

October 29, 2018

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

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

NRC STAFF'S RESPONSE TO BEYOND NUCLEAR, INC.'S HEARING REQUEST AND  
PETITION TO INTERVENE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309, the U.S. Nuclear Regulatory Commission Staff hereby responds to the Petition to Intervene filed by Beyond Nuclear, Inc.<sup>1</sup> As further discussed below, the Petition should be granted.

BACKGROUND

By letter dated April 28, 2016, Waste Control Specialists, LLC (WCS) tendered a specific license application under 10 C.F.R. Part 72 requesting authorization to construct and

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<sup>1</sup> *Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene* (Oct. 3, 2018).

operate a consolidated interim storage facility for spent nuclear fuel and reactor-related greater-than–class-C low-level radioactive waste in Andrews County, Texas.<sup>2</sup>

On April 18, 2017, WCS requested that the NRC temporarily suspend all review activities associated with its application, and the next day WCS and the NRC Staff jointly requested that the then pending hearing opportunity be withdrawn.<sup>3</sup> Beyond Nuclear, along with other petitioners, filed a response seeking additional measures, including that the Commission provide a separate opportunity for motions to dismiss the application for lack of jurisdiction, arguing that the application is inconsistent with the Nuclear Waste Policy Act.<sup>4</sup> The Commission declined this request and stated that it would not “add an extra process that is not contemplated under [the NRC’s] procedural regulations.”<sup>5</sup> The Commission noted, however, that such an argument could be raised as a contention when the hearing opportunity was re-noticed, as the NRC’s regulations “permit petitioners to present contentions that raise issues of law.”<sup>6</sup>

By letters dated June 8 and July 19, 2018, WCS requested that the NRC resume its review of its application, and it provided a revised application, reflecting, among other changes,

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<sup>2</sup> Letter from J. Scott Kirk, WCS, to Mark Lombard, NRC, “License Application to Construct and Operate a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas, Docket 72-1050” (Apr. 28, 2016) (ML16132A533).

<sup>3</sup> *Joint Request to Withdraw the Federal Register Notice Providing an Opportunity to Submit Hearing Requests* (Apr. 19, 2017) (NL17109A480) (attaching letter to NRC Document Control Desk from Rod Baltzer, WCS (Apr. 18, 2017)).

<sup>4</sup> *Response by Beyond Nuclear, SEED Coalition, and Sierra Club to Joint Request to Withdraw the Federal Register Notice Providing an Opportunity to Submit Hearing Requests* (Apr. 28, 2017) (ML17118A268).

<sup>5</sup> *Waste Control Specialists, LLC (Consolidated Interim Storage Facility)*, CLI-17-10, 85 NRC 221, 223 (2017).

<sup>6</sup> *Id.*

a new applicant, Interim Storage Partners, a joint venture between WCS and Orano CIS, LLC.<sup>7</sup> On August 29, 2018, a notice of opportunity to request a hearing and petition for leave to intervene for the Interim Storage Partners application was published in the *Federal Register*.<sup>8</sup>

On September 14, 2018, Beyond Nuclear filed a motion to dismiss the licensing proceeding.<sup>9</sup> The instant Petition to Intervene incorporates by reference the previously filed motion to dismiss.

## DISCUSSION

In order for a petition to intervene and hearing request to be granted, a petitioner must demonstrate that it has standing to intervene in the proceeding and submit at least one admissible contention. 10 C.F.R. § 2.309(a).

### **I. Standing to Intervene**

#### *Applicable Legal Requirements*

In accordance with the Atomic Energy Act (AEA), “the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.”<sup>10</sup> The Commission will grant a

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<sup>7</sup> Letter from Jeffery Isakson, ISP, to Document Control Desk, NRC (July 19, 2018) (ML1820A6A482); Letter from Jeffery Isakson, ISP, to Document Control Desk, NRC (June 8, 2018) (ML18166A003).

<sup>8</sup> Interim Storage Partner’s Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070 (Aug. 29, 2018), corrected, 83 Fed. Reg. 44,608 (Aug. 31, 2018) (noting that the correct deadline to file intervention petitions is October 29, 2018), 83 Fed. Reg. 45,288 (correcting the title of the August 31, 2018 correction).

<sup>9</sup> *Beyond Nuclear, Inc.’s Motion to Dismiss Licensing Proceedings for Hi-Store Consolidated Interim Storage Facility and WCS Consolidated Interim Storage Facility for Violation of the Nuclear Waste Policy Act*, (Sept. 14, 2018).

<sup>10</sup> 42 U.S.C. § 2239(a)(1)(A).

request for hearing if the petitioner meets the standing requirements of 10 C.F.R. § 2.309(d) and submits at least one admissible contention pursuant to 10 C.F.R. § 2.309(f).<sup>11</sup> The petitioner's hearing request must contain:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.<sup>12</sup>

#### *Traditional Standing Principles*

In addition to fulfilling the general standing requirements of 10 C.F.R. § 2.309(d)(1), a petitioner "must demonstrate that it has an interest that may be affected by the proceeding."<sup>13</sup> The Commission applies contemporaneous judicial concepts of standing to evaluate whether the petitioner has demonstrated the requisite interest.<sup>14</sup> To this end, "a petitioner must (1) allege an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision."<sup>15</sup> The injury claimed by the petitioner must be actual or

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<sup>11</sup> See 10 C.F.R. § 2.309(a).

<sup>12</sup> 10 C.F.R. § 2.309(d).

<sup>13</sup> See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015).

<sup>14</sup> See *Id.* at 394; see also *Calvert Cliffs 3 Nuclear Project, LLC, & UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

<sup>15</sup> *Turkey Point*, CLI-15-25, 82 NRC at 394; *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

threatened and both concrete and particularized.<sup>16</sup> Further, the injury alleged must be “to an interest arguably within the zone of interests protected by the governing statute”—here, the AEA or NEPA.<sup>17</sup> The causation element of standing requires a petitioner to show “that the injury is fairly traceable to the proposed action.”<sup>18</sup> The redressability element of standing “requires the intervenor to show that its actual or threatened injuries can be cured by some action of the tribunal.”<sup>19</sup> The petitioner has the burden to demonstrate standing requirements are met.<sup>20</sup> However, a licensing board will “construe the [intervention] petition in favor of the petitioner” when making a standing determination.<sup>21</sup>

#### *Proximity-Plus Standing*

In cases involving reactor facilities, the Commission will apply a standing presumption based on proximity to the site.<sup>22</sup> No such automatic presumption exists for nuclear materials proceedings.<sup>23</sup> In such cases, to obtain standing based on geographic proximity to a facility, a petitioner must demonstrate that “the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences.”<sup>24</sup> This “proximity-plus”

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<sup>16</sup> *International Uranium (USA) Corporation* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 250 (2001); see also *Sequoyah Fuels*, CLI-94-12, 40 NRC at 71 (stating that “standing has been denied when the threat of injury is too speculative”).

<sup>17</sup> *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993) (internal quotations omitted)).

<sup>18</sup> *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75.

<sup>19</sup> *Sequoyah Fuels Corporation and General Atomics* (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 15 (2001).

<sup>20</sup> See *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000).

<sup>21</sup> *Turkey Point*, CLI-15-25, 82 NRC at 394 (quoting *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995) (internal quotations omitted)).

<sup>22</sup> See *Florida Power and Light Co.* (St. Lucie, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

<sup>23</sup> See *Nuclear Fuel Servs., Inc.* (Erwin, Tennessee), CLI-04-13, 59 NRC 244, 248 (2004).

<sup>24</sup> *Georgia Tech Research Reactor*, CLI-95-12, 42 NRC at 116.

standard is applied on a “case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source.”<sup>25</sup> If “there is no ‘obvious’ potential for radiological harm at a particular distance frequented by the petitioner, it becomes the petitioner’s burden to show a specific and plausible means of how the challenged action may harm him or her.”<sup>26</sup> “[C]onclusory allegations about potential radiological harm” are insufficient for this showing.<sup>27</sup> Where a petitioner is unable to demonstrate “proximity-plus” standing to intervene, traditional standing principles will apply.<sup>28</sup>

#### *Organizational and Representational Standing*

When an organization requests a hearing, it must demonstrate either organizational or representational standing. To demonstrate organizational standing, the petitioner must show an “injury-in-fact” to the interests of the organization itself.<sup>29</sup> Where an organization seeks to establish representational standing, it must demonstrate that at least one of its members would be affected by the proceeding and identify any such members by name and address. Also, the organization must show that the identified members would have standing to intervene in their own right, and that these members have authorized the organization to request a hearing on their behalf.<sup>30</sup> In addition, the interests that the representative organization seeks to protect

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<sup>25</sup> *Id.* at 116–17.

<sup>26</sup> *USEC Inc. (American Centrifuge Plant)*, CLI-05-11, 61 NRC 309, 311–12 (2005) (quoting *Nuclear Fuel Servs.*, CLI-04-13, 59 NRC 244 (internal quotations omitted)).

<sup>27</sup> *Nuclear Fuel Servs.*, CLI-04-13, 59 NRC at 248.

<sup>28</sup> *See U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 188 (2010).

<sup>29</sup> *Energysolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-11-3, 73 NRC 613, 621 (2011).

<sup>30</sup> *See Detroit Edison Co. (Fermi ISFSI)*, CLI-10-3, 71 NRC 49, 51-52 (2010); *see also Sequoyah Fuels*, CLI- 94-12, 40 NRC at 72 (citing *Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1)*, ALAB-535, 9 NRC 377, 389–400 (1979)) (“An organization seeking representational standing on behalf of its members may meet the ‘injury-in-fact’ requirement by demonstrating that at

must be germane to its own purpose, and neither the asserted claim nor the required relief must require an individual member to participate in the organization's legal action.<sup>31</sup>

### *The Petitioner's Standing to Intervene*

The NRC Staff does not oppose Beyond Nuclear's demonstration of standing in this proceeding. In addition to its other arguments regarding traditional standing, the Petitioner seeks representational standing on the basis of declarations submitted by its members. Also, the Petitioner asserts that the proximity of its members to the proposed CISF is sufficient to grant those members standing in this proceeding. In support, the Petitioner proffers a declaration from a member residing within seven miles of the proposed CISF.<sup>32</sup> This member resides within distances previously determined by Atomic Safety and Licensing Boards or the Commission to be sufficient to establish standing under the proximity plus analysis for similar proceedings.<sup>33</sup> Accordingly, as the Petitioner has also proposed one admissible contention, the NRC Staff does not oppose the Petitioner's standing.

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least one of its members, who has authorized the organization to represent his or her interest, will be injured by the possible outcome of the proceeding").

<sup>31</sup> *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007).

<sup>32</sup> See Declaration of Rose Gardner, ¶ 3. The declaration also states that Ms. Gardner's workplace and the homes of several family members where she regularly spends time are located within that same radius from the proposed facility. The Petitioner also attaches the declaration of D.K. Boyd. Because the NRC Staff agrees that the Gardner declaration provides sufficient support to establish the Petitioner's representational standing, the NRC Staff does not consider it necessary to determine whether Mr. Boyd has independently articulated a basis for standing.

<sup>33</sup> See *Pacific Gas & Electric Co.* (Diablo Canyon ISFSI), LBP-02-23, 56 NRC 413, 428 (2002) (finding 17 miles sufficient and noting other agency rulings approving standing for petitioners located within 10 miles of facility for spent fuel pool expansion proceedings); see also *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163-64 (2000) (6 miles sufficient for standing in license transfer proceeding).

## **II. Admissibility of the Petitioner's Proffered Contention**

### *Legal Requirements for Contentions*

10 C.F.R. § 2.309(f)(1) establishes the “basic criteria that all contentions must meet in order to be admissible.”<sup>34</sup> Pursuant to that section, a contention must:

- (i) provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and
- (vi) provide information sufficient to show that a genuine dispute with the applicant/licensee exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case of an application that is asserted to be deficient, the identification of such deficiencies and supporting reasons for this belief.<sup>35</sup>

The failure to comply with any one of the 10 C.F.R. § 2.309(f)(1) requirements is grounds for the dismissal of a contention.<sup>36</sup>

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<sup>34</sup> *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 571–72 (2006); *see also* *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 436–437 (2006) (stating that the Commission “will reject any contention that does not satisfy the requirements”).

<sup>35</sup> *See* 10 C.F.R. § 2.309(f)(1).

<sup>36</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).



The contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) are intended to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”<sup>37</sup> The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing” as indicated by a proffered contention that satisfies all of the 10 C.F.R. § 2.309(f)(1) requirements.<sup>38</sup> The Commission has emphasized that the 10 C.F.R. § 2.309(f)(1) requirements are “strict by design.”<sup>39</sup> Attempting to satisfy these requirements by “[m]ere ‘notice pleading’ does not suffice.”<sup>40</sup> A contention must be rejected where, rather than raising an issue that is concrete or litigable, it reflects nothing more than a generalization regarding the petitioner’s view of what the applicable policies ought to be.<sup>41</sup>

Pursuant to 10 C.F.R. § 2.309(f)(1)(iii), a proposed contention must be rejected if it raises issues beyond the scope of the proceeding as dictated by the Commission’s hearing notice.<sup>42</sup> Thus, a proposed contention that challenges a license amendment must confine itself to “health, safety or environmental issues fairly raised by [the license amendment].”<sup>43</sup> The adequacy of the Staff’s review, as opposed to the adequacy of the application, cannot be

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<sup>37</sup> Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

<sup>38</sup> *Id.*

<sup>39</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002).

<sup>40</sup> *Amergen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (quoting *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808 (2005)).

<sup>41</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 129 (2004) (citing *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20–21 (1974)).

<sup>42</sup> *See Pub. Serv. Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170–71 (1976).

<sup>43</sup> *Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981).

challenged.<sup>44</sup> Also, to show that a dispute is “material” pursuant to 10 C.F.R. § 2.309(f)(1)(iv) a petitioner must show that its resolution would make a difference in the outcome of the proceeding.<sup>45</sup>

Further, pursuant to 10 C.F.R. § 2.309(f)(1)(v), a proposed contention must be rejected if it does not provide a concise statement of the facts or expert opinions that support the proposed contention together with references to specific sources and documents. Neither mere speculation nor bare or conclusory assertions, even by an expert, suffices to allow the admission of a proposed contention.<sup>46</sup> While a Board may view a petitioner’s supporting information in a light favorable to the petitioner, if a petitioner neglects to provide the requisite support for its contentions, it is not within the Board’s power to make assumptions or draw inferences that favor the petitioner, nor may the Board supply the information that a contention is lacking.<sup>47</sup> Additionally, simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information’s significance, is inadequate to support the admission of the contention.<sup>48</sup> The Board is not expected to sift through attached material and documents in search of factual support.<sup>49</sup>

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<sup>44</sup> See *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 493 n.56 (2010) (“The contention . . . inappropriately focused on the Staffs [sic] review of the application rather than upon the errors and omissions of the application itself. Such challenges are not permitted in our adjudications.”); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 123 n.39 (2009); 69 Fed. Reg. at 2202.

<sup>45</sup> See *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333–34 (1999).

<sup>46</sup> See *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006); *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003).

<sup>47</sup> See *Crow Butte Res., Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553–54 (2009); *Arizona Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3), CLI 91-12, 34 NRC 149, 155 (1991).

<sup>48</sup> See *Fansteel*, CLI-03-13, 58 NRC at 204–05.

<sup>49</sup> *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 332 (2012).

Finally, pursuant to 10 C.F.R. § 2.309(f)(1)(vi), a proposed contention must be rejected if it does not present a genuine dispute with the applicant on a material issue of law or fact.

The Commission has emphasized that “contentions shall not be admitted if at the *outset* they are not described with reasonable specificity or are not supported by some alleged fact or facts *demonstrating* a genuine material dispute” with the applicant.<sup>50</sup> The hearing process is reserved “for genuine, material controversies between knowledgeable litigants.”<sup>51</sup>

#### *Analysis of Petitioner’s Contention*

*The NRC must dismiss ISP’s license application and terminate this proceeding because the application violates the NWPA. The proceeding must be dismissed because the central premise of ISP’s application – that the U.S. Department of Energy (“DOE”) will be responsible for the spent fuel that is transported to and stored at the proposed interim facilities – violates the NWPA. Under the NWPA, the DOE is precluded from taking title to spent fuel unless and until a permanent repository has opened. 42 U.S.C. §§ 10222(a)(5)(A), 10143.*<sup>52</sup>

The Petitioner identifies several places in the SAR where ISP states that it may enter into a contract (or contracts) either with DOE or with nuclear plant licensees.<sup>53</sup> The Petitioner also identifies that ISP has sought an exemption, in its CISF application, from the decommissioning financial assurance regulations based on its intent to enter into a contract with DOE.<sup>54</sup> The Petitioner raises an issue of law as to whether the NRC can issue a CISF license when the application’s basis for satisfying NRC decommissioning financial assurance requirements includes a proposed exemption that would depend on the applicant entering into

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<sup>50</sup> *Id.* (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999)).

<sup>51</sup> *Id.* (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 219 (2003)).

<sup>52</sup> Beyond Nuclear Petition at 8-9.

<sup>53</sup> Beyond Nuclear Petition, Attachment 3 (“Beyond Nuclear Motion”) at 18.

<sup>54</sup> Beyond Nuclear Motion at 18.

a contract with DOE for that purpose. To the extent the Petitioner challenges the adequacy of the basis for the proposed exemption from the decommissioning financial assurance requirements, which is premised on obtaining a contract with DOE, the NRC Staff agrees that the Petitioner has proffered an admissible contention.

However, to the extent the Petitioner asserts that the application relies exclusively on potential DOE involvement, it fails to demonstrate a genuine dispute with the application. Indeed, the Petitioner observes that statements in the application that had previously referred solely to DOE have been revised.<sup>55</sup> The portions of the application referenced in the Petition specify that contracts for storage of spent nuclear fuel may be with private spent nuclear fuel title holders.<sup>56</sup> Similarly, the Petitioner notes that the application states it will obtain a surety bond for financial assurance for decommissioning from private spent nuclear fuel title holders in the event that it fails to have a contract with DOE. *Id.* Although the Petitioner summarily criticizes the possibility of private ownership or funding as “meaningless and unsupported,” it identifies no factual basis of its own to challenge either the feasibility or legality of such an approach.<sup>57</sup> In turn, because the Petitioner has not demonstrated that the WCS application makes DOE involvement the “essential premise” for any NRC finding other than the proposed exemption, it has not explained how any broader dispute regarding the appropriateness of DOE “responsibility” would be material to the findings the NRC staff must make on the WCS application.

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<sup>55</sup> *Id.* at 17.

<sup>56</sup> *Id.* at 18.

<sup>57</sup> *Id.* at 19.

In sum, to the extent this contention raises an issue of law regarding ISP's reliance on DOE for seeking an exemption from NRC's decommissioning financial assurance requirements, it is, in the Staff's view, admissible.

#### CONCLUSION

For the reasons described above, the NRC Staff agrees that Beyond Nuclear has demonstrated standing and an admissible contention, and so the Petition should be granted.

Respectfully submitted,

/signed (electronically) by/  
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Dated at Arlington, VA  
this 29th day of October 2018

October 29, 2018

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

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Interim Storage Partners	)	Docket No. 72-1050
(WCS Consolidated Interim Storage	)	
Facility)	)	

CERTIFICATE OF SERVICE

I hereby certify that the NRC STAFF'S RESPONSE TO BEYOND NUCLEAR, INC.'S HEARING REQUEST AND PETITION TO INTERVENE has been filed through the E-Filing system in both captioned proceedings this 29<sup>th</sup> day of October, 2018.

**/Signed (electronically) by/**

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Dated at Arlington, VA  
this 29<sup>th</sup> day of October, 2018