



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 10, 2023

Lynn E. Moorer, Attorney at Law
3865 Mondale Loop
Las Cruces, NM 88005

SUBJECT: APPLICATION OF THE PRICE-ANDERSON ACT TO SPENT NUCLEAR FUEL
STORAGE AND TRANSPORTATION

Dear Lynn E. Moorer:

I am responding to your May 18, 2023, letter to me and July 17, 2023, letter to Chair Hanson (Agencywide Documents Access and Management System [ADAMS] Accession Nos. ML23192A462 and ML23200A021, respectively). You asked questions concerning the applicability of the Price-Anderson Act to Holtec's HI-STORE Consolidated Interim Storage Facility Independent Spent Fuel Storage Installation (and transportation to and from that facility). You also asked about the NRC's proposed rule modification regarding nuclear liability insurance and indemnification coverage for the decommissioning of large nuclear power reactors.

In response to the first question regarding NRC's discretionary authority: while NRC regulations do not detail offsite financial protection requirements for independent spent fuel storage installations (ISFSIs) licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste," the NRC has invoked its discretionary authority under the Price-Anderson Act on a case-specific basis to require offsite financial protection for ISFSIs. In the case of Holtec's HI-STORE Consolidated Interim Storage Facility Independent Spent Fuel Storage Installation, the licensee has committed to obtain and maintain nuclear liability insurance in the amount of \$100 million to address offsite liability in accordance with condition 18 of its license.¹ The NRC considers this amount reasonable based on the risk profile of the proposed activities and previous NRC determinations regarding the adequacy of financial assurance for ISFSI facilities.

In response to your second question regarding transportation: the Price-Anderson Act covers any nuclear incident in the course of transportation of nuclear material from a facility for which the NRC requires financial protection under the Price-Anderson Act. Coverage under the Price-Anderson Act would include, for example, transportation of spent nuclear fuel from a commercial nuclear power plant to an away-from-reactor ISFSI and transportation to a final U.S. Department of Energy (DOE) repository from an away-from-reactor ISFSI that maintains offsite financial protection. In addition, DOE indemnification under the Price-Anderson Act includes any nuclear incident in the United States during transportation of nuclear material in connection with a DOE activity, including transportation to DOE facilities. Transportation coverage is included in the NRC's standard form Price-Anderson Act indemnity agreement with facility licensees, including ISFSI licensees (Section 140.92 of 10 CFR, Appendix B, Article 1.5). Condition 17 of its license requires Holtec to submit a Startup Plan to the NRC at least 90 days prior to receipt and storage of spent fuel at the HI-STORE Consolidated Interim Storage Facility Independent

¹ Final Safety Evaluation Report, Issuance of Materials License No. SNM-2516 for the HI-STORE Consolidated Interim Storage Facility ISFSI – (May 2023) (ML23075A183).

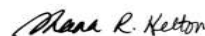
Spent Fuel Storage Installation. Upon receipt of the licensee's Startup Plan, an indemnity agreement will be prepared for signature by Holtec and the NRC for issuance.

Regarding your third question, the NRC rulemaking activity with potential modifications to liability insurance and indemnification requirements for the decommissioning of large nuclear power reactors is titled "Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning." The NRC published a proposed rule for public comment on March 3, 2022 ([87 FR 12254](#)). The NRC is reviewing public feedback on the proposed rule and preparing the final rule, which will incorporate any changes made to address public comments and contain the agency's decision regarding the liability insurance and indemnification requirements for decommissioning power reactors. The anticipated publication date of the final rule is August 2024. More information on this rulemaking activity is available on the NRC website at <https://www.nrc.gov/waste/decommissioning/reg-guides-comm/regulations/reg-improv-trans-to-decom.html>.

In accordance with 10 CFR Part 2, "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room (PDR) or from the Publicly Available Records component of the NRC's ADAMS. ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. The PDR is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

The NRC is committed to its mission of protecting public health and safety. If you have questions or require additional information related to this inquiry, you may contact Yoira Diaz Sanabria, Storage and Transportation Licensing Branch Chief, Division of Fuel Management of the Office of Nuclear Material Safety and Safeguards, at Yoira.Diaz-Sanabria@nrc.gov or 301-415-8064.

Sincerely,



Signed by Helton, Shana
on 08/10/23

Shana R. Helton, Director
Division of Fuel Management
Office of Nuclear Material Safety
and Safeguards

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FUEL STORAGE AND TRANSPORTATION DATED: August 10, 2023

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*via email

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