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Subject: [External_Sender] Docket ID NRC-2016-0231 Environmental Impact Statement for Interim Storage Partners LLC's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas
Attachments: EMNRD Comments on ISP Draft EIS.pdf

Please find attached the New Mexico Energy, Minerals and Natural Resources Department's comments regarding the draft Environmental Impact Statement for Interim Storage Partners LLC's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas.

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RE: Docket ID NRC-2016-0231

To Whom It May Concern:

On behalf of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD), attached please find our comments on the Environmental Impact Statement for Interim Storage Partners LLC's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas (draft EIS).

EMNRD finds the technical analysis in the draft EIS inadequate. The draft EIS does not comply with the requirements of Section 102(2)(c) of the National Environmental Policy Act as it fails to conduct a thorough evaluation because of numerous technical deficiencies related to waste transportation and it fails to address the potential of orphaned oil and gas wells within the facility or adjacent area. EMNRD strongly opposes the recommended action of approving Interim Storage Partners LLC's license application and instead supports the No Action Alternative.

EMNRD also supports the comments by other New Mexico state agencies including the New Mexico Environment Department.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Cottrell Propst".

Sarah Cottrell Propst

**New Mexico Energy, Minerals and Natural Resources Department (EMNRD) Comments
Regarding the May 2020 Draft Environmental Impact Statement (EIS) for the Interim
Storage Partners License Application for a Consolidated Interim Storage Facility for
Spent Nuclear Fuel and High-Level Waste in Andrews County, Texas**

The U.S. Nuclear Regulatory Commission (NRC) prepared a draft environmental impact statement (EIS) as part of its environmental review of the Interim Storage Partners (ISP) license application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel and Greater-Than-Class C waste, along with a small quantity of mixed oxide fuel. The proposed project area is situated approximately 0.37 miles east of the Texas and New Mexico state boundary at a location in Andrews County, Texas that is approximately 32 miles west of Andrews, Texas, and five miles east of Eunice, New Mexico.

EMNRD finds the technical analysis in the draft EIS inadequate. The draft EIS does not comply with the requirements of Section 102(2)(c) of the National Environmental Policy Act as it fails to adequately address waste transportation. It also fails to address the potential for orphaned oil and gas wells at the facility or in the adjacent area. EMNRD strongly opposes the recommended action of approving the ISP CISF License and instead supports the No Action Alternative.

1. Moving spent nuclear fuel multiple times creates unnecessary risks to public health, safety, and the environment.

The NRC stated in its Waste Confidence Decision that spent fuel can be stored safely beyond the operating life of a power reactor, at these current locations, until a national repository for spent nuclear fuel is established. Moreover, states and regional groups have consistently supported moving fuel only once – from current locations to a national repository. Moving spent nuclear fuel multiple times increases the likelihood of accidents.

2. The draft EIS contains numerous technical deficiencies including those related to waste transportation.

The NRC neglected to address the complexity of transporting spent nuclear fuel across the nation and specifically through the State of New Mexico in its transportation assessment in the draft EIS. The NRC did not provide a clear assessment on the transportation impact and radiological calculations for the assumed mostly rail scenario, and the many complex issues related to route selection, collaboration with impacted states, and other requirements within the Nuclear Waste Policy Act, as amended. Since the NRC determined it would use “bounding analysis” where necessary, it should have included transportation impact calculations for the full scope of the project from generating sites to the ISP facility and then to a permanent repository.

The NRC neglected to address the known safety issues associated with transportation of spent nuclear fuel, and specifically the complexities and technical challenges in transportation, planning, and implementation. In its October 2015¹ testimony to Congress, the General Accountability Office (GAO) indicated the following:

The transportation of large amounts of spent fuel to an interim storage or permanent disposal location is inherently complex and the planning and implementation may take decades to accomplish. The actual time it would take depends on a number of variables including distance, quantity of material, mode of transport, rate of shipment, level of security, and coordination with state and local authorities. For example, according to officials from a state regional

¹ “Spent Nuclear Fuel: Legislative, Technical and Societal Challenges to its Transportation”, GAO 16-121 (October 2015, pp 3-4

organization we interviewed and the Blue Ribbon Commission report, transportation planning could take about 10 years, in part because routes have to be agreed upon, first responders, have to be trained, and critical elements of infrastructure and equipment need to be designed and deployed.

The NRC did not consider the technical challenges in transporting spent nuclear fuel in any of the GAO reports. Many of the challenges within the October 2014 GAO report² were identified by experts who identified the uncertainties about the safety of newer fuel versus older fuel. Further, the NRC provided comments in the 2014 GAO report³ to Congress regarding concerns it held on the transport of high-burn up fuels regarding hydrogen buildup and cladding becoming brittle. The Department of Energy (DOE) and the Electric Power Research Institute planned a joint development⁴ to investigate the high burn-up fuel, its cladding, and the cask during transport. The results would take several years with the DOE stating, "...their strategy would not involve transportation of large amounts of high burn-up fuels until at least 2025...giving more time for the development project to yield results," (GAO 15-141, p. 25, October 2014).

Additionally, the 2014 GAO report⁵ included that the guidelines for storage of spent nuclear fuel radiation levels are significantly different than those allowed during transportation rendering some spent nuclear fuel in storage unavailable for transport (only about 30 percent of existing spent nuclear fuel in dry storage is cool enough to transport).

The draft EIS and supporting documents do not address the weight capacity of existing rail systems or the upgrade necessary on the Texas New Mexico rail line to support the proposed shipments. The weight capacity of rail systems is specified as weight per axle of the rail car. The transportation from reactor sites to the proposed storage site in Texas with all shipments through New Mexico is a potential risk that must be adequately addressed.

Additionally, the Federal Rail Administration has established the S2043 rail car as the standard. The draft EIS fails to incorporate how this standard will be met in transportation planning with the licensee, shipper/railroad industry.

3. The draft EIS fails to address the potential for acts of terrorism or sabotage along shipping corridors.

The draft EIS fails to fully address and mitigate the potential for acts of terrorism or sabotage along shipping corridors, as is required by 10 CFR Part 73, and by the Western Governors Association (WGA) Resolution 2018-10, Transportation, Storage and Disposal of Radioactive Waste, Radioactive Materials and Spent Nuclear Fuel. The draft EIS fails to recognize that the acts of terrorism and sabotage do not simply impact the transportation safety of future shipments, but have huge liability impacts to communities, the environment, and social-economic factors that should be included in the analysis. The final EIS also should recognize that NRC's licensing of the proposed ISP facility creates liability against the federal government arising from potential acts of terrorism and sabotage during transportation of spent nuclear fuel.

In addition, the WGA Resolution 2018-10 calls upon the generator sites of spent nuclear fuel and high-level waste and the federal government to pay for all costs associated with assuring safe transportation, responding effectively to accidents and emergencies that may occur, and otherwise assuring public health and safety. The resolution calls upon nuclear utility companies

2 "Spent Nuclear Fuel: Outreach Needed to Help Gain Public Acceptance for Federal Activities That Address Liability", GAO 15-141 (October 2014), <https://www.gao.gov/assets/670/666454.pdf>

3 GAO-15-141, p. 25 Description of Concerns Related to High-Burn Up Fuel

4 High Burnup Dry Storage Cask Research and Development Project <https://www.osti.gov/servlets/purl/1133392>

5 GAO-15-141, p. 26 Some Stored Spent Nuclear Fuel May Not Be Readily Transportable

to “...adequately fund state and local emergency and medical responder training and resources in case of an accident or terrorist attack while shipping spent nuclear fuel.”

4. The draft EIS fails to assess the potential for orphan oil and gas wells at the proposed facility and adjoining area.

The draft EIS provides extensive discussions concerning the potential for geologic hazards related to subsidence, sinkhole development, earthquakes, and induced seismicity as the result of oil and gas activities. However, there is no indication of consideration for the potential for orphan oil and gas wells within the facility and adjoining area. Even though reviews of historical records may not identify any such well, the draft EIS still does not address either the effects if a plugged orphan well were to be discovered during the construction phase of the facility or the possibility that the orphan well may require remedial action if not properly plugged.