

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board Panel

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

**Holtec International's Opposition to Motion by Sierra Club
to Amend Contention 16**

Pursuant to 10 C.F.R. § 2.309(i)(1) and the Atomic Safety and Licensing Board's (the "Board") January 31, 2019 Scheduling Order, Applicant Holtec International ("Holtec") submits this opposition to Sierra Club's ("Petitioner's") late-filed motion to amend its Contention 16.¹ The Board should find that the Petitioner has not met the standards for a late-filed contention under 10 C.F.R. § 2.309(c)(1)(i)-(iii). And, even if Petitioner had met those standards, it has not met the standards for an admissible contention. As a result, the Board should reject the Motion and should also reject the original contention.²

Petitioner asks the Board for leave to amend Contention 16 to add the following underlined sentences:

The ER does not contain any information as to whether brine continues to flow in the subsurface under the Holtec site. Holtec has not properly accounted for mechanisms that could allow corrosive material to reach cavity enclosure containers (CECs) and/or spent fuel canisters. Holtec's Aging Management Program would be insufficient to address the problem of groundwater impacting the integrity of the spent fuel containers.

¹ Sierra Club's Motion to Amend Contention 16 (Feb. 18, 2019) (hereinafter, "Motion").

² If, as Holtec shows below, the Board finds that the Petitioner's late-filed contention is unjustifiably tardy, the contention as originally submitted should be rejected for the reasons set forth in Holtec International's Answer Opposing Sierra Club's Petition to Intervene and Request for Adjudicatory Hearing on Holtec International's HI-STORE Consolidated Interim Storage Facility Application (Oct. 9, 2018) (hereinafter, "Holtec's Answer").

It is unclear if Petitioner's intent was to broaden the Contention to include "corrosive material" other than subsurface brine. However, the bases Petitioner provides for Contention 16 *remain unchanged*, alleging that: (1) subsurface brine was detected at the site; (2) the Environmental Report ("ER") does not adequately address the subsurface movement of brine; and (3) brine could corrode the containers resulting in a leak. Motion at 9 (Amended Contention). Therefore, it appears that Petitioner intends for the amended Contention to continue focusing on subsurface brine and groundwater. In support of its amended Contention, Petitioner also adds approximately ten pages of asserted "facts," most of which are quotes from a Declaration from Dr. Gordon Thompson proffered by Petitioners.³

The motion to amend Contention 16, the amended Contention and the supporting Declaration should be rejected as untimely, and the amended Contention should be rejected as inadmissible for failing to meet the admissibility standards in 10 C.F.R. § 2.309.

I. The Motion to Amend Contention 16 and Supporting Expert Declaration Should Be Rejected as Untimely.

Sierra Club requests leave to amend Contention 16 based on NRC Requests for Additional Information ("RAIs") 17-12 and 17-14 and the associated Holtec responses.⁴ Sierra Club claims that these RAIs (which cannot form the basis for an amended contention⁵) "raise questions about salts in the area of the proposed CIS facility from a different perspective that

³ Declaration of Gordon R. Thompson (Feb. 12, 2019) ("Thompson Declaration").

⁴ See NRC Staff's Requests for Additional Information (January 17, 2019) (NRC ADAMS Accession No. ML19016A481) (the "RAI Responses").

⁵ Sierra Club cannot use the NRC Staff's RAIs as a basis for timely filing of a new or amended contention because the Staff RAIs have been available on the docket since Sept. 17, 2018, and their mere existence cannot now (after five months) form the basis for a late-filed contention. Letter from J. Cuadrado (NRC-NMSS) to K. Manzione (Holtec), Holtec International's Application for Specific ISFSI License for the HI-STORE Consolidated Interim Storage Facility for Spent Nuclear Fuel – First Request for Additional Information, Part 2 (w/Enclosure 1) at 14-17 (Sept. 13, 2018) (NRC ADAMS Accession No. ML18257A240). As such, this response focuses on the Holtec's RAI Responses.

[sic] did Contention 16,”⁶ and that Holtec’s RAI Responses “present new information which Holtec had not asserted in its Answer to Contention 16.” Motion at 3.

Sierra Club’s reliance on the RAI Responses, and its repeated comparisons to the Holtec Answer to Contention 16, are insufficient to demonstrate good cause for lateness. The motion to amend Contention 16 and supporting declaration should be rejected as untimely because (1) Sierra Club’s focus on Holtec’s Answer, and only one section of the ER, wholly fails to meet its burden to demonstrate timeliness; (2) Sierra Club bases the timeliness of its amended Contention on “new” information that is not new; and (3) Dr. Thompson’s Declaration is also untimely, and should not be admitted, as it contains no “new” information.

A. Petitioner’s Comparison of the RAI Responses to Holtec’s Answer to Contention 16 Fails to Meet Its Burden to Demonstrate Good Cause for Its Lateness.

Sierra Club’s Motion repeatedly asserts (five times) that the information in the RAI Responses is new because Holtec did not assert the same information in its Answer to Sierra Club’s initial Contention 16. Motion at 3-4, 6-7. On its face, this showing is insufficient to meet Sierra Club’s burden to establish that the information is *new* and “could not have been raised earlier.”⁷

⁶ Sierra Club also cannot use the NRC Staff’s RAIs as a basis for timely filing of a new or amended contention simply because the Staff RAIs “raise questions” from a “different perspective.” Motion at 3. A new or amended contention must be based on information *not previously available*, and petitioners may not “delay filing a contention until a document becomes available that collects, summarizes and places into context the facts supporting that contention.” *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. 481, 496 (Sept. 30, 2010). By allowing a petitioner “to wait for the Staff to compile all relevant information in a single document,” a Board ignores the petitioner’s “obligation to conduct its own due diligence.” *Id.*

⁷ *Texas Util. Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 N.R.C. 62, 70 (1992); *see also* Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,566 (Aug. 3, 2012) (addressing concern that the good cause standard will allow petitioners to use old information repackaged in a new document as a basis for a new contention by stating that petitioners must still show that “the new information . . . is ‘materially’ different from information that was previously available”).

Sierra Club's attempt to show that its Motion is timely by comparing the RAI Responses with Holtec's Answer to the initial Contention 16 is irrelevant. Holtec's Answer was not, and was not intended to be, the sum of all the information available in this proceeding on the presence, absence, movement, or impact of subsurface brine. And it does not establish what is (or is not) *new* in the context of Petitioner's Motion. Nor should it: Holtec's Answer demonstrates that Contention 16 as originally submitted failed to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1) based upon Sierra Club's claimed basis for Contention 16. The Answer was not intended to address the RAI Responses or Sierra Club's yet-to-be submitted proposed amended Contention.

Sierra Club's single statement at the end of the amended Contention that Holtec's ER, Rev. 3, 4.5.3, does not discuss "environmental impacts" "described in RAI 17-12 and 17-14" suffers from the same flaw. Motion at 18 (Amended Contention). Section 4.5.3 is not the sum total of the information available on the record or in the Application and that section of the ER is largely irrelevant to the RAI Responses. It makes no sense for Sierra Club to compare RAI 17-12 (on air quality) and RAI 17-14 (on the Aging Management Program ("AMP")) to ER Section 4.5.3 (Water Resources: Operation); there is no reason why air quality information or AMP information would be contained in a single ER Section on groundwater.

The relevant inquiry is whether the information Petitioner put forward to support the proposed amendment to Contention 16 is new, based on the entirety of the existing record. Basing the proposed amended Contention on a comparison between the RAI Responses and Holtec's Answer to the original Contention 16, and a lone reference to one largely irrelevant section of the ER, Sierra Club has failed to meet its burden to establish that the information it

relies on to justify its late-filing is new.⁸ Nor could it. The information in the RAI Responses is not new but is materially the same as information presented on the Holtec HI-STORE Consolidated Interim Storage Facility Docket⁹ including information in the HI-STORE License Application (“Application”).¹⁰ As a result, Sierra Club does not meet the standard of good cause for a late-filed contention and the Motion should be denied.

B. The “New” Information from the RAI Responses Used in Sierra Club’s Amended Contention Is Not New.

While Sierra Club argues that the RAI Responses constitute the “new” information used to justify amended Contention 16, the proposed amended Contention contains only brief references to the RAI Responses. In fact, there are no references to this “new” information in Sierra Club’s amended Contention 16 itself or its basis. Motion at 9 (Amended Contention). The RAI Responses are only mentioned in the list of “facts” supporting the contention. Motion at 9-18 (Amended Contention). In the “facts” supporting proposed amended Contention 16, Petitioner merely copies RAI 17-12, and part of the Holtec Response, and copies the brief portions of Dr. Thompson’s Declaration that reference the RAI Responses. Sierra Club provides no further challenge or reference to the RAI Responses in the amended Contention.

The Commission’s regulations require that Sierra Club “[must show that] [t]he information *upon which the [amended or new contention] is based* was not previously available” and “is materially different from information previously available.”¹¹ The unavailability of the

⁸ Sierra Club’s brief statement at the end of the amended contention that Holtec’s ER, Rev. 3, Section 4.5.3, does not discuss “environmental impacts” “described in RAI 17-12 and 17-14” suffers from the same flaw. Section 4.5.3 is not the sum total of the information available on the record or in the Application. *See generally* ER, Rev. 3, Section 4.5.3 (Nov. 2018) (NRC ADAMS Accession No. ML19016A493).

⁹ *See* Docket 72-1051.

¹⁰ Holtec International HI-STORE CISF License Application (Mar. 30, 2017) (NRC ADAMS Accession No. ML17115A431) (“Application”).

¹¹ 10 CFR § 2.309(c)(1)(i)-(ii) (emphasis added).

RAI Responses until January 2019 does not constitute a showing of good cause for admitting the late-filed amended Contention when the factual predicate for the amended Contention was available from other sources months, if not years, earlier.¹² As such, for Sierra Club's amended Contention to be timely, Petitioner must explain why the availability of the information that it now argues is new was not in fact available long before the RAI Responses. Yet, the limited references to the RAI Responses in the amended Contention, taken from Dr. Thompson's Declaration, fail to meet this standard. As a result, the amended Contention is not timely, and Sierra Club has failed to establish good cause for its late-filing.¹³

1. The "New" Information from the Response to RAI 17-12 Is Not New.

The amended Contention repeats Dr. Thompson's assertion that the RAI 17-12¹⁴ response "exhibit[s] unwarranted optimism" when asserting that: "salts in the surrounding area are not expected to reach the SNF canisters," Motion at 11 (Amended Contention); and "Holtec's Aging Management Program (AMP) would conduct inspections of SNF canisters and take corrective actions as necessary," Motion at 13, 15 (Amended Contention). This information is not new. From the very beginning of this proceeding, the Application has stated that the storage system prevents intrusion from groundwater and that the limited air passage through the top lid results in a negligible halide risk that is addressed in the AMP as a conservatism.¹⁵ Thus, the issue of salts potentially reaching the canisters is not based on new information (it was always

¹² See *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1045, 1048 (1983).

¹³ The unavailability of a licensing-related document does not establish good cause for late filing of a contention if information was publicly available early enough to provide the basis for the timely filing of that contention. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1045, 1048 (1983).

¹⁴ Sierra Club's characterization of RAI 17-12 is also completely inaccurate. The RAI centers around "halide content in the air" and has no relation to brine in the ground water leading to leaks. RAI Responses at 18 (RAI 17-12). Thus, any claim that the information is new because it provides new information *on brine* is false.

¹⁵ See Licensing Report on the HI-STORE CIS Facility Rev. 0C at 34, 586, 588, 616, 618 (May 2018) (NRC ADAMS Accession No. ML12854A413) (hereinafter referred to as the "SAR").

addressed in the AMP), and Dr. Thompson's arguments could have easily been raised with Sierra Club's initial petition and should now be rejected as untimely.

The same is true of Dr. Thompson's claims,¹⁶ repeated in the amended Contention, that it is unwarranted optimism for the response to RAI 17-12 to state that "Holtec's Aging Management Program (AMP) would conduct inspections of SNF canisters and take corrective actions as necessary." *See* Motion at 13. Since its filing at the start of this proceeding, the SAR long described halides as a risk conservatively addressed by the aging management program and described the inspection program in detail, including the use of corrective actions.¹⁷ This issue could have been raised at the start of this proceeding. As such, Sierra Club is not raising an issue based on new information from the RAI Response, and these claims could have easily been raised in Sierra Club's initial petition.

2. The "New" Information from the Response to RAI 17-14 Is Not New.

Petitioner's proposed amended Contention raises a dispute with only limited portions of the response to RAI 17-14, specifically those portions that Dr. Thompson argues "exhibit unwarranted optimism" when asserting that: "[the] (CECs) would be isolated from corrosion agents in [] native soil," Motion at 11 (Amended Contention); and "inspection of CEC interior surfaces would suffice to detect wall thinning due to corrosion," Motion at 13 (Amended Contention).

¹⁶ The RAI Response at 19 in fact states, "It should also be noted that although it is not anticipated that significant amount of salts will be transported to the canisters, Holtec has still implemented a full aging management program, as described in Chapter 18. This program involves canister inspections over the life of the canisters. This program will monitor the condition of the canisters for all degradation mechanisms and take corrective actions as necessary."

¹⁷ *See* SAR at 586, 588-592.

This information is not new and cannot support the late-filing of an amended contention. First, as noted above, the concept that “the CECs would be isolated from corrosion agents in native soil,” has long been part of the SAR description of the protection afforded by the CEC, which prevents intrusion from groundwater.¹⁸ Additionally, the SAR has from the beginning addressed the possibility of halides and how they would be treated in the AMP.¹⁹ Thus, isolation of the CEC from the corrosive agents in the soil is information that has been in the Application since it was submitted to the NRC and cannot constitute good cause for the late-filing of an amended contention.

Sierra Club likewise cannot argue that a statement that “inspection of CEC interior surfaces would suffice to detect wall thinning due to corrosion” is new and can somehow justify the addition of a new contention on ISFSI inspection. *See* Motion at 13-15. As clearly set forth in the Application, “[i]n-service inspection for long-term interior and below-grade degradation shall be performed by visual inspection of accessible areas of the HI-STORM UMAX VVM.”²⁰ This includes “[a]dditional in-service inspection activities [with] more thorough inspections for foreign material accumulation, *corrosion (CEC wall thinning)* and insulation degradation.”²¹ And a “Visual Inspection of CEC Cavity” is meant to “ensure that VVM internal components are properly aligned, the *surface preservatives on all exposed surfaces are undamaged*, the insulation on the Divider Shell is undamaged and the cavity is free of visible foreign material.”²² Thus, the use of inspections to identify corrosion and CEC wall thinning is not new information and cannot form the basis for Dr. Thompson’s new ISFSI inspection contention.

¹⁸ *Id.* at 34.

¹⁹ *Id.* at 586, 588-592.

²⁰ *Id.* at 446.

²¹ *Id.* at 446 (emphasis added).

²² *Id.* at 448 (emphasis added).

C. Dr. Thompson’s Declaration Is Also Untimely, and Should Not Be Admitted, as It Contains No “New” Information.

Dr. Thompson’s Declaration should also be denied as untimely. As described above, Dr. Thompson’s Declaration is not based on anything new from the RAI Responses. As a result, Dr. Thompson’s Declaration does not meet the Commission’s standards for a late-filed contention (or its purported support) because it does not contain any new information and nothing prevented Petitioner from submitting the Declaration with its original contention.²³ Petitioner has also failed to explain why it waited until February 2019 to reach out to Dr. Thompson to provide a Declaration, even though Sierra Club relied on Dr. Thompson in prior proceedings, for example in its November 13, 2018 Petition to Intervene and Request for Adjudicatory Hearing in Interim Storage Partners LLC (Consolidated Interim Storage Facility Project), Docket No. 72-1050, at 26-29, 43, 47-48 (NRC ADAMS Accession No. ML18317A413).²⁴ Sierra Club makes no attempt to excuse its failing to include the Thompson Declaration or the information that it contains in its initial Petition, and thus the Declaration must be rejected.

In summary, Sierra Club cannot meet its burden to establish that the information it relies on to justify its late-filing is timely. The Commission rejects late-filed contentions based on documents which only collect or summarize previously available information, and any reliance on *already available* information cannot constitute new or materially different information.²⁵

²³ *Crow Butte Res., Inc.* (North Trend Expansion Project), LBP-08-6, 67 N.R.C. 241, 256-258 (2008), *aff’d in part, rev’d in part*, CLI-09-9, 69 NRC 331 (“Although Exhibits A and B are not themselves either ‘petitions’ or ‘contentions,’ we find it appropriate to consider the timeliness of their filing under 10 C.F.R. § 2.309(c) and (f)(2), given that the exhibits are offered in support of Petitioners’ standing and certain of their contentions.”).

²⁴ Sierra Club also filed an Expert Declaration from Dr. Thompson in the ISP proceeding. *See* Expert Declarations for Sierra Club at 27-57 (Nov. 13, 2018) (NRC ADAMS Accession No. ML18317A413). Sierra Club was obviously familiar with Dr. Thompson when it filed its initial contentions in the Holtec proceeding, since it cited to one of Dr. Thompson’s reports in its September 14, 2018 Petition to Intervene at 19-20 (NRC ADAMS Accession No. ML18257A228).

²⁵ *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. 481, 483 (2010).

Moreover it is the Petitioner's burden to establish that the information is *new* and could not have been presented earlier.²⁶ Sierra Club's failure to address the relevant portions of the Application or supporting documentation, described above, is justification alone for rejecting the late-filed amended Contention,²⁷ and the Motion must therefore be denied and the amended Contention and Dr. Thompson's Declaration rejected.

II. Petitioner's Amended Contention 16 is Inadmissible.

Even if the Board were to find good cause for the late-filing of the amended Contention (which it should not do), the Board should nevertheless find that the amended Contention falls far short of the Commission's contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Under those standards, Petitioner must "[p]rovide a brief explanation of the basis for the contention,"²⁸ plead its issues with particularity,²⁹ and "is obligated to provide the [technical] analyses and expert opinion showing why its bases support its contention."³⁰ The Commission has held that "[n]either mere speculation nor bare or conclusory assertions, even by an expert,

²⁶ See, e.g., 10 CFR 2.309(c)(1)(i)-(iii); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. 481, 496 (Sept. 30, 2010); *Texas Util. Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 N.R.C. 62, 69-73 (1992).

²⁷ "[O]ur contention admissibility and timeliness rules require a high level of discipline and preparation by petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset. There simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding." *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 271-72 (2009) (footnotes and internal quotation marks omitted).

²⁸ 10 C.F.R. 2.309(f)(1)(ii).

²⁹ *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-15, 71 N.R.C. 479, 482 (2010).

³⁰ *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 N.R.C. 1, *aff'd in part*, CLI-95-12, 42 N.R.C. 111 (1995).

alleging that a matter should be considered will suffice to allow the admission of a proffered contention.”³¹

Petitioner has entirely failed to meet this standard. First, Petitioner’s bases do not support the amended Contention. Petitioner’s Motion at 9 proposes amending Contention 16 to add the following underlined sentences:

The ER does not contain any information as to whether brine continues to flow in the subsurface under the Holtec site. Holtec has not properly accounted for mechanisms that could allow corrosive material to reach cavity enclosure containers (CECs) and/or spent fuel canisters. Holtec’s Aging Management Program would be insufficient to address the problem of groundwater impacting the integrity of the spent fuel containers.

However, the bases Petitioner provides for Contention 16 *remain unchanged*, alleging that: (1) subsurface brine was detected at the site; (2) the ER does not adequately address the subsurface movement of brine; and (3) brine could corrode the containers resulting in a leak. Motion at 9 (Amended Contention). While Petitioner has attempted to significantly broaden Contention 16, the bases continue to focus solely on subsurface brine and therefore cannot serve to support the plain language of the amended Contention, which now addresses the AMP and general “corrosive material.” Motion at 9 (Amended Contention). This mixture of a broadly-stated contention (with groundwater, the AMP, and general “corrosive material”) with only limited basis (focused on brine) makes it impossible to discern the focus of Sierra Club’s actual contention,³² an issue that is only exacerbated by Sierra Club’s irrelevant and rambling section on factual support (covering climate change, emergency planning, inspection methods, the magnitude of a theoretical release

³¹ *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-12-27, 76 N.R.C. 583, 595 (2012).

³² Under longstanding NRC practice, the Board should refer to the basis to determine the scope of the contention. *Pilgrim Nuclear Power Station*, CLI-10-15, 71 N.R.C. at 482 (“[U]nder longstanding NRC practice, if a question arises over the scope of an admitted contention, the Board or Commission will refer back to the bases set forth in support of the contention.”).

from a terrorist attack, and challenges to the NRC's GEIS³³). *See* Motion at 9-18 (Amended Contention).

Because Sierra Club is filing a vague contention without particularity,³⁴ the Board should reject Amended Contention 16. Sierra Club is responsible for setting forth its grievances, giving the Applicant a good idea of the claims that it is opposing,³⁵ and it has entirely failed to meet that responsibility. This is a deficiency that the Board may not overlook³⁶ by "mak[ing] factual inferences on [the] petitioner's behalf."³⁷ Instead of providing a concise contention with adequate (and relevant) basis, Petitioner includes a broad section of "Facts Upon Which Petitioner Intends to Reply In Support of This Contention," with large sections copied directly from Dr. Thompson's Declaration. *See* Motion at 9-18 (Amended Contention). This is not the "*concise statement* of the alleged facts or expert opinions"³⁸ needed to support the amended Contention.

Moreover, while Sierra Club does not need to prove the contention at this stage, it must allege at least some *credible foundation* for the amended Contention.³⁹ Instead, Dr. Thompson

³³ The amended Contention refers to the NRC's Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, NUREG-2157 (Sep. 2014) (hereinafter referred to as the "GEIS").

³⁴ "The scope of a contention is limited to issues of law and fact *pled with particularity* in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with our rules. . . . Parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing. Our procedural rules on contentions are designed to ensure focused and fair proceedings. It 'should not be necessary to speculate about what a pleading is supposed to mean,' and petitioners bear the responsibility for setting forth their grievances clearly." *Pilgrim Nuclear Power Station*, CLI-10-15, 71 N.R.C. at 482 (internal citations omitted); *Shieldalloy Metallurgical Corp.* (Amendment Request for Decommissioning of the Newfield, New Jersey Facility), LBP-07-5, 65 N.R.C. 341, 352 (2007).

³⁵ *Pilgrim Nuclear Power Station*, CLI-10-15, 71 N.R.C. at 482 (internal citations omitted); *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 N.R.C. 281, 303-304 (2007).

³⁶ *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 260 (2009) (noting that the contention admissibility rules "require the petitioner (*not the board*) to supply all of the required elements for a valid intervention petition." (emphasis added) (footnote omitted)).

³⁷ *Georgia Tech Research Reactor*, LBP-95-6 at 284 citing *Palo Verde*, CLI-91-12 at 155.

³⁸ 10 C.F.R. § 2.309(f)(1)(v) (emphasis added).

³⁹ *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-880, 26 N.R.C. 449, 457 (1987), remanded, *Sierra Club v. NRC*, 862 F.2d 222 (9th Cir. 1988).

speculates at length about the ways salts might reach the inside of the CEC – climate change, terrorist attacks, dust storms, floods, “thermic lances,” etc. – but provides no reasoned basis for any of these speculations other than his personal, and often seemingly contradictory, opinion.⁴⁰ Speculation, even by an expert, fails to provide the requisite support for an admissible contention.⁴¹ Nor does NEPA require the analysis of remote and speculative impacts, such as those alleged by Dr. Thompson.⁴²

This revised statement of facts also does nothing to remedy the absence of a material issue in the original contention: there is still no basis for concluding that brine might appear below the CISF.⁴³ Nor has Sierra Club established that *any* of its new arguments would otherwise result in an issue that is material to the findings that the NRC must make to license the CISF,⁴⁴ as Sierra Club has failed to establish that the resolution to any of these claims “would ‘make a difference in the outcome of the licensing proceeding.’”⁴⁵ Instead, Petitioner’s only references to groundwater (the topic of Contention 16) are based on claims so remote and speculative that they are beyond the scope of a NEPA.⁴⁶

⁴⁰ For example, Dr. Thompson claims the impacts of climate change are “foreseeable,” but then alleges climate change might result in such increased precipitation that the groundwater raises over twelve feet or such significant droughts that the airborne particulates would be substantially increased. Elsewhere, Dr. Thompson claims the CISF design would make an attack-induced release less likely, and then later claims the design would make it more vulnerable to attack. Nor does Petitioner support Dr. Thompson’s expertise on these matters.

⁴¹ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 N.R.C. 231, 240 (2008).

⁴² *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-05-8, 61 N.R.C. 202, 208 (2005) (quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 N.R.C. 340, 348-49 (2002)).

⁴³ See Holtec Answer at 85-87.

⁴⁴ 10 C.F.R. § 2.309(f)(1)(iv).

⁴⁵ *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 N.R.C. 328, 333-334 (1999).

⁴⁶ Motion at 11-12 (Amended Contention); *Nuclear Fuel Services*, LBP-05-8, 61 N.R.C. at 208 (quoting *Private Fuel Storage*, CLI-02-25, 56 N.R.C. at 348-49).

Further, the Board should ignore the remainder of Dr. Thompson's Declaration. Petitioner cannot dump volumes of mostly-irrelevant material into a Declaration and provide only the slightest link to an amended Contention. There is no need for Holtec and the Board to "search[] for a needle that may be in a haystack,"⁴⁷ to piece together an admissible contention on Sierra Club's behalf.

III. Conclusion

For all of the foregoing reasons, the Board should reject the amended Contention.

Respectfully submitted,

/Signed electronically by Anne R. Leidich/

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⁴⁷ *Pub. Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 N.R.C. 234, 241 (1989).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Holtec International's Opposition to Motion by Sierra Club to Amend Contention 16 has been served through the EFiling system on the participants in the above-captioned proceeding this 11^h day of March 2019.

/signed electronically by Anne R. Leidich/

Anne R. Leidich