

EXHIBIT 3

**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

November 5, 2020

AFFIDAVIT AND DECLARATION OF TOMMY E. TAYLOR

1. My name is Tommy E. Taylor, and my business address is 6101 Holiday Hill Road, Midland, Texas 79707. I reside at 4100 Timberglen Circle, Midland, Texas 79707. I am Sr. Vice President of Fasken Management, LLC, which is the general partner of Fasken Land and Minerals, Ltd. I am the Assistant General Manager of Fasken Oil and Ranch, Ltd., a subsidiary of Fasken Management (collectively “Fasken”), where I also serve as the partnership’s Director of Oil and Gas Development. I am authorized to execute this declaration on behalf of Fasken and on behalf of the Permian Basin Coalition of Land and Royalty Owners and Operators (PBLRO) of which I am the President and of which Fasken is a member.
2. This affidavit and declaration is submitted in support of Fasken and PBLRO’s Motion to Reopen the Record and Motion for Leave to File a New and Amended Contention in the Holtec licensing proceedings before the Nuclear Regulatory Commission (NRC) and to contest Holtec International’s application for the construction and operation of a consolidated interim storage facility (CISF) for spent fuel.
3. Fasken’s business activities include real estate development, agricultural activities such as grazing cattle and ranching and, primarily, oil and gas extraction and production in the Permian Basin region of west Texas and southeast New Mexico. PBLRO is a nonprofit corporation formed in response to the CISF applications of Holtec International, and Waste Control Specialists (WCS) / Interim Storage Partners. I am personally familiar with the sixty-five founding members of PBLRO and the nature of their agricultural, ranching, and oil and gas business activities in the Permian Basin. Of those members, there are multiple ranchers engaged in agricultural activities within five miles of the proposed CISF. These Coalition members have owned land in the area of the proposed storage sites for over a century and at least three PBLRO Coalition members are publicly traded corporations (two integrated and one large independent oil and gas operator) as well as numerous private companies involved in the extraction and production of oil and gas in the Permian Basin with ownership interest of minerals immediately beneath the proposed Holtec CISF and the surrounding area.
4. Fasken owns and/or leases property directly related to oil and gas activities, including the Baetz Federal lease, approximately two miles from the proposed

Holtec CISF. That Fasken acreage consists of over 2,000 acres located directly west and adjacent to the proposed Holtec CISF. Fasken has four producing wells on this acreage and many planned future well locations from established drilling islands. There are also at least 20 plugged and abandoned wellbores on this same acreage.

5. My understanding is that Holtec plans to construct and operate a storage facility at their proposed site to store spent nuclear fuel and high-level nuclear waste (collectively SNF) from commercial reactors in the United States.
6. I understand that a radiation release from the Holtec facility or a release during transport of SNF has the possibility of contaminating areas in which Fasken and other members of PBLRO currently conduct oil and gas activities, have existing property interests and/or extraction and production facilities.
7. A radiological contamination event has the potential to interrupt or foreclose further oil and gas extraction/production activities as well as agricultural activities, thereby diminishing or eliminating the economic value of the oil and gas assets and surface lands of Fasken and other members of PBLRO, as well as reducing economic benefits to the communities of the Permian Basin.
8. Fasken drilled its first oil well in the Permian Basin 70 years ago and its first well in the vicinity of the Holtec site in 1977. As part of Fasken's activities near the Holtec site, Fasken employees, including myself, routinely go to this area for work related purposes. Fasken employees make routine checks on oil and gas production equipment and inspect and conduct maintenance and/or repairs as needed.
9. As a petroleum engineer, officer for Fasken, and the Chairman-elect of the 1,000+ member Permian Basin Petroleum Association (PBPA), I am trained, knowledgeable, and personally familiar with the exploration and development of oil and gas, especially within the Permian Basin region of west Texas and southeast New Mexico. For over a century, Fasken has owned land and minerals within the vicinity of the proposed CISF. Fasken and members of the PBLRO own extensive interests within close proximity to the proposed Holtec CISF. Neither Fasken, nor any member of the PBLRO has relinquished any control, limited, or restricted in any way, their interests in favor of the proposed Holtec CISF.
10. As an officer of Fasken, Chairman-elect of the PBPA, and President of the PBLRO, I am authorized to speak to the Permian Basin oil and gas industry's opposition to the interim storage of SNF in the Permian Basin. Specifically, our industry is opposed to the licensing of Holtec's application currently under technical review by the NRC and raise the following issues in support of Fasken and PBLRO's Motion to Reopen the Record and Motion for a New Contention:
 - a. Holtec's CISF application, supporting documents, and public statements consist of misrepresentations as to 1) control of the proposed CISF site and of the subsurface, and 2) agreements regarding control of the site and subsurface. These falsehoods in Holtec's

submissions to the NRC have misled federal, state, and local governments and the public so much so as to create false impressions and, possibly, unmerited endorsement of the CISF. Holtec's mischaracterizations rise to the level of voiding the application and supporting documents, including the Facility Environmental Report (FER), the Safety Analysis Report (SAR), and the Draft Environmental Impact Statement (DEIS). Holtec's materially false statements should be investigated for possible violations of Section 1001 of the Federal Criminal Code and are so profound as to give rise to a need to Reopen the Record and warrant a New Contention so as to examine the credibility of the Holtec application affidavit(s) and call into question the credibility of the entire application so as to void the entire document.

- b. In Section 2.4.2 of their FER, Holtec purports oil drilling as being "proscribed at and around the site and would not affect the activities at the site." In their application and supporting documents, Holtec claims it has secured third-party agreements for control of the site. This is false. Holtec fails to acknowledge or have any regard for the interests of the mineral owners and lessees of minerals directly beneath and adjacent to their proposed CISF. Holtec's contempt for the interests of the New Mexico State Land Office and of lessees, including XTO/Exxon, is evidenced by the contradictory submissions of both Stephanie Garcia Richard, the Commissioner of Public Lands for the State of New Mexico, and Deanna Archuleta, New Mexico Public and Government Affairs Manager for XTO Energy, Inc., a subsidiary of ExxonMobil (XTO).
- c. In their *Attachment 1 to Holtec Letter 5025058, RAI Part 5 Responses, page 25*, Holtec claims that horizontal drilling "is the greatest concern for dissolution of salts and land subsidence," not only does Holtec fail to substantiate this claim, but Holtec goes on to claim that existing, plugged wells are not important to safety. This claim is made, again, without data or evidence to support it. Not only are these claims unsubstantiated, but they are also inaccurate. In their responses to RAIs, Holtec has not completely answered questions about the 18 plugged and abandoned wells at their proposed site. In their responses, Holtec claims "there is little to no potential for hazards to important-to-safety structures at the proposed facility from oil and gas well activity including existing plugged wells," which is untrue. In fact, the old wellbores beneath their site are known to those of us in the oil and gas industry as posing a potential threat of collapse due to deficient plugging. To the detriment of the State of New Mexico and to the owners and lessees of minerals, the hazard of old wellbores is not fully and adequately acknowledged nor addressed by Holtec.
- d. Further misinformation on the part of Holtec are its claims that potash mining is an impossibility beneath their proposed CISF. In fact, measured potash, evidenced by current maps of the Bureau of Land Management, is present beneath and surrounding the CISF and is found at shallow depths of one thousand feet beneath the surface. This

is not disclosed by Holtec nor is the fact that once Holtec's facility is constructed, mining of this shallow potash will be banned which said ban amounts to a taking.

- e. As with the legitimate possibility of conventional shaft mining or dissolution mining of potash directly beneath and surrounding the proposed Holtec CISF, the possibility and right to drill for oil and gas from within and from around the Holtec site is both legitimate and lawful. On page 29 of Holtec's *RAI Part 5 Responses* published October 21, 2020, Holtec reports: *the shallowest oil and gas formation, the Yates formation, is greater than 3050ft below the surface at the CISF site . . . because of this fact, any horizontal drilling under the site would occur at greater than 3050ft and only from drilling islands located outside of the CISF site.* Actually, that is false. The truth is that the Yates formation beneath and surrounding the proposed CISF occurs at shallower depths than is being reported by Holtec. The Yates formation occurs between the surface and 3050ft (usually found at 2500ft) and is best reached vertically and not horizontally, which vertical wells would be located directly above, at the surface, and not required to be situated at the drilling islands as claimed by Holtec's *RAI Part 5 Responses* but, instead, would be drilled from within the confines of the CISF site. The drilling and completion of vertical wells and wells at shallow depths is much less costly with less mechanical risk as compared to drilling deep targets. These potential vertical wells that are dismissed by Holtec are, in fact, more affordable than horizontal wells, more affordable than deeper geologic wells and more appealing during the current unprecedented pandemic. Renewed interest in exploring the Yates formation as well as other geologic formations beneath the CISF is a very real possibility as operators are revisiting previously dismissed formations thanks to new 3-dimensional seismic surveys and processing techniques revealing new opportunities for exploration. For these reasons, Holtec's responses to the possibility of vertical drilling from within the Holtec CISF site and potential for shallower than 3050ft horizontal drilling under the CISF site should best be answered by oil and gas operators including the actual owners of the subject minerals whose rights are dominant to those of Holtec, the mere surface owner. To be clear, Holtec is the holder of the servient estate and must accommodate the dominant mineral estate according to the law. The actual construction of a CISF at the proposed Holtec site would fly-in-the-face of established law and be the only manner by which Holtec's *RAI* statements could be made truthful for it would be the bar to mineral production and exploration beneath the CISF site and would amount to a taking.
- f. Holtec's *RAI Part 5 Responses* published October 21, 2020 misconstrues the legal rights of oil and gas lessees beneath the CISF site. There are no drilling depth restrictions on leases in New Mexico and potentially valuable resources are present at depths shallower than 3,050 feet.

- g. Holtec's license application claims that Holtec controls the minerals beneath their proposed CISF. This is false as is evidenced by the comments of XTO to the NRC's Draft Environmental Impact Statement. XTO's comments of September 22, 2020 were made publicly available on October 5, 2020 and brought to light critical factual and legal errors in Holtec's license application. XTO's comments show that Holtec either failed to exercise due diligence or purposefully misled the NRC; both of which call into question the credibility of Holtec and the validity of their application. The fact is that XTO is the current lessee of record of a mineral lease directly beneath the Holtec CISF. XTO holds the dominant mineral estate which cannot be encumbered by a surface agreement post-mineral-lease. XTO and any other entity holding an interest in the mineral estate beneath the Holtec CISF site has the right to produce minerals at any and every depth, utilizing conventional and unconventional methods, vertically and horizontally.
11. XTO/Exxon comments published on Oct. 5, 2020 raise serious issues involving undeveloped future mineral lease rights including correlative surface rights, which are guaranteed by law in the State of New Mexico. These rights supersede those of Holtec and, when lawfully exercised, would pose a risk and possibly interfere with the proposed Holtec CISF. Furthermore, the DEIS finding that the facility will have "no impact" on land use is clearly erroneous and warrants an objective, independent review and a re-opening of the record.
12. The State of New Mexico and its agencies' public opposition, displayed in recent comments to the Holtec DEIS, demonstrate an intentional disregard for the rights of the proposed host state and disenfranchises state's rights. The State of New Mexico's various agency comments to the Holtec DEIS warrants a reopening of the record.
13. The Permian Basin is an unsuitable site for these facilities. Had the lack of control and absence of any effective third-party agreements with XTO and other oil and gas lessee with rights at the Holtec site been disclosed earlier, given the regional opposition and stakes at play, the NRC would have chosen a different location, selected "No Action Alternative" or at the very least implemented mitigation measures.
14. In order to assure that the licensing decision in this matter adequately protects the interests of Fasken and other PBLRO members in an environment free from radiation hazards associated with CISFs and to protect the economic interests of Fasken and PBLRO, to which Fasken belongs, I am authorized to effect Fasken's efforts in support of PBLRO's participation in the above-captioned NRC docket.

Under penalty of perjury, the above is true and correct to the best of my knowledge and understanding.

Tommy G. Taylor

Declarant: Fasken Land and Minerals Ltd.
By Fasken Management, LLC, its General Partner
Tommy Taylor, Sr. Vice President

November 5, 2020

Date