October 18, 2018

May Ma
Office of Administration
Mail Stop: TWFN-7-A60M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Docket No. 72-1050; NRC-2016-0231; Federal Register v. 83, no. 171, Tuesday, September 4, 2018

Scoping of Environmental Impact Statement (EIS) of Interim Storage Partners (ISP) LLC's Consolidated Interim Spent Fuel Storage Facility (CISF) Project

Dear Ms. Ma and NRC Staff:

The Western Interstate Energy Board (WIEB) High-Level Radioactive Waste (HLRW) Committee appreciates the opportunity to offer comments on the scope of the EIS for the ISP[1] CISF application. WIEB is an organization of eleven Western states and two Canadian provinces which focuses on promoting energy policies developed through the cooperative efforts of WIEB's members in collaboration with the federal government. WIEB's HLRW Committee is composed of representatives from eleven Western states who have expertise in the realm of spent nuclear fuel and high-level radioactive waste (SNF/HLW) transportation. For over thirty years, the HLRW Committee has examined the issues that surround this topic, offering comments, developing policies, and interacting with federal, industry, tribal, and other state interests in this space. The HLRW Committee would now like to leverage this experience in offering comments on the ISP CISF application.

The HLRW Committee first notes that transportation *must* be one of the resource areas analyzed under an EIS intended to assess the potential effects of licensing the ISP CISF. Depending on the source, indications as to whether transportation is a necessary component of this license application have been inconsistent.[2] The HLRW Committee respectfully refers any who may have doubts as to whether transportation should be included in the environmental analysis of a facility seeking to store SNF/HLW to 40 CFR § 1508.25 (a)(1)(ii). This federal regulation on the scope of an EIS, which provides guidance to federal agencies on complying with the National Environmental Policy Act (NEPA), states the following: "To determine the scope of environmental impact statements, agencies shall consider 3 types of actions . . . : (1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously." The SNF/HLW that ISP proposes to store at its CISF is scattered across the Nation. If ISP actually intends to store any of this material at its CISF, then it must

[1] ISP LLC is a joint venture of Waste Control Specialists, the original proponent of the license application under consideration, and Orano USA.

[2] Compare Federal Register Notice, v.82 no.18, January 30, 2017, Docket No. 72-1050; NRC-2016-0231: "The NRC will evaluate the potential impacts to various environmental resources, such as air quality, surface and ground water, transportation . . .", with Interim Storage Partners LLC, License Application rev.2, Docket 72-1050, ADAMS Accession No. ML18206A483, July 19, 2018, pg. 1-3: "Transportation of the spent nuclear fuel shipping casks from the originating commercial nuclear reactor to the CISF will be performed in accordance with 10 CFR 71 and the originating reactor licenses and is not part of the License Application."

first be transported there. The storage of SNF/HLW cannot proceed unless transportation actions are taken previously. Therefore, transportation is an action that is connected to the CISF application within the meaning of 40 CFR § 1508.25 (a)(1)(ii), and it must be included within the scope of the EIS for this application.

Next, the HLRW Committee offers its recognition that those who will presumably be charged with preparing the transportation piece of the EIS are being asked to evaluate a future scenario filled with considerable uncertainty. The Nuclear Waste Policy Act of 1982, as amended (NWPA), put into law the expectation that the federal government would handle the storage or disposal of SNF/HLW as well as its transportation to any such facility through the Department of Energy (DOE). However, while permanent disposal of these highly radioactive substances is a prerogative reserved for the federal government, purely private ventures can seek to temporarily store, and also transport, SNF/HLW by following the regulatory paths laid out by the Nuclear Regulatory Commission (NRC). The ISP CISF application contemplates this latter storage path. As far as transportation is concerned, the HLRW Committee is not aware of any indication from ISP as to its plans for how this piece will be conducted. With the question of *who* will be transporting the materials still very much up in the air, the *how* of it is even more uncertain.

Despite these uncertainties and the effects they will inevitably have on the EIS, western state views on SNF/HLW transportation, as expressed through the HLRW Committee, remain essentially unchanged. Western states expect that the shipping entity, whoever it may be, will make the safe and uneventful transportation of SNF/HLW to the ISP CISF their guiding principle. In general, the EIS should reflect this expectation, as the EIS is not only a disclosure document, but a planning tool. The ideal EIS can thus not only reflect what could happen during SNF/HLW transportation, but what should happen. With this overarching consideration in mind, the HLRW Committee offers the following specific comments on the scope of the EIS.

1. The transportation component of the EIS for the ISP CISF application should take into account the policies of the WIEB HLRW Committee.[3]

The HLRW Committee has worked together over the past two years to begin distilling its members' views and expertise into policy papers. This work, which is ongoing, has at this time produced five policy papers which have been approved by the HLRW Committee and adopted by the WIEB Board. These policy papers represent the official Western member states' perspective on how a SNF/HLW transportation program should be conducted. The approved policies include: The "WIPP Transportation Model" and Its Application to SNF/HLW Transport; Physical Protection Requirements for SNF Transport; Ship Oldest Fuel First; Rail Route Safety: Track, Grade Crossings, Bridges, and Switches; and Rail Shipment Inspection. Although some of the policy recommendations in these papers were formulated under a DOE-run transportation program assumption, most are generally applicable to any public or private campaign designed to ship SNF/HLW to an interim storage or permanent disposal facility. Depending on HLRW Committee approval and WIEB Board adoption, these policy papers will be joined by more in the near future, which will then, collectively, represent some of the more important facets of a well-planned SNF/HLW transportation program. The policy recommendations in these papers, as well as the historical context, will provide useful guidance to the preparers of the ISP CISF EIS. Therefore, the HLRW Committee recommends that the preparers take into account and incorporate these policies into the ISP CISF application EIS.

[3] Found at https://westernenergyboard.org/library/wieb/, and also available upon request.

2. The transportation component of the EIS for the ISP CISF application should fully evaluate all reasonable modes and routes.

The lack of information on transportation planning leaves perhaps no greater area of uncertainty than that of the transportation modes and routes. For instance, DOE indicated in its planning for shipments of SNF/HLW to the proposed Yucca Mountain repository that it intended to ship mostly by rail.[4] Contractor(s) hired by nuclear utilities or by ISP may have a different idea as to their preferred transport mode, despite ISP's stated expectation that SNF will arrive at the CISF by rail.[5] To account for these uncertainties, the EIS for the ISP CISF should evaluate all reasonable modes of transporting SNF/HLW to the proposed site.[6] The scope of this consideration will be usefully bounded by the fact that the size and weight of spent nuclear fuel assemblies packaged in canisters and casks, as well as state and federal transportation regulations, necessarily limit acceptable modes for SNF transport. Also, the proposed CISF site's existing infrastructure should influence the modes selected for consideration. Only a full consideration of all reasonable modes of transport can claim to fairly contemplate the impacts of such transportation. In addition, full modal consideration in the EIS will be a useful guide to whoever does end up transporting SNF/HLW to the ISP CISF, if it is in fact licensed.

The potential impacts of SNF/HLW transportation will necessarily follow the routes that these radioactive materials take, but this is perhaps the area that is most difficult to predict at this point in the process. Not only are the routes dependent on the as-yet-to-be-determined mode of transport, they are also dependent on the origin point of the shipments. The origin points, while limited to sites with spent fuel or high-level waste that is ready to be shipped, are still highly speculative with no agreements currently in place with DOE or nuclear utilities. Despite this, the limited number of origin sites, and other bounding criteria,[7] make at least rough guesstimates of likely routes possible. Thus, the ISP CISF application EIS should evaluate the impacts of transportation along all reasonably feasible routes. Potential impacts along these "corridor communities" are too varied and too dramatic to be applied generally to any and all communities. A thorough route analysis should include, among other things, assessments of distance, population exposure, and time SNF/HLW will be in transit.

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[4] DOE, *Final Supplemental Environmental Impact Statement for a Geological Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, Summary*, DOE/EIS-02050F-S1, June 2008, pg. S-46.

[5] Interim Storage Partners LLC, License Application rev.2, Docket 72-1050, ADAMS Accession No. ML18206A483, July 19, 2018, pg. 1-2.

[6] Indeed, such an analysis is likely required under NEPA: "[A]ll agencies of the Federal Government shall – (E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E).

[7] For instance, state and federal regulations will often specify what kinds of roads or railways that highly radioactive substances such as SNF/HLW can traverse, which limits potential routes. Additionally, the ISP CISF will initially only be licensed to receive certain canisters (*see* ISP LLC License Application rev.2, ML18206A483, pg. 2-1). It is unknown whether ISP plans to later submit license amendments to allow the facility to receive additional canister types. Thus, for this EIS, only nuclear utility sites that have the canisters that the ISP CISF will be initially licensed to receive need be considered. Further, DOE has studied in detail several nuclear utility sites and their options for removing SNF, and set forth their findings in Initial Site-Specific De-Inventory Reports. The information and recommendations in these reports could be useful both for modal and route planning.

3. The transportation component of the EIS for the ISP CISF application should consider all facets of a SNF/HLW transportation program that could influence the safety of the public and the environment.

Some, but not all, of the factors that should be fully considered include:

- An analysis of the impacts of a transportation accident or incident, which should include not only a consideration of credible scenarios and threats, but should also consider all possible recovery problems even in the event of accident or incident scenarios involving no release of radioactivity;
- An analysis of the impact on shipment numbers and safety of using any licensed transportation casks that could be used to ship the canisters that the ISP CISF will be licensed to receive;
- An analysis of requisite coordination and communication with affected states, tribes, and other important stakeholders;
- An analysis of the level of emergency preparedness along likely shipping routes; and
- An analysis of the effects of different transportation operating protocols on shipment safety.

The HLRW Committee would be pleased to answer any questions that the NRC may have about these comments or about SNF/HLW transportation in general. We appreciate your attention to this important feature of the EIS for the ISP CISF application.

Sincerely,

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