

**UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT**

BEYOND NUCLEAR, INC.,	)	
	)	
	)	
Petitioner,	)	Case No. 18-1340
	)	
v.	)	
	)	
UNITED STATES NUCLEAR	)	
REGULATORY COMMISSION and the	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondents.	)	
	)	

**UNDERLYING DECISION FROM WHICH PETITION ARISES**

Petitioner Beyond Nuclear, Inc. has attached a copy of the underlying decision from which this appeal arises: an Order issued by the U.S. Nuclear Regulatory Commission (“NRC”) on October 29, 2018, in the following proceedings: *Holtec International* (Consolidated Interim Storage Facility) (Docket No. 72-1051) and *Interim Storage Partners L.L.C.* (WCS Consolidated Interim Storage Facility) (Docket No. 72-1051).

Respectfully submitted,

*/s/ Diane Curran*

DIANE CURRAN

Harmon, Curran, Spielberg

& Eisenberg, LLP

1726 M Street NW, Suite 600

Washington, D.C. 20036

Tel: (202) 328-3500

Fax: (202) 328-6918

Email: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

*/s/ Mindy Goldstein*

MINDY GOLDSTEIN

Turner Environmental Law Clinic

Emory University School of Law

1301 Clifton Road

Atlanta, GA 30322

404-727-3432

Fax: 404-727-7853

Email: [magolds@emory.edu](mailto:magolds@emory.edu)

March 18, 2019

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

<hr/>	
In the Matters of	)
	)
	)
HOLTEC INTERNATIONAL	)
	)
(HI-STORE Consolidated Interim Storage Facility)	)
	)
	)
INTERIM STORAGE PARTNERS LLC	)
	)
(WCS Consolidated Interim Storage Facility)	)
	)
	)
<hr/>	)

Docket No. 72-1051

Docket No. 72-1050

**ORDER**

On July 16, 2018, the NRC provided notice in the *Federal Register* of Holtec International’s application to construct and operate a consolidated interim storage facility for spent nuclear fuel.<sup>1</sup> Separately, on August 29, 2018, the NRC provided notice in the *Federal Register* of Interim Storage Partners’ application to construct and operate a consolidated interim storage facility for spent nuclear fuel.<sup>2</sup>

On September 14, 2018, Beyond Nuclear, Fasken Land and Minerals, and Permian Basin Land and Royalty Owners filed motions to dismiss both the Holtec and Interim Storage Partners applications.<sup>3</sup> These groups argue that the NRC cannot, as a threshold matter, issue

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<sup>1</sup> Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919 (July 16, 2018).

<sup>2</sup> 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). Interim Storage Partners is a joint venture of Orano USA and Waste Control Specialists.

<sup>3</sup> Beyond Nuclear filed its own motion to dismiss. *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,

licenses to Holtec or Interim Storage Partners because both applications are contrary to the Nuclear Waste Policy Act (NWPAA). Specifically, the groups argue that both applications contemplate the storage of Department of Energy-titled spent fuel in violation of various NWPAA provisions.

The NRC's regulations allow interested persons to file petitions to intervene and requests for hearing in which they can raise concerns regarding a particular license application. These regulations do not, however, provide for the filing of threshold "motions to dismiss" a license application; instead, interested persons must file petitions to intervene and be granted a hearing. I therefore deny both motions to dismiss on procedural grounds, without prejudice to the underlying merits of the legal arguments embedded within the motions.

Beyond Nuclear also filed hearing petitions in the Holtec and Interim Storage Partners proceedings that incorporated by reference the NWPAA arguments that it raised in its motion to dismiss and identified those arguments as proposed contentions.<sup>4</sup> I am separately referring these hearing requests—as well as other hearing requests challenging the applications—to the Atomic Safety and Licensing Board Panel (ASLBP) for the establishment of a Board to consider *all* hearing requests in accordance with the hearing procedures set forth in 10 C.F.R. §2.309. And, in accordance with 10 C.F.R. § 2.346(i), I am referring the motion from Fasken Land and

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2018) (ADAMS Accession No. ML18257A318). Fasken Land and Minerals joined with Permian Basin Land and Royalty Owners to file a motion to dismiss that is substantially similar to Beyond Nuclear's motion. *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) (ML18257A330). Both the NRC Staff and respective applicants filed oppositions to the motions, and Beyond Nuclear, Fasken Land and Minerals, and Permian Basin Land and Royalty Owners then filed replies.

<sup>4</sup> *Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene* (Sept. 14, 2018) (ML18257A324) (Holtec docket); *Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene* (Oct. 3, 2018) (ML18276A242) (Interim Storage Partners docket). Fasken Land and Minerals and Permian Basin Land and Royalty Owners have not filed related hearing petitions in either docket.

Minerals and Permian Basin Land and Royalty Owners to the ASLBP for consideration under § 2.309.

This Order is issued under my authority in 10 C.F.R. § 2.346(c), (g), (i), and (j).

IT IS SO ORDERED.

For the Commission

**NRC SEAL**

**/RA/**

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 29<sup>th</sup> day of October 2018

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER OF THE SECRETARY** have been served upon the following persons by Electronic Information Exchange (EIE).

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3F23  
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop - O-15 D21  
Washington, DC 20555-0001

Sarah Ladin, Law Clerk  
E-mail: [sarah.ladin@nrc.gov](mailto:sarah.ladin@nrc.gov)

Patrick Moulding, Esq.  
E-mail: [patrick.moulding@nrc.gov](mailto:patrick.moulding@nrc.gov)

Joseph McManus, Law Clerk  
E-mail: [joseph.mcmanus@nrc.gov](mailto:joseph.mcmanus@nrc.gov)

Sara B. Kirkwood, Esq.  
E-mail: [sara.kirkwood@nrc.gov](mailto:sara.kirkwood@nrc.gov)

Taylor A. Mayhall  
E-mail: [taylor.mayhall@nrc.gov](mailto:taylor.mayhall@nrc.gov)

Mauri Lemoncelli, Esq.  
E-mail: [mauri.lemoncelli@nrc.gov](mailto:mauri.lemoncelli@nrc.gov)

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

Christopher Hair, Esq.  
E-mail: [christopher.hair@nrc.gov](mailto:christopher.hair@nrc.gov)

Joseph I. Gillespie, Esq.  
E-mail: [joe.gillespie@nrc.gov](mailto:joe.gillespie@nrc.gov)

Krupskaya T. Castellon, Paralegal  
E-mail: [krupskaya.castellon@nrc.gov](mailto:krupskaya.castellon@nrc.gov)

Holtec Counsel  
Pillsbury Winthrop Shaw Pittman LLP  
1200 Seventeenth Street, NW  
Washington, DC 20036

OGC Mail Center: Members of this office have received a copy of this filing by EIE service.

Jay Silberg, Esq.  
E-mail: [jay.silberg@pillsburylaw.com](mailto:jay.silberg@pillsburylaw.com)

Don't Waste Michigan  
316 N. Michigan Street, Suite 520  
Toledo, OH 43604-5627

Timothy J. Walsh, Esq.  
E-mail: [timothy.walsh@pillsburylaw.com](mailto:timothy.walsh@pillsburylaw.com)

Terry J. Lodge, Esq.  
E-mail: [tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)

Anne Leidich, Esq.  
E-mail: [anne.leidich@pillsburylaw.com](mailto:anne.leidich@pillsburylaw.com)

Sierra Club  
4403 1<sup>st</sup> Avenue SE, Suite 402  
Cedar Rapids, IA 52402

Michael Lepre, Esq.  
E-mail: [michael.lepre@pillsburylaw.com](mailto:michael.lepre@pillsburylaw.com)

Wallace L. Taylor, Esq.  
E-mail: [wtaylor784@aol.com](mailto:wtaylor784@aol.com)

Docket No. 72-1051

**ORDER OF THE SECRETARY**

Harmon, Curran, Spielberg & Eisenberg LLP  
1725 DeSales Street NW  
Suite 500  
Washington, DC 20036

Diane Curran, Esq.

E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

Robert V. Eye Law Office, LLC  
4840 Bob Billings Parkway  
Lawrence, KS 66049

Robert V. Eye, Esq.

E-mail: [bob@kauffmaneye.com](mailto:bob@kauffmaneye.com)

Timothy J. Laughlin, Esq.

E-mail: [tijay1300@gmail.com](mailto:tijay1300@gmail.com)

Turner Environmental Law Clinic  
1301 Clifton Road  
Atlanta, GA 30322

Mindy Goldstein, Esq.

E-mail: [magolds@emory.edu](mailto:magolds@emory.edu)

City of Carlsbad, NM  
1024 N. Edward  
Carlsbad, NM 88220

Jason G. Shirley

E-mail: [jgshirley@cityofcarlsbadnm.com](mailto:jgshirley@cityofcarlsbadnm.com)

Eddy County, NM  
101 W. Greene Street  
Carlsbad, NM

Rick Rudometkin

E-mail: [rrudometkin@co.eddy.nm.us](mailto:rrudometkin@co.eddy.nm.us)

Hogan Lovells LLP  
555 13<sup>th</sup> Street NW  
Washington, DC 20004

Sachin S. Desai, Esq.

E-mail: [sachin.desai@hoganlovells.com](mailto:sachin.desai@hoganlovells.com)

Allison E. Hellreich, Esq.

E-mail: [allison.hellreich@hoganlovells.com](mailto:allison.hellreich@hoganlovells.com)

Law Office of Nancy L. Simmons  
120 Girard Boulevard SE  
Albuquerque, NM 87106

Nancy L. Simmons, Esq.

E-mail: [nlsstaff@swcp.com](mailto:nlsstaff@swcp.com)

Eddy-Lea Energy Alliance  
102 S. Canyon  
Carlsbad, NM 88220

John A. Heaton

E-mail: [jaheaton1@gmail.com](mailto:jaheaton1@gmail.com)

City of Hobbs, NM  
2605 Lovington Highway  
Hobbs, NM 88242

Garry A. Buie

E-mail: [gabuie52@hotmail.com](mailto:gabuie52@hotmail.com)

Lea County, NM  
100 N. Main  
Lovington, NM 88260

Jonathan B. Sena

E-mail: [jsena@leacounty.net](mailto:jsena@leacounty.net)

[Original signed by Brian Newell]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 29<sup>th</sup> day of October, 2018