

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

IN THE MATTER OF:)	
)	
HOLTEC INTERNATIONAL)	Docket No. 72-1051
)	
(Consolidated Interim Storage Facility)	February 25, 2019
Project))	

**SIERRA CLUB’S REPLY TO HOLTEC’S OPPOSITION TO SIERRA CLUB
CONTENTION 26**

Comes now the Sierra Club and in support of this Reply to Holtec’s Opposition to Sierra Club Contention 26, states as follows:

CONTENTION 26 IS TIMELY FILED

Contention 26 is based on the Reprising 2018 publication from Holtec, which was published on January 2, 2019. Contention 26 was filed well within 30 days after that publication. The Reprising 2018 publication was new information, based on the constantly changing positions taken by Holtec. A review of that history is instructive.

As set forth in Sierra Club’s original Contention 1, during 2015 and 2016 Holtec officials were clearly saying that the CIS project would require DOE taking title and providing funding. The first revision of the ER, 1.0, also said, “Phase 1 construction would begin after issuance of the license and after Holtec successfully enters into a contract for storage with the U.S. Department of Energy (DOE).” When Sierra Club, in Contention 1, said DOE involvement would be illegal, Holtec’s Answer, filed on October 9, 2018, said the plan really was that either DOE or nuclear reactor owners would hold title to the waste and be financially responsible. Then, on January 2, 2019, the Reprising 2018 report was published, reverting back to the original plan to have DOE be involved.

That report changed the official position Holtec had been taking in its Answer to Sierra Club's Contention 1. Therefore, it is new information that was not available before the issuance of the Reprising 2018 report.

Holtec should not be able to pick and choose which story it wants to use depending on the audience. When Contention 26 was filed, the Reprising 2018 statement was the most recent version of the story. Sierra Club has been consistent in asserting that DOE cannot legally take title to the waste. But Sierra Club has been forced to play "Whack a Mole" in responding to Holtec's constantly changing positions.

The NRC Staff joins Holtec in claiming that Sierra Club should have known that Holtec never meant that DOE would take title. But, beginning in 2015, as noted above, Holtec officials, the first revision of the ER, and now the Reprising 2018 report have relied on the fiction that DOE would take title to the waste. As set forth in Contention 26, the Commission, and interested parties, depend on license applicants for accurate information. Rather than opposing Contention 26 as untimely, the NRC Staff should be joining with Sierra Club in demanding accurate information from Holtec.

Based on the foregoing, Contention 26 is timely.

CONTENTION 26 IS ADMISSIBLE

Holtec claims that the Reprising 2018 statement is vague enough to escape the interpretation that it means the CIS project cannot be constructed until DOE agrees to take title to the waste. While Holtec has made a valiant attempt at mental gymnastics in order to argue that the Reprising 2018 statement does not say what it says, it is important to step back and read what the statement actually says. It says:

Holtec's effort to establish the HI-STORE CISF (consolidated interim storage facility) in New Mexico remains on track for licensing in 2020 with the NRC

acceptance of the license application early in 2018. Numerous meetings across New Mexico were held by Holtec throughout the year to inform the citizens and solicit their opinions. Local public sentiment remains in favor of the Project in the nuclear savvy region of New Mexico. In accordance with the NRC licensing process, an Atomic Safety Licensing Board (ASLB) was established to preside over the HI-STORE CISF licensing process. *While we endeavor to create a national monitored retrievable storage location for aggregating used nuclear fuel at reactor sites across the U.S. into one (HI-STORE CISF) to maximize safety and security, its deployment will ultimately depend on the DOE and the U.S. Congress.* (emphasis added).

As Sierra Club explained in its amendment to Contention 1, filed previously in this proceeding, use of the word “deployment” in the Reprising 2018 statement means that the CIS project could not even begin without involvement of the DOE. What other involvement from the DOE could there be prior to construction other than taking title to the waste and financial responsibility, just as Holtec had been saying since 2015?

The point of Contention 26 is that Holtec has made material false statements in its Answer to Sierra Club’s Contention 1 by stating that its intent is for nuclear reactor owners to be one option for ownership of the waste. It is clear from the history of Holtec statements set out above that Holtec’s intent from the outset has been for DOE to take title to the waste. But because that would be illegal, Holtec had to present the illusory and highly unlikely proposal that reactor owners would accept that responsibility. So Holtec’s assertions in its Answer that reactor owners are an option was a material false statement.

Holtec claims that § 186 of the Atomic Energy Act is not a proper basis for Contention 26. Instead, Holtec points to § 182 of the AEA. But § 182 makes no reference to material false statements. It simply discusses what must be in a license application and that the Commission may require further information. But that is not what happened here.

Holtec’s false statements were made in its Answer to Sierra Club Contention 1. That was not in response to a request by the Commission for additional information. Nor

was the Reprising 2018 statement a response to a request for additional information. So § 182 does not apply. Section 186 is the only section of the AEA that addresses material false statements. That section says that a license may be revoked for any material false statement in the license application. It is axiomatic that if a license can be revoked for a material false statement, a license can and should be denied for the same reason.

Based on the foregoing, Contention 26 is admissible.

/s/ *Wallace L. Taylor*
WALLACE L. TAYLOR AT0007714
Law Offices of Wallace L. Taylor
4403 1st Ave. S.E., Suite 402
Cedar Rapids, Iowa 52402
319-366-2428;(Fax)319-366-3886
e-mail: wtaylorlaw@aol.com

ATTORNEY FOR SIERRA CLUB

IN THE MATTER OF:)
) Docket No. 72-1051
HOLTEC INTERNATIONAL)
)
(Consolidated Interim Storage Facility) February 26, 2019
Project))

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