

October 9, 2018

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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

**Holtec International’s Answer Opposing 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**

On September 14, 2018, Beyond Nuclear, Inc. (“Beyond Nuclear”) filed a Motion to Dismiss this proceeding (together with the separate proceeding in Docket No. 72-1050).¹ On September 24, 2018, Holtec International (“Holtec”) filed its Answer opposing the Motion to Dismiss. The Motion to Dismiss was based on the claim that the filing of the applications in both proceedings was prohibited by the Nuclear Waste Policy Act. Holtec’s Answer opposed the Motion because (1) Beyond Nuclear had not demonstrated that it had standing in this proceeding; (2) the Motion was filed grossly out of time under the rules of the Nuclear Regulatory Commission; and (3) the Commission had ruled on a similar motion filed by Beyond Nuclear in Docket No. 72-1050 that this issue should be raised as a contention in the proceeding on that application rather than via a motion to dismiss.

On September 28, 2018, Beyond Nuclear simultaneously filed (1) a Motion for Leave to Reply to Holtec International, Interim Storage Partners LLC (“Motion for Leave to File”), and

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, dated Sep. 14, 2018 (“Motion to Dismiss”).

NRC Staff Responses to Beyond Nuclear’s Motion to Dismiss, and (2) its Reply to Holtec International, Interim Storage Partners LLC, and NRC Staff Responses to Beyond Nuclear’s Motion to Dismiss (“Reply”). Holtec respectfully submits this answer opposing the Motion for Leave to File because Beyond Nuclear has not met the threshold requirements for filing a reply to Holtec’s September 24 Answer. We therefore oppose Beyond Nuclear’s Motion for Leave to File and respectfully submit that no reply is needed or appropriate to Holtec’s September 24 Answer.

Under NRC rules, Beyond Nuclear “has no right to reply [to Holtec’s Answer] except as permitted by the Secretary, the Assistant Secretary, or the presiding officer.” 10 C.F.R.

§ 2.323(c). The regulation also sets the standard for granting permission to file such a reply:

Permission 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.

Id. Beyond Nuclear has not met this standard.

Much of Beyond Nuclear’s Motion for Leave to File is based on the argument that “fairness compels an opportunity to reply” because it could not have anticipated that Holtec would oppose Beyond Nuclear’s standing arguments set forth in the Motion to Dismiss. Yet fully half of Beyond Nuclear’s Motion to Dismiss was based on arguing that it had standing. Motion to Dismiss at 2-11. It is unimaginable that Beyond Nuclear would have assumed that its standing (a central part of its Motion to Dismiss) would have gone unchallenged. Its desire for another bite at the standing “apple” hardly qualifies as “compelling circumstances.”

The second prong of Beyond Nuclear’s Motion for Leave to File is the argument that the motion is not subject to the timeliness requirements for filing motions before the NRC. In Beyond Nuclear’s view, it could not reasonably have anticipated a challenge to its claim that

NRC's regulations do not apply to a motion asking that the Commission "should establish a separate proceeding for consideration of this Motion [to Dismiss]." Motion for Leave to File at 2. This claim is particularly farfetched since Beyond Nuclear filed the Motion to Dismiss in the NRC's docket for the licensing of the Holtec facility, a proceeding clearly governed by NRC regulations. Nowhere does Beyond Nuclear show that either the Nuclear Waste Policy Act or the Administrative Procedure Act² provides a mechanism for filing its Motion to Dismiss outside of NRC regulations.

Having failed to show "compelling circumstances," Beyond Nuclear's Motion for Leave to File should be denied, and its Reply to the Holtec International, Interim Storage Partners LLC, and NRC Staff Responses to Beyond Nuclear's Motion to Dismiss should not be accepted for filing by the Commission.

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October 9, 2018

Respectfully submitted,

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² It has long been the law that the Administrative Procedure Act is not an independent source of jurisdiction. *Califano v. Sanders*, 430 U.S. 99, 104-107 (1977).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Holtec International's Answer Opposing 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 has been served through the E-Filing system on the participants in the above-captioned proceeding this 9th day of October, 2018.

/signed electronically by Timothy J. V. Walsh/
Timothy J. V. Walsh