

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

IN THE MATTER OF)
) Docket No. 72-1051
HOLTEC INTERNATIONAL)
) May 18, 2020
(HI-STORE Consolidated Interim)
Storage Facility))

**SIERRA CLUB’S JOINT REPLY TO HOLTEC’S AND NRC STAFF’S ANSWER
TO SIERRA CLUB’S MOTION TO REOPEN THE RECORD**

Comes now Sierra Club and for its Joint Reply to Holtec’s and NRC Staff’s Answer to Sierra Club’s Motion to Reopen the Record, states as follows:

SIERRA CLUB’S MOTION SHOULD BE CONSIDERED BY THE BOARD

On April 23, 2020, the Commission remanded Sierra Club’s proposed Contention 30 to the Board, “including the issue of whether the reopening standards are met.” If Sierra Club’s Motion to Reopen the Record were untimely filed and conclusively precluded from consideration, pursuant to 10 C.F.R. § 2.326, as asserted by Holtec and NRC Staff, the Commission could have, and certainly would have, made that decision itself, rather than remand Contention 30 to the Board. Surely, the Commission would not have remanded, expecting the Board to engage in a meaningless exercise.

Instead, the Commission expects the Board to consider and determine whether the Motion to Reopen the Record satisfies the requirements for reopening the record set forth in 10 C.F.R. § 2.326. Sierra Club has set forth in its Motion to Reopen the Record and in its affidavits to support the motion why the motion satisfies the § 2.326 requirements.

The affidavits submitted with Sierra Club's motion comply with the requirements of § 2.326. Robert Alvarez is a recognized expert and his sworn declaration, which is an affidavit, explains the importance of the NWTRB report that forms the basis of Contention 30 and further explains the technical details related to the NWTRB report and its implications for the Holtec project. The affidavit by Sierra Club's attorney is based on his knowledge of the NWTRB report and his review of the contents of the report. The report is the primary fact on which Contention 30 is based, so the attorney's affidavit sets out the factual basis for the contention. A technical report like the NWTRB report, can be the basis of a contention.

TRANSPORTATION OF NUCLEAR WASTE IS A SIGNIFICANT SAFETY AND ENVIRONMENTAL ISSUE

An ER must address issues related to transportation of nuclear waste. 10 C.F.R. § 72.108. So Contention 30 is within the scope of this proceeding. Contention 30, supported by the NWTRB report and the declaration of Robert Alvarez, raises significant safety and environmental issues related to the transportation of nuclear waste to the proposed Holtec CIS facility. The NWTRB report identifies 18 technical issues regarding transportation of nuclear waste that are not addressed or discussed in the Holtec ER. Most importantly, the NWTRB report concludes that nuclear waste could not be removed safely from reactor sites until at least 2070, if it could be repackaged. If no repackaging occurs, some of the canisters containing the hottest waste would not be cool enough to meet transportation requirements until approximately 2100. In other words, the waste could not be safely transported during the period of the license, and certainly not within the 20-year period

for transporting the waste envisioned by the Holtec ER. That is certainly a significant safety and environmental issue that is material to this proceeding.

Robert Alvarez' declaration further explains the safety and environmental issues presented in the NWTRB report. Mr. Alvarez' declaration certainly provides an acceptable basis for admissibility of Contention 30.

IF CONTENTION 30 COULD HAVE BEEN CONSIDERED INITIALLY, IT WOULD
HAVE BEEN ADMITTED FOR HEARING

In order for a contention to be admitted after the record is closed, the new information need only "be significant and plausible enough to require reasonable minds to inquire further." *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), 74 NRC 214, 222-223 (2011). That certainly describes the information in the NWTRB report and Mr. Alvarez' declaration. The NWTRB report means that the nuclear waste cannot be safely transported to the Holtec facility during the licensing period. Holtec bears the ultimate burden of showing that the nuclear waste can be safely transported in an environmentally protective manner during the license period.

The Atomic Energy Act prohibits the NRC from issuing licenses that would be "inimical to the common defense and security or to the health and safety of the public." 42 U.S.C. § 2133. If the nuclear waste cannot be safely transported in an environmentally protective manner during the licensing period, the NRC's action in issuing a license would be "inimical to the common defense and security or to the health and safety of the public." That is undeniably material to this proceeding.

CONCLUSION

Sierra Club has satisfied the requirements of 10 C.F.R. § 2.326, and Contention 30 should be admitted for hearing.

/s/ *Wallace L. Taylor*

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of Sierra Club's Joint Reply to Holtec's and NRC Staff's Answer to Sierra Club's Motion to Reopen the Record were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned proceeding.

/s/ Wallace L. Taylor

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