
**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 23-60377

FASKEN LAND AND MINERALS, LTD. and PERMIAN BASIN LAND AND
ROYALTY OWNERS, PETITIONERS-APPELLANTS

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION and the UNITED
STATES OF AMERICA, RESPONDENTS-APPELLEES

On Petition for Review of Action by the Nuclear Regulatory Commission

**HOLTEC INTERNATIONAL'S UNOPPOSED MOTION
FOR LEAVE TO INTERVENE**

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CERTIFICATE OF INTERESTED PERSONS

Counsel of record certifies that the following persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Petitioners-Appellants	Former or present counsel
<ul style="list-style-type: none"> • Fasken Land and Minerals, Ltd. • Permian Basin Land and Royalty Owners 	<ul style="list-style-type: none"> • Allan Kanner • Annemieke M. Tennis
Respondents-Appellees	Former or present counsel
<ul style="list-style-type: none"> • United States Nuclear Regulatory Commission • United States of America 	<ul style="list-style-type: none"> • Andrew Averbach • Justin Heminger
Proposed Intervenor	Former or present counsel
<ul style="list-style-type: none"> • Holtec International 	<ul style="list-style-type: none"> • Jay E. Silberg • Anne R. Leidich • Benjamin L. Bernell

/s/ Benjamin L. Bernell
Benjamin L. Bernell

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Pursuant to 28 U.S.C. § 2348, Rule 15(d) of the Federal Rules of Appellate Procedure, and Fifth Circuit Rule 15.5, third-party Holtec International (“Holtec”) hereby respectfully moves for leave to intervene as of right in the above-captioned action commenced by Fasken Land and Minerals, Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”) (collectively, “Petitioners”) on July 11, 2023.¹ In support of this Unopposed Motion, Holtec states as follows:

Petitioners commenced this action to seek review of an Order issued by the United States Nuclear Regulatory Commission (“NRC”) on May 9, 2023 (the “Order”) which granted Holtec the license titled Materials License No. SNM-2516 (the “License”).² The License authorizes Holtec to construct and operate the HI-STORE Consolidated Interim Storage Facility (the “HI-STORE Facility”).³

¹ See Petition for Review, *Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners v. United States Nuclear Regulatory Commission and the United States of America*, Case No. 23-60377 (July 11, 2023) (“Petition for Review”).

² See NRC Docket No. 72-1051 (Holtec International HI-STORE Consolidated Interim Storage Facility), 88 Fed. Reg. 30,801, Notice of License Issuance (May 12, 2023), Exhibit I to Petition for Review. Petitioners are also seeking review of NRC Orders relating to the HI-STORE Facility in the D.C. Circuit. See Petition for Review, *Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners v. United States Nuclear Regulatory Commission and the United States of America*, D.C. Cir. Case No. 21-1147 (June 25, 2021) (Consol. with D.C. Cir. Case Nos. 20-1187, 20-1225, and 21-1104 by D.C. Cir. Order in *Beyond Nuclear, Inc. v. United States Nuclear Regulatory Commission and the United States of America*, dated June 29, 2021). That proceeding is awaiting a scheduling order for briefing, and Holtec International has been granted permission to intervene in that matter.

³ The HI-STORE Facility is a facility for the interim storage of spent nuclear fuel from civilian nuclear power reactors to be constructed in southeastern New Mexico.

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, and Holtec's interests would be adversely affected if the Order or the License were enjoined, set aside, or suspended. *See* 28 U.S.C. § 2348 ("The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order.").

Holtec was the applicant in NRC Docket No. 72-1051 for the HI-STORE Facility and is now the holder of the License granted by the NRC. Holtec filed its application for the License with the NRC in 2017.⁴ Holtec fully participated in the NRC process that resulted in the issuance of the Order and the granting of the License to Holtec.

Because the purpose of Petitioners' Petition to Intervene is to hold the Order unlawful and to set aside Holtec's License, 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 therefore cannot receive any return on its considerable investment in the project to date or otherwise receive any of the project's other expected benefits. Consequently, Holtec has

⁴ *See* Exhibit A to Petition for Review.

substantial, direct, and tangible interests in this Court’s affirmance of the Order and the License. Accordingly, Holtec is entitled to intervene as of right in this action. *See* 28 U.S.C. § 2348.

This motion is also timely because it has been filed within “30 days after the petition for review [was] filed” as required by Fed. R. App. P. 15(d), and because it has been filed “promptly after the petition for review of the agency proceeding is filed, but not later than 14 days prior to the due date of the brief of the party supported by the intervenor,” as required by Fifth Cir. R. 15.5.

Undersigned counsel has conferred with counsel for Petitioners and Respondents concerning the relief requested herein. Counsel for both Petitioners and Respondents are unopposed to the relief Holtec requests.

Accordingly, Holtec respectfully requests that it be granted leave to intervene as of right in the above-captioned action.

Dated: July 27, 2023

Respectfully submitted,

/s/ Benjamin L. Bernell

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements,
and Type Style Requirements

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this pleading contains 662 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2023, the foregoing document was served on the on all counsel of record via the Court's e-filing system.

I further certify that courtesy copies of the foregoing document have also been sent by email to counsel of record for Petitioners, the United States Nuclear Regulatory Commission, and the United States of America.

/s/ Benjamin L. Bernell

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