

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

BEYOND NUCLEAR, INC.,

Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION and the UNITED STATES
OF AMERICA,

Respondents.

No. 20-1187

**MOTION OF HOLTEC INTERNATIONAL
FOR LEAVE TO INTERVENE**

Holtec International (“Holtec”) respectfully moves pursuant to 28 U.S.C. § 2348, Rule 15(d) of the Federal Rules of Appellate Procedure, and Circuit Rule 15(b), for leave to intervene as of right in the above-captioned action commenced by Beyond Nuclear, Inc. (“Beyond Nuclear”) on June 4, 2020.¹ In support of its motion, Holtec states the following:

Beyond Nuclear commenced this action to seek review of the Order issued by the Secretary of the United States Nuclear Regulatory Commission (the “NRC”)

¹ Petition for Review, Beyond Nuclear, Inc. v. United States Nuclear Regulatory Commission and the United States of America, No. 20-1187 June 4, 2020) (“Petition for Review”).

on October 29, 2018,² and the Memorandum and Order, CLI-20-04, issued by the NRC on April 23, 2020.³

The Secretary's Order denied Beyond Nuclear's Motion to Dismiss⁴ two separate licensing applications filed with the NRC. Each application requested NRC authorization to construct and operate a consolidated interim storage facility for spent nuclear fuel. Holtec filed one of those applications for its proposed HI-STORE facility located in New Mexico.⁵

The NRC's Memorandum and Order upheld the denial of Beyond Nuclear's petition to participate in the NRC proceeding to consider the Holtec application.⁶

In its Motion to Dismiss, Petition to Intervene and Petition for Review, Beyond Nuclear alleges that Holtec's application is contrary to the Nuclear Waste Policy Act and the Administrative Procedure Act.

Holtec is entitled to intervene as a matter of right in the above-captioned matter because Holtec is a party in interest in the matter before the NRC whose

² Order, NRC Docket Nos. 72-1050 and 72-1051 (Oct. 29, 2018) ("Order"), *see* Exhibit A to Petition for Review.

³ Memorandum and Order, CLI-20-04, issued on April 23, 2020 ("Memorandum and Order"), *see* Exhibit B to Petition for Review

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, NRC Docket Nos. 72-1050 and 72-1051 (Sept. 14, 2018) ("Motion to Dismiss").

⁵ *See* Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919 (July 16, 2018)

⁶ Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene (Sept. 14, 2018) ("Petition to Intervene").

interests would be adversely affected if the Order or the Memorandum and Order were enjoined, set aside, or suspended. 28 U.S.C. § 2348. Holtec is the applicant in NRC Docket No. 72-1051, one of the two NRC licensing proceedings to which the Order applies and the NRC licensing proceeding to which the Memorandum and Order applies. Holtec fully participated in the NRC process that resulted in the issuance of the Order and the Memorandum and Order. Because the purpose of the Motion to Dismiss and the Petition to Intervene is to prohibit the NRC's issuance of a license authorizing construction and operation of the Holtec facility, Holtec has a direct and substantial interest in the resolution of the Petition for Review. Without an NRC license, Holtec cannot construct and operate the proposed HI-STORE facility and hence cannot receive any return on its considerable investment in the project to date or receive any of the project's other expected benefits. Consequently, Holtec has substantial, direct, and tangible interests in this Court's affirmance of the Order and the Memorandum and Order. Accordingly, Holtec is entitled to intervene as of right in this action. 28 U.S.C. § 2348.

Respectfully submitted,

/s/ Jay E. Silberg

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June 26, 2020

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| v. | |) | No. 20-1187 |
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**HOLTEC INTERNATIONAL’S
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Holtec International (“Holtec”) respectfully submits this Corporate Disclosure Statement. Holtec is a Delaware corporation that has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The foregoing Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5); the type-style requirements of Fed. R. App. P. 32(a)(6); the length limitation set forth in F. R. App. P. 27(d)(2)(a); and the applicable rules for the U.S. Court of Appeals for the District of Columbia Circuit. The Motion was prepared in 14-point, double spaced Times New Roman font using Microsoft Word 2016. The Motion contains 691 words.

/s/ Timothy J. V. Walsh

Timothy J. V. Walsh

PILLSBURY WINTHROP SHAW PITTMAN, LLP

Counsel for Holtec International

CERTIFICATE OF SERVICE

I hereby certify that the electronic original of the foregoing “Motion of Holtec International for Leave to Intervene” was filed with the United States Court of Appeals for the D.C. Circuit on this 26th day of June, 2020 through the Court’s CM/ECF electronic filing system, and thus also served on counsel of record.

Courtesy copies have also been sent by email to counsel for Beyond Nuclear and the NRC.

/s/ Timothy J. V. Walsh

Timothy J. V. Walsh

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