

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY LICENSING BOARD**

IN THE MATTER OF  
HOLTEC INTERNATIONAL

(Consolidated Interim Storage Facility)

Docket No. 72-1051

June 11, 2020

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**FASKEN LAND AND MINERALS, LTD.'S AND PERMIAN BASIN LAND AND  
ROYALTY OWNERS' COMBINED REPLY TO NRC STAFF'S AND HOLTEC  
INTERNATIONAL'S OPPOSITIONS TO MOTION FOR LEAVE  
TO FILE AMENDED CONTENTION AND MOTION TO REOPEN THE RECORD**

Now comes Fasken Oil and Ranch Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”) (collectively “Petitioners”), by and through undersigned counsel, who respectfully submit the foregoing reply in further support of their Motion for Leave to File Amended Contention No. 2<sup>1</sup> and Motion for Leave to Reopen the Record<sup>2</sup> before the Atomic Safety Licensing Board (“ASLB”) in the above-captioned matter, and state as follows:

## I. INTRODUCTION

Petitioners filed Amended Contention No. 2 (“Contention”) to challenge newly disclosed material facts and conclusions in the Holtec International (“Holtec”) draft environmental impact statement (“DEIS”), which contain glaring omissions, inaccuracies, and inconsistencies regarding the ownership of subsurface mineral rights, oil and gas and mineral extraction operations, geologic characteristics and subsurface stability in the region of the proposed Holtec consolidated interim storage facility (“CISF”) project. Reliance on a less-than-complete record in the context of licensing a facility to house the entire nation’s nuclear storage will simply not suffice. Petitioners’ Contention implicates serious and important safety and environmental issues that the United States Nuclear Regulatory Commission (“NRC”) must notice, disclose and appropriately review and address in the licensing of the proposed Holtec CISF project.

The NRC Staff’s Opposition and Holtec’s Opposition<sup>3</sup> present misleading accounts of the factual content and basis for Petitioners’ Contention and unforgivably downplay the importance

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<sup>1</sup> *Fasken Land and Minerals, Ltd.’s and Permian Basin Land and Royalty Owners Motion for Leave to File Amended Contention No. 2* (May 11, 2020) (ADAMS Accession No. ML20132F019), hereinafter “Motion to Amend.”

<sup>2</sup> *Fasken Land and Minerals, Ltd.’s and Permian Basin Land and Royalty Owners Motion to Reopen the Record* (May 11, 2020) (ML20132E724), hereinafter “Motion to Reopen.”

<sup>3</sup> *NRC Staff Answer in Opposition to Fasken Land and Minerals, Ltd.’s and Permian Basin Land and Royalty Owners Motions to Amend Contention 2 and Reopen Record* (June 4, 2020) (ADAMS Accession No. ML20156A228; *Holtec International’s Answer Opposing Fasken Land and Minerals, Ltd.’s and Permian Basin Land and Royalty Owners*

of apposite analyses when considering a storage site for the nation's high-level radioactive waste. Contrary to assertions in the Oppositions, Petitioners' Contention identifies new and materially different information in the Holtec draft environmental impact statement ("Holtec DEIS")<sup>4</sup> that unacceptably fail to analyze cumulative impacts on geology and soils and land use. Petitioners' Contention is supported by robust factual and expert evidence. Indeed, Petitioners precisely cite to deficiencies in data, analyses and conclusions in specific sections of Holtec's application<sup>5</sup> and the DEIS, and unequivocally pin-point materiality of Holtec's long over-due responses to requests for additional information (RAIs), information which the NRC itself deems critical for review of Holtec's license.<sup>6</sup> Such incomplete, inconsistent and inaccurate information cannot form the basis for proper cumulative impact analyses under the National Environmental Policy Act ("NEPA")<sup>7</sup> or genuine site evaluation analyses under NRC regulations.<sup>8</sup> Petitioners' Contention clearly articulates disputes that implicate important legal issues, safety risks and environmental impacts relating to the construction and operation of the proposed Holtec CISF project. Petitioners have good cause to file their Contention, it is timely, admissible, and further supported by a Motion to

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*Motion to Reopen the Record and Motion for Leave to File Amended Contention No. 2* (June 5, 2020) (ADAMS Accession No. ML20157A270), collectively "Oppositions.")

<sup>4</sup> Environmental Impact Statement for the Holtec International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel and High-Level Waste, Draft for Comment, NUREG-2237 (March 2020) (ADAMS Accession No. ML20069G420), herein after "Holtec DEIS."

<sup>5</sup> Holtec Environmental Report on the HI-STORE CIS Facility, Rev. 7, Docket No. 72-1051 (August 2019) (ADAMS Accession No. ML19309E337), herein after "Holtec ER" and Holtec Safety Analysis Report, Rev. H (DATE) (ADAMS Accession No. ML19163A062), hereinafter "Holtec SAR."

<sup>6</sup> See Motion for Leave pp. 20-28, Exhibit 2; Jose Cuadrado (NRC Project Manager) Letter to Kim Manzione (Holtec Licensing Manager) re First Request for Additional Information, Part 5 (November 14, 2019), ADAMS No. ML193322C260 ("...additional information is necessary in connection" with NRC Staff's "technical review" of Holtec's application).

<sup>7</sup> The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, herein after "NEPA."

<sup>8</sup> See *e.g.*, 10 C.F.R. §§ 72.11, 72.24, 72.90(a)-(d), 72.94, 72.98, 72.103(f), 72.122.

Reopen the Record which satisfies the requirements of 10 C.F.R. § 2.236.<sup>9</sup> Thus, the Board should grant Petitioners' Motions.

## II. LEGAL STANDARDS

The NRC cannot grant a license for the proposed CISF project until it determines that applicable regulatory requirements of the Atomic Energy Act of 1954 ("AEA"), NEPA and NRC are satisfied.<sup>10</sup> NRC regulations demand complete, accurate and reliable data to analyze site evaluation factors, including subsurface and geologic characteristics and a competent technical review of natural and man-induced events based on the "current state of knowledge."<sup>11</sup> It should go without saying that all NRC license applications must be "complete and accurate in all material respects."<sup>12</sup>

NEPA requires the NRC focus on "the environmental consequences" of the proposed CISF project "[so] that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."<sup>13</sup> NEPA's primary purpose is to

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<sup>9</sup> See *Calvert* at 730-731 ("The regulations do not define or specify an exact number of days within which a new or amended contention must be filed in order to be considered 'timely,'...unless a deadline has been specified...timeliness is subject to a reasonableness standard that depends on the facts and circumstances of each situation."); *In the Matter of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 N.R.C. 491, 491 (2012) (noting that "although 'timely' is not expressly defined by months or days in [NRC] regulations. . . typically [] 30 to 60 days from the initiating event [is considered] a reasonable deadline for proposing new or amended contentions."); *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), 67 N.R.C. 460, 493 (2008) (30 days held as presumptive time frame for timeliness of late-filed contentions).

<sup>10</sup> See *Holtec DEIS* at 4-102; see also 10 C.F.R. §51.10(a) (Nothing in the NRC NEPA implementing regulations alter the cardinal rule that license applications comply with all NRC regulations. Indeed, NEPA regulations must be carried out in a "manner which is consistent with the NRC's domestic licensing and regulatory authority under the [AEA].")

<sup>11</sup> See 10 C.F.R. §§ 72.92, 72.94 (requiring examination of important natural phenomena and man-induced events, "based on the current state of knowledge of such events"); see also, 10 C.F.R. § 72.103(a)(1) (The NRC requires "...the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site....") (emphasis added).

<sup>12</sup> See 10 C.F.R. § 72.11(a) (information provided by a license applicant to the Commission must be "complete and accurate in all material respects") (emphasis added).

<sup>13</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

inform the public of environmental issues to encourage public participation and challenges to ensure optimal results based on best possible record. This is especially true in the context of the proposed CISF project – when transporting, storing and then re-transporting unprecedented amounts of highly radio-active nuclear waste – there is very little room for error.

If the NRC DEIS “contains data or conclusions. . .of the proposed action that differ significantly from those contained in the [ER] (an applicant’s document), the petitioner may file an amended contention, or an entirely new contention, to challenge the new data or conclusions.”<sup>14</sup> The use of a disjunctive phrase here indicates a “contention may therefore challenge a DEIS even though its ultimate conclusion on a particular issue. . . is the same as that in the ER, as long as the DEIS relies on significantly different data than the ER to support the determination.”<sup>15</sup>

### **III. FURTHER SUPPORT FOR AMENDED CONTENTION NO. 2**

#### **A. *Petitioners Have Good Cause to File Amended Contention No. 2***

Reliance on false and speculative information in the Holtec DEIS, by its very nature, prevents proper NEPA or NRC evaluation of environmental impacts and safety risks. Petitioners have good cause to file Amended Contention No. 2 and meet the requirements of 10 C.F.R. § 2.309(c)(1). Accurate, complete, and reliable inputs and information are necessary to appropriately assess and analyze cumulative environmental effects and potential safety issues of the proposed Holtec CISF over the lifetime of the project. The recently published Holtec DEIS presents new and materially different information and conclusions as to purported drilling depths, mineral and

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<sup>14</sup> *In the Matter of Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), 72 N.R.C. 720, 729-730, LBP-10-24 (Dec. 28, 2010) (“*Calvert*”).

<sup>15</sup> *Calvert*, 72 N.R.C. at 730 (“The reverse is also true: a significantly different conclusion in the DEIS may be challenged even though it is based on the same information that was cited in the ER.”). *See also*, *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 533 (2005) (“Our rules expressly allow timely amendment of NEPA contentions if there is significant new information or different conclusions in the DEIS that could not have been challenged previously”).

oil and gas extraction activities, alleged future land use restrictions, and methodologies of analyses as to the cumulative impacts on geology and soils and land use. As described herein, Petitioners genuinely dispute the underlying information (or lack thereof) and conclusions on these material issues, considered indispensable under NRC and NEPA regulations and in the context of nuclear storage waste.

Petitioners timely filed Amended Contention No. 2 on May 11, 2020 pursuant to the NRC's April 7, 2020 Order<sup>16</sup> deeming "petitions to intervene, new or amended contentions, or hearing requests based on information in the [Holtec DEIS]. . ." timely if filed on or before that date.<sup>17</sup>

#### ***A. Outstanding RAIs Implicate Important Safety and Environmental Issues***

Much like Holtec's delays in disclosing subsurface mineral rights and ownership early on,<sup>18</sup> which has led to significant and material inconsistencies in its application documents regarding land use and potential geologic impacts, Holtec's substantial delays in responding to the NRC's RAIs precludes a fulsome review and analysis of the impacts of the proposed CISF as required under NEPA and NRC regulations. The NRC itself concedes this long-overdue

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<sup>16</sup>*Holtec Int'l* (HI-STORE Consolidated Interim Storage Facility), Order of the Secretary (Apr. 7, 2020), at 1 (unpublished) (ML20098F515).

<sup>17</sup> As noted in NRC Staff's Opposition at pp. 7-8, , the triggering event for timeliness is when information becomes "reasonably available to the public." Publication of the Holtec DEIS is the triggering event. When Fasken could have obtained oil and gas well information through *commercial* software is irrelevant here, where timeliness is based on publication of the Holtec DEIS, and Fasken timely responded to the new and significantly different data and/or conclusions in same.

<sup>18</sup> Letter from Stephanie Garcia Richard, Comm'r, N.M. State Land Office, to Krishna Singh, President and CEO, Holtec (June 19, 2019) (ML19183A429) ("As New Mexico's Commissioner of Public Lands, with direct oversight of mineral leasing at the location of Holtec's planned facility, I write. . .to address several misrepresentations that Holtec made to the NRC and New Mexicans about its control of the proposed disposal site as well as agreements that it claims to have secured...[Holtec's ER and SAR] have the potential, intended or not, to mislead federal regulators and the public alike. . Holtec's claim that it has secured third-party agreements for control of the Site is incomplete at best. . .In addition to misstating its control over the Site, Holtec also treats as a foregone conclusion the State Land Office's ability and desire to restrict oil and gas drilling on the Site. . .[including] proposed. . .land use restriction or condition on all mineral development on the Site. . [a] ban on oil and gas development between the surface and a depth of 3,000 feet, and a prohibition on any directional or horizontal wells bottomed beneath the site that Holtec believes might "disturb or conflict" with its use of the site.").

information is “necessary in connection with its review” of Holtec’s license application and required by NRC regulations.<sup>19</sup>

Contrary to the Oppositions, Holtec’s allegedly forthcoming responses to the outstanding RAIs are inextricably linked to both *environmental and safety* aspects. More specifically, this withheld data and information relates to surrounding land uses (oil and gas operations, active and abandoned oil and gas wells on the site, drilling depths, potash mining) and the interdependent and cumulative impacts of land uses on geology and soils (seismicity, geotechnical properties, stability of subsurface materials, immediate, elastic, consolidation-related and secondary settlement, and the potential for sinkholes, karst formation and catastrophic subsidence).<sup>20</sup>

Shielding this information prevents meaningful and well-informed challenges to evaluations of the substantive impacts of the proposed project on the human environment, in violation of NEPA regulations, circumventing its fundamental purpose of public participation. Perhaps most importantly, the NRC itself cannot effectively conduct technical reviews, characterize the affected environment, evaluate collective and cumulative impacts or potential safety risks without this vital information, let alone conduct an *independent and reliable review* or

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<sup>19</sup> See Jose Cuadrado (NRC Project Manager) Letter to Kim Manzione (Holtec Licensing Manager) re First Request for Additional Information, Part 5 (November 14, 2019), ADAMS No. ML193322C260; *see also* Exhibit 2 to Motion to Amend (listing all relevant outstanding RAIs); 10 C.F.R. §§ 72.11, 72.24, 72.90(a)-(d), 72.94, 72.98, 72.103(f), 72.

<sup>20</sup> See Exhibit 2 to Motion to Amend. Such examples include but are not limited to: RAI 2-5 (additional information needed on existing structures and assessments of potential hazards posed by them to the proposed facility if they would not be dismantled or, in the case of the producing oil/gas wells, abandoned and plugged); RAI 2-10, RAI 2-11, RAI 2-12 (additional information needed regarding potash extraction “needed to estimate the potential maximum surface subsidence” and “potential subsidence hazards”); RAI 2-25 and RAI 2-26 (additional information needed to analyze potential for subsurface deformation from natural processes or human activities, “potential for catastrophic subsidence” noting “the application does not consider surface deformation from the exploration or extraction of minerals or other resources other than potash, oil, or gas.”); RAI-29 (additional information needed as to fractured rock, occurrence of slickenslides and associated geologic or tectonic events); RAI 2-31 (“Justify not incorporating site-specific subsurface geologic and geophysical properties through a site response analysis for the development of the site-specific design basis earthquake (DBE)); various RAIs for “Stability of Subsurface Materials” and immediate, elastic, consolidation-related and secondary settlement. *See also*, Decl. of S. Pollock (improperly cased orphaned and abandoned wells on the site have potential for corrosion and subsidence).

appropriate NEPA cumulative impacts analysis on land use or geology and soils for the proposed Holtec CISF project.

**i. *Ever-Evolving and Erroneous Descriptions of Subsurface Mineral Rights, Drilling Depths and Nearby Mineral, Brine and Oil and Gas Extraction Activities in the Proposed Holtec Region***

Faulty descriptions of oil and gas, brine and mineral extraction activities in the area surrounding the site substantially skew analyses of cumulative impacts under NEPA and prohibit sound evaluation of site factors under NRC regulations. The Holtec ER falsely states drilling in the proposed area, at the epicenter of the nation’s oil and gas and mineral extraction operations, would occur only at depths greater than 5,000 feet and drilling directly below the proposed site would be proscribed entirely. Based on brand-new data sources and RAIs predating the Holtec DEIS (RAIs Holtec actually provided responses for), the Holtec DEIS, in stark contrast to the ER, conclusory states that all drilling in the area occurs at depths greater than 3,050 feet.<sup>21</sup> The Holtec DEIS uniquely references an outdated 1978 source for this faulty premise. As noted and de-bunked in the expert Declaration of S. Pollock – these historical assertions as to drilling depths are patently untrue in modern times.<sup>22</sup>

Drilling depths in the region are not the only thing Holtec seriously misconstrues. Petitioners’ Contention describes multiple misconceptions and material inconsistencies throughout Holtec’s ever-changing application documents related to past, present and future extraction operations, seismicity and geologic characteristics in the region.<sup>23</sup> The Holtec ER, SAR and DEIS

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<sup>21</sup> “The proposed CISF will have no impact on oil and gas exploration and development in the proposed project area because extraction will continue to occur at depths greater than 930m [3,050 ft].” Holtec DEIS at xxiv-xxv.

<sup>22</sup> See Exhibit 4 to Motion to Amend (“recent technological advances. . .and better imaging of shallow formation” allow for drilling at shallower depths. . .[and] [t]his region is historically known for subsurface subsidence due to the mining of salt formations that produce Potash which also occurs between the surface and 3050’.”).

<sup>23</sup> See Exhibit A, attached hereto evidencing same.

significantly differ on a number of issues, including but not limited to, subsurface mineral right ownership, drilling depths, negative easement and land use restrictions., active and ongoing oil and gas activities, historical and future mining operations, seismicity, and subsidence in the proposed CISF region over the lifetime of the proposed Holtec project.

Contrary to previous assertions, for the first time, the Holtec DEIS states it is “in discussions” with the New Mexico Land Commissioner to proscribe potash mining extraction beneath and around the site. This vague and conclusory statement, lacking any concrete source or reference, is also cryptic as to whether this proscription of mining activity directly and surrounding the site would be for the initial license period or potential lifetime of the proposed Holtec CISF project. Such information is also the subject of outstanding NRC RAIs. Such speculation and lack of response makes it exceedingly difficult for the NRC to analyze cumulative impacts and in turn, the public to meaningfully respond to the proposed project.

The Holtec DEIS also for the first time, describes the existence of an active well directly below the proposed CISF site. The DEIS speculates that the active well in “the SW corner operates at minimum to maintain mineral production.” This substantially differs from the Holtec ER, which states there are “no active wells” at the proposed CISF site.<sup>24</sup> The NRC Staff states the source for this unfounded statement is the NM OCD website, although the DEIS does not expressly reference any specific source whatsoever, and the NM OCD website is silent as to the intent for future production at the currently active well directly below the proposed Holtec site. The publicly available information says nothing about intent for future production and the NRC fails to cite to

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<sup>24</sup> *Id.*

a reliable or verifiable source that the public could possibly challenge in violation of NEPA and NRC regulations.

With an ever-moving target and the absence of accurate, complete and reliable information, the NRC cannot fulfill its duties under NEPA or NRC regulations, evaluate site factors or prepare a DEIS without reasonable assessments of the past abandoned and orphaned wells on site and cavernous potash mining extractions nearby, reliable information regarding the present active oil well directly below the proposed site, and the full story as to future potash mining extractions and oil and gas operations directly below and surrounding the proposed CISF.

Moreover, these known interdependent activities, when combined with unknown and undiscussed risks like other mineral extraction operations in the area, uncertain subsurface and aquifer characterization, unmapped faults and natural seismicity, create the potential for sinkholes, settlement, and subsidence. When dealing with nuclear waste, these interactions cannot be ignored. The NRC must independently review and evaluate site characteristics given the current state of knowledge of known extraction operations, the interconnectedness of such activities and synergies of such risks with the proposed CISF project and their collective and cumulative impacts on geology and soils.

***ii. NRC Use of 6-Mile Radius for Land Use Impacts in the Holtec DEIS is New and Materially Different Information***

NEPA warrants a “hard look” at the cumulative impacts of land use and impacts on geology and soils. This is particularly true in the region of proposed CISF with historic mineral exploration, actively ongoing and extensive oil and gas development and unique geology. As Holtec’s application recognizes, subsidence in the Delaware Basin is “controlled by several factors, most

of which are interdependent. . .[t]aken collectively, they demonstrate the complexity of the subsidence process.”<sup>25</sup> Coupled with unknown and sometimes unpredictable risks in this region, these factors have the potential to lead to settlement and “catastrophic subsidence.”<sup>26</sup>

In the recent Holtec DEIS, the NRC found cumulative impacts of the proposed project to be of MODERATE impact on geology and soils – a materially different and substantial degree of impact higher than Holtec’s previous findings. By comparison, Holtec’s ER summarily found only a minimal cumulative impact on geology and soils and “no significant impact” from the proposed project and its thousands of MTUs of nuclear waste and concrete cask systems to be stored over the initial 40-year term of the license period at the proposed site.<sup>27</sup>

Despite the NRC’s MODERATE cumulative impact findings for geology and soils and acknowledged, well-known interdependence of factors relating to land use in the proposed region leading to subsidence and sinkholes, the NRC surprisingly decided to substantially limit the radius for its analysis of cumulative land use impacts for the proposed Holtec CISF. In the Holtec DEIS, the NRC narrowed, by orders of magnitude, the radius for analysis of cumulative land use impacts from the 50-mile radius utilized in the ER to a mere 6-mile radius in the Holtec DEIS.<sup>28</sup>

The NRC claims its decision to use a 6-mile radius is “not materially different” because it is “based on a sub-set of information” that Holtec previously provided inaccurately, unreliably and incompletely describing the known historical, present and future land use in its ER. As discussed

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<sup>25</sup> Holtec SAR at 2-9.

<sup>26</sup> Holtec SAR at 2-11.

<sup>27</sup> Holtec ER at 5-3 (“Impacts to geology and soils would be minimal and would be limited to soil disturbance and temporary increases in soil erosion at the CISF. There are no known significant new projects in the project area, and for purposes of this cumulative impact assessment, the existing activities (nuclear or non-nuclear) are assumed to continue at current levels, with no significant impact on geology and soils.”); *see also* Motion to Amend at 12.

<sup>28</sup> *See* NRC Staff Answer at 12 (NRC explains use of the 6-mile radius is “necessarily a subset of the same information already provided in ER.”)

herein and as the NRC's own outstanding RAIs acknowledge, Holtec's inconsistent descriptions of oil and gas and mineral extraction operations has substantially changed over time. Petitioners, with technical expertise in geology and such operations specifically in the region of the proposed site, resolutely dispute Holtec's distorted descriptions. The NRC did not conduct an independent evaluation of land use information or geology and oils and its lack of independent review and reliance on Holtec's material misrepresentations and sub-par analyses of the proposed CISF, violate the NRC's obligations as a federal agency under NEPA, its own regulations, federal and state laws.

***B. Petitioners Present Material Disputes<sup>29</sup> with Robust Factual Support***

The Oppositions flip flop as to Petitioners' sufficiency of evidence and the materiality of disputes, criticizing Petitioners for failing to cite to the DEIS and relevant regulations. This is also false as stated herein and in Petitioners' Motions. Petitioners have pinpointed the falsehoods and material facts and underlying premises in specific sections of Holtec's application and provided factual evidence to the moving targets Holtec has created with the countless revisions to its application documents.<sup>30</sup>

Petitioners adamantly dispute the veracity of statements in Holtec's application as to oil and gas and mining extraction operations and geology and soils. Such information is imperative to

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<sup>29</sup> See, *U.S. Dept. of Energy*, CLI-09-14, 69 NRC 580, 588 (2009) (demonstrating a genuine dispute of fact or law requires a petitioner to show "specific ties to NRC regulatory requirements, or to safety in general"); *Nextera*, LBP-17-07, 75 NRC 301 (finding "sufficient information" to demonstrate a genuine dispute to require inclusion of references to specific portions of the application that a petitioner disputes and for deficient applications, identification of alleged areas of deficiencies with supporting beliefs).

<sup>30</sup> See Petitioners Motion to Amend at 12 ("Holtec's application misleads the NRC and the public regarding subsurface mineral rights, ongoing oil and gas and mining extraction operations, geologic characteristics and the cumulative impacts the proposed CISF [] and regional activities will have on the environment, land use, and surrounding populations."); see also, Exhibit 2 (listing facts and information Petitioners intend to rely on in support of Amended Contention No. 2).

NRC's review of Holtec's license and is precisely the type of information that should be subject to hearing and adversarial process by competent interested parties to establish a complete and transparent record and inform the public of environmental impacts and potential safety risks of the proposed project. Petitioners are experienced and knowledgeable in the field, are challenging material issues and have put forth concrete evidence to back it up. Holtec should have been forthright and provided accurate information to the NRC as to active and ongoing mineral extraction operations and geologic characteristics. The NRC and public cannot consider alternative sites or implement mitigation strategies and alterations to safety structures and components, including the concrete pads, without accurate and complete information. Because Holtec failed to provide such and the NRC failed to independently review or confirm the reliability of the applicant's information, the Holtec DEIS falls short of NRC and NEPA standards.

### C. CONCLUSION

Threshold admissibility requirements should not be turned into a "fortress to deny intervention."<sup>31</sup> There is no requirement at this stage in NRC proceedings that Petitioners prove the merits of their case.<sup>32</sup> Timeliness and procedural issues should not overtake substance. The massive undertaking of this project deserves reciprocal analyses and cumulative impacts.

**WHEREFORE**, Petitioners pray the ASLB allow Petitioners' Motion to Reopen the Record and admit Amended Contention No. 2 for full adjudication. for full adjudication.

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<sup>31</sup> *Power Authority of the State of New York, et al.* (James Fitz Patrick Nuclear Power Plant; Indian Point Nuclear Generating Unit 3), CLI-00-22, 52 NRC 266, 295 (2000); *Matter of Duke Energy Corp.* (Oconee Nuclear Power Plant), CLI-99-11, 49 NRC 328, 335 (1999) (quoting *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), 8 AEC 13, 20-21 (1974), rev'd in part, CLI-74-32, 8 AEC 217 (1974), rev'd in part, *York Committee for a Safe Environment v. N.R.C.*, 527 F.2d 812 (D.C. Cir. 1975)).

<sup>32</sup> *Matter of Entergy Nuclear Generation Co., et al.* (Pilgrim Nuclear Power Station), 50-293-LR (ASLB Oct. 16, 2006), 2006 WL 4801142 at (NRC) 85 (quoting *Oconee*, 49 NRC at 342)

Dated June 11, 2020

/electronically signed by Allan Kanner

**Kanner & Whiteley, LLC**

Allan Kanner, Esq.  
Conlee S. Whiteley, Esq.  
Elizabeth B. Peterson, Esq.  
Cynthia St. Amant, Esq.  
701 Camp Street  
New Orleans, Louisiana 70130  
Phone: (504) 524-5777  
Fax: (504) 524-5763

*Attorneys for Petitioners  
Fasken Oil and Ranch, Ltd. and PBLRO*

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I Allan Kanner certify that, on this 11th day of June, 2020, true and correct copies of Fasken's Reply to NRC Staff's and Holtec International's Oppositions to Motion for Leave to File Amended Contention and Motion to Reopen the Record, and attachments were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above-captioned proceeding.

*/electronically signed by Allan Kanner*

**Kanner & Whiteley, LLC**

Allan Kanner, Esq.  
Conlee S. Whiteley, Esq.  
Elizabeth B. Peterson, Esq.  
Cynthia St. Amant, Esq.  
701 Camp Street  
New Orleans, Louisiana 70130  
Phone: (504) 524-5777  
Fax: (504) 524-5763

*Attorneys for Petitioners  
Fasken Oil and Ranch, Ltd. and PBLRO*