UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 25, 2018

Sister Joan Brown, osf
Executive Director
New Mexico Interfaith Power and Light
P.O. Box 27162
Albuquerque, NM 87125

SUBJECT: HOLTEC INTERNATIONAL'S APPLICATION FOR CONSOLIDATED INTERIM SPENT FUEL STORAGE FACILITY LICENSE IN LEA COUNTY, NEW MEXICO, DOCKET NO. 72-1051

Dear Sister Brown:

I am writing in response to your email dated March 19, 2018. In that email, you attached a letter on behalf of many faith leaders in the State of New Mexico that expressed concerns about a license application by Holtec International (Holtec) for a Consolidated Interim Storage Facility (CISF) in Lea County, New Mexico. The letter expressed concern that the decisions to approve this project will be made without adequate time for communities to understand the project and voice their concerns. Further, your letter identifies eight specific issues pertaining to safety, environmental, or financial impacts.

The Nuclear Regulatory Commission's (NRC's) mission is to license and regulate the civilian use of radioactive materials to protect public health and safety, protect the environment, and promote the common defense and security. Consistent with that mission, the NRC will not issue a license for a CISF unless and until the NRC staff has completed its detailed safety, security, and environmental reviews, and the applicant is able to demonstrate that the facility can meet all applicable NRC regulations and statutory requirements. The NRC staff estimates this review process will take approximately three years to complete.

The NRC staff has reviewed the specific issues identified in your letter and a response to each of the associated concerns is provided in the enclosure to this letter.

As discussed in our letter to Holtec dated February 28, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18059A251), the NRC staff has accepted the CISF license application for docketing. Acceptance for docketing does not constitute approval of the license, but rather initiates the detailed safety, security, and environmental reviews of the application. On March 30, 2018, the NRC published a *Federal Register* notice requesting public comments on the scope of its environmental review. Comments will be accepted through May 29, 2018. On April 6, 2018, the NRC published a separate *Federal Register* notice announcing the locations and times for public scoping meetings in New Mexico. Information about these meetings is provided in the following link:

https://www.nrc.gov/reading-rm/doc-collections/news/2018/18-011.pdf.

If you would like to further discuss any of these matters, please contact John McKirgan, Chief of the Spent Fuel Licensing Branch, at 301-415-5722.

Sincerely,

/RA/

Victor M. McCree
Executive Director
for Operations

Docket No. 72-1051

Enclosure:
As stated

SUBJECT: HOLTEC INTERNATIONAL'S APPLICATION FOR CONSOLIDATED INTERIM SPENT FUEL STORAGE FACILITY LICENSE IN LEA COUNTY, NEW MEXICO, DOCKET NO. 72-1051, DATED APRIL 25, 2018.

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ADAMS Package No.: ML18081B190 * via e-mail

OFC:	SFM	SFM	SFM	OGC*
NAME:	JCuadrado	WWheatley	JMcKirgan	ACoggins, NLO
DATE:	4/11/18	4/11/18	4/11/18	4/11/18
OFC:	SFM	NMSS	NMSS	EDO
NAME:	MLayton	LMoorin (CTyler for)	MDapas	VMcCree
DATE:	4/13/18	4/16/18	4/18/18	4/25/18

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NRC staff response to New Mexico Interfaith Power and Light

Issue 1: *"The safety of the transportation of the spent fuel on highways and railroads through communities. Also, since this is a "storage" site and not a "disposal site" like the Waste Isolation Pilot Plant (WIPP), at some future point the spent fuel will need to be removed and sent to a disposal site, thus doubling the transportation risk."*

NRC Response:

The NRC's review of Holtec's application will include an assessment of the environmental impacts of the potential transportation of spent fuel to the proposed facility. Additionally, any future shipment of spent nuclear fuel to or from the proposed facility must be made in an NRC-certified transportation package and made in accordance with established NRC and the U.S. Department of Transportation (DOT) safety and security regulations.

The NRC and the DOT have established regulations to ensure the safety and security of the transportation of spent nuclear fuel. The NRC brochure NUREG/BR-0292, Rev. 2, entitled "Safety of Spent Fuel Transportation," describes the roles of various U.S. Government agencies with respect to the shipment of spent nuclear fuel. The brochure also describes the safety standards that must be met to ship this material. These standards require demonstrations that the transportation packages used to ship spent nuclear fuel will withstand accident conditions, which include impact, puncture, fire, and underwater submersion, prior to being certified for use. The brochure also describes the NRC's work on the risk associated with transportation of spent nuclear fuel. These studies indicate the risk of an accident that would lead to a release of radioactive material is very low. This brochure is available from the NRC website at:

https://www.nrc.gov/docs/ML1703/ML17038A460.pdf

There is also a Spanish version of the brochure available here:

https://www.nrc.gov/docs/ML1715/ML17158B362.pdf

More information regarding the transportation of spent nuclear fuel is available here:

https://www.nrc.gov/waste/spent-fuel-transp.html

Issue 2: "*The safety of the operations at the site during construction and operation. Spent fuel is many thousands of times more radioactive than the waste disposed of at WIPP."*

NRC Response:

NRC regulations establish the requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess spent nuclear fuel in an interim storage facility. These provisions, in Part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR), "*Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste and Reactor-Related Greater than Class C Waste,*" include requirements for the design, construction, and operation of the proposed facility. In its license application, the applicant must provide detailed descriptions, analyses, and

discussions of the proposed site layout and characteristics; the design of the facility; the proposed structures, systems, and components relied upon for safety; and the operational procedures and controls necessary to demonstrate that the facility can be safely constructed and operated. The NRC will not issue a license for the proposed CISF until the applicant has demonstrated compliance with the NRC's safety requirements. Any applicant/entity that is issued a license then receives continued NRC oversight through periodic inspections to examine whether that licensee is performing activities in accordance with the NRC's radiation safety requirements and the conditions of its license.

The NRC staff conducted an acceptance review of the license application to determine if the application contained sufficient information to begin a detailed technical review. On February 28, 2018, the NRC staff announced that it accepted the Holtec CISF application and began the detailed safety, security, and environmental reviews. The technical review is expected to take approximately three years to complete. During this period, the staff may issue requests for additional information and conduct public meetings with the applicant before reaching its regulatory findings. Any requests for additional information from the NRC and the associated responses will be available to the public, to the extent the information is not otherwise protected, and members of the public may observe public meetings between the NRC staff and the applicant.

Issue 3: *"Assurance that The State of New Mexico will not have to shoulder the cost of railways, roads, accident mitigation and recovery, and future clean-up and decommissioning of the site. The operating entity is likely to be Holtec Government Services, LLC, a Limited Liability Corporation (LLC) and as such is protected from many of the financial consequences of failure. If their corporation dissolves, who is stuck with the bill? New Mexico does not have the resources for this."*

NRC Response:

As part of its application, Holtec is required to provide an emergency plan identifying potential accidents and describing means to mitigate the consequences of such accidents. Also, the application must include a proposed decommissioning plan that outlines the practices and procedures for dismantling and decommissioning the facility, as well as a detailed cost estimate and discussion of the financial instruments that will be used to pay for the decommissioning of the facility. The regulations also require the applicant to update this estimate of the decommissioning costs every 3 years, and adjust the corresponding financial instruments to account for any changes in cost. The NRC requires financial instruments that cover a licensee's decommissioning costs, and the NRC can access those funds if the licensee is unable to perform the decommissioning.

As part of their detailed technical review of the license application, the NRC staff will review Holtec's emergency plan to confirm that it can adequately respond to any emergencies at the proposed site, and that it can adequately mitigate the consequences of any potential accidents. The NRC staff will also review Holtec's financial information and decommissioning funding plan to confirm that the applicant (Holtec) will provide the necessary funds to decommission the facility. The NRC will not issue a license for the proposed facility until the applicant has demonstrated compliance with the NRC's emergency planning, financial assurance, and decommissioning requirements.

The NRC staff will prepare an environmental impact statement (EIS) for the proposed CISF that will contain a cost benefit analysis considering the costs for the construction, operation, and eventual decommissioning of the facility. Among the various types of costs that will be considered, the analysis will include the costs required to transport the spent fuel to the facility, and the construction of a proposed rail spur and roads to the proposed site. Holtec's statement of financial qualifications and life cycle cost estimate provides an estimate of the costs needed to construct the rail spur and access road to the facility.

Issue 4: *"The public has been unable to obtain information from the NRC regarding Holtec Government Services, LLC compliance with regulatory requirements, safety performance, and financial responsibility in their existing operations. Holtec has no current presence in New Mexico so their corporate ethics are unknown."*

NRC Response:

The NRC maintains a page in the NRC's public website where members of the public can access documents associated with the Holtec license application, NRC correspondence with Holtec, and meeting information related to the NRC's review of Holtec's license application. The page can be accessed at:

https://www.nrc.gov/waste/spent-fuel-storage/cis/holtec-international.html

Holtec does not currently hold an NRC license, but it does hold four separate NRC certificates of compliance for dry cask systems for storage of spent nuclear fuel under 10 CFR Part 72. The NRC conducts reviews of Holtec's dry storage cask certification activities and conducts routine inspections and oversight of its cask design and manufacturing activities. Information regarding the NRC's oversight of Holtec activities can be found by searching NRC's Agencywide Documents Access and Management System (ADAMS), accessible at https://adams.nrc.gov/wba/, and searching under Docket Number 07201014.

Issue 5: *"When the people of New Mexico agreed to the WIPP Site they were promised that New Mexico would not store high-level nuclear waste. The Federal government has been unable to agree on a disposal site for the permanent disposal of spent nuclear fuel, and given that history we are concerned that the "storage facility" here will become a de-facto disposal location."*

NRC Response:

The Nuclear Waste Policy Act of 1982, as amended, establishes U.S. national policy for the disposal and management of spent nuclear fuel and high-level radioactive waste. In accordance with the statute, commercial spent nuclear fuel may only be disposed of in a deep geologic repository.

With respect to interim storage of spent nuclear fuel, the NRC is authorized to issue licenses under the Atomic Energy Act of 1954, as amended.

NRC regulations for independent spent fuel storage installations in 10 CFR Part 72 establish that the initial term of a specific license for a storage facility may not exceed 40 years. A licensee may apply for renewal of a specific license for an additional

40-year term. An application for renewal of a spent fuel storage facility license must be accompanied with additional detailed analyses to demonstrate that the storage facility's structures, systems and components will continue to meet the NRC safety requirements and perform their intended safety functions during the extended renewal period.

Issue 6: *"There is also an environmental justice concern for this project. We already have a large number of industrial activities which can pollute our air, land, and water and pose potential failure risk. Our citizens, many of whom are Hispanic, bear a disproportional amount of risk as citizens of New Mexico living in the communities where environmentally risky operations take place."*

NRC Response:

In response to Executive Order 12898, the Commission issued a "Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions" (69 FR 52040). As explained in the Policy Statement, the Commission is committed to the general goals set forth in Executive Order 12898, and strives to meet those goals as part of its review process to comply with the National Environmental Policy Act of 1969. Therefore, environmental justice will be a topic addressed during the environmental review of Holtec's application. The public will have an opportunity to provide comments on this topic during the public scoping period for the environmental review. In addition, the staff will address the topic in the draft environmental impact statement, which will be made available to the public for comment.

Issue 7: *"We are concerned that the NRC does not have the resources or presence to adequately monitor or regulate the construction or operation of this facility. The NRC has no current presence in Southeast New Mexico. The WIPP site is overseen by the Department of Energy (DOE) which has decades of presence in New Mexico."*

NRC Response:

The NRC periodically inspects the design, fabrication, and use of dry cask storage systems by conducting inspections of licensee and dry cask vendor facilities. The NRC inspectors examine whether licensees and vendors are performing activities in accordance with NRC's radiation safety requirements, the conditions of their licenses and certificates of compliance, and quality assurance program commitments. The NRC inspectors conduct their inspections in accordance with the guidance in the NRC Inspection Manual, which contains objectives and procedures to use for each type of inspection.

The NRC currently inspects and oversees approximately sixty licensed spent fuel storage facilities in thirty-four States throughout the United States. The NRC's inspection program is carried out by the NRC's Regional offices in King of Prussia, Pennsylvania; Atlanta, Georgia; Lisle, Illinois; and Arlington, Texas, with the support from Headquarters staff, as necessary. If a consolidated interim storage facility is licensed and constructed in Lea County, New Mexico, the NRC's Region IV Office in Arlington, Texas, will have the lead for conducting inspections of the facility's construction and operation. The NRC currently regulates uranium recovery licensees in New Mexico.

Issue 8: *"Waste Control Specialists, LLC has already started the development of a storage facility for spent nuclear fuel near the Texas/New Mexico border near Eunice, NM. This raises the question of the economic viability of this project since a competitor is already started."*

NRC Response:

The NRC's mission is to license and regulate the civilian use of radioactive materials to protect public health and safety, protect the environment, and promote the common defense and security. As an independent regulator of nuclear safety, the NRC does not promote nor endorse the development of any particular private facilities for interim storage of spent nuclear fuel. The NRC does not consider business competitions in conducting its safety review and oversight activities.