

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

In the Matter of: )  
 )  
Holtec International ) Docket No. 72-1051  
 )  
(HI-STORE Consolidated Interim Storage Facility )  
 )

**BEYOND NUCLEAR, INC.’S HEARING REQUEST AND  
PETITION TO INTERVENE**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.309, Beyond Nuclear, Inc. (“Beyond Nuclear”) hereby requests the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) grant a hearing on Holtec International’s (“Holtec’s”) application for a license to build and operate a centralized interim spent fuel storage facility (“CISF”) in Lea County, New Mexico. *See* 83 Fed. Reg. 32,919 (July 16, 2018) (“Holtec Hearing Notice”).

As discussed in Section II of Beyond Nuclear’s attached 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 (“Motion to Dismiss”, attached as Exhibit 1 and incorporated herein), Beyond Nuclear does not believe its contention lies within the scope of this licensing proceeding. Beyond Nuclear’s contention claims noncompliance by Holtec and the NRC with the Nuclear Waste Policy Act of 1982, as amended (“NWPA”), a statute that is not covered by this licensing proceeding. *See* 10 C.F.R. §§ 72.40, 51.101.

Beyond Nuclear filed its Motion to Dismiss in this docket and Docket No. 72-1050 (Interim Storage Partners (“ISP”), WCS Consolidated Interim Storage Facility), but does to seek consideration of the Motion by the Atomic Safety and Licensing Board in either licensing

proceeding. Instead, Beyond Nuclear has asked the NRC Commissioners to consider the Motion in separate dockets dedicated to the Motion to Dismiss. *Id.* Beyond Nuclear is filing its contention in this adjudicatory proceeding in an abundance of caution, to preserve its claims in the event that the Commission and/or a reviewing court holds that the licensing proceeding for consideration of the Holtec application (as well as the ISP application) constitutes the only venue in which the NRC will consider whether the application violates the NWPAA.

## **II. BEYOND NUCLEAR HAS STANDING TO REQUEST A HEARING.<sup>1</sup>**

As set forth below, Beyond Nuclear has standing to obtain a hearing on Holtec's license application as a representative of its members. *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 342 (1977). Beyond Nuclear is a nonprofit, nonpartisan membership organization that aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abolish both to protect public health and safety, prevent environmental harms, and safeguard our future. Beyond Nuclear advocates for an end to the production of nuclear waste and for securing the existing reactor waste in hardened on-site storage until it can be permanently disposed of in a safe, sound, and suitable underground repository. For almost ten years, Beyond Nuclear has worked toward its mission by regularly intervening in NRC licensing, relicensing, and other proceedings related to irradiated nuclear fuel matters. Based on the following, as well as the additional interests included in members' declarations, *see* Exhibits 02-07, Beyond Nuclear demonstrates that its members fulfill the

---

<sup>1</sup> Beyond Nuclear notes that this discussion of standing is the same as the discussion of standing in the Motion to Dismiss, including the legal arguments, the identity of the standing declarants who live or travel near the Holtec site and spent nuclear fuel transportation routes, and the content of their declarations. The only difference is that this discussion omits reference to ISP's application for the WCS CISF.

standing requirements and have authorized Beyond Nuclear to represent their interests.

Accordingly, Beyond Nuclear has standing to request NRC dismiss the Holtec application.

**A. Beyond Nuclear’s Standing is Established through Radiological Injury**

Beyond Nuclear’s members are largely concerned with radiological injury. To establish standing, the injury alleged need not be large: even minor radiological exposures, within regulatory limits, resulting from a proposed license activity can be sufficient. *See Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 417 (2001), *reversed on other grounds*, CLI-02-24, 56 NRC 335 (2002). In *Yankee Atomic Elec. Co.*, for example, the Licensing Board found standing because the Board could not “rule out” the potential for “some, even if minor, public exposures” from the decommissioning process to members of the petitioner organizations who lived within ten miles of the site, recreated along waterways, and regularly used roads that potentially would be used to transport waste. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 69-70, *aff’d*, CLI-96-7, 43 NRC 235, 246-48 (1996). *See also Armed Forces Radiobiology Research Inst.* (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 154 (1982) (quoting *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 74 (1978)) (“[T]he emission of non-natural radiation into appellees’ environment would also seem a direct and present injury, given our generalized concern about exposure to radiation and the apprehension flowing from the uncertainty about the health and genetic consequences of even small emissions like those concededly emitted by nuclear power plants.”).

The NRC recognizes two legal frameworks for analyzing standing based on radiological injury: traditional standing and the proximity presumption. *U.S. Army Installation Command*

(Schofield Barracks, Oahu, Hawaii, & Pohakuloa Training Area, Island of Hawaii, Hawaii), LBP-10-4, 71 NRC 216, 228 (2010). Beyond Nuclear has standing pursuant to both frameworks.

**B. Beyond Nuclear Has Standing Pursuant to Traditional Standing Doctrine**

To establish standing through traditional means, the NRC applies judicial concepts of standing, *i.e.*, injury-in-fact, causation, and redressability. *Pac. Gas & Electric Co.* (Diablo Canyon Power Plant Indep. Spent Fuel Storage Installation) LBP-07-14, 56 NRC 413, 426 (2002).

Beyond Nuclear establishes standing through traditional means by virtue of the injuries to its members who live and travel on or along routes that Holtec plans to transport spent nuclear fuel. Members will be injured primarily from radiologic exposure received during normal transportation operations. *See* WASH-1238, Environmental Survey of Transportation of Radioactive Materials To and From Nuclear Power Plants (Dec. 1972) (NRC found that a person who spends three minutes at an average distance of three feet from loaded truck or car might receive a dose of as much of 1.3 mrem); Environmental Report on the HI-STORE CIS FACILITY at 4-32 (Report No. HI-2167521) (Dec. 2017) (using dose rate of 10 mrem/hour at a distance of 6.5 feet for transportation radiation impact analysis) (hereinafter “Holtec Environmental Report”). For example, the Licensing Board in *Duke Cogema Stone & Webster* found that “unwanted doses of ionizing radiation” from shipments of nuclear fuel transported “over the same public highways the Petitioners’ members travel” established standing because “incident-free shipping of plutonium provides a dose of ionizing radiation, albeit small, to anyone next to the transport vehicle and a minor exposure to radiation, even one within regulatory limits, is sufficient to state an injury in fact.” LBP-01-35, 54 NRC at 417.

There is also a risk of radiologic injury to Beyond Nuclear's members from an accident involving shipments of spent nuclear fuel being transported to the Holtec CISF. *See e.g.*, Holtec Environmental Report at 4-34 (the application analyzes "a spectrum of accidents that ranged from high-probability accidents of low severity and consequences to severe accidents with radiological consequences"). There is a higher likelihood of an accident involving spent nuclear fuel near the CISF because the surrounding transportation infrastructure is already unsafe and impacted from the oil and gas boom. *See e.g.*, *New Mexico GOP Governor Hopeful: Toll Roads for Oil Traffic*, Associated Press, KTBS (Aug. 21, 2018), [https://www.ktbs.com/news/business/new-mexico-gop-governor-hopeful-toll-roads-for-oil-traffic/article\\_e8f4a10a-2542-5a9a-b64e-d0e6448c7bc8.html](https://www.ktbs.com/news/business/new-mexico-gop-governor-hopeful-toll-roads-for-oil-traffic/article_e8f4a10a-2542-5a9a-b64e-d0e6448c7bc8.html).

Further, Beyond Nuclear's members' interest in and right to travel will also be injured because they will either not know which route is safest to avoid radiological injury or they will be unable to avoid unsafe routes because of the limited highways in the area. *See Duke Cogema Stone & Webster*, LBP-01-35, 54 NRC at 415.

Holtec plans to transport spent nuclear fuel to the Holtec CISF on the Burlington Northern Santa Fe Carlsbad Subdivision railroad. Holtec Environmental Report at 2-4, 3-105, 4-30. This railroad travels through Roswell, New Mexico, south to Carlsbad, New Mexico, and then travels east toward the Holtec site, along which it parallels Highway 62/180 for 20 miles at a distance of 100 to 500 feet. Holtec may also transport the spent nuclear fuel the final 3.8 miles to the Holtec CISF by truck. Holtec Environmental Report at 4-33. Beyond Nuclear members who live or travel on roads that cross or parallel the Burlington Northern Santa Fe Carlsbad Subdivision railroad will be exposed to small doses of unwanted radiation during the normal transportation of spent nuclear fuel to the Holtec Facility and a higher likelihood of an accident

involving spent nuclear fuel. Their interest in travel will be affected if they wish to avoid these injuries. Thus, Beyond Nuclear has standing to request dismissal of the Holtec application through members:

- Danny Berry who regularly travels on roads and highways around the Holtec CISF, including Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad. *See* Exhibit 02.
- Keli Hatley (Exhibit 3) and Margo Smith (Exhibit 4), who regularly travel on Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad, regularly travel other roads in the area on which Holtec may transport spent nuclear fuel, and regularly travel on Laguna Road/Country Road 55 which will have to be moved to avoid the Holtec CISF.
- Nick King, who lives within 450 yards of one Burlington Northern Santa Fe Carlsbad Subdivision railroad, 800 yards of a second Burlington Northern Santa Fe Carlsbad Subdivision railroad, and within one mile of a railyard at which the spent nuclear fuel shipments may stop for extended periods. *See* Exhibit 05.
- Gene Harbaugh, who lives within 250 yards of a Burlington Northern Santa Fe Carlsbad Subdivision railroad and within 500 yards of a railyard at which the spent nuclear fuel shipments may stop for extended periods. *See* Exhibit 06.
- Jimi Gadzia, who lives within 900 yards of the Burlington Northern Santa Fe Carlsbad Subdivision railroad and whose frequent travel in Roswell causes her to regularly travel along and over this railroad. *See* Exhibit 07.

Beyond Nuclear also establishes standing through traditional means by virtue of adverse impacts to its members' property values. *See Kelley v. Selin*, 42 F.3d 1501, 1509–10 (6th Cir. 1995) (“Petitioners are clearly asserting a threatened injury. The injury can be fairly traced to respondents’ actions since petitioners allege that it is the storage of spent nuclear fuels in the VSC–24 cask that has the potential to interrupt enjoyment of their lakefront property and to diminish its value. Finally, a decision in their favor could redress the threatened harm.”); *see also Louisiana Energy Servs., L.P.* (Claiborne Enrichment Ctr.), CLI-98-3, 47 NRC 77, 108-109 (1998). Because of public perception and anticipation, individuals are hesitant to move close to a nuclear facility or the transportation route for spent nuclear fuel, which leads to depressed

property values near these sites. Close proximity to nuclear facilities and transportation routes for spent nuclear fuel may decrease property values as soon as a nuclear facility is licensed. Thus,

Beyond Nuclear has standing to request dismissal of the Holtec application through members:

- Keli Hatley (Exhibit 03) and Margo Smith (Exhibit 04), whose homes and property are located within one to seven miles from the Holtec CISF and each of their livelihoods is directly connected to the value of the Smith Ranch, which shares a fence line with the Holtec CISF.
- Daniel Berry, whose home and property is located within 11 miles of the Holtec CISF and who owns ranchland located within three to 15 miles of the Holtec CISF. *See* Exhibit 02.
- Gene Harbaugh, whose home and property is located within 250 yards of a Burlington Northern Santa Fe Carlsbad Subdivision railroad and 500 yards of the railyard that Holtec will use to transport spent nuclear fuel to the Holtec CISF. *See* Exhibit 06.
- Nick King, whose home and property is located within 450 yards of one Burlington Northern Santa Fe Carlsbad Subdivision railroad, within 800 yards of a second Burlington Northern Santa Fe Carlsbad Subdivision railroad, and within one mile of a railyard that Holtec will use to transport spent nuclear fuel to the Holtec CISF. *See* Exhibit 05.
- Jimi Gadzia, whose home and property is located within 900 yards of the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec may use to transport spent nuclear fuel to the Holtec CISF. *See* Exhibit 07.

### **C. Beyond Nuclear Has Standing Pursuant to the Proximity Presumption**

NRC has also applied an alternative to establishing standing based on the proximity presumption. *Tennessee Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 3 (2002) (“This so-called proximity or geographical presumption ‘presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability...’ ”); *Armed Forces Radiobiology Research Inst.*, ALAB-682, 16 NRC at 154 (The “proximity to a large source of radioactive material establishes petitioner’s interest.”). Where the “nature of the proposed action and the significance of the radioactive source” create an “obvious potential for offsite consequences,” the NRC applies a

presumption of standing to individuals residing, owning property, or having frequent and regular contacts within the radius of those potential offsite consequences. *Consumers Energy Co.* (Big Rock Point Indep. Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007) (quoting *Exelon Generation Co. LLC & PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 580-581 (2005)); see also *Kelley v. Selin*, 42 F.3d 1501 (6th Cir. 1995).

The determination of the radius “beyond which . . . there is no longer an ‘obvious potential for offsite consequences’” is made on a case-by-case basis. *Exelon Generation Co. LLC & PSEG Nuclear, LLC*, CLI-05-26, 62 NRC at 580-81. Licensing Boards have found standing based on proximity to spent nuclear fuel ranging from 4,000 feet to 17 miles. *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1997); *Pac. Gas & Elec. Co.*, LBP-02-23, 56 NRC at 428. The standard for assessing the potential for offsite consequences is whether the consequences are plausible, not whether consequences are probable or likely. *Cfc Logistics, Inc.*, LBP-03-20, 58 NRC 311, 320 (2003), citing *Ga. Inst. of Tech.* (Georgia Tech Research Reactor) CLI-95-12, 42 NRC 111 (1995) (Commission found standing based on a “plausible scenario, albeit a highly unlikely one, in which three independent redundant safety systems—all designed to function under normal circumstances—could simultaneously fail in a research reactor.”).

The potential for offsite consequences from the Holtec CISF is “obvious” due to the characteristics and quantity of spent nuclear fuel Holtec plans to consolidate at the CISF. Spent fuel is and will remain highly radioactive and dangerous to humans for hundreds of thousands of years. *Nuclear Energy Institute v. EPA*, 373 F.3d 1251, 1257 (D.C. Cir. 2004). Holtec proposes to store an astronomical quantity of this extremely dangerous and long-lived radioactive waste --

up to 173,600 MTU, more than twice the total amount of commercially generated spent nuclear fuel existing in the entire United States today. *See infra*, Section V.A. As discussed in the Blue Ribbon Commission’s Report (for more detail, *see infra* Section V.A.), the *only* acceptable means for separating this dangerous material from the environment for the long-term is disposal, not interim storage. Blue Ribbon Commission on America’s Nuclear Future, Report to the Secretary at xi (Jan. 2012) (ML120970375) (“BRC Report”) (“The conclusion that disposal is needed and that deep geologic disposal is the scientifically preferred approach has been reached by every expert panel that has looked at the issue and by every other country that is pursuing a nuclear waste management program.”). Further, Holtec acknowledges at least one plausible scenario that would result in off-site consequences from storage of spent nuclear fuel at the CISF. HI-STORE CIS Safety Analysis Report at 8-5 – 8-6 (Report No. HI-2167374) (Mar. 27, 2017) (safety analysis explains that a criticality accident is possible due to a flooded canister) (hereinafter “Holtec SAR”). #

Thus, Beyond Nuclear has standing to request dismissal of the Holtec application based on the proximity presumption, through members who own property nearby and have frequent and regular contacts within the radius of potential obvious offsite consequences from the Holtec CISF, including:

- Keli Hatley, who lives one mile from the Holtec CISF. *See* Exhibit 03. Ms. Hatley often spends time with family approximately two miles from the Holtec CISF and ranches her cattle up to the fence line of the Holtec CISF. *Id.* Ms. Hatley and her children drive most days over a section of the Laguna Road/Country Road 55 that currently travels across the Holtec site and will have to be moved if the CISF is built. *Id.*
- Margo Smith, who lives seven miles from the Holtec CISF. *See* Exhibit 04. Ms. Smith regularly spends time within approximately two miles of the Holtec CISF, ranching and visiting her two daughters’ homes. *Id.*
- Daniel Berry, who owns property within three to fifteen miles of the Holtec CISF. *See* Exhibit 02. Mr. Berry also lives and works on this land, and regularly drives on Highway 62/180 near the Holtec CISF. *Id.*

- Jimi Gadzia, who owns mineral rights within ten to 16 miles of the Holtec CISF. *See* Exhibit 07.

## **I. CONTENTION**

### **A. Statement of Contention**

The NRC must dismiss Holtec’s license application and terminate this proceeding because the application violates the NWPA. The proceeding must be dismissed because the central premise of Holtec’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.

### **B. Basis Statement**

Beyond Nuclear hereby adopts and incorporates by reference Sections IV and V of the attached Motion to Dismiss (Exhibit 1). The Motion sets forth the facts in Holtec’s license application on which Beyond Nuclear relies, and applies the NWPA and the Administrative Procedure Act to those facts.

### **C. Demonstration that the Contention is Within the Scope of the Proceeding**

As discussed above in Section I, Beyond Nuclear does not believe its contention is within the scope of this proceeding, because NRC regulations establishing the scope of the proceeding do not include the NWPA. *See* 10 C.F.R. §§ 72.40, 51.101. The contention seeks compliance by the Commission with the NWPA and the Administrative Procedure Act, which prohibits the Commission from acting in a manner that is “not in accordance with law,” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. §§ 706(2)(A), (C). *See* Motion to Dismiss, Section IV.B. Nevertheless, as discussed above in Section I, Beyond Nuclear is filing this contention in an abundance of caution.



Mindy Goldstein  
Emory University School of Law  
Turner Environmental Law Clinic  
1301 Clifton Road  
Atlanta, GA 30307  
404-727-3432  
[magolds@emory.edu](mailto:magolds@emory.edu)

September 14, 2018

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

In the Matter of: )  
 )  
Holtec International ) Docket No. 72-1051  
 )  
(HI-STORE Consolidated Interim Storage Facility )  
 )

**CERTIFICATE OF SERVICE**

I certify that on September 14, 2018, I posted copies of the foregoing Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene on the NRC's Electronic Information Exchange System. I also posted Exhibits 1 through 7 to Beyond Nuclear's Hearing Request and Petition to Intervene:

          /signed electronically by/            
Diane Curran