May 9, 2018

Kristine L. Svinicki, Chairman
Jeff Baran, Commissioner
Stephen G. Burns, Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop O-4F00
Washington, DC 20555-0001
Via email to Chairman@NRC.gov, CMRBARAN@nrc.gov, CMRBURNS@nrc.gov

Jose Cuadrado, Project Manager
Division of Spent Fuel Management
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Via email to jose.cuadrado@nrc.gov

Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Via email to annette.vietti-cook@nrc.gov

SUBJECT: Holtec International HI–STORE Consolidated Interim Storage Facility Project
Docket No. 72–1051 (Request for 180-day extension of scoping and public period and addition of 18 public hearings)

Dear Members of the Commission:

Occupy Bergen County, Citizens' Resistance at Fermi 2, Sisters of Mercy/Albuquerque, Crabshell Alliance, Nukewatch, On Behalf of Planet Earth, Coalition Against Nukes, Nuclear Age Peace Foundation, Cape Downwinders and Physicians for Social Responsibility are all organizations that question or oppose the proposed Holtec International (Holtec) consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) being planned for southeast New Mexico. Many of these organizations are planning to intervene in the forthcoming Nuclear Regulatory Commission (NRC) license proceeding for the Holtec CISF.

We hereby request that the Commission extend the scoping comment period for the CISF proposal by 180 days beyond the present terminus of May 29, 2018. The purpose of this request is to afford an opportunity for the convening of additional public comment hearings in 18 American cities likely to be affected by the large-scale transportation effort that will be caused by the Holtec project, and to allow members of the public additional time to undertake pre-filing investigation.

1. The Holtec CISF Plan Is Controversial

Holtec applied to the NRC by letter dated March 30, 2017 for license authorization to construct and operate a HI–STORE CISF for spent nuclear fuel disposal on a 960-acre site in Lea County, New Mexico. Holtec intends initially to store 500 canisters (8680 metric tons) of SNF, followed by 19 additional phases, all aimed eventually at storing 10,000 canisters and 120,000 or more metric tons. If the first phase is a guide, it may be that more than 170,000 metric tons might end up at Holtec’s facility. Even at 120,000 MT, the Holtec CISF would easily be the world’s largest SNF interim site.

Holtec plans to provide long-term SNF storage for up to 120 years, \(^1\) or for however much time beyond 120 years it may take to develop a repository. \(^2\) Holtec itself has recommended to the U.S. Department of Energy that a CIS facility “should have a minimum service life of 300 years,” \(^3\) all of which raises legitimate questions as to the possible permanence, fitness and suitability of the Holtec plan for storing high-level spent nuclear fuel in the New Mexico desert.

There is no civilian SNF generated in New Mexico. Tens of thousands of tons of dangerous radioactive waste will be transported into the state from hundreds, even thousands, of


\(^{2}\) According to the Holtec ER Rev. 1, p. 19/543 of .pdf: “Holtec anticipates the SNF could be stored at the CIS Facility for up to 120 years, or until a permanent geologic repository is opened consistent with the NRC’s Continued Storage Rule.” (Emphasis added).

miles away, via barge, truck and railroad, followed a century later by a second massive effort of 10,000 more trips, taking the waste away to a permanent geological repository. The waste will pass through 75% of the nation’s congressional districts en route to New Mexico. Many of the nation’s largest metropolitan areas will endure hundreds of canister transports over decades. The ability of the thin-walled canisters to uniformly withstand travel-related vibrations, moderate jarring, severe accidents or sabotage is dubious.

Once the canisters are delivered, Holtec will store them in shallow concrete burial pits. The Holtec site is situated in a geologically troublesome area. Holtec will minimally monitor the suspect storage canisters in the hopes of avoiding dangerous spills, leakage and criticality for many decades. After 120 years—or longer—the aspiration is that the SNF will again be transported, this time to a final geological repository.

The CISF may have to accept a far larger volume of waste than can be accepted by the ultimate permanent repository. The Department of Energy had aimed to dispose of 63,000 metric tons of commercial power plant SNF in Yucca Mountain, which is only about half of what Holtec proposes to take in. If an undersized permanent geological repository is opened, the excess SNF waste will have to remain in New Mexico for an unknown period.

There is continuing support in the New Mexico legislature and among economic development advocates for reprocessing as a spinoff to the CISF. Reprocessing is a dirty and dangerous means of reclaiming the dangerous isotopes in the waste which may bring a major radioactive waste-producing complex to New Mexico. Holtec’s “interim” CISF is undeniably a major component of an enormous undertaking that carries grave national policy and cost implications. The Holtec CISF’s centrality to nationwide management of SNF means that additional, nationwide, scoping must be undertaken by the NRC.

2. NEPA Scoping to Date for the Holtec CISF Is Grossly Inadequate

The NRC’s public involvement to date under the National Environmental Policy Act (NEPA) does not match the scale of policy, implementation and environmental concerns. On March 30, 2018, the NRC published in the Federal Register a notice of intent to prepare an environmental impact statement and conduct scoping on the Holtec International HI–STORE CISF project. A 60-day public comment period opened by the publication is slated to end on May 29, 2018. Only four public scoping hearings have been convened, including a national phone-in meeting at NRC headquarters in Rockville, Maryland, followed by three hearings in Roswell, Hobbs and Carlsbad, New Mexico, respectively.

This level of public engagement is grossly inadequate for a project of such magnitude. The scoping process for the CISF pales in comparison to the NEPA public outreach for the proposed Yucca Mountain repository. In 1995, the U.S. Department of Energy (DOE) undertook

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a 120-day effort consisting of public comments and scoping hearings for the Yucca draft EIS in 17 U.S. cities and Nevada:

To reach minority and low-income communities, DOE contacted news publications and radio stations that tend to service these communities to notify them of the scoping meetings and the locations of available information. In addition, DOE met with 13 Native American tribes and organizations and provided them the same information. DOE invited public interest groups, transportation interests, industry and utility organizations, regulators, and members of the general public to participate in the process. The Department mailed a series of information releases to Yucca Mountain stakeholders notifying them of the opportunity to comment on the scope of the EIS; sent press releases and public service announcements to newspapers and television and radio stations; and made information about Yucca Mountain, the EIS, and the scoping process available on the Internet (at www.ym.gov) and in public reading rooms around the country.

In 1995, DOE held 15 public scoping meetings across the country (DIRS 104630-YMP 1997, p. 7). More than 500 people submitted more than 1,000 comment documents during the 120-day public scoping period. DOE considered all comments—oral and written—it received during the scoping process and grouped them in categories. . . .

Holtec’s Environmental Report, the basis for the Draft EIS, largely ignores the massive transportation effort that will be required for the facility to function. The minimal publicity efforts the NRC has conducted to date suggest that the agency may not adequately analyze the transportation implications, and will effectively segment those aspects from the waste storage parts of the proposal. The NRC’s poor publicizing of the Holtec application is a far cry from the public involvement that characterized the Yucca Mountain scoping.

3. NRC Discretion to Limit Scoping Is Not Unbounded

The NRC’s discretion to limit or restrict NEPA scoping efforts has boundaries.

Scoping is the initial phase of the overall EIS process under NEPA. Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv., 297 F.3d 1012, 1022 (10th Cir.2002). Scoping is “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” 40 C.F.R. § 1501.7; Citizens’ Comm. to Save Our Canyons, 297 F.3d at 1022 (goal of scoping is to “identify [ ] specific issues to be addressed and studied” during the EIS process (citing 40 C.F.R. § 1501.7)).

According to the Ninth Circuit, the primary purpose of the scoping period “is to notify

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those who may be affected by a proposed government action which is governed by NEPA that the relevant entity is beginning the EIS process; this notice requirement ensures that interested parties are aware of and therefore are able to participate meaningfully in the entire EIS process, from start to finish.” Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1116 (9th Cir. 2002), citing Northwest Coalition for Alternatives to Pesticides (NCAP) v. Lyng, 844 F.2d 588, 594-95 (9th Cir. 1988).

To initiate the scoping process, the lead agency must publish a Notice of Intention (NOI) in the Federal Register “[a]s soon as practicable after its decision to prepare an [EIS].” 40 C.F.R. § 1501.7. In the notice, the agency must “[i]nvite the participation of affected Federal, State, and local agencies” and “[d]etermine the scope ... and the significant issues to be analyzed in depth in the [EIS].” Id. § 1501.7(a)(1), (2). The agency “may . . . [s]et time limits” for the scoping process and “[h]old an early scoping meeting or meetings.” Id. § 1501.7(b)(2), (4) (emphasis added). Those time limits must comply with 40 C.F.R. § 1501.8. Id., § 1501.7(b)(1). Section 1501.8 does not “prescribe [ ] universal time limits for the entire NEPA process,” but instead authorizes agencies to set time limits, including limits on the scoping process that are “appropriate to individual actions” and “are consistent with the purposes of NEPA and other essential considerations of national policy.” Id. § 1501.8.

Council on Environmental Quality (CEQ) regulations do not set minimum time limits for the scoping period and do not require an agency to extend or reopen the scoping period. Congress intended that agency discretion, and not the courts, “be exercised in determining when extra procedural devices should be employed.” Phillips Petroleum Co. v. U.S. EPA, 803 F.2d 545, 559 (10th Cir.1986) (emphasis omitted) (quoting Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, 435 U.S. 519, 546 (1978) (internal quotation marks omitted). Thus a reviewing court generally can overturn an agency decision for failure to provide additional procedure only when there are “extremely compelling circumstances.” Vermont Yankee, 435 U.S. at 543.

4. Much More Public Participation Is Warranted

We submit that Holtec’s CISF proposal presents “extremely compelling circumstances” that necessitate much greater NRC scoping outreach and solicitation of public feedback. This immense, expensive and long-duration SNF storage project requires perfect transportation and containment of extraordinarily deadly substances for centuries to come. The continued storage of SNF at reactor sites as an alternative to Holtec requires further consideration. The risks from even one major cask accident or act of sabotage, if it is accompanied by serious radiation leakage, could be more than the public is willing to accept just to have the waste concentrated in New Mexico.

Before the decision to move deadly SNF 20,000 times can be made, the American public outside of New Mexico should be afforded meaningful participation. We therefore request that the scoping period and comment opportunity for the Holtec CISF be extended from May 29, 2018 until November 30, 2018. During that period, we further request that the NRC convene
town hall-style public meetings and comment sessions in the following cities, each of which is located on one or more anticipated major SNF transport routes:

Atlanta
Boston
Chicago
Cleveland
Dallas/Forth Worth
Detroit
San Antonio
Kansas City
Los Angeles

Miami
Minneapolis/Saint Paul
Nashville
New York/Newark
Omaha
Philadelphia
Pittsburgh
St. Louis
Tampa

The possibility of a spent fuel leak, explosion, criticality or canister breach in any of these urban areas, and the questions of whether and how much Americans and the environment should bear the risks of this massive scheme, should be decided in a process that is truly national, visible and far more extensive.

We request an expedited decision from the NRC on these requests, given the fast-approaching May 29, 2018 deadline.

Thank you very much.

/s/ Terry J. Lodge
Terry J. Lodge, Esq.
316 N. Michigan St., Ste. 520
Toledo, OH 43604-5627
tjodge50@yahoo.com
Counsel for Don’t Waste Michigan

/s/ Wallace L. Taylor
Wallace L. Taylor
4403 1st Ave. S.E.
Suite 402
Cedar Rapids, Iowa 52402
Counsel for Sierra Club

/s/ Kevin Kamps
Kevin Kamps, Radioactive Waste Watchdog
Beyond Nuclear
6930 Carroll Avenue, Suite 400
Takoma Park, Maryland 20912
kevin@beyondnuclear.org
www.beyondnuclear.org

/s/ Victor McManemy
Victor McManemy, Chairperson
Citizens for Alternatives to Chemical Contamination (CACC)
P.O. Box 23

/s/ Tim Judson
Tim Judson, Exec. Director
Nuclear Information and Resource Services
6930 Carroll Ave, Ste. 340
Takoma Park, MD 20912
timj@nirs.org
Rose Gardner, Convenor
Alliance For Environmental Strategies
Box 514
1402 Avenue A
Eunice, NM 88232
nmlady2000@icloud.com

David A. Kraft, Director
Nuclear Energy Information Service
3411 W. Diversey #13
Chicago, IL 60647
neis@neis.org

Adrian Shelley, Director, Texas Office
Public Citizen
309 East 11th Street, Suite 2
Austin, TX, 78701
http://www.citizen.org/texas
ashelley@citizen.org

Allison Fisher
Outreach Director, Energy Program
Public Citizen
215 Pennsylvania Avenue SE
Washington, D.C. 20003
(202) 546-4996

Manna Jo Greene, Environmental Director
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508
845-265-8080 x 7113
www.clearwater.org

Debra Stoleroff
Vermont Yankee Decommissioning Alliance
Plainfield, Vermont
debrastoleroff@protonmail.com

Sarah Fields
Uranium Watch
P.O. Box 1306
Monticello, Utah 84532
435-260-8384
sarah@uraniumwatch.org

Linda Seeley, Convenor
San Luis Obispo Mothers for Peace
San Luis Obispo, CA 93403
www.mothersforpeace.org

Damon Motz-Storey
Clean Energy Organizer
Oregon Physicians for Social Responsibility
1020 SW Taylor Street, Suite 275
Portland, OR 97205
info@oregonpsr.org

Karen Hadden, Convenor
Sustainable Energy & Economic Development (SEED) Coalition
605 Charismatic Lane
Austin, TX 78748
512-797-8481
karendhadden@gmail.com
www.NoNuclearWaste.org

Schuyler Gould, President
New England Coalition on Nuclear Pollution
Brattleboro, Vermont
skygvt@aol.com
LuAnne Kozma, president
Ban Michigan Fracking
9330 Woods Road
Charlevoix MI 49720
www.banmichiganfracking.org

John McFadden, CEO
Tennessee Environmental Council
One Vantage Way, Suite E-250
Nashville, Tennessee 37228

Janet Greenwald, Convenor
Citizens for Alternatives to Radioactive Dumping (CARD)
215 Hartline SW
Albuquerque, NM 87105

Tanya Keefe, Chair
Great Lakes Environmental Alliance
525 Court St.
Port Huron, MI 48060
tanya_keefe@yahoo.com

Scott Williams, M.D., M.P.H., Director
Healthy Environment Alliance of Utah (HEAL Utah)
824 South 400 West Suite B-111
Salt Lake City, Utah 84101
scott@healutah.org

Gordon Edwards
Canadian Coalition for Nuclear Responsibility
53 Dufferin Road, Hampstead
Quebec, H3X 2X8 Canada
ccnr@web.ca

Barbara Warren, Executive Director
Citizens’ Environmental Coalition
33 Central Ave, 3rd Floor
Albany, NY 12210
warrenba@msn.com

Vina Colley, President
PRESS (Portsmouth/Piketon Residents for Environmental Safety and Security)
Co-Founder of NNWJ (National Nuclear Workers for Justice)
P.O. Box 136
Portsmouth, Ohio 45662
740-357-8916
vcolley@earthlink.net

Gwen Dubois, MD, MPH, President
Chesapeake Physicians for Social Responsibility
325 E. 25th Street
Baltimore Maryland 21218
bikenotbomb@gmail.com

Jay Coghlan, Executive Director
Nuclear Watch New Mexico
Alameda #325
Santa Fe, NM 87501
505.989.7342
jay@nukewatch.org
www.nukewatch.org

Denise Duffield, Associate Director
Physicians for Social Responsibility-Los Angeles (PSR-LA)
617 S. Olive Street, Suite 1100
Los Angeles, CA 90014
213-689-9170 ext. 104
dduffield@psr-la.org
/s/ Stephen Brittle
Stephen Brittle, Convenor
Don’t Waste Arizona
2934 West Northview Avenue
Phoenix, AZ 85051
dwaz@fastq.com

/s/ Marylia Kelley
Marylia Kelley, Executive Director
Tri-Valley CAREs (Communities Against a Radioactive Environment)
4049 First Street, Suite 139 A
Livermore, CA 94551
marylia@earthlink.net

/s/ Deb Katz
Deb Katz, Convenor
Citizens Awareness Network
Box 83
Shelburne Falls, MA 01370
deb@nukebusters.org

/s/ Damon Moglen
Damon Moglen, Senior Strategic Advisor
Friends of the Earth
1101 15th Street, NW, 11th Floor
Washington, DC 20005
Ph: 202-222-0708
dmoglen@foe.org

/s/ Gary Headrick
Gary Headrick, Convenor
San Clemente Green
San Clemente, CA
garyheadrick@gmail.com

/s/ Molly Johnson
Molly Johnson, Area Coordinator
SLO (San Luis Obispo) County Grandmothers for Peace
6290 Hawk Ridge Pl
San Miguel, CA 93451
mollypj@yahoo.com

/s/ Maureen K. Headington
Maureen K. Headington, President
Stand Up/Save Lives Campaign
6760 County Line Lane
Burr Ridge, IL 60527
630-323-6891
moeteam@comcast.net

/s/ Siegfried (Ziggy) Kleinau
Siegfried (Ziggy) Kleinau, Co-Founder and Outreach Director
Bruce Peninsula Environment Group
Bruce County, Ontario, Canada
ziggyk38@gmail.com

/s/ Liz Kirkwood
Liz Kirkwood, J.D., Executive Director
FLOW (For Love Of Water)
153 1/2 East Front Street, Suite 203C
Traverse City, MI 49684
231.944.1568
liz@flowforwater.org
http://flowforwater.org/

/s/ Joni Arends
Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety
P.O. Box 31147
Santa Fe, NM 87594-1147
505 986-1973
jarends@nuclearactive.org

/s/ Greg Mello
Greg Mello, Executive Director
Los Alamos Study Group
2901 Summit Pl. NE
Albuquerque, NM 87106
Phone: 505-265-1200
gmello@lasg.org
http://www.lasg.org/
/s/ Cheryl Nenn
Cheryl Nenn, Riverkeeper
Milwaukee Riverkeeper
1845 N Farwell Avenue, Suite 100
Milwaukee, WI 53202
414.287.0207 x2
www.milwaukeeriverkeeper.org
cheryl_nenn@milwaukeeriverkeeper.org

/s/ Eleanor Bravo
Eleanor Bravo, Nat’l Pipeline Campaign Manager
Food & Water Watch and Action
7804 Pan American Frwy E NE, Suite 2
Albuquerque, NM 87109
Office (505) 633-7366
ebravo@fwwatch.org
https://www.foodandwaterwatch.org/

/s/ Mary Beth Brangan
Mary Beth Brangan, Co-Director
EON (Ecological Options Network)
P.O. Box 1047
Bolinas, CA  94924
415-868-1900 - office
www.eon3.net
https://www.youtube.com/eon3

/s/ Sally Jane Gellert
Sally Jane Gellert, Convenor
Occupy Bergen County
Teaneck, NJ
SJGUU@aol.com

/s/ Jessie Collins
Jessie Collins, Co-chair
Citizens' Resistance at Fermi 2
17397 Five Points Street
Redford MI 48240
313.286.3827
shutdownfermi@gmail.com
jessiepauline2003@yahoo.com

/s/ Sister Marlene Perrotte
Sisters of Mercy
1004 Major Avenue NW
Albuquerque, NM 87107
marlenep@swcp.com

/s/ Regina Minniss
Regina Minniss, Treasurer
Crabshell Alliance
6 W. Mt. Vernon Place #301
Baltimore, MD 21201
rminniss@hotmail.com

/s/ John LaForge
John LaForge, Convenor
Nukewatch
740A Round Lake Road
Luck, Wisconsin 54853
jmichaellaforge@yahoo.com
http://nukewatchinfo.org/

/s/ Sheila Parks
Sheila Parks, Ed.D., Founder
On Behalf of Planet Earth
Massachusetts
617-744-6020
sheilaruthparks@comcast.net
http://www.madownwinders.org/on-behalf-of-planet-earth/

/s/ Priscilla Star
Priscilla Star, Convenor
Coalition Against Nukes
90 Wainscott Stone Road
Wainscott, NY 11975
priscillastar@hotmail.com
631-680-5163

/s/ Alice Slater
Alice Slater, Convenor
Nuclear Age Peace Foundation
446 E. 86 St.
New York, NY 10028
212-744-2005
www.wagingpeace.org