would trigger a reporting  
5 requirement, I'm not familiar with the exact terms of  
6 that. But otherwise they would also be -- there's  
7 requirements before shipping that we have to approve  
8 routes. And that may also trigger some sort of  
9 approval if they intend to ship a return that they  
10 hadn't expected to.

11 JUDGE TRIKOUROS: Okay. With respect to  
12 burn up -- and again, I apologize for having to repeat  
13 questions to you that I had already asked Holtec. But  
14 I have no other way of doing this. But I'm going to  
15 summarize. So the certificate of compliance  
16 requirements for fuel that can be shipped to Holtec  
17 was provided in Appendix B of the certificate of  
18 compliance as I had said earlier. I referenced the  
19 table that provided burn ups the size of 68.5  
20 gigawatt-days, I believe, and noted that the SAR  
21 analyses or at least the SAR indicated number was 45  
22 gigawatt-days.

23 The answer came back that the analyses  
24 that were done did utilize 45. But they were rather  
25 conservatisms in the analysis such that the results

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1 would be applicable to the certificate of compliance  
2 table requirements including 68.5. Do you agree with  
3 that?

4 MR. GILLESPIE: Your Honor, I can't speak  
5 to the exact details that were done as part of the  
6 application. But I would note that with respect to  
7 this application, as we say in our brief, the safety  
8 and the review of the transportation package designs  
9 that we see as outside of the scope of this hearing.  
10 But I don't know with respect to the details of the  
11 SAR for the HI-STAR 190 system.

12 Okay. So you're saying that you don't  
13 whether or not -- you personally right now do not know  
14 if 68.5 gigawatt-days can be accommodated in the  
15 facility safely, safely meaning within the  
16 acceptability of the analyses that were done in  
17 support in the SAR itself?

18 MR. GILLESPIE: Well, I should clarify if  
19 that's the case if that's okay. The COC represents  
20 what the staff found acceptable. And so long as  
21 something that's transported in accordance with the  
22 COC or stored within the UMAX system. Within that  
23 COC, if it permits storage of higher burner fuel, then  
24 the staff sees that as sufficient.

25 JUDGE TRIKOUROS: All right. Holtec said

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1 they took that all into account. And do you have any  
2 reason to think that's not correct?

3 MR. GILLESPIE: No, Your Honor. And  
4 looking at the petitions, there's not a clear  
5 allegation of what that stands at, identifying exactly  
6 which portion is in scope that they're alleging a  
7 deficiency with. And then also things like could  
8 potentially be in scope is unclear exactly what  
9 dispute they have that they raised.

10 JUDGE TRIKOUROS: All right. Now actually  
11 I don't personally know if there are any fuel  
12 assemblies in the United States that are greater than  
13 68.5. But clearly, they would not be able to be  
14 shipped to the Holtec facility if they were. Is that  
15 a correct statement?

16 MR. GILLESPIE: Your Honor, I think based  
17 on what is currently available, I believe that's  
18 correct. But regardless of whether something does now  
19 or later, the issue of having a Part 71 license is  
20 already been issued under the general license. So if  
21 a package was approved in the future, they could  
22 transport that. That could be transported. Whether  
23 they could accept that at the site under their  
24 proposed license, they may ultimately require an  
25 amendment to accept it.

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1 JUDGE TRIKOUROS: And clearly, all the  
2 paperwork says that it couldn't be shipped. And if  
3 have a nod from Holtec, and you have no problem with  
4 that. So that's it. Holtec indicated that they  
5 haven't seen any cracks in canisters and that the San  
6 Onofre experience no longer -- doesn't apply because  
7 of modifications that have been made. Do you agree  
8 with that?

9 MR. GILLESPIE: Your Honor, I'm not  
10 familiar enough with the facts of what occurred in San  
11 Onofre to make a judgment on that here.

12 JUDGE TRIKOUROS: All right. With respect  
13 to contention 15, Sierra Club contention 15, this is  
14 the contention where -- okay. I was going to  
15 summarize it for you, but that's all right. All  
16 right. Well, I'll summarize it anyway. This is a  
17 contention that basically asserts that there's  
18 near-surface groundwater that was not identified in  
19 the environmental report.

20 And also the next contention, I believe  
21 Sierra Club contention 16, it's the same sort of thing  
22 but with respect to the presence of brine in a shallow  
23 groundwater area. And the staff answer basically was  
24 we don't need to worry about that. It's inadmissible  
25 because there won't ever be a leak.

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1 MS. KIRKWOOD: Your Honor, I would not  
2 characterize our response as such. It was rather that  
3 the petitioners have a burden to controvert statements  
4 in the ER and the SAR. There were numerous statements  
5 in the ER and the SAR which establish that there is no  
6 credible pathway for a leak from the facility. And we  
7 identified those. I can run through them if you like,  
8 but they're in the brief.

9 JUDGE TRIKOUROS: Okay. I agree with  
10 respect to the fact that there's no liquid release.  
11 So from that point of view, I understand that. But  
12 the contention was somewhat broader in the sense that  
13 it was trying to identify potential cracking  
14 mechanisms if groundwater were to get in contact with  
15 the canister and that sort of thing.

16 I had asked the question if you ignore the  
17 transport of radioactivity part of that of those two  
18 contentions and you just look at them as, is the ER  
19 adequate, those contentions are claiming that the ER  
20 is not adequate, just ending it right there. No more,  
21 no discretion of liquid pathways or anything. Do you  
22 agree with that, that the -- from that point of view,  
23 their contention is that the ER is not adequate. Do  
24 you agree with that?

25 MS. KIRKWOOD: Your Honor, staff is still

1 reviewing the ER. As we discussed the RAI is ongoing.  
2 It's normal course of business. So we do not yet have  
3 a position on the merits of the ER.

4 JUDGE TRIKOUROS: Okay. And I guess this  
5 proceeding and the staff review has come to a point of  
6 contact in another contention. Let me just ask one  
7 question on this point. I believe the 10 CFR 51  
8 requirement is for the applicant to describe the  
9 affected environment. If there's no leakage path, is  
10 any of the ground affected by this installation?

11 MS. KIRKWOOD: Your Honor, our argument  
12 could be made. But nonetheless, it's staff's position  
13 to describe the site characteristics generally to  
14 establish a baseline.

15 JUDGE TRIKOUROS: And we also discussed  
16 and that's why I don't want to spend too much time  
17 going over things that we discussed. But we also  
18 discussed that the aging management program in the SAR  
19 requires groundwater testing. And I can't imagine  
20 that they wouldn't use the ER as a basis for  
21 identifying why groundwater is there and what  
22 potential corrosive material might be in the  
23 groundwater and therefore having an ER that doesn't  
24 have the correct groundwater identified and the  
25 correct sources of, say, brine identified could be

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1 problematic from that point of view.

2 I can't imagine in the aging management  
3 program they're going to go do some environmental  
4 analysis to try and find new groundwater. They're  
5 just going to use whatever knowledge they have of  
6 where groundwater is. I would assume that. And I had  
7 no basis for not assuming that based on the  
8 conversation we had on this yesterday. So from that  
9 -- from the point -- so you're telling me that you're  
10 not ready to answer that question --

11 MS. KIRKWOOD: We are not --

12 JUDGE TRIKOUROS: -- with respect to  
13 whether the contention as it applies to just the  
14 adequacy of the ER is --

15 MS. KIRKWOOD: Well, Your Honor, it's the  
16 petitioners' burden also to establish materiality.  
17 And our position is, is that because a credible  
18 pathway for the leaks has not been established,  
19 they've not shown the materiality of the contention,  
20 how it would affect conclusions in the ER.

21 JUDGE TRIKOUROS: Well, contention 16 was  
22 with the brine discussion was really talking about  
23 brine affecting the facility. Contention 15 with  
24 respect to the presence of groundwater was identifying  
25 that as a pathway to the environmental if there's a

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1 leak. So they're not exactly -- but both of them have  
2 the one thing in common, that they're claiming that  
3 the environmental report is not adequate.

4 MS. KIRKWOOD: That is correct that that  
5 is their claim.

6 JUDGE TRIKOUROS: Okay. All right. Let's  
7 see. I'll still ask this one again. There's a claim  
8 that a crack in the canister or in the UMAX cask  
9 enclosure is not credible and that there has been no  
10 experience of crack in the canister. I don't know if  
11 we just covered this. I don't remember. But could  
12 you just -- do you agree with that?

13 MS. WASE: Could I confer with staff for  
14 a second?

15 JUDGE TRIKOUROS: Yes.

16 MS. WASE: Your Honor, that's correct.  
17 There is no evidence of any NRC licensed canisters  
18 cracking.

19 JUDGE TRIKOUROS: Okay. So with respect  
20 to subsidence possible -- the possibility of  
21 subsidence in the site vicinity, you heard the answer  
22 that Holtec gave. But I'm going to ask that one again  
23 specifically. Do you agree that there is no  
24 possibility of subsidence at the Holtec site?

25 MS. WASE: Your Honor, we are conducting

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1 our review currently of the potential for subsidence  
2 at the site. I would point out you mentioned the ER.  
3 And I believe your citation was to the possibility of  
4 regional subsidence. I'd like to provide you with  
5 citations to ER 4-5 as well as ER 3-14 which they both  
6 noted -- the ER notes that there's no evidence of  
7 local subsidence actually at the site as opposed to in  
8 the area.

9 JUDGE TRIKOUROS: Right. And that is  
10 consistent with what Holtec has --

11 MS. WASE: Correct.

12 JUDGE TRIKOUROS: -- told us?

13 MS. WASE: Correct.

14 JUDGE TRIKOUROS: Okay.

15 MS. WASE: And also if I could, Your  
16 Honor, the SMU study that was referenced yesterday for  
17 evidence of subsidence, I believe it's in footnote 26  
18 of the petition. The closest subsidence that the  
19 study references is approximately 75 miles from the  
20 site.

21 JUDGE TRIKOUROS: Okay. And by the way,  
22 this is a Don't Waste Michigan contention 12, I  
23 believe --

24 MS. WASE: That was referencing --

25 JUDGE TRIKOUROS: -- and also 5.

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1 MS. WASE: Yes, that was -- my response  
2 referenced footnote 26 of contention 5.

3 JUDGE TRIKOUROS: Okay. Yes, so 5 and 12  
4 were really -- as we said yesterday, they're dealing  
5 with the same thing. But one is human activity and  
6 the other is geologic activity. So one natural, one  
7 human.

8 MS. WASE: If I could point out with  
9 respect to Don't Waste Michigan contention 12, our  
10 position is that contention is not admissible as the  
11 petition did not reference the SAR or the ER.

12 JUDGE TRIKOUROS: I understand.

13 MS. WASE: Okay.

14 JUDGE TRIKOUROS: I understand that.

15 MS. WASE: Thank you.

16 JUDGE TRIKOUROS: Okay. With respect to  
17 hydraulic fracturing below 5,000 feet, does the staff  
18 agree that totally precludes the possibility of  
19 subsidence effects?

20 MS. WASE: Staff's review is still ongoing  
21 on that as well.

22 JUDGE TRIKOUROS: Okay. But you heard the  
23 answers that were provided in a positive way that if  
24 you drill below -- and I think they said 3,000 feet.  
25 But certainly if you drill below 5,000 feet or

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1 hydraulic fracture below 5,000 feet, there will not be  
2 a subsidence effect?

3 MS. WASE: Yes, and, Your Honor, staff has  
4 not yet made a conclusion on that.

5 JUDGE TRIKOUROS: So you're still working  
6 on that?

7 MS. WASE: Correct.

8 JUDGE TRIKOUROS: Okay. And with respect  
9 to this issue that came up, your answer to contention  
10 23. If you're worrying about defects that might occur  
11 during the service life -- 100-year service life --  
12 well, I guess your answer did not address the time  
13 period up to the service life. I think you were  
14 addressing the license life.

15 And we discussed yesterday that any  
16 extension beyond the license life at each stage would  
17 be required to be reviewed as a license renewal which  
18 would include an environmental review and a safety  
19 review. So one could not get to even the design life  
20 without having to go through a series of reviews; is  
21 that correct?

22 MR. GILLESPIE: Yes, Your Honor.

23 JUDGE TRIKOUROS: So we don't need to  
24 worry about 100 years right this minute, and that's  
25 consistent with the guidance as well?

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1 MR. GILLESPIE: Yes, Your Honor. Based on  
2 the canisters that could go in the facility as  
3 proposed and the 40-year license term, there'd be no  
4 way to reach 100 years without another renewal.

5 JUDGE TRIKOUROS: Okay. I pointed out  
6 earlier again that a cursory look at the Schafersman  
7 report, it seemed to me it was in direct dispute, if  
8 you will, with part of the ER, specifically Section  
9 3.3.3 of the ER and Section 2 of the Schafersman  
10 report with respect to cost geology formations. Do  
11 you have any comment on the adequacy of Section 3.3.3  
12 of the ER?

13 MS. WASE: One minute, Your Honor.

14 JUDGE TRIKOUROS: Thank you.

15 MS. WASE: As a preliminary matter, Your  
16 Honor, if I could note the Schafersman report is only  
17 relied on for contention 12. It's not mentioned as a  
18 basis for contention 5.

19 JUDGE TRIKOUROS: And Holtec had an  
20 elaborate answer to this as well. But I'm asking you  
21 separately.

22 MS. WASE: We're not going to take a  
23 position on that at this time as our review is still  
24 ongoing.

25 JUDGE TRIKOUROS: All right. I had asked

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1 the question, would subsidence on the site potentially  
2 cause damage to the UMAX system? Do you have an  
3 answer to that?

4 MS. WASE: No, Your Honor. May I confer  
5 with staff?

6 JUDGE TRIKOUROS: Yes.

7 MS. WASE: Your Honor, that is an area  
8 that is under review currently. So we are not taking  
9 a position.

10 JUDGE TRIKOUROS: Okay. All right. That  
11 is my last question. I've had -- all my other  
12 questions have been answered throughout the  
13 proceeding. So thank you very much.

14 CHAIR RYERSON: Judge Arnold, any further  
15 questions? All right. Well, we're now either  
16 virtually done or almost done. We did suggest the  
17 possibility in our order that if there's an interest  
18 in them, we could have very brief final statements  
19 from the various participants. Perhaps I could just  
20 ask for a show of hands. There is interest.

21 MS. CURRAN: Voting.

22 CHAIR RYERSON: You're voting. What we'll  
23 do then, we'll take another break. And we'll go  
24 through in the same order. Do not feel you need to  
25 say anything if you don't want to. Do not feel you

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1 need to use all five minutes. We will limit these to  
2 five minutes maximum. And we'll go through in the  
3 order. I think we'll try to restrain ourselves from  
4 any questions. But we will provide that opportunity.

5 One thing I will mention too. I am sorry  
6 if there was some problem with the audio. It sounded  
7 like it's now working or at least when the podium is  
8 used. But I should alert people. If you really have  
9 an interest, there will be a written transcript of  
10 this proceeding which is being prepared. I'm not sure  
11 exactly when we get that, possibly three working days  
12 or something like that. And that will, fairly  
13 promptly, be posted on the NRC website. So if you go  
14 to the NRC public website and you go to the electronic  
15 hearing docket and find this case, it will be there in  
16 its entirety within a reasonable period of time. I'm  
17 not sure exactly how long.

18 MS. BONINE: Is that NRC.gov?

19 CHAIR RYERSON: Correct. And there is a  
20 public -- the staff may know better than I. But there  
21 is a public access to the electronic hearing docket  
22 that virtually all of the documents are available on.

23 PARTICIPANT: Your Honor, I'm happy to --  
24 I may have turned the mic off -- I'm happy to show any  
25 member of the public, if they have internet access,

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1 how to get to the electronic records.

2 CHAIR RYERSON: Great, they can see on the  
3 break then. But thank you very much. All right.  
4 Let's resume at 20 of 3:00, 2:40. And we will finish  
5 up then. Thank you.

6 (Whereupon, the above-entitled matter went  
7 off the record at 2:23 p.m. and resumed at 2:42 p.m.)

8 CHAIR RYERSON: All right. So what we are  
9 going to do as we said earlier, we're going to have  
10 very brief final statements from those who wish to  
11 make them, no more than five minutes. You do not have  
12 to make one. You do not have to take five minute.  
13 But we would begin with Ms. Curran --

14 MS. CURRAN: Thank you.

15 CHAIR RYERSON: -- for Beyond Nuclear.

16 MS. CURRAN: Yes. At the end of these two  
17 days, it is safe to say that everyone agrees that DOE  
18 cannot currently take title to privately owned spent  
19 fuel except in a few narrow exceptions. And everyone  
20 agrees that the purpose of the Holtec project is to  
21 take spent fuel from privately owned nuclear reactor  
22 sites.

23 I would like to respond to two statements  
24 by Mr. Silberg to the effect that this doesn't matter.  
25 First, Mr. Silberg said that having an option that DOE

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1 may take title to spent fuel which we've been calling  
2 Option 1 that may currently violate the law is okay  
3 because that option could be severable. He referred  
4 to severability clauses and contracts that can save  
5 contracts from such illegal options.

6 But severability clauses work by allowing  
7 for the illegal provisions to be struck from the  
8 contract. If Holtec is willing to strike the illegal  
9 provisions from its application, removing Option 1,  
10 and then refile the application, this could, of  
11 course, negate our legal claims.

12 In the meantime, we continue to maintain  
13 that an application that would allow for DOE ownership  
14 of spent fuel, whether it is characterized as  
15 alternative or contingent is unlawful under the  
16 Nuclear Waste Policy Act and the Administrative  
17 Procedure Act.

18 In fact, what Holtec is asking the NRC to  
19 do is the very type of action the APA prohibits as the  
20 District Court held in State of New York, et al v.  
21 U.S. Department of Commerce. And those numbers of the  
22 docket, it's still a slip opinion, are 18-CV-2921 and  
23 18-CV-5025, January 15th, 2019. Agencies are not  
24 above the law and they cannot do more than Congress  
25 allows.

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1           As the court recognized in the State of  
2 New York, the APA is meant to protect the integrity of  
3 legal proceedings like this one. As the court  
4 explained -- and I just want to read this to you  
5 because I think it's very eloquent language. Although  
6 some may deride its requirements as red tape, the APA  
7 exists to protect core constitutional and democratic  
8 values. It ensures that agencies exercise only the  
9 authority that Congress has given them, that they  
10 exercise that authority reasonably, and that they file  
11 applicable procedures. In sort, it ensures that  
12 agencies remain accountable to the public they serve.

13           Here by even entertaining Holtec's license  
14 application, the NRC has shown a serious lack of  
15 accountability to the public, not to mention a lack of  
16 consistency with its own standards. As Judge Ryerson  
17 noted earlier, any member of the public taking issue  
18 with a license application that's been filed with the  
19 NRC has an iron clad obligation to contest the  
20 application with specificity and support. License  
21 applications are thus treated as real and serious and  
22 not hypothetical.

23           Here, as is demonstrated by two days of  
24 oral argument, petitioners have spent precious time  
25 and treasure analyzing an application that is

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1 fundamentally hypothetical. We are not just chasing  
2 a rabbit that may disappear down a hole. We're  
3 chasing the white rabbit, a fictional creature.

4 Second, I want to respond to Mr. Silberg's  
5 suggestion that it doesn't really matter whether the  
6 owner of the spent fuel at the Holtec facility turns  
7 out to be the DOE or a private licensee because the  
8 impact analysis of the environmental report will not  
9 change if DOE were the owner of the spent fuel.

10 Setting aside the illegality of Holtec's  
11 license application under the APA, Mr. Silberg is  
12 wrong as a practical matter. If DOE becomes the owner  
13 of spent fuel to be transported from reactors to the  
14 Holtec facility and stored there, that would need to  
15 be done by federal legislation.

16 As Mr. Silberg said in his opening  
17 statement, the issue of what to do with spent reactor  
18 fuel is a huge national problem. Congress effectively  
19 will be crafting a temporary alternative to the  
20 national repository. In that event, it is very  
21 reasonable to assume that Congress would put DOE in  
22 charge of such a national project and not Holtec.

23 And as the driver of the project, DOE  
24 would likely be responsible for the environmental  
25 analysis. It is not hard to imagine that the range of

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1 alternatives examined in a DOE prepared draft EIS for  
2 a national spent fuel storage program would include  
3 more than one type of cask and more than one type of  
4 facility design.

5 In all likelihood, Holtec's proposal would  
6 become an alternative for DOE to consider in its own  
7 EIS, not necessarily the proposed alternative. This  
8 is a huge difference. As Mr. Silberg stated today,  
9 the purpose of this project is to deploy Holtec casks,  
10 not NAC casks. The purpose of a national spent fuel  
11 storage program would be to solve the national spent  
12 fuel storage problem, not to advance one company's  
13 spent fuel management business in preference to  
14 another's.

15 Under the APA, the NRC may not continue to  
16 entertain an application that could require federal  
17 participation in the ownership of the spent fuel to be  
18 stored. Holtec's application should be dismissed, and  
19 Holtec can refile after the Congress has taken the  
20 necessary action. In the alternative, if Holtec  
21 wishes to continue to pursue this license application  
22 now, it must drop from the application any reference  
23 to the DOE as a potential owner of the spent fuel.

24 Thank you very much.

25 CHAIR RYERSON: Thank you, Ms. Curran.

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1 Next we have, I believe, Mr. Taylor for the Sierra  
2 Club.

3 MR. TAYLOR: Thank you. As the Board  
4 reviews the admissibility of the contentions, I ask  
5 that you keep in mind the standards for admissibility  
6 of contentions. At this point, we are not required to  
7 prove our case. In fact, the burden of proof is  
8 always on the applicant. We've tried to draft our  
9 contentions narrowly and specifically so they are  
10 focused on definite facts and issues.

11 The Commission has said that a petitioner  
12 needs to only come forward with factual issues and not  
13 merely conclusory statements and vague allegations as  
14 cited in Northeast Nuclear Energy Company at 53 NRC  
15 22. In other words, the contention should make enough  
16 of a showing to require reasonable minds to inquire  
17 further as said in Vermont Yankee v. NRDC, a U.S.  
18 Supreme Court case at 435 U.S. 519. We have tried to  
19 comply with those admissibility standards.

20 I suggest that Holtec in the answers of  
21 the NRC staff are attempting to impose an improperly  
22 high standard on contention admissibility. They are  
23 claiming that Sierra Club must set forth in great  
24 detail the facts, often very technical in nature and  
25 with pinpoint specificity, argue exactly where the

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1 Holtec documentation is in error or inadequate.

2 As I explained a moment ago, that is not  
3 the standard. Furthermore, it seems as if Holtec can  
4 make unsupported conclusory statements in its  
5 documentation, and then it's up to a petitioner to  
6 refute those statements with detailed facts supported  
7 by expert testimony or irrefutable authority. That  
8 improperly shifts the burden of proof. In fact, as we  
9 saw here today, I would suggest that Holtec was  
10 basically allowed to orally amend its application  
11 documents by responding to the Board's questions.

12 With respect to a few of the issues that  
13 Ms. Curran suggested, the idea that DOE would take  
14 title as we now see Holtec admitting is purely  
15 hypothetical. And a license cannot or should not be  
16 issued on the basis of a hypothetical.

17 If, in the alternative, we go with Option  
18 2 as you described it with a private reactor owners  
19 retaining title, there is absolutely nothing in the  
20 Holtec documentation that would infer at all that the  
21 plant owners would want to retain title. So again,  
22 it's a hypothetical.

23 With respect to the service life of the  
24 containers, the safety of the containers on into the  
25 future, the aging management plan that Holtec is

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1 relying on, although it may be a requirement of the  
2 license, there's absolutely no assurance beyond that  
3 license period that the AMP will be carried out. It  
4 is purely voluntary from that perspective, and there's  
5 no oversight.

6 Holtec imagines that they'll keep getting  
7 extensions apparently. But in their documentation,  
8 they've only expressed the intent to get the initial  
9 license and perhaps a 40-year extension. That's only  
10 60 years. So they have not shown any indication as to  
11 what assurance we have of the safety of the containers  
12 beyond that 60-year period.

13 CHAIR RYERSON: And I think we're going to  
14 have to ask you to wrap up --

15 MR. TAYLOR: Okay.

16 CHAIR RYERSON: -- over the next minute,  
17 Mr. Taylor.

18 MR. TAYLOR: Okay. Thank you. I didn't  
19 realize I'd gone that long already. So we would ask  
20 that the Board find that Sierra Club has standing and  
21 that our contentions are admissible. Thank you.

22 CHAIR RYERSON: Thank you, Mr. Taylor. Do  
23 we have anyone here today for Alliance for  
24 Environmental Strategies? Is Ms. Simmons here?

25 MS. BONINE: Ms. Simmons is not here.

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1 CHAIR RYERSON: Is not here? Well, again,  
2 it is not necessary to make this final statement. So  
3 the Alliance petition stands on the record that we  
4 have.

5 MS. BONINE: As a member of AFES, could I  
6 speak briefly?

7 CHAIR RYERSON: Actually, it's clear in  
8 our order that today we're only hearing from people  
9 who have filed appearances with the NRC. But we've  
10 heard from Ms. Simmons yesterday. We have your  
11 pleading, so thank you very much.

12 Next we have Mr. Lodge for joint  
13 petitioners.

14 MR. LODGE: Thank you very much. And  
15 thank you for the Board's presence and the attention  
16 and rigor and preparation that clearly has been  
17 reflected on the last couple of days on your part.

18 There's a number of points I want to make.  
19 I was very troubled this morning by the Holtec  
20 statement that remediation concerns are outside the  
21 scope of the proposal. And I think it's a little bit  
22 difficult for that point of view to be sustained given  
23 the revelation in the last approximate ten days of  
24 November, RAI responses from Holtec that indicate a  
25 slight change in the return to sender policy whereby

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1 Holtec now says that if there are nonconforming casks  
2 with contamination, leakage, whatever, they will  
3 either returned to the originating reactor site or  
4 devoted to a facility with loading capability.  
5 Loading capability, of course, being code for some  
6 type of dry transfer system or some type of means of  
7 being able to unload fuel or otherwise work with very  
8 dangerous radioactive casks.

9           So remediation is quite within the scope.  
10 And in fact, remediation and the apparent indifference  
11 on the part of Holtec to the need to have the  
12 capability then and there on site is a major issue and  
13 is within the scope.

14           Some of the realities that are being  
15 avoided with magical thinking include the NRC staff's  
16 admission some months ago that 29 storage canisters at  
17 San Onofre are damaged. So we start out with the  
18 potential, and I, of course, cannot guarantee that  
19 Holtec will be taking those canisters. But in the  
20 event that they do, we start out with unknowns that  
21 there already are, in effect, damaged canisters that  
22 are going to be coming. And they're going to have to  
23 be dealt with in some way. There will have to be  
24 reality based thinking in the acceptance plan.

25           One of the points that my petitioners were

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1 attempting to make through Dr. Ballard's report and  
2 remonstrance was precisely that this is -- there's a  
3 mission creep potential here that Holtec could become  
4 a de facto permanent -- not repository but a permanent  
5 place where all of this garbage stays essentially  
6 forever.

7 Part of the psychology that I fear and  
8 suggest may come to pass if this plan is somehow  
9 approved is that Holtec will also become the  
10 destination for a lot more waste than simply  
11 commercial nuclear reactor waste. There is still  
12 defense. There's military waste out there. As we  
13 have heard and discussed, there's DOE waste that was  
14 taken off the hands of commercial operators.

15 And one of the reactors that hasn't been  
16 mentioned that we believe DOE probably has possession  
17 of their waste is Fermi 1 which was, of course, a fast  
18 breeder reactor which generated during its thankfully  
19 limited lifetime a great deal of plutonium laden  
20 radioactive waste. So just to designate and limit and  
21 see the limitations that are binding on the part of  
22 Holtec would be a welcome and necessary event.

23 Another point that I'd like to make is  
24 that to get back into the 173,600 ton work is footnote  
25 137 in the answer that was filed -- oh, I hope I can

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1 find it in time. Footnote 137, basically I'll  
2 summarize it.

3 In the Holtec answer to the Don't Waste  
4 Michigan petitioner's initial petition states  
5 essentially that 173,000 -- the 173,600 figure may be  
6 what they call an overstatement of the likely waste to  
7 be delivered. But they essentially admit that it  
8 creates or that they have taken some liberty to  
9 overestimate because there is probably going to be  
10 more than 100,000 tons of waste. So today we still  
11 don't know. It's an unknown knowable.

12 Finally, I'd like to talk about standing.  
13 The calculations that were performed using the U.S.  
14 EPA's online environmental justice population  
15 demographic tool suggests that the known rail routes,  
16 the mainline routes across Texas that are very, very  
17 likely to be used at some point for delivery to  
18 Holtec, that within 800 meters on either side of those  
19 railroad lines. In the aggregate, 2010 data -- census  
20 data suggests that approximately 930,000 Texans live  
21 within a half mile of a rail line where literally  
22 hundreds, if not thousands of loads of cargos will be  
23 delivered.

24 In New Mexico, the figure is approximately  
25 132,000 people live within a half mile either side of

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1 the likely rail delivery routes. That is the  
2 equivalent in New Mexico of -- pardon me.

3 CHAIR RYERSON: We're going to have to ask  
4 you to wrap up in a minute, Mr. Lodge.

5 MR. LODGE: I'm getting there. Thank you,  
6 sir. It is the equivalent of twice the 2010  
7 population of Santa Fe living within a half mile.  
8 It's 132,000 is more than the combined populations of  
9 Hobbs, Carlsbad, and Roswell combined. And it's  
10 greater than the population of Las Cruces and Hobbs  
11 combined.

12 Standing has been established. It's been  
13 established by our declarations, and it is a bogus  
14 argument against standing that somehow the rail routes  
15 are unknown.

16 My final point is this, regarding mostly  
17 the rail routes since that's approximately 95 percent  
18 of the delivery. I keep seeing the suggestion that  
19 the rail routes will be chosen by the Federal Railway  
20 Administration. They're out of our hands. They  
21 cannot be known. It's years away, et cetera, et  
22 cetera. That's false.

23 If there's another federal agency that may  
24 or indeed must be included in consultation for NEPA,  
25 then let's bring them in with the NRC acting as the

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1 lead NEPA preparer. But you don't just say we can't  
2 do anything. It's another agency. It's another turf.  
3 We can't talk about it. There are environmental  
4 justice concerns. There are very distinct standing --  
5 there's considerable evidence of standing.

6 And that raises the other final problem  
7 which is that we are as interveners required to have  
8 our contentions projected out 120 years. We are  
9 required -- and more than 30,000 comments in  
10 opposition to this plan are essentially calling upon  
11 the NRC to consider the largest maximal picture  
12 possible. That's what NEPA requires. That is the  
13 obligation and the charge upon the Commission.

14 Thank you very much.

15 CHAIR RYERSON: Thank you, Mr. Lodge. Mr.  
16 Desai for NAC International.

17 MR. DESAI: Thank you very much for having  
18 us here this week. I'll start the closing, and then  
19 the general counsel with NAC International, Mr.  
20 Helfrich, will finish. We've timed it, we've  
21 established.

22 I will start with the environmental issues  
23 as you expected. But I'm just going to repeat a few  
24 lines of NUREG-1748 which is referenced as the NEPA  
25 standard in Section 1.0 of the ER and discussed

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1 throughout. Section 5.25 is core and states that  
2 failure to address an alternative -- and in order to  
3 fail to address an alternative, you have to have a  
4 brief discussion of the reasons for rejecting the  
5 alternative.

6 Holtec provides a reason that is incorrect  
7 and not been disavowed, its universal system failing  
8 NEPA requirements. The NRC staff agrees with us here.  
9 Section 5.2.4 states reasonable alternatives include  
10 those that are practical or feasible from the  
11 technical and economic standpoint and using common  
12 sense rather than simply desirable from the  
13 applicant's point of view.

14 We've discussed a lot this week on  
15 reasonable alternatives including the open alternative  
16 being built down the road. Keep in mind when reading  
17 Holtec statements about alternatives and the last few  
18 comments of our exchange about alternatives in  
19 competitions.

20 Now as to timing, the whole facility is  
21 getting its NEPA review here, all 20 phases. The  
22 amendment that is always being advocated as this cure  
23 all is for cask use. Look at the cases. We can't  
24 relitigate the facility design later on. Think of it  
25 this way. If a power plant gets a license amendment

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1 for another fuel type, it can't at that time  
2 relitigate the alternatives to building the power  
3 plant.

4 And they say their amendment may come  
5 sooner or later. That's the point. They can do it  
6 whenever, including after the facility is built.  
7 Recall a facility can't get built under NEPA unless  
8 the NEPA review is done. They're getting that  
9 facility level review here so they can build the  
10 facility. And then we can't litigate a NEPA issue on  
11 a facility design after it's been NEPA approved and  
12 built.

13 So when Holtec takes the position that we  
14 have participation, please take a hard look to make  
15 sure we actually have hearing rights. And those  
16 hearing rights are the same as we would get now.  
17 Thank you very much.

18 CHAIR RYERSON: Thank you. Welcome, sir.  
19 And I think I recall seeing that you have entered an  
20 appearance.

21 MR. HELFRICH: Yes, I have. Thank you,  
22 Your Honors. Thank you all. I'm Bob Helfrich, NAC  
23 Senior Vice President and general counsel.

24 As we said yesterday, with respect, NAC is  
25 not opposed to a consolidated interim storage facility

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1 in principle including this CISF. We narrowed our  
2 contentions out of consideration for that. Please  
3 assume for a moment that universal is not just a term  
4 that relates to size, you know, like a diameter or a  
5 volume of a UMAX underground receptacle.

6 But is there any so called universal cask  
7 such as described in the UMAX COC amendment 3 and in  
8 the environmental report which is feasible for NRC  
9 approval under Part 72 today and where the applicant  
10 does not have access to the original proprietary  
11 design of the vendor who is the COC holder of the  
12 canister.

13 We had noticed the difficulty in the UMAX  
14 COC amendment 3 docket where the NRC questioned  
15 Holtec's lack of original proprietary design  
16 information to address standard functions such as  
17 criticality, shielding, thermal design, cooling, and  
18 structural integrity.

19 But that is just the licensing aspect of  
20 the term universal which is Holtec's term used in the  
21 environmental report, for example, at Section 2.2.2.1  
22 stating UMAX is the only licensed technology with the  
23 universal capability, et cetera. The phrase was not  
24 universal capacity.

25 But either way, it's not yet licensed.

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1 This is an assertion by Holtec, an assumption that is  
2 an essential element of this application as explained  
3 in the NAC's George Carver's affidavit with our  
4 petition.

5 Without the original design information  
6 for the other non-Holtec canisters available, how will  
7 Holtec as the ISFSI licensee owner respond, diagnose,  
8 safely manage, and correct for an incident or an  
9 operational event? Something involving mishandling,  
10 for example, where realistic and accurate  
11 calculations, not just founding, are needed. NAC  
12 wants to know, is a Holtec UMAX universal cask  
13 feasible for NRC approval for this facility? If it  
14 is, we need to be involved now.

15 As a final point, NAC respectfully  
16 suggests as a first step if Holtec does not want to  
17 address any non-Holtec canisters in this application,  
18 then perhaps Holtec would eliminate the term universal  
19 in the application as it refers to the UMAX cask and  
20 limit the application to only Holtec canisters for  
21 which licensing approvals exists. The use of the term  
22 universal, with all respect, is causing confusion.

23 Thank you.

24 CHAIR RYERSON: Thank you, sir. Let's  
25 see. We next move to Fasken, Mr. Eye.

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1 MR. EYE: Thank you, Mr. Chairman. A few  
2 brief comments to close.

3 To the extent that the license application  
4 continues to use the either-or in terms of the  
5 alternatives as to who would have title or the right  
6 to take title, that raises a hypothetical that we  
7 think is improperly considered in the context of this  
8 license application. And I support that with asking  
9 -- by asking the panel to consider how far a  
10 petitioner's contention would get raising a  
11 hypothetical and asking the Board to consider it.

12 Likewise, Holtec infers, suggests,  
13 implies, states flat out that there's a legislative  
14 fix for this. That is pure conjecture and  
15 speculation. Nobody knows what kind of bill might  
16 come out of a committee, what marked up version it  
17 would be, what amendments get offered and adopted on  
18 the floor, whether it would be signed by the  
19 President. That's complete conjecture and  
20 speculation.

21 And I would suggest again that approach by  
22 a petitioner would be unsuitable and rejected by  
23 licensing boards of the NRC. Hence, if there's going  
24 to be essentially, more or less, fair treatment of the  
25 parties, Holtec should not be allowed to engage in

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1 speculation, conjecture to support its license  
2 application.

3 Finally, there's a suggestion this morning  
4 by Mr. Silberg that while there's -- his suggestion is  
5 that this facility is safer than counterparts in urban  
6 areas because it's in a sparsely populated zone. That  
7 conflates safety with potential for the number of  
8 injuries or harm, the kind of harm that might result.

9 If, in fact, these facilities are as safe  
10 as Holtec suggests, they could be put anywhere. They  
11 could be put in West Chester County if they're that  
12 safe. But that's not what's being proposed here.  
13 Instead, the burden of the harm is shifted to an area  
14 that's sparsely populated just because it's sparsely  
15 populated. No other quality would support that. That  
16 is not a fair way to evaluate whether this facility is  
17 safe.

18 So with those comments, I would thank the  
19 panel for its attention.

20 CHAIR RYERSON: Thank you, Mr. Eye.  
21 Holtec International, Mr. Silberg.

22 MR. SILBERG: Thank you, Mr. Chairman. I  
23 hope you'll give me a little leeway because I'm  
24 responding to --

25 CHAIR RYERSON: Five and a half to one.

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1 MR. SILBERG: Five and a half to one.  
2 First, and I wasn't planning to give a closing  
3 statement. But since everyone is, I think it's  
4 appropriate.

5 The case that the Board and the audience  
6 here were able to listen to the strong local support  
7 from the folks from Eddy and Lea County and ELEA  
8 yesterday and today from Carlsbad. It's unfortunate  
9 that yesterday's presentations for people who were  
10 listening remotely when the audio link went out while  
11 they were speaking. And we hope that their  
12 presentations will be clearly on the record so that  
13 the strong local support that we have will be  
14 reflected.

15 Let me try to go through some of the  
16 comments that we just heard. The issue of the DOE  
17 presentation is that is it hypothetical that DOE will  
18 participate? We don't know. There was legislation on  
19 the floor of Congress to do that. That legislation  
20 did not pass.

21 Mr. Eye said all this is hypothetical. On  
22 the other hand, Mr. Lodge said we ought to assume that  
23 there's going to be federal legislation. We ought to  
24 further assume that that federal legislation will  
25 result in taking the site from private ownership. We

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1 should further assume that that federal legislation  
2 will force other casks besides Holtec on that site.  
3 When we talk about hypothetical and speculative,  
4 that's about as much as I've ever heard.

5 Do we need to show a basis? Sierra Club's  
6 counsel said that they shouldn't be required to prove  
7 their case. That's correct. They should not. Their  
8 obligation is to show that there's a basis for their  
9 contentions that is material to the contention. We  
10 don't expect a determination whether those bases are  
11 factually correct or better science and technology  
12 than ones we might have. But we do urge the Board to  
13 take a look at those documents to see whether they  
14 meet the test of materiality.

15 We don't require detailed facts. We don't  
16 require a refutable authority, and we're not urging  
17 that on the Board. But we do need to make sure that  
18 the Commission's rules on contention and admissibility  
19 are adhered to. And we hope you'll take a hard look  
20 at the filings of both sides.

21 In terms of DOE taking title, it's clear  
22 that from an environmental standpoint DOE's presence  
23 as an option has no impact on the environment.  
24 Whether we identify it as an option down the road  
25 certainly doesn't make the application illegal in any

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1 sense.

2 We recognize that the current state of the  
3 Nuclear Waste Policy Act does not permit except with  
4 respect to spent fuel that's already owned by DOE. It  
5 does not require that they be a party to this. On the  
6 other hand, if in the future they should become a  
7 party to that, it is an obvious fact. But it does not  
8 change any of the environmental consequences.

9 There's a question raised about the role  
10 of the AMP beyond the licensing period and that that's  
11 voluntary. I think we had testimony clearly that it  
12 is not voluntary. And beyond the license period for  
13 that part of the license application or any part of  
14 the license application, it's clearly set aside by the  
15 continue storage rule.

16 I still don't understand the continued  
17 reference to the 173,000 tons. That's been fully  
18 explained. I also don't think it's terribly relevant  
19 to this Board's rulings. I don't think it provides a  
20 basis because I don't think there is a basis for that  
21 number.

22 In terms of the railroads, whether or not  
23 there are 900,000 or 132,000 people on a half mile on  
24 either side of railroads and whether that's an  
25 environmental justice issue, I do note that the

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1 consolidated petitioners, Don't Waste Michigan and  
2 others, have not raised an environmental justice  
3 contention. So I don't think it's appropriate for  
4 them to raise that in their closing statements.

5 With respect to the NAC statements, I  
6 would note that they are incorrect in saying that  
7 there are no cases in which one vendor's cask is  
8 stored in another vendor's -- one vendor's canister is  
9 stored in another vendor's cask. In fact, at this  
10 very time at the Trojan Plant, there are Holtec  
11 canisters that are stored in TranStore casks. It is  
12 something that happens. It is not a violation of law.  
13 It's not inappropriate, and it certainly doesn't  
14 create additional environmental consequences.

15 The issue that we ought to consider NAC  
16 canisters on our site violates the very basis of our  
17 purpose and needs statement. The purpose of this  
18 facility is to deploy the Holtec UMAX system. It is  
19 not to bring other people's casks on the site. We  
20 don't need to do that. We've explained why that is  
21 not required as part of the design alternatives  
22 consideration.

23 We are not surprised and we're glad to  
24 hear that NAC is not opposed to this facility. They  
25 are apparently opposed to the word "universal". In

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1 the context of an environmental report and talking  
2 about phases that are not before this Board for the  
3 license, we think that that concern is not a relevant  
4 basis for a contention.

5 If the NRC should license the storage of  
6 NAC canisters in the Holtec UMAX, then it will be  
7 appropriate if the NRC is able to do that. Without  
8 access to NAC's proprietary information, we believe  
9 that they will be able to do so. Then storage should  
10 be perfectly fine. If NAC is unable to license that  
11 system without the access to NAC proprietary  
12 information, and if that proprietary information does  
13 not become available, then the NAC canisters will not  
14 be stored on the Holtec site and their concerns are  
15 moot.

16 In any event, we don't need access. We  
17 don't believe we need access to proprietary  
18 information. And if we do and we can't get it, their  
19 concern is moot.

20 With respect to the legislative fix that  
21 Mr. Eye said being a purely hypothetical, we don't  
22 know what will happen in Congress. We don't know a  
23 lot of what will happen tomorrow. However, if it does  
24 happen, it's perfectly appropriate for a document  
25 which is intended to look out to the future to say,

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1 this might happen.

2 In this case, if it does happen, it  
3 doesn't affect the environmental consequences of this  
4 action. And therefore, even if it does happen, we  
5 think the presence of Option 1 in the environmental  
6 report is of no materiality and therefore not the  
7 basis for the contention.

8 We really appreciate the Board's clearly  
9 intense scrutiny of the application documents. We  
10 were pleased to be able to provide answers to the  
11 extent we can. We think we did. And we look forward  
12 to the next phase of this proceeding.

13 Thank you very much.

14 CHAIR RYERSON: Thank you, Mr. Silberg.  
15 Does the NRC staff want to say anything?

16 MS. KIRKWOOD: No, Your Honor.

17 CHAIR RYERSON: That's what I guessed.  
18 All right. Well, thank you all. That concludes what  
19 we intended to cover at this proceeding. Now our job  
20 now is to take all the information we've received and  
21 that includes the hundreds of pages of pleadings that  
22 I referred to yesterday and everything that we've  
23 heard today and render a decision on the standing of  
24 the various participants, the petitioners, and on the  
25 admissibility of their individual contentions of which

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1 there are approximately 40, I believe.

2 It's our intention to rule at the same  
3 time on the local government petitions which again  
4 stand unopposed and all pending motions of which I  
5 described the first day. We have all sorts of pending  
6 motions that are related to those major issues.

7 The NRC has certain milestones for us  
8 which we always try to comply with. Basically, we  
9 should try to render a decision within 45 days of the  
10 argument or 45 days of the last pleadings that were  
11 filed.

12 This has gotten a little complicated here  
13 because last week there were I believe two sets of  
14 motions for new or amended contentions. And the  
15 briefing on those will not be completed until well  
16 past the middle of February. So just considering  
17 those, it looks like our timing which would've been  
18 around March 11, I think, will probably push back to  
19 early April or so.

20 There's a little further complication in  
21 that there may be further filings. And at some point,  
22 I think we have to make a decision that we're going to  
23 decide based on the briefing that has been completed  
24 and that we will defer to a second decision --  
25 additional motions.

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1 I think the motions we received last week  
2 are sufficiently closely related to the Sierra Club's  
3 contention and contention 1 and the Beyond Nuclear  
4 contention. It really doesn't make much sense to try  
5 to sever those in any way. I think they are part of  
6 the same types of arguments, and so we will deal with  
7 those together.

8 We'll have to see the filings that may be  
9 coming in, in the next couple weeks whether we really  
10 have to sever those or just push the whole decision  
11 back a little bit. So that's where we are. Most  
12 likely, a decision on everything in very late March or  
13 early April but possibly even later than that. If we  
14 can't meet the milestones for any reason, we will  
15 issue a notice to that effect.

16 Let's see. Now on behalf of the Board, I  
17 want to personally thank all of the counsel who've  
18 spoken today and as well as the representatives of the  
19 local governments. I think everybody has been  
20 extremely professional, and this has been extremely  
21 helpful to us as we make our decision.

22 Also as most of you know, this forum, the  
23 Bar of the State of New Mexico was a place we had to  
24 come to on relatively short notice. We were all set  
25 up to use the federal court -- the older federal

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1 court building, the historic one. And apparently  
2 there's some funding problems in the federal  
3 government at the moment, and they were unable to  
4 ensure us at some point that they could support us.

5 So we made a relatively sudden decision to  
6 come here to the Bar of the State of New Mexico, and  
7 the staff here could not have been more cooperative  
8 and helpful. And it's been wonderful for us and a  
9 wonderful opportunity to make a quick shift and what  
10 I hope has been, from all standpoints, a successful  
11 two-day event.

12 Do I have any comments from other judges?  
13 Judge Arnold? Judge Trikouros?

14 JUDGE ARNOLD: I think you've said it.  
15 Thank you.

16 CHAIR RYERSON: We have one. Mr. Lodge is  
17 standing up. Mr. Lodge?

18 MR. LODGE: Your Honor, I wonder if I may  
19 make a very brief request to the panel.

20 CHAIR RYERSON: You may make a request.

21 MR. LODGE: All right. It's a start. We  
22 request on behalf of the joint petitioners a 14-day  
23 period for the Board to hold open the record of this  
24 proceeding for the purpose of providing some  
25 documentation related to the Baltimore tunnel fire

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1 colloquy that was discussed this morning. We would  
2 like to respond to the issue of whether or not there  
3 were maps and the implications.

4 CHAIR RYERSON: Well, let me say this.  
5 We're certainly not going to decide anything in 14  
6 days. The new contentions go beyond that for the  
7 briefing. Whether what you submit is something that  
8 we can appropriately consider is another issue. But  
9 you may submit something within 14 days.

10 MR. LODGE: Thank you, Your Honor.

11 MR. TAYLOR: The Sierra Club joins in that  
12 request.

13 CHAIR RYERSON: Fair enough. Fair enough.  
14 Again, no assurances that we will consider that that  
15 is something that was required or permissible or  
16 appropriate in view of what's been said here. But  
17 we're not doing anything for the next 14 days. We're  
18 working, I hope, for the next 14 days but not issuing  
19 any decisions.

20 All right. We stand adjourned. Thank you  
21 again.

22 (Whereupon, the above-entitled matter went  
23 off the record at 3:28 p.m.)  
24  
25