

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

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

In the Matter of: )  
)  
Interim Storage Partners ) Docket No. 72-1050  
)  
(WCS Consolidated Interim Storage Facility) )  
)

**BEYOND NUCLEAR’S MOTION FOR LEAVE TO REPLY TO HOLTEC  
INTERNATIONAL, INTERIM STORAGE PARTNERS LLC, AND NRC STAFF  
RESPONSES TO BEYOND NUCLEAR’S MOTION TO DISMISS**

Beyond Nuclear moves the Commission for leave to reply to Holtec International’s Answer Opposing Beyond Nuclear Motion to Dismiss Licensing Proceeding for HI-STORE Consolidated Interim Storage Facility, Interim Storage Partner LLC’s Response Opposing Beyond Nuclear, Inc’s Unauthorized September 14, 2018 Filing, and NRC Staff’s Response to Motions to Dismiss Licensing Proceedings, each filed on September 24, 2018 (collectively, the “Responses”). While Beyond Nuclear maintains that the 10 C.F.R. Part 2 regulations do not govern this proceeding, the circumstances described herein nevertheless satisfy the “compelling circumstances” requirement of 10 C.F.R. § 2.323(c) for granting requests to reply.<sup>1</sup>

Beyond Nuclear filed its Motion to Dismiss the above captioned Holtec and ISP licensing proceedings (“Motion to Dismiss”) pursuant to the Nuclear Waste Policy Act of 1982, as

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<sup>1</sup> “Permission [for leave to reply] may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.” 10 C.F.R. 2.323(c)

amended, 42 U.S.C. § 10101, *et seq.* (“NWPA”) and the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A) and (C) (“APA”). The Responses largely ignore the mandates of these statutes and the merits of the Motion to Dismiss, briefly address Beyond Nuclear’s standing, and primarily focus on the procedural requirements of 10 C.F.R. Part 2, which govern proceedings conducted under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. *See* 10 C.F.R. § 2.1. Beyond Nuclear could not have reasonably anticipated arguments based on the 10 C.F.R. Part 2 regulations because its Motion to Dismiss does not rely upon the Atomic Energy Act and Energy Reorganization Act; instead it relies exclusively on the NWPA and APA. Ensuring the fairness of this proceeding constitutes a compelling reason to provide Beyond Nuclear with an opportunity to reply to these unanticipated arguments.

But more than fairness compels an opportunity to reply. Such an opportunity is crucial to ensure that the Commission’s decision on Beyond Nuclear’s Motion to Dismiss is based on a complete and accurate record. A substantial number of arguments raised in the Responses are incorrect and misleading on significant issues such as judicial and NRC standing requirements and the relevance of previous NRC decisions on the application of the NWPA to NRC proceedings. Without the opportunity to reply, Beyond Nuclear cannot address these mischaracterizations. And if arguments in the Responses go unanswered, they may sway the Commission to an indefensible and manifestly unjust conclusion that could undermine longstanding Congressional policy, established in the NWPA, that ownership of and liability for spent nuclear fuel should remain with private licensees until a federal repository becomes available for permanent disposal. An incorrect decision could also unjustly subject Beyond Nuclear and its members to the costly and unnecessary expenses of challenging applications that cannot be lawfully approved, and unnecessarily depress the property values of Beyond Nuclear

members who reside and own property in the vicinity of the Holtec and ISP facilities. Moreover, it is simply wise for the Commission to have the same, full ventilation of the legal issues posed by the Motion to Dismiss that a reviewing Court of Appeals will certainly have.

Finally, consideration of Beyond Nuclear's reply is warranted because Beyond Nuclear's Motion to Dismiss has important legal and policy ramifications with respect to the question of how the thousands of tons of highly radioactive waste that have been generated at U.S. nuclear reactors will be managed and stored in the coming decades.<sup>2</sup> What happens if the NRC effectively "jumps the gun" on the statutory scheme envisioned by the NWPA by licensing two private spent fuel storage facilities that depend on federal ownership of spent fuel in order to go forward? The gravity of this matter deserves a thorough briefing that covers all relevant information and applicable law.

For the foregoing compelling reasons and circumstances, Beyond Nuclear respectfully requests the Commission grant its motion for leave to reply.

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<sup>2</sup> Holtec proposes to store up to 173,600 MTU of spent nuclear fuel, more than twice the total of amount of commercially generated spent nuclear fuel existing in the entire United States today; ISP proposes to store more than 40,000 MTU of spent nuclear fuel, still more than half of the spent nuclear fuel existing in the United States. Motion to Dismiss at 16, 17.

Respectfully submitted,

\_\_\_/signed electronically by/\_\_\_

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September 28, 2018

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**CERTIFICATE OF COUNSEL**

Beyond Nuclear reasserts that this proceeding falls outside 10 C.F.R. Part 2. However, out of an abundance of caution and respect, pursuant to 10 C.F.R. § 2.323(b), the undersigned counsel hereby certifies that counsel for Beyond Nuclear consulted with the parties to this proceeding regarding the filing of the Motion For Leave to Reply, stating, in part:

We seek to respond to a number of arguments by Holtec, ISP, and the Staff regarding the applicability of NRC’s procedural rules, Beyond Nuclear’s standing, and the merits of our motion. We believe these arguments are factually and/or legally incorrect, and therefore want to make sure the record is complete and accurate.

Alliance for Environmental Strategies, Don’t Waste Michigan et al., and Sierra Club support Beyond Nuclear’s request.

NAC International, Inc. takes no position.

Holtec opposes, asserting there was nothing to indicate the “compelling circumstances” that would justify filing a reply. ISP opposes, asserting no reply is

permitted under NRC's rules. NRC Staff opposes, asserting no "compelling circumstances" were identified warranting a reply.

Respectfully submitted,

\_\_\_/signed electronically by/\_\_\_

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2018, I posted a copy of BEYOND NUCLEAR’S MOTION FOR LEAVE TO REPLY TO HOLTEC INTERNATIONAL, INTERIM STORAGE PARTNERS LLC, AND NRC STAFF RESPONSES TO BEYOND NUCLEAR’S MOTION TO DISMISS and a CERTIFICATION OF COUNSEL on the NRC’s Electronic Information Exchange System.

\_\_\_/signed electronically by/\_\_\_  
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