



February 7, 2018

FOIA Officer
Mail Stop T-2 F43
U.S. Nuclear Regulatory Commission
Washington, DC 20555
By posting to [FOIAonline](#)

SUBJECT: *Freedom of Information Act Request*

Dear FOIA Officer:

On behalf of the Beyond Nuclear, Inc., and pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. § 552 et seq.) and U.S. Nuclear Regulatory Commission ("NRC") FOIA regulations (10 C.F.R. part 9), I am writing to request certain records related to an application to NRC by Holtec International ("Holtec") for a license to build and operate a consolidated interim spent fuel storage facility in Southeast New Mexico. Holtec submitted the application to NRC in March 2017 and supplemented it in April 2017. *See* letter from Kimberly Manzione, Holtec, to Michael Layton, NRC, re: USNRC Docket No. 72-1051 (Mar. 30, 2017) ("Holtec Letter No. 5025012") (ML18023A781); letter from Ed Mayer, Holtec, to Jose R. Cuadrado, NRC, re: Holtec International HI-STORE Consolidated Interim Storage Facility License Application - Docket No. 72-1051 (Apr. 13, 2017) ("Holtec Letter No. 5025013") (ML17109A386).

A list of the records requested by Beyond Nuclear is provided below in Section 1. In Sections 2 and 3, Beyond Nuclear seeks a waiver of search and copy fees and expedited consideration.

1. REQUEST FOR DOCUMENTS

Beyond Nuclear requests the following documents:

A. Attachments to Holtec Letter 5025012 (all currently withheld from public disclosure in their entirety as proprietary):

- Attachment 1: HI-STORE Safety Analysis Report, HI-2167374R0;
- Attachment 5: HI-STORE Consolidated Interim Storage Facility -- Training and Qualification Program;
- Attachment 6: HI-STORE Consolidated Interim Storage Facility -- Decommissioning Plan, HI-2177558R0;
- Attachment 7: HI-STORE Consolidated Interim Storage Facility -- Decommissioning Cost Estimate and Funding Plan, HI-2177565R0; and
- Attachment 9: HI-STORE Financial Assurance & Project Life Cycle Cost Estimates, HI-2177593R0.

B. Any documents that revise or update the attachments to Holtec Letter 5025012 cited above in Paragraph A.



C. Cover letters and signature pages to the following enclosures to Holtec Letter 5025013 (all currently withheld from public disclosure as proprietary):

- Holtec International & Eddy Lea Energy Alliance (ELEA) Underground Consolidated Interim Storage Facility - Physical Security Plan, HI-2177559, HO17-17;
- Holtec International & Eddy Lea Energy Alliance (ELEA) Underground Consolidated Interim Storage Facility - Safeguards Contingency Plan, Report HI-2177560, H-019-17;
- Holtec International & Eddy Lea Energy Alliance (ELEA) CISF - Security Training and Qualification Plan, Report HI-217775; and
- Safeguards Evaluation of Explosion Hazard at HI-STORE CIS Facility, Report HI-2177666, H-023-17.

D. Cover letters and signature pages to any revisions or updates to the documents identified above in Paragraph C as enclosures to Holtec Letter 5025013.

As required by the FOIA, responsive documents should be produced in their entirety if their content is non-exempt. Also, as required by the FOIA and 10 C.F.R. § 9.19, documents containing exempt information must be redacted to disclose all non-exempt material. NRC may withhold only those limited portions that are exempt from disclosure under the FOIA.

Request for Documents in Electronic Format and Production on a Rolling Basis.

If possible, please provide the requested documents in electronic (pdf) format on a rolling basis.

2. REQUEST FOR WAIVER OF FEES

Pursuant to federal regulations at 10 C.F.R. § 9.41, Beyond Nuclear requests that any searching and copying fees incurred as a result of this search be waived. Beyond Nuclear satisfies the NRC's criteria in 10 C.F.R. § 9.41(b) for a fee waiver, as described in more detail below:

1) Purpose of request:

Beyond Nuclear has two related purposes in making this FOIA request. First, Beyond Nuclear seeks to obtain key information about the contents of Holtec's license application in order to allow Beyond Nuclear and other organizations and individuals to participate effectively in the NRC's upcoming licensing proceeding for the proposed Holtec facility, and thereby protect their interest in safety and environmental protection as protected by the Atomic Energy Act and National Environmental Policy Act. In particular, Beyond Nuclear seeks disclosure of information about Holtec's compliance with NRC safety regulations requiring a demonstration of financial qualifications to build and operate the proposed facility, training and qualification of employees, and Holtec's practical and financial ability to safely decommission the facility after operations cease. Beyond Nuclear also seeks disclosure of patently non-exempt content such as cover letters and signature pages to security and safeguards-related documents. Beyond Nuclear will use the information to educate itself about Holtec's application, and the information may



give rise to a hearing request by Beyond Nuclear. Beyond Nuclear will also share the information widely with other organizations and individuals, who are currently monitoring the Holtec licensing proceeding and may also seek to intervene in the licensing proceeding.

Second, Beyond Nuclear seeks generally to ensure that NRC lives up to its public promise of openness and transparency in the Holtec licensing proceeding. One of Beyond Nuclear's founding principles is the importance of maximizing public disclosures of federally licensed activities that may pose a risk to public health and safety or the environment. Ironically, in the very act of posting an incomplete version of the Holtec license application on its website, the NRC acknowledges the importance of disclosing the contents of Holtec's license application to the public's ability to participate effectively in the NRC licensing proceeding:

The [NRC] considers public involvement in, and information about, our activities to be a cornerstone of strong, fair regulation of the nuclear industry. As such, the NRC believes that nuclear regulation should be transacted as openly and candidly as possible to maintain and enhance the public's confidence. *Ensuring appropriate openness explicitly recognizes that the public must be informed about, and have a reasonable opportunity to participate meaningfully in, the NRC's regulatory process. Toward that end, this page provides access to documents and correspondence related to the application that Holtec International submitted to obtain a license for an away-from-reactor consolidated interim storage facility...*

<https://www.nrc.gov/waste/spent-fuel-storage/cis/hi/hi-app-docs.html> (emphasis added). In dereliction of this promise, the NRC has withheld entire portions of Holtec's license application on their website.

2) Extent to which Beyond Nuclear will extract and analyze the substantive content of the records:

Beyond Nuclear is qualified to make use of the requested information. Its staff has demonstrated the ability to interpret information and communicate that information in a form comprehensible to the general public. Beyond Nuclear is quoted in national and international media, including the New York Times, and has been cited as a reliable source of information on NRC oversight and enforcement of regulation regarding the operation of nuclear facilities, including spent fuel storage and disposal facilities.

Beyond Nuclear has a working relationship with physicists, structural and nuclear engineers, federal policy analysts, and other respected professionals who contribute to the full understanding of NRC oversight and enforcement of regulation regarding the operation of nuclear power generating stations and public safety.

3) Nature of the specific activity or research in which the records will be used and Beyond Nuclear qualifications to utilize the information for the intended use in such a way that it will contribute to public understanding:



As discussed above, Beyond Nuclear seeks the requested information in order to allow affected members of the public a meaningful opportunity to advocate for their interests in safety and environmental protection in the licensing proceeding for the proposed Holtec facility.

4) Likely impact on the public understanding of the subject as compared to the level of understanding of the subject prior to disclosure:

The public understanding of Holtec's financial qualifications and plans for funding and accomplishing decommissioning is currently nil, thanks to the NRC's complete blackout of this information on its website. NRC's failure to disclose the requested information is inconsistent with the agency's level of disclosure in past licensing proceedings. Therefore, if disclosure of information in Holtec's application is brought to a consistent level with other applications, the public's understanding of the regulatory issues should be substantially improved.

5) Size and nature of the public to whose understanding a contribution will be made:

Beyond Nuclear has a membership of 23,000 who periodically receive communications from Beyond Nuclear. Beyond Nuclear provides resource material to electronic and print media outlets with very broad outreach to a constituency and the interested public. Additionally, Beyond Nuclear maintains a web site at www.BeyondNuclear.org, where postings on this issue will be made available.

6) Means of distribution of the requested information:

Beyond Nuclear will use its publications and media contacts in both electronic and print media outlets to provide very broad outreach to the public on this issue. Beyond Nuclear will also share information with other interested parties concerned about Holtec's license application. Additionally, Beyond Nuclear will post information on its website.

7) Whether free access to information will be provided:

Beyond Nuclear will provide the information without charge to all members of the public. Information from the FOIA requested will be prepared for printed material and electronically posted on the web site for downloading free of charge. Beyond Nuclear will provide a copy of information to all interested public without charge.

8) No commercial interest by Beyond Nuclear or any other party:

Beyond Nuclear is a nonprofit charitable organization and therefore has no commercial interest in obtaining the requested information. The sole interest of Beyond Nuclear is to promote an open policy debate on the NRC oversight and enforcement of requirements for the protection of public safety.



3. REQUEST FOR EXPEDITED CONSIDERATION

Pursuant to 10 C.F.R. § 9.25(e), Beyond Nuclear requests expedited consideration of this FOIA request, because there is a compelling need for prompt disclosure of the requested information. According to NRC officials, the commencement of a licensing proceeding for the proposed Holtec spent fuel storage facility is imminent. As discussed above, Beyond Nuclear seeks release of key portions of Holtec's license application that NRC has failed to provide on its website, in order to ensure that Beyond Nuclear and other organizations can participate effectively in the NRC's licensing proceeding. Beyond Nuclear also seeks prompt disclosure of the information in order to ensure that members of the public who seek to monitor the Holtec licensing proceeding are fully informed. In making this request for expedited consideration, we note that the NRC's blanket withholding of such significant portions of a license application is not only unprecedented, but inconsistent with NRC's professed commitment to provide as much disclosure of Holtec's licensing documents as possible.

This FOIA request is particularly urgent because NRC imposes strict deadlines for submitting hearing requests. Once NRC issues a hearing notice -- probably in February -- Beyond Nuclear and other individuals and organizations are likely to be allowed only 60 days to intervene, the standard time period granted by NRC to submit a hearing request that includes documented technical analysis of the issues and potentially expert declarations to support contentions. In the absence of a reasonable amount of time to review all of the contents of Holtec's license application, Beyond Nuclear and other organizations and individuals will be seriously impeded in their efforts to analyze the license application and prepare a hearing request. Beyond Nuclear's certification regarding the compelling need for expedited processing is provided below.

Thank you very much for your prompt attention to this request. We look forward to receiving your response as quickly as possible on an expedited basis, and at the very latest within twenty working days, as required by 10 C.F.R. § 9.25(a). In the meantime, please call the undersigned Diane Curran at 240-393-9285 if you have any questions regarding this request.



Sincerely,

/s/Diane Curran

Diane Curran

Harmon, Curran, Spielberg, & Eisenberg, L.L.P.

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Cc: Kevin Kamps, Beyond Nuclear

CERTIFICATION OF COMPELLING NEED FOR EXPEDITED PROCESSING

I, Diane Curran, certify that the statements in this letter regarding the timing of the Holtec licensing proceeding and the need of Beyond Nuclear and other organizations and individuals for a reasonable amount of time to review the documents sought in this FOIA request in order to participate meaningfully in the proceeding are true and correct to the best of my knowledge. In my judgment, these circumstances establish a compelling need for immediate disclosure of the requested information.

February 7, 2018

Diane Curran, counsel to Beyond Nuclear

Harmon, Curran, Spielberg + Eisenberg LLP

