

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOLTEC INTERNATIONAL

(Consolidated Interim Storage Facility)

Docket No. 72-1051

NRC STAFF ANSWER TO MOTIONS TO AMEND CONTENTIONS
REGARDING FEDERAL OWNERSHIP OF SPENT FUEL

On February 6, 2018, four of the Petitioners filed motions to amend their respective pending contentions regarding federal ownership of spent fuel.¹ Pursuant to the January 31, 2019, Board Order, the Staff hereby responds to the motions to amend the contentions.² As further discussed below, the amended contentions are admissible.

The Petitioners collectively seek to amend their proposed contentions to add the following language:

“Language in Rev. 3 of Holtec’s Environmental Report, which presents federal ownership as a possible alternative to private ownership of spent fuel, does not

¹ Sierra Club’s Motion to Amend Contention 1 (Feb. 6, 2019); Motion by Petitioners Don’t Waste Michigan, *et al.* to Amend Their Contention 2 Regarding Federal Ownership of Spent Fuel in the Holtec International Revised License Application (Feb 6, 2019); Motion by Petitioners Beyond Nuclear and Fasken to Amend their Contentions Regarding Federal Ownership of Spent Fuel to Address Holtec International’s Revised License Application (Feb. 6, 2019). While they are separate Petitioners, Beyond Nuclear and Fasken captioned their Motion jointly.

² Order (Granting Request to Modify Schedule for Responses to Amended and New Contentions) (Jan. 31, 2019) (unpublished).

render the application lawful. As long as the federal government is listed as a potential owner of the spent fuel, the application violates the NWPA.”³

The Staff agrees that this portion of the proposed contention is admissible, specifically as a challenge to whether the application may propose a license condition that includes the potential for DOE ownership of spent fuel to be stored at the Holtec facility. However, to the extent the amended contentions are intended as a challenge to the likelihood or viability of the private ownership alternative, they are inadmissible; other than speculation regarding the applicant’s intent, the petitioners provide no legal or factual basis to demonstrate a genuine dispute with the applicant’s inclusion of that option. Furthermore, in agreeing that the contention is admissible in part, the Staff takes no position on the underlying merits of the contention. And as a procedural matter, the Staff disagrees with Beyond Nuclear and Fasken’s apparent position that the application could not be revised to remove the potential for DOE ownership, or that doing so would require renoticing of the application.⁴

One additional matter warrants clarification. Petitioner Beyond Nuclear has asserted in this proceeding that the hearing notice for this proceeding limited the scope to issues arising out of the Atomic Energy Act and NEPA.⁵ But the hearing notice contains no such limitation; rather, it sets forth the requirements of contentions as found in 10 C.F.R. 2.309.⁶ Furthermore, the contention admissibility rules in Part 2 are also not so constrained. Accordingly, in agreeing that the amended contentions are admissible in part, the Staff specifically disagrees with the premise that issues arising out of the Nuclear Waste Policy Act or the Administrative Procedure Act are outside the scope of this proceeding or NRC licensing proceedings more generally.

³ See *e.g.* Sierra Club Motion at 11.

⁴ See Beyond Nuclear Motion at 11, fn 5.

⁵ Transcript of Oral Argument at 35 (Jan. 23, 2019).

⁶ See Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919 (July 16, 2018).

Finally, the petitioners' previous iterations of this contention remain inadmissible in part, for the reasons that are stated in the Staff's original answer and not repeated here. In sum, the Staff agrees that the new portion of the proposed contention is admissible. Although the Staff agrees these amended contentions would be admissible, for the reasons previously explained, neither Fasken nor Don't Waste Michigan has shown standing, and therefore their hearing requests should still be denied.

Respectfully submitted,

/Signed (electronically) by/

Sara B. Kirkwood

Dated in Arlington, VA
this 19th day of February 2019

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC STAFF ANSWER TO MOTIONS TO AMEND CONTENTIONS REGARDING FEDERAL OWNERSHIP OF SPENT FUEL ,” dated February 19, 2019, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding, this 19th day of February 2019.

/Signed (electronically) by/

Sara Kirkwood

Dated in Arlington, VA
this 19th day of February 2019