

No. 25-540

IN THE
Supreme Court of the United States

BEYOND NUCLEAR, INC.,

Petitioner,

v.

NUCLEAR REGULATORY COMMISSION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF IN OPPOSITION OF
INTERVENOR-RESPONDENT
HOLTEC INTERNATIONAL**

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December 2025

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QUESTIONS PRESENTED

Whether the D.C. Circuit erred in upholding a Nuclear Regulatory Commission decision rejecting Beyond Nuclear's contention for failing to raise a dispute of genuine law or fact with the Holtec spent fuel storage facility application.

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Intervenor-Respondent Holtec International states that it has no parent corporation and no shareholder owns 10% or more of its stock.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES.....	iv
INTRODUCTION.....	1
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION.....	4
CONCLUSION	8

TABLE OF AUTHORITIES

Cases

<i>NRC v. Texas</i> , 605 U.S. 666 (2025)	5
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Other Authorities

Holtec International’s HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 39,919 (July 16, 2018)	2
Petitioner Beyond Nuclear’s Opening Brief, No. 20-1187 (D.C. Cir. January 22, 2024)	6
<i>U.S. Nuclear Regulatory Commission</i> , Materials License No. SNM-2516 (Holtec International – HI-STORE CISF), ISFSI Docket No. 72-1051 (May 9, 2023) (ADAMS Accession No. ML23075A181, available at https://www.nrc.gov/docs/ML2307/ ML23075A181.pdf)	5

INTRODUCTION

This case addresses one issue: whether Petitioner, Beyond Nuclear, raised a genuine dispute with a license application in proceedings before the Nuclear Regulatory Commission (“NRC” or “Commission”). A unanimous D.C. Circuit panel examined the record and concluded that Petitioner did not.

Petitioner ignores this narrow dispute and stretches the D.C. Circuit’s case-specific analysis in a fruitless search for a question worthy of certiorari. Thus, Petitioner claims that the court of appeals’ decision has “create[d] multiple exemptions” allowing agency actions contrary to law, Pet. 21; forever deprives Petitioner of judicial review over Holtec’s potential future choice of clients, Pet. 21-23; and deprives litigants of their ability to “form concrete complaints about whether [] licenses comply with the laws of tomorrow,” Pet. 23. While these claims are inventive, they bear no resemblance to the decision below and fail to frame a question justifying further review.

In the end, Petitioner asks this Court to overturn a court of appeals decision to reopen a single NRC licensing proceeding, and, at most, strike three superfluous words from a license application. There is no further remedy, and there is no broader importance to be found.

The Court should instead deny the petition and put an end to this frivolous dispute.

STATEMENT OF THE CASE

The Commission’s adjudicatory proceeding for the Holtec license began on July 16, 2018, when the agency published a notice in the Federal Register

providing the public an opportunity to participate by (1) requesting a formal evidentiary hearing to challenge Holtec's application and (2) petitioning for leave to intervene in the proceeding. *See* Holtec International's HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 39,919 (July 16, 2018).

Beyond Nuclear responded to this notice by filing a motion to dismiss and a contention asserting that "the central premise of Holtec's application – that the U.S. Department of Energy ("DOE") will be responsible for the spent fuel that is transported to and stored at the proposed interim facilities – violates the [Nuclear Waste Policy Act ("NWPA)]." Pet. App. 150a-151a. Holtec answered that any reliance on DOE as the sole owner of spent fuel was a mistake in the application, explained that it would not contract with DOE to illegally store spent fuel from nuclear power plants absent a change in the law, and amended its license application to resolve any internal inconsistencies. Pet. App. 151a, 154a-156a. In response, Beyond Nuclear amended its contention to claim that "federal ownership as a possible alternative to private ownership" "does not render the application lawful," and "[a]s long as the federal government is listed as a potential owner of the spent fuel, the application violates the NWPA." Pet. App. 151a, 156a.

An Atomic Safety and Licensing Board ("Board") rejected this contention for failing to raise a genuine dispute with the license application. Pet. App. 158a-162a. The Board specifically addressed proposed License Condition 17, from the Holtec license application, which stated that Holtec would

“undertake construction only after it has established ‘a definitive agreement with the prospective user/payer for storing the used fuel (USDOE and/or a nuclear plant owner).” Pet. App. 158a. In evaluating that text from the application, the Board found that the parties all agreed on the material issues: Holtec could lawfully store the small quantities of spent fuel from commercial reactors to which DOE already holds legal title; Holtec committed to abstain from any illegal contracts with DOE; and Holtec could enter into contracts with private parties without limitation. The Board further observed that the Commission regulates the safe conduct of licensees, not their “market strategies.” Pet. App. 159a. Thus, the Board found no factual or legal dispute with the license application. Pet. App. 160a.

The Board also found no issue with the potential for future DOE contracts in the event of a change in law. As the Board succinctly put it: “If Congress decides to amend the NWPA. . . the only difference would be that DOE could then lawfully contract with Holtec to store the same spent fuel that presently belongs to the nuclear power plant owners,” an alternative already encompassed in NRC Staff safety and environmental reviews. Pet. App. 161a. The Board could see “no discernable purpose” in requiring a new application or opportunity for hearing in such a case and found no requirement in the Administrative Procedure Act (“APA”) or NWPA “to perform a useless act” by taking further action. Pet. App. 161a. The Commission affirmed the Board’s decision. Pet. App. 32a-33a.

Beyond Nuclear appealed this decision to the D.C. Circuit, and a panel of the D.C. Circuit reviewed and

unanimously affirmed the Commission’s decision on appeal. Pet. App. 7a-9a. The panel first recognized that Beyond Nuclear’s legal challenge on appeal was limited to the Holtec application, since “Beyond Nuclear was not admitted as an intervenor,” and “cannot seek direct review” of the license itself. Pet. App. 7a n.7. The panel then reiterated the facts: the application (as amended) stated that Holtec would accept fuel from both private parties and DOE; Holtec acknowledged the limitations in the NWPA and would not accept fuel contrary to those limitations; and the Commission found no genuine legal or factual dispute with the license application. Pet. App. 8a.

The panel found this decision “consistent with relevant legal requirements.” Pet. App. 8a. The Commission may license private spent fuel storage facilities, and the Commission’s rules allow for the use of license conditions with a future effect. Pet. App. 8a-9a. Thus, the panel agreed with the Commission “that Beyond Nuclear did not raise a genuine dispute of law or fact.” Pet. App. 9a.

Beyond Nuclear subsequently petitioned the D.C. Circuit for rehearing, and that petition was denied. Pet. App. 107a-108a. Beyond Nuclear then filed this Petition for Certiorari on October 31, 2025.

REASONS FOR DENYING THE PETITION

The decision below reviewed the agency record, applied the Commission’s rules for contention admissibility, and upheld the agency’s decision applying those rules. While Beyond Nuclear styles this as a grand case with weighty impacts on administrative agency licenses and future litigation, the reality is much simpler: the D.C. Circuit never

opined on the validity of Holtec’s license or Beyond Nuclear’s ability to pursue subsequent litigation. In short, this case has no impact beyond the contention filed with the NRC on the specific conditional language in Holtec’s license application. The case is not worthy of review.

A. The Petition starts with a false premise that the D.C. Circuit decision has the precedential effect of allowing license conditions contrary to law. Pet. 18-21. In actual fact, the Circuit affirmed a Commission decision rejecting Petitioner’s contention on the *license application*, because the contention failed to raise a dispute sufficient to warrant an evidentiary hearing. The final Holtec license itself was not reviewed as part of this litigation limited to contention admissibility. Pet. App. 7a n7. *See also NRC v. Texas*, 605 U.S. 666, 679-680 (2025). If the D.C. Circuit had reviewed the license, the matter would be moot, as the final license contains no references to DOE as a customer.¹ Since the Circuit’s decision was specific to Beyond Nuclear’s particular contention on the language of the Holtec license application, it has limited (if any) precedential effect going forward.

B. The Petition then continues with another false premise, claiming that the D.C. Circuit’s decision limits Beyond Nuclear’s ability to challenge Holtec’s

¹ *See U.S. Nuclear Regulatory Commission*, Materials License No. SNM-2516 (Holtec International – HI-STORE CISF), ISFSI Docket No. 72-1051 (May 9, 2023), ¶ 15 (ADAMS Accession No. ML23075A181, available at <https://www.nrc.gov/docs/ML2307/ML23075A181.pdf>) (“[T]he construction program will be undertaken only after a definitive agreement with the prospective customer for storing the used fuel at the HI-STORE CIS Facility has been established.”).

storage of DOE-owned fuel should Congress amend the NWPA to permit such storage in the future. Pet. 21-23. On the contrary, the decision never opines on Beyond Nuclear’s ability to pursue subsequent litigation on DOE ownership, Pet. App. 7a-9a, and Beyond Nuclear never perfected that argument below. *See generally* Petitioner Beyond Nuclear’s Opening Brief, No. 20-1187 (D.C. Cir. January 22, 2024).

In fact, Beyond Nuclear will struggle with future litigation because its future claims are illusory. The NRC does not regulate the market strategies or the specific contracts of NRC licensees. Pet. App. 29a n.24, 159a. The agency’s statutory authority is centered on public health and safety, and, as the Commission explained, a spent fuel storage license “authorize[s] Holtec to take possession of the spent fuel” based on the NRC’s safety and environmental review. Pet App. 32a. The NRC license does not “transfer[] the title to the fuel” from DOE to Holtec or “authorize Holtec or DOE to enter into storage contracts.” Pet App. 32a.

Since the NRC does not regulate licensee contracts or transfer title, Beyond Nuclear’s only possible future challenge is to the *legality* of DOE storing fuel at the Holtec facility. This theoretical litigation, however, hinges on Congress legalizing DOE’s storage of fuel at private facilities under the NWPA, since Holtec will not enter into illegal contracts under the current NWPA. Thus, Beyond Nuclear’s sole legal challenge would be against the theorized congressional amendment to the NWPA or DOE’s theorized action under that theorized amendment. Holtec’s individual licensing proceeding would not be the forum for

Beyond Nuclear to challenge a congressional act or a subsequent DOE action.²

Consistent with the D.C. Circuit's decision, there is no genuine dispute to be found here today. The parties all agree that, with limited exceptions, it is illegal for DOE to own and store fuel with Holtec. Beyond Nuclear's new concern is that it will not be able to challenge Holtec contracts with DOE if Congress ever legalizes DOE ownership of fuel *in the future*. The NRC could not hold an evidentiary hearing today on tomorrow's hypothetical congressional action, or the hypothetical DOE contracts arising from that action.

There is no genuine dispute today, and it makes no sense for the Court to grant certiorari simply to address a chain of hypotheticals which may never even ripen.

² Whether Beyond Nuclear could challenge DOE should these hypotheticals come to pass is a question that is obviously premature.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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DECEMBER 2025