

November 8, 2018

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**HOLTEC INTERNATIONAL’S MOTION FOR LEAVE TO REPLY TO
ALLIANCE FOR ENVIRONMENTAL STRATEGIES’ RESPONSE TO
HOLTEC INTERNATIONAL’S MOTION TO STRIKE**

In accordance with 10 C.F.R. § 2.323(c), Holtec International (“Holtec”) hereby moves the Atomic Safety and Licensing Board (the “Board”) for leave to reply to Alliance for Environmental Strategies’¹ (“Alliance”) Response to Holtec International’s Motion to Strike (“Response”), filed on Nov. 1, 2018. NRC regulations permit the Board to grant leave to reply, “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). Alliance’s Response requests that the Board deny Holtec’s Motion to Strike because Holtec’s consultation allegedly was “a violation of NRC rules.” Response at 1. Holtec respectfully requests leave to file the attached Reply as the Reply is the only way in which Holtec can bring to the Board’s attention the facts surrounding Alliance’s allegations concerning the consultation process.

¹ In its Response to Holtec’s Motion to Strike, Alliance has referred to itself as both Alliance for Environmental Strategies and Alliance for Environmental Solutions. This Motion and Reply refer to the organization as Alliance for Environmental Strategies based on Alliance’s errata to its Petition to Intervene filed on September 17, 2018.

As 10 C.F.R. § 2.323(b) requires Holtec to consult with parties in an effort to resolve the issues raised in this Motion for Leave to Reply, Holtec has limited its consultation to the only party able to resolve the issue: Alliance. Counsel contacted Alliance numerous times via email and telephone in an effort to resolve the issue. However, Holtec and Alliance could not resolve the issue satisfactorily.

Holtec also informed the NRC Staff of the dispute. The NRC Staff does not oppose the filing of this motion.

Respectfully submitted,

/Signed electronically by Anne R. Leidich/

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Counsel for HOLTEC INTERNATIONAL

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On October 24, 2018, counsel for Holtec International (“Holtec’s Counsel”) emailed counsel for Alliance for Environmental Strategies (“Alliance’s Counsel”) and all of the other intervenor parties for the purpose of consultation as to Holtec’s plans to file a motion to strike. *See* Attachment A. Holtec’s Counsel used Alliance’s email address nlsstaff@swcp.com, taken from the NRC’s Electronic Information Exchange system service list in this proceeding (hereinafter, the “Electronic Service List”). Indeed, nlsstaff@swcp.com is the Alliance email address that all electronically-served filings are sent to in this proceeding, from Board decisions to the parties’ filings. Holtec’s Counsel uses the Electronic Service List as the basis for our communications with other parties to ensure that the correct email addresses are used. Holtec’s Counsel received no indication that Alliance or Alliance’s Counsel failed to receive the October 24 email (e.g., a delivery failure notification).

Indeed, Alliance’s Counsel responded to Holtec’s Counsel’s request for consultation by email of October 26, 2018. *See* Attachment B. The email in its entirety states:

AFES opposes your motion to strike. Please include my email address on future correspondence, in addition to Rachael Lujan, my legal assistant.

Nowhere did Alliance’s counsel indicate that she had not received the consultation request. Nor did her response indicate any need for further consultation or suggest that Holtec’s Counsel ought to resend the consultation request to her other email address. This email response indicated, for the first time, that nlsstaff@swcp.com is not the email address of Alliance’s Counsel but is rather the email address of her legal assistant and that Alliance’s Counsel’s email address is nlsimmons@swcp.com, an email address that is not on the Electronic Service List.

Holtec’s use of the email address that Alliance used to sign up for the Electronic Service List, and used to receive electronic service, hardly indicates that our consultation was “a violation of NRC rules,” shows a “lack of interest in consultation,” was merely *pro forma* consultation, or is a basis for denying our Motion to Strike.

Respectfully submitted,

/Signed electronically by Anne R. Leidich/

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Counsel for HOLTEC INTERNATIONAL

Attachment A

From: Leidich, Anne
Sent: Wednesday, October 24, 2018 3:26 PM
To: allison.hellreich@hoganlovells.com; sachin.desai@hoganlovells.com; nlsstaff@swcp.com; tjlodge50@yahoo.com; wtaylorlaw@aol.com
Cc: dcurran@harmoncurran.com; magolds@emory.edu; bob@kauffmaneye.com; Silberg, Jay E.
Subject: Request for Consultation

Counsel –

We are writing to seek your consultation on Holtec International’s filing of a Motion to Strike limited portions of the replies of Alliance for Environmental Strategies (“Alliance”), Don’t Waste Michigan et al., NAC International Inc., and Sierra Club.

The portions of the replies that we are currently planning to move to strike we believe include new facts or legal arguments that are improperly raised for the first time in the replies. These portions are:

- Alliance’s new argument in Contentions 1 and 2 alleging the need for a cumulative impacts analysis;
- Don’t Waste Michigan’s new argument in Contention 4 (Continued Storage Rule) that the Continued Storage Rule does not apply because Holtec is relying on DOE for funding and because of repackaging requirements;
- Don’t Waste Michigan’s new factual support in Contention 5 (Fracking) on earthquakes;
- Don’t Waste Michigan’s new argument in Contention 7 (Start Clean/Stay Clean) on the impacts from the “Repackaging Juggernaut”;
- NAC International’s new argument regarding an alleged “universal CISF license”; and
- Sierra Club’s new challenge in Contention 8 (Decommissioning Funding) to the rate of return of decommissioning funds and the surety mechanism.

We plan to file our Motion on Friday. Please let us know of your response prior to 5 PM Eastern on Friday.

Best regards,

Anne Leidich and Jay Silberg

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AUSTIN BEIJING HONG KONG HOUSTON LONDON LOS ANGELES MIAMI
NASHVILLE NEW YORK NORTHERN VIRGINIA PALM BEACH SACRAMENTO
SAN DIEGO SAN DIEGO NORTH COUNTY SAN FRANCISCO SHANGHAI
SILICON VALLEY TAIPEI TOKYO WASHINGTON, DC

Attachment B

From: Nancy Simmons <nlsimmons@swcp.com >
Sent: Friday, October 26, 2018 10:06 AM
To: Leidich, Anne; Rachael Lujan
Subject: AFES position on motion

Dear Ms. Leidich:

AFES opposes your motion to strike. Please include my email address on future correspondence, in addition to Rachael Lujan, my legal assistant.

Thank you,

Nancy Simmons

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Holtec International’s Motion for Leave to Reply to Alliance for Environmental Strategies’ Response to Holtec International’s Motion to Strike has been served through the EFiled system on the participants in the above-captioned proceeding this 8th day of November 2018.

/signed electronically by Anne R. Leidich/

Anne R. Leidich