

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

IN THE MATTER OF
HOLTEC INTERNATIONAL

(HI-STORE Consolidated Interim Storage
Facility)

Docket No. 72-1051

January 21, 2021

**FASKEN LAND AND MINERALS, LTD.’S AND PERMIAN BASIN LAND AND
ROYALTY OWNERS’ UNOPPOSED MOTION TO EXTEND DEADLINES**

Now comes Fasken Oil and Ranch Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”) (collectively “Petitioners”), by and through undersigned counsel, before the United States Nuclear Regulatory Commission (“NRC”) and respectfully submit this unopposed motion,¹ pursuant to 10 C.F.R. § 2.307, to extend the deadlines in the above-captioned matter for any interested party to file petitions to intervene, new and/or amended contentions, hearing requests or associated documents in response to Holtec International (“Holtec”) licensing documents officially released on December 21, 2020 until January 28, 2021.² Given the volume of documents, the breadth and significance of subject matter covered, and the timing of the NRC’s official release of the documents on December 21, 2020, prior to several federally recognized

¹ Although not required under 10 C.F.R. § 2.307, on January 20, 2021 Petitioners’ counsel reached out to counsel for Holtec (Jay Silberg) and NRC Staff attorney (Sara Kirkwood), who responded on January 21, 2021 that they were agreeable and would not object to a seven (7) day extension of deadlines in the above-captioned matter relating to filings based on Holtec International documents officially released on December 21, 2020. Counsel reserves their rights to raise all other objections.

² See Environmental Report on the HI-STORE CIS Facility by Holtec Int’l, Rev. 9 (Nov. 2020), *officially released Dec. 21, 2020 (ML20353A427), hereinafter “Holtec ER”; Licensing Report on the HI-STORE CIS Facility by Holtec Int’l, Rev. 0L (Nov. 20, 2020) *officially released Dec. 21, 2020 (ML20353A420), hereinafter “Holtec SAR”; Supplementary Sheet to License for Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste by Holtec Int’l (Nov. 20, 2020), *officially released Dec. 21, 2020 (ML20326A009), hereinafter “Holtec Supp. Sheet”; Holtec International’s Responses to HI-STORE Consolidated Interim Storage Facility Requests for Additional Information, Part 6 (Nov. 20, 2020), *officially released Dec. 21, 2020 (ML20326A008), hereinafter “Holtec RAI Responses” (collectively “Holtec Licensing Documents”).

holidays and period when most take time to spend with family and loved ones, Petitioners have good cause to file the foregoing Motion and a reasonable extension of deadlines is warranted here.

On December 21, 2020 the NRC made over one thousand pages of Holtec Licensing Documents publicly available for the first time.³ It is increasingly unfair to expect interested parties and potential intervenors to review this amount of highly complex materials, perform time-consuming research and further consult with experts to adequately support new and/or amended contentions over this short time frame, particularly when it spans over the holiday season. The granting of the requested extension of deadlines is necessary to allow interested parties to meaningfully participate and to provide a fair, efficient and transparent NRC adjudicatory process.

BACKGROUND

On March 30, 2017, Holtec submitted its application seeking an NRC license to construct and operate a consolidated interim storage facility (“CISF”) for spent nuclear fuel (“SNF”) and high-level radioactive waste disposal in Lea County, New Mexico.⁴ Holtec’s proposed CISF is posited as a “temporary solution” to the nation’s growing inventory of SNF and lack of permanent repository for storage of same.⁵ More specifically, Holtec seeks “the issuance of an NRC license authorizing the initial phase (Phase 1) of the project to store up to 8,680 metric tons of uranium [9,568 short tons] in 500 canisters for a license period of 40 years. Holtec plans to subsequently request amendments to the license to store an additional 500 canisters for each of 19 expansion phases of the proposed CISF (a total of 20 phases), to be completed over the course of 20 years,

³*Id.*

⁴ See U.S. Dep’t of Energy (“DOE”) (High-Level Waste Repository), LBP-11-24, 74 NRC 368 (2011).

⁵ Congress passed the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 (1983) (“NWPA”), which ultimately led the DOE to submit an application to the NRC for authorization to construct a geologic repository at Yucca Mountain, Nevada. See Letter from Edward F. Sproat III, Director, DOE Office of Civilian Radioactive Waste Management, to Michael F. Weber, Director, NRC Office of Nuclear Material Safety and Safeguards (NMSS) (June 3, 2008) (ML081560407). However, shortly after DOE’s application was submitted in June 2008, Congress stopped funding the Yucca Mountain project, and a pending adjudication before an NRC licensing board was suspended in September 2011. U.S. Dep’t of Energy (High-Level Waste Repository), LBP-11-24, 74 NRC 368 (2011).

and to expand the proposed facility to eventually store up to 10,000 canisters of SNF.”⁶ Holtec’s proposed CISF would be the largest repository of SNF and high-level radioactive waste in the world and will require transportation of SNF via railway from decommissioned facilities spanning the country from California to Maine. The potential impacts of this massive undertaking have far-reaching consequences that mandate civic involvement and thorough review.

On March 19, 2018, the NRC published a notice in the Federal Register regarding the acceptance and docketing of Holtec’s CISF license application.⁷ The NRC subsequently published a Federal Register notice of opportunity to request a hearing and to petition for leave to intervene.⁸

Petitioners filed a motion to dismiss the proceeding on September 14, 2018,⁹ which the Secretary referred to the Board for consideration under 10 C.F.R. § 2.309 as a petition to intervene.¹⁰ Multiple others filed hearing requests and petitions to intervene as well.¹¹ After holding a hearing, the Board found Fasken had demonstrated standing but failed to submit an admissible contention.¹² And the Board further denied all petitions to intervene and terminated the proceedings on May 7, 2019.¹³ Petitioners and others appealed the Board’s decision, which were each in turn dismissed by the Commission.¹⁴

⁶ 85 Fed. Reg. 16151 (March 20, 2020).

⁷ Holtec Int’l HI-STORE CISF for Interim Storage of SNF, 83 Fed. Reg. 12,034 (Mar. 19, 2018).

⁸ Holtec Int’l HI-STORE CISF for Consolidated Interim Storage of SNF, 83 Fed. Reg. 32,919 (July 16, 2018).

⁹ Motion of Fasken to Dismiss Licensing Proceedings for Holtec Int’l HI-STORE CISF and Interim Storage Partners, LLC CISF (“WCS CISF”) (Sept. 14, 2018), at 1–8 (ML18257A330).

¹⁰ Holtec Int’l HI-STORE CISF and WCS CISF, Order of the Secretary (Oct. 29, 2018), at 2 (unpublished) (ML18302A328).

¹¹ The other petitioners are: Alliance for Environmental Strategies; Beyond Nuclear, Inc.; NAC International Inc.; Sierra Club; and a group of joint petitioners led by Don’t Waste Michigan.

¹² *Id.* at 135–36.

¹³ Holtec Int’l (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, 89 NRC __ (May 7, 2019) (slip op. at 135–37).

¹⁴ *See* Fasken and PBLRO Notice of Appeal and Petition for Review of LBP-19-4 (June 3, 2019) (ML19154A455); Holtec Int’l (HI-STORE Consolidated Interim Storage Facility), Memorandum and Order (April 23, 2020) (ML20114E150).

On March 10, 2020 the NRC officially released the Holtec DEIS to its website.¹⁵ On March 13, 2020, three days later, the President declared the COVID-19 virus a national emergency.¹⁶ Amidst the national emergency, on March 20, 2020, the NRC issued a Federal Register Notice¹⁷ (“NRC Notice”) announcing a 60-day public comment period to respond to the Holtec DEIS, ending on May 22, 2020. This date was later extended and Petitioners timely filed a contention based on the Holtec DEIS in conjunction with a motion to reopen the record on May 11, 2020.¹⁸ Subsequently, Petitioners timely filed a contention based on new and materially different information on November 5, 2020.¹⁹

The NRC has indicated that new or amended contentions filed after the initial hearing requests in the Holtec matter are governed by 10 C.F.R. § 2.309(c)(1), which requires a party demonstrate good cause²⁰ and timely file such contentions within 30 days of any new information forming the basis of the contention becomes publicly available.²¹ The present 30-day window for filing new or amended contentions under 10 C.F.R. § 2.309(c)(1) under the extenuating circumstances is inadequate and warrants extension.

LEGAL STANDARDS

The presiding officer “has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process. . . [and] has all the

¹⁵ See Holtec DEIS, available March 10, 2020 at ADAMS No. ML20069G420. on March 10, 2020.

¹⁶ White House, “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak”, issued on March 13, 2020.

¹⁷ 85 Fed. Reg. 16151 (March 20, 2020).

¹⁸ See Fasken and PBLRO Motion to Reopen the Record (May 11, 2020) (ML20132E724).

¹⁹ See Fasken and PBLRO Motion to Reopen the Record (Nov. 5, 2020) (ML20310A442).

²⁰ To demonstrate “good cause” under 10 C.F.R. § 2.309(c)(1) a party must show the following three conditions are met: (i) The information upon which the filing is based was not previously available; (ii) The information upon which the filing is based is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

²¹ See *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), 67 N.R.C. 460, 493 (2008) (30 days held as presumptive time frame for timeliness of late-filed contentions).

powers necessary to those ends, including the powers to: . . . [t]ake any other action consistent with the Act, this chapter, and 5 U.S.C. 551-558.”²²

Under NRC regulations, “the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time, may be extended or shortened either by the Commission or the presiding officer for good cause. . . .”²³ Good cause is not explicitly defined in the regulations,²⁴ but the Commission has interpreted “good cause” to require a showing of “unavoidable and extenuating circumstances.”²⁵ Participants may file a request for an extension under 10 C.F.R. § 2.307 in advance of a deadline or shortly thereafter “if unanticipated events. . . or unexpected health issues, prevented the participant from filing for a reasonable period of time after the deadline.”²⁶

To ensure opposing viewpoints are heard and adequate expert scrutiny, an interested party’s chance to focus on and participate in the adjudicatory process and hearings relating to the recently released Holtec Licensing Documents must be made as fair and informed as possible.²⁷

The NRC frequently grants requests for extensions for additional time based on unanticipated events, the complexity of the underlying materials and to allow for thorough expert

²² 10 C.F.R. § 2.319.

²³ See 10 C.F.R. § 2.307(a).

²⁴ The NRC has established that “good cause in 10 C.F.R. § 2.307 “does not share the same definition” as “good cause” under 10 C.F.R. § 2.309(c)(1). See 77 Fed. Reg. at 46,571-72; see also *In the Matter Of: FirstEnergy Nuclear Operating Company* (Davis-Besse Nuclear Power Station, Unit 1), Memorandum and Order, 81 N.R.C. 28, LBP-15-1, Docket No. 50-346-LR, ASLBP No. 11-907-01-LR-BD01 (Jan. 15, 2015)

²⁵ *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342 (1998), *petition for review denied sub nom., Nat’l Whistleblower Center v. NRC*, 208 F.3d 256, 264 (D.C. Cir. 2000).

²⁶ “A participant may file such a request under § 2.307 in advance of a deadline—for example, if the participant is unable to meet a deadline because of health issues—or shortly after a deadline—for example, if unanticipated events, such as a weather event or unexpected health issues, prevented the participant from filing for a reasonable period of time after the deadline.” See Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 571-72 (Aug. 3, 2012).

²⁷ See e.g., *Myersville Citizens for a Rural Cmty., Inc v. FERC*, 783 F.3d 1301, 1324-25 (D.C. Cir. 2015) (Under NEPA’s “hard look” standard, an agency’s analysis is adequate if it “contains sufficient discussion of the relevant issues and opposing viewpoints, and . . . the agency’s decision is ‘fully informed’ and ‘well-considered.’”) (internal citations omitted).

review and analysis.²⁸ A request that “promote[s] adjudicatory efficiency, because it will enable [participants] – with the benefit of their expert’s input – to provide th[e] Board with a higher quality answer that fully considers and addresses the issues” should be granted.²⁹ Indeed, “the expeditious completion of a proceeding must be pursued ‘while still ensuring that hearings are fair and produce an adequate record for decision.’”³⁰

Extenuating Circumstances Warrant an Extension of Deadlines

Extenuating circumstances warrant good cause for an extension of deadlines, including but not limited to the 30-day window for filing new or amended contentions, in the above-captioned Holtec matter during the holiday season when counsel and experts have limited availability and are spending time with family and loved ones. A comprehensive presentation of opposing viewpoints during this shortened window prejudices the interests of those who may be affected by the proposed Holtec CISF.

The licensing of the proposed Holtec CISF is a massive project. The recent release of over a thousand pages of Holtec Licensing Documents, including Holtec RAI Responses to highly complex NRC-issued questions, implicate important issues that warrant time-consuming review by scientific and technical experts as well as counsel. This information presents an extensive array of nuanced scientific and legal considerations requiring interested parties to seek interpretation and

²⁸ See *In the Matter of AmerenUE* (Callaway Plant Unit 2), et al., NRC Staff Answer to Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident, ADAMS No. ML111220569 (“[i]f 30 days are not sufficient in a given case based on the nature of the new information, case-specific motions for extensions of time to file (or to file out of time) are commonly requested and granted in NRC practice.”)

²⁹ See e.g., *In the Matter of Florida Power & Light Co.* (Turkey Point Units 6 and 7), Order Granting Joint Intervenors’ Motion for Extension of Time, Docket Nos. 52-040-COL and 52-041-COL, ASLBP No. 10-903-02-COL-BD01, ADAMS No. ML15357A225 (Dec. 23, 2015) (finding 30-day extension to respond to motion for summary disposition of amended contentions reasonable given the “length and complexity” of materials and that the filing occurred at a time “when it might reasonably be expected that essential members of . . . litigation team would be on travel or otherwise unavailable.”); *In the Matter of Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), Docket No. 40-09075-MLA, ASLB No. 10-898-02-MLA-BD01, ADAMS No. ML14295A420 (granting 30-day extension to submit additional testimony and exhibits on contention).

³⁰ *Id.*

advice across multiple disciplines that demand in-depth analysis and research.³¹ This enormous undertaking, necessary to present opposing viewpoints for NRC consideration, would be unfairly limited and hindered given the abbreviated time frame.

The requested unopposed extension is necessary to ensure adequate participation by interested parties and a fair and transparent NRC adjudicatory process. Granting an extension in the above-captioned Holtec proceeding will not prevent efficient adjudication or in any way harm the NRC or the Board. To the contrary, an extension of deadlines is necessary, under the extenuating circumstances, to ensure adequate discussion and facilitate proper review of the Holtec Licensing Documents in accordance with NRC regulations.

CONCLUSION

For the foregoing reasons and in light of the volume, breath, complexity and significance of the underlying materials, as well as the timing of their official release during the holiday season, Petitioners have demonstrated good cause and respectfully request the Commission grant this unopposed Motion to Extend Deadlines in the above-captioned matter until January 28, 2021.

Dated: January 21, 2021

Respectfully submitted,

/signed electronically by/
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³¹ The Holtec Licensing Documents require highly technical reviews of issues in addition to novel and complex legal issues.

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I Allan Kanner certify that, on this 21st day of January, 2021, true and correct copies of Fasken Land and Minerals, Ltd.'s and Permian Basin Land and Royalty Owners' Unopposed Motion to Extend Deadlines were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above-captioned proceeding.

/signed electronically by/

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