

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

LBP-19-11

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman  
Nicholas G. Trikouros  
Dr. Gary S. Arnold

In the Matter of

INTERIM STORAGE PARTNERS LLC

(WCS Consolidated Interim Storage Facility)

Docket No. 72-1050-ISFSI

ASLBP No. 19-959-01-ISFSI-BD01

December 13, 2019

MEMORANDUM AND ORDER

(Ruling on Motion for Leave to File Late-Filed Contention and Terminating Proceeding)

Before the Board is a motion by Sustainable Energy and Economic Development Coalition (SEED) for leave to file a late-filed contention (SEED Contention 17).<sup>1</sup> We deny SEED's motion because it fails to meet the requirements of 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(1). There being no other contention pending, this proceeding is terminated.

I. BACKGROUND

The background of this proceeding is set forth in detail in the Board's August 23, 2019 Memorandum and Order,<sup>2</sup> but is summarized below.

In April 2016, Waste Control Specialists LLC (WCS) submitted an application to the Nuclear Regulatory Commission (NRC) for a license to construct and operate a consolidated interim storage facility for spent nuclear fuel and greater-than-Class C waste in Andrews

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<sup>1</sup> Motion of Intervenor Sustainable Energy and Economic Development Coalition for Leave to File Late-Filed Contention, and Contention 17 (Oct. 23, 2019) [hereinafter SEED Motion to File].

<sup>2</sup> LBP-19-7, 90 NRC \_\_, \_\_–\_\_ (slip op. at 6–12) (Aug. 23, 2019), appeal pending; see also LBP-19-9, 90 NRC \_\_ (slip op.) (Nov. 18, 2019).

County, Texas.<sup>3</sup> A year later, WCS asked the NRC to suspend consideration of its application.<sup>4</sup> Thereafter, WCS merged with Orano CIS LLC to form Interim Storage Partners LLC (ISP).<sup>5</sup>

In June 2018, ISP submitted a revised license application,<sup>6</sup> and the NRC published a Federal Register notice that permitted the public to request a hearing and petition to intervene.<sup>7</sup> SEED jointly submitted a timely hearing request,<sup>8</sup> as did several other petitioners. After briefing, the Board heard oral argument in Midland, Texas concerning petitioners' standing and the admissibility of their contentions.<sup>9</sup>

In LBP-19-7, we denied SEED's hearing request and the hearing requests of all other petitioners except Sierra Club.<sup>10</sup> Although we concluded that SEED had not proffered an admissible contention, we found that SEED had established standing.<sup>11</sup>

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<sup>3</sup> Waste Control Specialists LLC, Application for a License for a Consolidated Interim Spent Fuel Storage Facility (Apr. 28, 2016) (ADAMS Accession No. ML16133A100).

<sup>4</sup> Joint Request to Withdraw the Federal Register Notice Providing an Opportunity to Submit Hearing Requests (Apr. 19, 2017), Attach. 1, Letter from Rod Baltzer, WCS President and CEO, to NRC Document Control Desk (Apr. 18, 2017) (ADAMS Accession No. ML17109A480).

<sup>5</sup> Interim Storage Partners LLC License Application, Docket 72-1050, Andrews County, Texas, (rev. 2 July 2018) at 1-1, 1-4 (ADAMS Accession No. ML18206A483) [hereinafter ISP License Application].

<sup>6</sup> Letter from Jeffery D. Isakson, ISP, to NRC Document Control Desk (June 8, 2018) (ADAMS Accession No. ML18166A003).

<sup>7</sup> Interim Storage Partners Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070, 44,070–75 (Aug. 29, 2018), corrected, 83 Fed. Reg. 44,680 (Aug. 31, 2018) (correcting the deadline date for petitioners to request a hearing to October 29, 2018). The Secretary of the Commission later extended this deadline to November 13, 2018. Order of the Secretary (Oct. 25, 2018) at 2.

<sup>8</sup> Petition of Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, Sustainable Energy and Economic Development Coalition and Leona Morgan, Individually, to Intervene, and Request for an Adjudicatory Hearing (Nov. 13, 2018).

<sup>9</sup> Licensing Board Notice and Order (Establishing Dates and Location of Oral Argument) (May 24, 2019) at 1 (unpublished).

<sup>10</sup> LBP-19-7, 90 NRC at \_\_\_ (slip op. at 2).

<sup>11</sup> Id. The NRC Staff argues (in a footnote) that "SEED should have submitted affidavits to demonstrate that it continues to meet the criteria for standing in this proceeding." NRC Staff

Thereafter, the Board dismissed Sierra Club's sole admitted contention.<sup>12</sup> Before we did so, however, SEED submitted the motion now before us. SEED asks permission to file out of time Contention 17, which states:

The Environmental Report for the ISP/WCS [consolidated interim storage facility] fails to satisfy NEPA in light of findings in a 2019 report published by the U.S. Nuclear Waste Technical Review Board. The NWTRB, as principal scientific and engineering governmental advisory panel for [spent nuclear fuel] disposition, has concluded that 50 to 80 years will be necessary for DOE to prepare for and accomplish the transportation of spent nuclear fuel to the ISP/WCS facility in west Texas. The NWTRB also found that the lead time needed for resolution for associated technical issues related to transport of the vast majority of the [spent nuclear fuel] is 10 years or more; that the NRC lacks data to establish a technical basis for the long-term storage of high-burnup [spent nuclear fuel] and reliability of its fuel cladding under high burnup conditions and will not have results of a DOE study presently under way for about 7 more years; and that there is inadequate data as yet to determine whether high burnup [spent nuclear fuel] can withstand the rigors of long-distance transportation. Mitigation plans and the discussion of alternatives to shipment of all [spent nuclear fuel] within a 20-year period consequently have not been sufficiently addressed and disclosed as required by NEPA.<sup>13</sup>

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Answer in Opposition to Sustainable Energy and Economic Development Coalition's New Contention 17 (Nov. 18, 2019) at 10 n.45 [hereafter NRC Staff Answer]. ISP concedes (subject to its pending appeal of LBP-19-7) that it "does not challenge [SEED's Motion to File] on standing grounds." Interim Storage Partners LLC's Answer Opposing Petitioner Sustainable Energy and Economic Development Coalition's Motion for Leave to Submit Late-Filed Contention 17 (Nov. 18, 2019) at 6 n.24 [hereafter ISP Answer]. But, in a second footnote, ISP points out that "to the extent SEED (which was previously denied party status) is required to reestablish (or affirm continued) standing under 10 C.F.R. § 2.309(c), it has not done so." *Id.* at 12 n.52. The Board has examined the cases cited by the Staff and by ISP and concludes that none involved similar circumstances. *See, e.g., Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993) (explaining that petitioner sought to re-intervene in a proceeding in which its most recent filing had been submitted "well over 4 years ago"). Because SEED submitted its Motion to File just two months after the Board's initial ruling on standing, we do not require SEED to demonstrate standing all over again.

<sup>12</sup> LBP-19-9, 90 NRC at \_\_, \_\_ (slip op. at 1, 5).

<sup>13</sup> SEED Motion to File at 5.

According to SEED, the findings in a September 23, 2019 report of the U.S. Nuclear Waste Technical Review Board<sup>14</sup> “vindicate and go beyond the problems raised in SEED Coalition’s earlier contentions,”<sup>15</sup> which the Board ruled inadmissible in LBP-19-7.<sup>16</sup>

Both ISP and the NRC Staff oppose SEED’s motion.<sup>17</sup>

## II. ANALYSIS

### A. Good Cause

Any petitioner that proffers a new or amended contention after the initial deadline for hearing requests must demonstrate good cause for doing so.<sup>18</sup> To establish good cause, a petitioner must show that (1) the information upon which the new or amended contention is based was not previously available; (2) the information upon which the contention is based is materially different from information previously available; and (3) the contention has been submitted in a timely fashion after the new information on which it is based becomes available.<sup>19</sup>

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<sup>14</sup> “Preparing for Nuclear Waste Transportation: Technical Issues that Need to Be Addressed in Preparing for a Nationwide Effort to Transport Spent Nuclear Fuel and High-Level Radioactive Waste,” 23 U.S. Nuclear Waste Technical Review Board (Sept. 23, 2019) (ADAMS Accession No. ML19297D146) [hereinafter NWTRB Report].

<sup>15</sup> Seed Motion to File at 5.

<sup>16</sup> SEED Contention 17 revisits issues that were initially raised (and ruled inadmissible) in Joint Petitioners Contentions 1, 4, and 11. See LBP-19-7, 90 NRC at \_\_-\_\_, \_\_-\_\_, \_\_-\_\_ (slip op. at 67–69, 72–74, 84–87).

<sup>17</sup> ISP Answer; NRC Staff Answer. SEED filed a timely reply. See Reply of Intervenor Sustainable Energy and Economic Development Coalition in Support of Litigation of Proposed Contention 17 (Nov. 25, 2019) [hereinafter SEED Reply].

<sup>18</sup> See 10 C.F.R. § 2.309(c)(1).

<sup>19</sup> See id. § 2.309(c)(1)(i)–(iii).

It is not disputed that SEED has satisfied the third requirement. In accordance with the Board's Initial Scheduling Order,<sup>20</sup> SEED proffered Contention 17 within 30 days of publication of the NWTRB Report on which Contention 17 relies.

Both ISP and the NRC Staff argue, however, that the information in the NWTRB Report on which SEED relies was either previously available or not materially different from information that was previously available.<sup>21</sup> We agree.

The NWTRB Report does not purport to document any new scientific or engineering research. Rather, as required by the Nuclear Waste Policy Amendments Act of 1987,<sup>22</sup> the purpose of the NWTRB Report is to review the Department of Energy's (DOE's) preparedness to transport spent nuclear fuel and high-level radioactive waste.<sup>23</sup>

In undertaking this review, the NWTRB Report relies on and cites approximately 150 earlier references.<sup>24</sup> Indeed, the Report explicitly acknowledges that, in identifying the issues that its recommendations address, the NWTRB drew upon such earlier sources. These included both issues that the NWTRB itself had previously identified "during past Board public meetings, technical workshops, and Board reports" (spanning 2012-2018) and "[a]dditional relevant technical issues" that had been previously "identified and documented" in reports and presentations by DOE, the United States nuclear industry, and researchers in other countries.<sup>25</sup> All or virtually all of these original sources were publicly available before September 2019.<sup>26</sup>

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<sup>20</sup> Licensing Board Order (Initial Scheduling Order) (Oct. 16, 2019) at 4 (unpublished).

<sup>21</sup> ISP Answer at 8–12; NRC Staff Answer at 6–9.

<sup>22</sup> Nuclear Waste Policy Amendments Act of 1987, Pub. L. No.100-203, § 5051, 101 Stat. 1330-248 (1987) or 2 U.S.C. §§ 10261–10270.

<sup>23</sup> NWTRB Report at 1.

<sup>24</sup> Id. at 107–17.

<sup>25</sup> Id. at 23.

<sup>26</sup> See id. at 107–17.

For example, SEED Contention 17 claims that, according to the NWTRB Report, some nuclear waste could not be removed from all commercial reactor sites within the 20-year timeframe contemplated by ISP's Environmental Report or even within the 40-year term of the license ISP is requesting.<sup>27</sup> According to SEED, the NWTRB Report makes the "critical determination" that, because of increased use of high burnup fuel and storage of spent fuel in large canisters, DOE could not remove spent fuel from "all nuclear power plants" for some period of time.<sup>28</sup> Specifically, the NWTRB Report states that, even if the spent fuel were repackaged into smaller canisters, DOE likely could not remove all such fuel until approximately 2070.<sup>29</sup> And, as SEED quotes from the Report, without repackaging "some of the largest [spent nuclear fuel] canisters, storing the hottest [spent nuclear fuel] would not be cool enough to meet the transportation requirements until approximately 2100."<sup>30</sup>

As the NWTRB Report acknowledges, however, these same conclusions were first presented at an NWTRB public workshop in 2013.<sup>31</sup> Because this information was publicly available years ago, SEED fails to show good cause for failing to raise this aspect of Contention 17 earlier.

Likewise, SEED's claim that ISP's Environmental Report fails to address what it calls "the DOE mandate of standardized transportation, aging and disposal (TAD) canisters"<sup>32</sup> most

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<sup>27</sup> SEED Motion to File at 8.

<sup>28</sup> Id. at 7–8.

<sup>29</sup> NWTRB Report at 77.

<sup>30</sup> SEED Motion to File at 8.

<sup>31</sup> NWTRB Report at 77. The Report cites as authority a November 2013 presentation at a public NWTRB technical workshop by Jeffrey Williams, the director of DOE's Nuclear Fuels Storage and Transportation Planning Project. Mr. Williams' discussion of the timeframe for transporting all spent nuclear fuel from reactor sites appears at page 54 of the workshop transcript, which is publicly available at <https://www.nwtrb.gov/docs/default-source/meetings/2013/november/13nov18.pdf?sfvrsn=9>.

<sup>32</sup> SEED Motion to File at 6.

clearly is not based on new information. This is essentially the same claim SEED initially proffered in Joint Petitioners Contention 4, which we previously rejected as being outside the scope of this proceeding.<sup>33</sup> Moreover, in supporting this claim, SEED primarily relies on a 2006 DOE Federal Register notice and DOE's 2008 Supplemental Environmental Impact Statement for Yucca Mountain<sup>34</sup>—documents that were available more than a decade ago.

In its reply, SEED argues that it was free to ignore an analysis presented at a public NWTRB workshop in 2013 by “a sole member of the NWTRB.”<sup>35</sup> Rather, SEED claims, only when that analysis became the “official” position of the NWTRB was SEED required to pay attention and submit a contention based on it.<sup>36</sup> The NRC recognizes no such distinction.<sup>37</sup> Moreover, ironically, the Declaration of SEED's own supporting expert cites and relies on the very same 2013 NWTRB workshop presentation that SEED now claims was of no consequence.<sup>38</sup>

For the most part, the Declaration of SEED's expert, Robert Alvarez, merely repeats conclusions in the NWTRB Report. But his Declaration also demonstrates that SEED Contention 17 is based on facts and theories that were available long before the contention was filed. For example, Mr. Alvarez states that the NWTRB “concluded in 2016 that the Nuclear Regulatory Commission and the Energy Department lack a technical basis in support of the safe

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<sup>33</sup> See LBP-19-7, 90 NRC at \_\_\_ – \_\_\_ (slip op. 72–74).

<sup>34</sup> See SEED Motion to File at 6–7.

<sup>35</sup> SEED Reply at 2.

<sup>36</sup> Id. at 2–3.

<sup>37</sup> On the contrary, the Commission has expressly stated that a petitioner may not delay filing a contention “until a document becomes available that collects, summarizes and places into context the facts supporting that contention.” See N. States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-10-27, 72 NRC 481, 496 (2010).

<sup>38</sup> See Declaration of Robert Alvarez in Support of Motion of Intervenor Sustainable Energy and Economic Development Coalition for Leave to File Late-Filed Contention (Oct. 23, 2019) at 2 n.8 [hereinafter Alvarez Declaration].

transport of high burnup [spent nuclear fuel].”<sup>39</sup> Indeed, Mr. Alvarez cites his own work in 2013 for the proposition that “[h]igh burnup fuel temperatures make the used fuel more vulnerable to damage from handling.”<sup>40</sup>

Mr. Alvarez’s Declaration similarly confirms that SEED’s claims regarding repackaging spent fuel for eventual transmission to a DOE permanent repository merely repeat concerns that were expressed years ago. Mr. Alvarez quotes from a 2013 DOE study cautioning that “[d]irect disposal of the large canisters currently used by the commercial nuclear power industry is beyond the current experience base globally” and “represents significant engineering and scientific challenges.”<sup>41</sup> He quotes a 2013 NWTRB staff report asserting that “repackaging the [spent nuclear fuel] may be a lengthy process and could impact operational schedules at the utility sites, at a consolidated storage facility, or at the repository, depending on where repackaging is performed.”<sup>42</sup> He quotes a 2014 GAO report for the proposition that “casks and canisters being used by the power utilities will be at least partially, and maybe largely, incompatible with future transport and repository requirements, meaning that some if not all, of the [used nuclear fuel] that is moved to dry storage by the utilities will ultimately need to be repackaged.”<sup>43</sup>

Indeed, SEED concedes that its claim about the need for repackaging spent fuel is not “new” in any conventional sense.<sup>44</sup> But, SEED argues, “with the weight of the NWTRB behind

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<sup>39</sup> Id. at 1.

<sup>40</sup> Id. at 6 n.26.

<sup>41</sup> Id. at 8.

<sup>42</sup> Id. at 8–9.

<sup>43</sup> Id. at 9.

<sup>44</sup> SEED Motion to File at 19.



it,” this claim is “‘new’ in the sense that it can’t simply be ignored any longer.”<sup>45</sup> Again, the NRC recognizes no such distinction.

SEED fails to demonstrate that Contention 17 is based on new and materially different information, as required by 10 C.F.R. § 2.309(c)(1).

**B. Contention Admissibility**

Even if SEED had demonstrated good cause for proffering Contention 17 after the initial deadline for filing a hearing petition, Contention 17 would also have to satisfy the NRC’s usual requirements for contention admissibility.<sup>46</sup> Although we do not adjudicate disputed facts at this stage, an admissible contention must (1) show that a genuine dispute exists on a material issue of law or fact by referring to specific portions of the application that the petitioner disputes; and (2) state the alleged facts or expert opinions that support the petitioner’s position.<sup>47</sup> Moreover, among other things, a contention must raise an issue that is within the scope of the proceeding.<sup>48</sup>

SEED fails to raise a genuine dispute with ISP’s application, as required by 10 C.F.R. § 2.309(f)(1)(vi). Contrary to SEED’s claims, the findings of the NWTRB Report do not contradict ISP’s plans.

DOE’s statutory responsibility to store the nation’s spent nuclear fuel at a permanent repository (and hence eventually to implement a “national transportation program for nuclear

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<sup>45</sup> Id.

<sup>46</sup> See 10 C.F.R. § 2.309(f)(1).

<sup>47</sup> Id. § 2.309(f)(1)(v)–(vi).

<sup>48</sup> Id. § 2.309(f)(1)(iii)

waste<sup>49</sup>) is not ISP's responsibility. Rather, ISP, a private applicant, seeks NRC authorization to possess and store 5,000 metric tons of spent nuclear fuel at an interim storage facility.<sup>50</sup>

According to SEED's own expert, nuclear power reactors in the United States have generated more than 80,000 tons of such fuel—a number that is only increasing.<sup>51</sup> As the NWTRB Report acknowledges, most of “the existing dry-storage casks and canisters for commercial [spent nuclear fuel] have been designed and approved for both storage and transportation.”<sup>52</sup> Accordingly, while the NWTRB concludes that some technical issues must be resolved “before the nation's entire inventory of waste can be transported,”<sup>53</sup> it agrees that not all such issues “must be resolved before the first of the waste can be transported.”<sup>54</sup>

Contrary to 10 C.F.R. § 2.309(f)(1)(v), therefore, the NWTRB Report does not support SEED's suggestion that 5,000 (out of 80,000) metric tons of spent nuclear fuel could not possibly be moved to ISP's facility within the term of the license ISP is requesting. And even if it did, as ISP points out<sup>55</sup> that would simply mean that its proposed facility would likely not be built. As we stated in LBP-19-7, the NRC is not concerned with the commercial viability of the

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<sup>49</sup> NWTRB Report at 3.

<sup>50</sup> Because of the likelihood that ISP will seek license amendments, its Environmental Report analyzed the impacts of storing up to 40,000 metric tons of spent fuel, to be received under separate license amendments over a period of 20 years. See WCS Consolidated Interim Spent Fuel Storage Facility Environmental Report, Docket No. 72-1050 (rev. 2 July 2018) at 1-1 (ADAMS Accession No. ML18221A405 (package)) [hereinafter Environmental Report]. The application under review, however, would authorize storage of only 5,000 metric tons, and the only term limit for receiving the spent fuel would be the term of the initial license itself: that is, 40 years.

<sup>51</sup> Alvarez Declaration at 3.

<sup>52</sup> NWTRB Report at 73.

<sup>53</sup> Id. at xxiii (emphasis added).

<sup>54</sup> Id.

<sup>55</sup> ISP Answer at 17.

facilities it licenses, because the business decision whether to use a license has no bearing on a licensee's ability to safely conduct the activities the license authorizes.<sup>56</sup>

SEED claims that "[t]he NWTRB has identified several flaws and/or weaknesses in DOE's role in the development of the ISP/WCS [interim storage facility] which change the expected timing and sequencing of [spent nuclear fuel] storage activity at the facility."<sup>57</sup> But neither DOE nor the NWTRB has any role in the NRC's licensing process for ISP's proposed facility.

As explained supra, the NWTRB's responsibility under the Nuclear Waste Policy Amendments Act of 1987 is to "evaluate the technical and scientific validity of activities undertaken by the Secretary [of Energy] . . . including activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel."<sup>58</sup> The NWTRB does not license private spent fuel transportation systems; the NRC does. Contrary to SEED's claims,<sup>59</sup> the NWTRB has no ability to "effectively revise the scope" of ISP's project or of this adjudication.

ISP's Environmental Report confirms that spent nuclear fuel will be transported to ISP's proposed facility only in transportation packages that are approved and certified as safe by the NRC under 10 C.F.R. Part 71.<sup>60</sup> ISP's license application lists the specific, currently approved packages it proposes to accept for storage.<sup>61</sup> ISP's application, however, is for a storage facility under Part 72, not for a transportation system under Part 71. Responsibility for transporting spent nuclear fuel to ISP's proposed facility (including any repackaging required for such transportation) would lie with the title holders of the fuel, not with ISP.

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<sup>56</sup> See LBP-19-7, 90 NRC at \_\_\_ (slip op. at 27).

<sup>57</sup> SEED Motion to File at 20.

<sup>58</sup> NWTRB Report at 1.

<sup>59</sup> SEED Motion to File at 20.

<sup>60</sup> Environmental Report at 1-8.

<sup>61</sup> ISP License Application at 2-1.

Contrary to 10 C.F.R. § 2.309(f)(1)(iii), any challenge to the safety of NRC-approved transportation packages is outside the scope of this proceeding, as we ruled in LBP-19-7.<sup>62</sup> Although 10 C.F.R. § 72.108 requires consideration of transportation impacts in ISP'S Environmental Report, section 72.108 “does not require that the environmental report prove the safety of transportation packages,” because 10 C.F.R. Part 71 separately addresses these issues.<sup>63</sup>

SEED fails to address, much less challenge, the parts of ISP'S Environmental Report that do, in fact, analyze the potential environmental impacts associated with transportation of spent nuclear fuel (including high burnup fuel).<sup>64</sup> Likewise (and as we determined in connection with the contentions SEED initially proffered), SEED fails to acknowledge or dispute any safety analyses, aging management plans or quality assurance programs described in ISP'S application, including provisions that specifically address how ISP proposes to address the challenges posed by high burnup fuel.<sup>65</sup>

Accordingly, SEED Contention 17 again fails to raise a genuine dispute on a material issue of law or fact, contrary to 10 C.R. R. § 2.309(f)(1)(vi). Rather than address what ISP'S application says, SEED mounts a generalized attack on the adequacy of the NRC'S regulations.

For example, SEED claims that such safety-related transportation issues as “the travel-worthiness of high burnup [spent nuclear fuel] and its potential damage from shipping” and “when to require standardized TAD canisters” must be addressed in the Environmental Report for a consolidated interim storage facility under Part 72.<sup>66</sup> SEED makes such claims even

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<sup>62</sup> LBP-19-7, 90 NRC at \_\_ – \_\_ (slip op. at 57–58).

<sup>63</sup> Holtec Int'l (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, 89 NRC 353, 415 (2019) (citation omitted), appeal pending.

<sup>64</sup> See, e.g., Environmental Report at 4-9 to -10, 4-12, 4-16, 4-23.

<sup>65</sup> See LBP-19-7, 90 NRC at \_\_ – \_\_ (slip op. at 85–86).

<sup>66</sup> SEED Motion to File at 16.

though ISP has committed to accepting at its facility only transportation packages that have been approved by the NRC and licensed under Part 71.

In essence, such claims try to expand a Part 72 application process into a dispute over the adequacy of the NRC's Part 71 requirements. Plainly, these claims are outside the scope of this Part 72 proceeding, in contravention of 10 C.F.R. §2.309(f)(1)(iv). And, insofar as they attack Commission regulations without seeking a waiver, SEED's claims violate 10 C.F.R. § 2.335 as well.

SEED's challenge to what it calls "ISP's dogmatic refusal to have dry transfer system ('DTS') capability on site"<sup>67</sup> is similar. As we explained in LBP-19-7, "ISP's application does not set forth any intent to repackage spent fuel or any analysis of the costs of repackaging the fuel, and the Continued Storage Rule does not require a spent fuel storage facility applicant under Part 72 to include such an analysis beyond the license term."<sup>68</sup>

If SEED believes the NWTRB Report warrants revisions in the NRC's rules and regulations, it may petition the Commission.<sup>69</sup> In this adjudicatory proceeding, however, the Board applies the Commission's rules, and has no authority to change them.

SEED Contention 17 is not admissible.

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<sup>67</sup> SEED Reply at 6.

<sup>68</sup> LPB-19-7, 90 NRC at \_\_\_ (slip op. at 73).

<sup>69</sup> See 10 C.F.R. § 2.802.

III. ORDER

For the foregoing reasons:

A. SEED's motion for leave to late-file Contention 17 is denied.

B. This proceeding is terminated. As this decision terminates this proceeding before the Board, any appeal to the Commission shall be filed in conformity with 10 C.F.R. § 2.311.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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Paul S. Ryerson, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Nicholas G. Trikouros  
ADMINISTRATIVE JUDGE

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Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
December 13, 2019

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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INTERIM STORAGE PARTNERS LLC ) Docket No. 72-1050-ISFSI  
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(WCS Consolidated Interim Storage Facility) )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Ruling on Motion for Leave to File Late-Filed Contention and Terminating Proceeding) (LBP-19-11)** have been served upon the following persons by the Electronic Information Exchange:

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**WCS CISF - Docket No. 72-1050-ISFSI  
MEMORANDUM AND ORDER (Ruling on Motion for Leave to File Late-Filed Contention  
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Dated at Rockville, Maryland,  
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[Original signed by Herald M. Speiser ]  
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