

**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. 18-1340

**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 December 27, 2018.¹ In support of its motion, Holtec states the following:

Beyond Nuclear has commenced this action to seek review of the Order issued by the Secretary of the United States Nuclear Regulatory Commission (the “NRC”) on October 29, 2018.² The Secretary’s Order denied Beyond Nuclear’s

¹ Petition for Review, Beyond Nuclear, Inc. v. United States Nuclear Regulatory Commission and the United States of America, No. 18-1340 (Dec. 27, 2018) (“Petition for Review”).

² Order, NRC Docket Nos. 72-1050 and 72-1051 (Sept. 14, 2018) (“Order”), *see* Exhibit A to Petition for Review.

Motion to Dismiss³ 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.⁴ In its Motion to Dismiss and Petition for Review, Beyond Nuclear alleges that both applications are contrary to the Nuclear Waste Policy Act and the Administrative Procedure Act. On September 24, 2018, the NRC Staff filed an answer opposing the Motion to Dismiss, arguing it failed to comply with NRC requirements including that (1) a petition to intervene is the appropriate place to raise concerns with a license application, including a claim that the application is inconsistent with the Nuclear Waste Policy Act; and (2) the Motion to Dismiss was filed far out of time.⁵ That same day, Holtec filed an answer opposing the Motion to Dismiss, arguing that the Motion to Dismiss should be denied because (1) Beyond Nuclear failed to demonstrate its standing; (2) the Motion was filed grossly out of time; and (3) that the Commission had already ruled that the issues sought to be raised in the

³ 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").

⁴ See Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919 (July 16, 2018)

⁵ NRC Staff's Response to Motions to Dismiss Licensing Proceedings, NRC Docket Nos. 72-1050 and 72-1051 (Sept. 24, 2018).

Motion to Dismiss should be raised as a contention in the licensing proceeding on the HI-STORE application, rather than as a motion to dismiss.⁶

The NRC Secretary denied the Motion to Dismiss because the NRC's regulations "allow interested persons to file petitions to intervene and requests for hearing in which they can raise concerns regarding a particular license application" but "do not, however, provide for the filing of threshold 'motions to dismiss' a license application; instead, interested persons must file petitions to intervene and be granted a hearing."⁷ As noted in the Secretary's Order, Beyond Nuclear also filed a hearing petition in the NRC proceeding on the proposed Holtec HI-STORE consolidated interim storage facility, which hearing petition "incorporated by reference the [Nuclear Waste Policy Act] arguments that it raised in its motion to dismiss and identified those arguments as proposed contentions."⁸ The Secretary referred the Beyond Nuclear hearing petition on the Holtec HI-STORE application (and the other hearing petitions received from other interested entities) to the

⁶ Holtec International's Answer Opposing Beyond Nuclear Motion to Dismiss Licensing Proceeding for HI-STORE Consolidated Interim Storage Facility, NRC Docket No. 72-1051 (Sept. 24, 2018) at p 2. On September 28, 2018, Beyond Nuclear also (1) moved for leave to file a reply to Holtec's and the NRC Staff's oppositions and (2) filed that a reply. On October 9, 2018, Holtec filed an answer opposing the motion for leave to file a reply because replies to motions are not permitted under the NRC's rules of practice absent a showing of compelling circumstances, which standard Beyond Nuclear had not met.

⁷ Order at 2.

⁸ Order at 2.

Atomic Safety and Licensing Board Panel for consideration in accordance with the NRC's long-established hearing procedures set forth in 10 C.F.R. § 2.309.⁹

Holtec is entitled to intervene as a matter of right because Holtec is a party in interest in the matter before the NRC whose interests would be adversely affected if the Secretary's 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 in which the Secretary issued her Order denying Beyond Nuclear's Motion to Dismiss. As set forth above, Holtec fully participated in the NRC process that resulted in the NRC Secretary's Order denying the Motion to Dismiss—a motion explicitly directed at two applications pending before the NRC, one of which is Holtec's application for its proposed HI-STORE facility in New Mexico. Because a purpose of the Motion to Dismiss 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

⁹ Order at 2.

interests in this Court's affirmance of the NRC Secretary's denial of Beyond Nuclear's Motion to Dismiss by denying the Petition to Review. Accordingly, Holtec is entitled to intervene as of right in this action. 28 U.S.C. § 2348.

Respectfully submitted,

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January 14, 2019

Counsel for Holtec International

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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,

/s/ Jay E. Silberg

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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 955 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 14th day of January, 2019 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

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