

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:

INTERIM STORAGE PARTNERS LLC

(Consolidated Interim Storage Facility)

)
) Docket No. 72-1050
)
)

) October 5, 2018
)
)

**INTERIM STORAGE PARTNERS LLC’S RESPONSE OPPOSING
FASKEN LAND AND MINERALS’ AND PERMIAN BASIN LAND AND ROYALTY
OWNERS’ UNAUTHORIZED SEPTEMBER 28, 2018 FILING**

Interim Storage Partners LLC (“ISP”) submits this response opposing the document filed with the U.S. Nuclear Regulatory Commission (“NRC”) on the above-captioned docket on September 28, 2018, by Fasken Land and Minerals and Permian Basin Land and Royalty Owners (“Fasken/PBLRO”), styled as a Motion to “Dismiss Licensing Proceedings for Hi-Store Consolidated Interim Storage Facility and WCS Consolidated Interim Storage Facility” (“Fasken/PBLRO Filing”).¹ Fasken/PBLRO request that the Commission establish a separate proceeding solely for the purpose of considering their demand that the Holtec and ISP licensing proceedings, conducted under 10 C.F.R. Part 72, be dismissed because the NRC purportedly “lacks jurisdiction over the applications” at issue in those proceedings.² Fasken/PBLRO state that their Filing “should be resolved outside the pending . . . licensing proceedings.”³

¹ 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. 28, 2018) (ML18271A244).

² *Id.* at 1.

³ *Id.* at 2 (thus requesting the Commission *not* treat this filing as a contention in those proceedings).

On September 14, 2018, Beyond Nuclear, Inc. (“BN”) filed a pleading substantively similar to the Fasken/PBLRO Filing on the above-captioned docket (“BN Filing”).⁴ ISP’s response to that pleading (“ISP Response”) urged the Commission to reject the BN Filing because it is procedurally and substantively deficient on multiple, independent grounds.⁵ As to its non-standing arguments, because the Fasken/PBLRO Filing “incorporate[s] by reference the arguments and authorities” in the BN Filing,⁶ it must be summarily rejected for all of the same reasons discussed in the ISP Response (and even more so on the basis of untimeliness).

Furthermore, although Fasken/PBLRO’s standing arguments identify *different persons or entities* purportedly entitled to standing under the “proximity presumption,” those arguments also fail for the same fundamental reasons articulated in the ISP Response. In summary, even if such a limited proceeding—solely to consider the NRC’s organic statutory authority to review license applications under 10 C.F.R. Part 72—was convened, Fasken/PBLRO’s alleged risk of radiological harm incorrectly assumes such a proceeding could result in the licensing of an independent spent fuel storage installation under 10 C.F.R. Part 72 as the final agency action from that proceeding. However, it would do no such thing; rather, such a hypothetical proceeding would solely consider NRC jurisdictional authority, and simply *could not* result in a licensing decision.

The many procedural and substantive deficiencies of the BN Filing, and therefore the Fasken/PBLRO Filing, are explained in further detail in the ISP Response, which ISP does not

⁴ 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) (ML18257A312). *See also* Errata to 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. 18, 2018) (ML18261A110).

⁵ Interim Storage Partners LLC’s Response Opposing Beyond Nuclear, Inc.’s Unauthorized September 14, 2018 Filing (Sept. 24, 2018) (ML18267A299) (“ISP Response”).

⁶ Fasken/PBLRO Filing at 7.

republish here, but instead incorporates by reference in full. For the above reasons and those discussed in the ISP Response, the Fasken/PBLRO Filing requesting an unnecessary and recently denied separate adjudicatory proceeding should be summarily rejected.⁷

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.
this 5th day of October 2018

⁷ Because this pleading merely incorporates by reference arguments presented in the ISP Response, served on Fasken/PBLRO on September 24, 2018, there can be no colorable claim of “compelling circumstances” for Fasken/PBLRO to file a further reply to this response. See 10 C.F.R. § 2.323(c).

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “Interim Storage Partners LLC’s Response Opposing Fasken Land and Minerals’ and Permian Basin Land and Royalty Owners’ Unauthorized September 28, 2018 Filing” was filed through the E-Filing system.

Signed (electronically) by Ryan K. Lighty
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