

September 24, 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
HOLTEC INTERNATIONAL)	
(HI-STORE Consolidated)	Docket No. 72-1051
Interim Storage Facility))	
)	
)	Docket No. 72-1050
INTERIM STORAGE PARTNERS)	
(WCS Consolidated Interim Storage)	
Facility))	

NRC STAFF'S RESPONSE TO MOTIONS
TO DISMISS LICENSING PROCEEDINGS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323, the U.S. Nuclear Regulatory Commission Staff hereby responds to the motions filed by Beyond Nuclear, Inc. and by Fasken Land and Minerals and Permian Basin Land and Royalty Owners, in which they seek to dismiss these licensing proceedings for lack of jurisdiction.¹ As further discussed below, both motions should be dismissed for failure to comply with NRC requirements.

¹ *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); *Motion of Fasken Land and Minerals and Permian Basin Land and Royalty Owners to Dismiss Licensing Proceedings for Hi-Store Consolidated Interim Storage Facility and WCS Consolidated Interim Storage Facility* (Sept. 14, 2018).

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 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.²

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its application, and the next day WCS and the NRC Staff jointly requested that the then pending hearing opportunity be withdrawn.³ Beyond Nuclear, along with other petitioners, filed a response seeking additional measures, including that the Commission provide a separate opportunity for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.⁴ 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.”⁵ 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.”⁶

On March 19, 2018, notice of the acceptance and docketing of Holtec International’s HI-STORE Consolidated Interim Storage facility for Interim Storage of Spent Nuclear Fuel

² Interim Storage Partner’s Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070 (Aug. 29, 2018).

³ *Waste Control Specialists, LLC (Consolidated Interim Storage Facility)*, CLI-17-10, 85 NRC 221, 221 (2017)

⁴ *Id.* at 222-23.

⁵ *Id.* at 223.

⁶ *Id.*

(Holtec) was published in the *Federal Register*.⁷ On July 16, 2018, a notice of opportunity to request a hearing and to petition for leave to intervene for the Holtec application was published in the *Federal Register*.⁸

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, a new applicant, Interim Storage Partners, a joint venture between WCS and Orano CIS, LLC.⁹ 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*.¹⁰

Beyond Nuclear has filed a motion to dismiss the licensing proceedings for Holtec and Interim Storage Partners on both dockets. Fasken Land and Minerals and Permian Basin Land and Royalty Owners have filed a substantially similar motion.¹¹

DISCUSSION

As discussed above, Beyond Nuclear requested this relief in the *WCS (now Interim Storage Partners)* proceeding, and that request was rejected by the Commission.¹² The

⁷ Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 12,034 (Mar. 19, 2018).

⁸ Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919 (July 16, 2018).

⁹ Interim Storage Partner's Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070 (Aug. 29, 2018).

¹⁰ 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).

¹¹ While the Fasken motion refers to both applications and contains the captions for both proceedings, it was filed only on the Holtec docket.

¹² See CLI-17-10, 85 NRC at 223.

Commission unequivocally stated at the time that a petition to intervene is the appropriate place to raise concerns with a license application, including the legal argument that an application is inconsistent with the NWPA.¹³ Therefore, the Commission should again decline to entertain similar procedural motions in the *Holtec* proceeding, and decline to reconsider its previous ruling in CLI-17-10. Further, granting the relief requested by the movants is simply unnecessary. Indeed, one of the movants filed a petition to intervene, proffering a contention raising substantially the same issue in the *Holtec* proceeding,¹⁴ and it has the opportunity to file such a contention in the re-noticed *Interim Storage Partners* proceeding as well.¹⁵ There is no reason for the Commission to address the question outside the intervention process.

Even if the Commission had not made clear in CLI-17-10 that an intervention petition is the proper vehicle for the movants to raise their claim, the instant motions are procedurally defective. Specifically, both motions fail to comply with the standards in 10 C.F.R. § 2.323 and should be summarily dismissed. First, both movants failed to comply with 10 C.F.R. § 2.323(a)(2) because their motions were not filed within 10 days of the circumstance from which the motion arises. Although the movants filed their motions within the time frame to file petitions to intervene in the *Holtec* proceeding, this is not the circumstance from which the motion arises. Assuming that such an argument would have been appropriate as a motion, because the movants seek dismissal of the applications on jurisdictional grounds, the relevant

¹³ *Id.* Our contention admissibility rules contemplate challenges to an application that raise a legal question such as this. See 10 C.F.R. § 2.309(f)(1)(vi) (setting forth the information to be provided for contentions asserting that “the application fails to contain information on a relevant matter as required by law”).

¹⁴ Beyond Nuclear, Inc.’s Hearing Request and Petition to Intervene at 10 (Sept. 14, 2018) (ADAMS Accession No. ML18257A323).

¹⁵ Two or more petitioners may co-sponsor a contention. 10 C.F.R. § 2.309(f)(3).

circumstance for such a motion was the notice of the NRC Staff's acceptance of each application for docketing and detailed review—in this case, by March 19, 2018, for the Holtec application. The then-WCS application was accepted for docketing in early 2017. In CLI-17-10, as part of its ruling approving withdrawal of the hearing notice associated with the WCS application, the Commission directed the Staff to publish a new notice of opportunity to request a hearing if WCS were to request that the Staff review the application in the future.¹⁶ That notice was published on August 29, 2018, and served to inform interested persons, including the movants, that the Staff planned to resume its review of the WCS application. As such, the motions associated with the resumption of the WCS application review were due no later than September 10, 2018.

Furthermore, 10 C.F.R. § 2.323(b) requires that each motion include a certification that the movant made a sincere effort to contact other parties in the proceeding and resolve the issues raised in the motion. Neither of the motions contains any such certification, and the NRC Staff is unaware of any efforts by the movants in this regard. A motion which does not contain such a certification “must be rejected.”¹⁷

Finally, to the extent that the motions can be construed to seek reconsideration of CLI-17-10, albeit without specifically citing to CLI-17-10 or the reconsideration standards, this effort must also fail. A motion for reconsideration must be filed within 10 days of the action for which reconsideration is requested, and show compelling circumstances, such as the existence of a clear and material error which could not reasonably have been anticipated.¹⁸ In the instant

¹⁶ CLI-17-10, 85 NRC at 222; see Waste Control Specialists LLC's Consolidated Interim Spent Fuel Storage Facility Project, 82 Fed. Reg. 33,521, 33,522 (July 20, 2017).

¹⁷ See 10 C.F.R. § 2.323(b).

¹⁸ See 10 C.F.R. § 2.323(e).

case, the movants failed to articulate, let alone demonstrate, any compelling circumstances for reconsidering the Commission's previous ruling. Therefore, the motions should be summarily dismissed.

CONCLUSION

For the reasons described above, the NRC Staff opposes both motions and requests that they be dismissed.

Respectfully submitted,

/signed (electronically) by/
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Dated at Arlington, VA
this 24th day of September
2018

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CERTIFICATE OF SERVICE

I hereby certify that the NRC STAFF'S RESPONSE TO BEYOND NUCLEAR, INC.' MOTION TO DISMISS LICENSING PROCEEDINGS AND FASKEN LAND AND MINERALS AND PERMIAN BASIN LAND AND ROYALTY OWNERS MOTION TO DISMISS LICENSING PROCEEDINGS has been filed through the E-Filing system in both captioned proceedings this 24th day of September, 2018.

/Signed (electronically) by/

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Dated at Arlington, VA
this 24th day of September, 2018