

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FRIENDS OF THE EARTH)	
)	
Petitioner,)	
)	
v.)	No. _____
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	

PETITION FOR REVIEW

Pursuant to § 189 of the Atomic Energy Act, 42 U.S.C. § 2239; 28 U.S.C. §§ 2341- 2344; the Administrative Procedure Act, 5 U.S.C. § 551 et seq.; Rule 15 of the Federal Rules of Appellate Procedure; and Circuit Rule 15, Friends of the Earth (“Petitioner”) hereby petitions the Court for review of the final order of the United States Nuclear Regulatory Commission (“NRC”) approving Revision 21 to the Final Safety Analysis Report as Updated (FSARU) for Diablo Canyon Units 1 & 2 without the required license amendment proceeding, in violation of 42 U.S.C. § 2239. “Diablo Canyon Power Plant Units 1 & 2 FSAR Update, Revision 21,” (Sep. 2013) ML 13280A390.¹ The NRC acted arbitrarily, abused its discretion,

¹ In response to a request to the NRC’s Public Document Room, on October 1, 2014, NRC posted a redacted version of sections 2.5, 3.7, and 3.10 of Revision 21,

and violated the Atomic Energy Act, the Administrative Procedure Act, the Commission's policies and regulations, and other applicable laws and regulations in approving Revision 21.

This Petition is filed within 60 days of the earliest public notice of NRC's approval of Revision 21 and is thus filed within the Hobbs Act's 60-day statute of limitations. 28 U.S.C. § 2344. Petitioner was not aware, and could not have been aware of Revision 21 until its existence was made public in the September 10, 2014 release of the Case File in the matter of the Dissenting Professional Opinion of Dr. Michael Peck, then-NRC Senior Resident Inspector for Diablo Canyon Power Plant.²

Venue is appropriate in the U.S. Court of Appeals for the D.C. Circuit pursuant to 28 U.S.C. § 2343. Therefore, Friends of the Earth respectfully requests

those chiefly related to the seismic design basis, on the NRC's Agencywide Document Access and Management System (ADAMS) (ML14269A007). Attachment A to this Petition is the Panel Report issued in the agency's disposition of the Dissenting Professional Opinion of Dr. Michael Peck (DPO-2013-002). Pages A-17 through A-19 of the Panel Report document the NRC's final order accepting and approving Revision 21.

² Email from Lara Uselding, NRC Region IV Public Affairs to interested parties on September 10, 2014:

Based on your interest in the Michael Peck differing professional opinion AP story that ran a couple of weeks ago, I am sharing the agency's final decision that was made public today. Per the process, the Executive Director of Operations, Mark Satorius, has made a decision on the appeal and the submitter expressed his wish to have the file publically [sic] released.

that this Court (1) review NRC's order; (2) declare that NRC violated the Atomic Energy Act and Commission rules and regulations in failing to notice and provide opportunity for a license amendment proceeding in accordance with 42 U.S.C. § 2239; (3) remand the matter to NRC for proper execution of the public hearing requirements for license amendments under the Atomic Energy Act and the agency's own regulations; (4) order that Diablo Canyon temporarily suspend operation until those proceedings are complete; and (5) grant any other relief that the Court may deem just and appropriate.

Dated: October 28, 2014
Washington, D.C.

Respectfully submitted,

Richard Ayres
(D.C. Bar No. 212621)
Jessica Olson
(D.C. Bar No. 497560)
John Bernetich
(D.C. Bar No. 1018769)
Ayres Law Group
1707 L St, NW
Suite 850
Washington, DC 20036
(202) 452-9200
ayresr@ayreslawgroup.com
olsonj@ayreslawgroup.com
bernetichj@ayreslawgroup.com

Counsel for Friends of the Earth

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FRIENDS OF THE EARTH)	
)	
Petitioners,)	
)	
v.)	
)	
UNITED STATES NUCLEAR REGULATORY COMMISSION,)	No. _____
)	
Respondents.)	
)	
)	
)	
)	
)	

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Local Rule 26.1 of the United States Court of Appeals for the District of Columbia Circuit, Petitioner Friends of the Earth submits the following disclosure:

Friends of the Earth is a nonprofit environmental advocacy organization with a mission to defend the environment and create a more healthy and just world, in particular by engaging in efforts to improve the environmental, health, and safety conditions at civil nuclear facilities licensed by the Nuclear Regulatory Commission.

Friends of the Earth is part of Friends of the Earth International, a federation of grassroots groups working in 76 countries. In the United States, Friends of the Earth has more than 9,100 members in all 50 states.

Friends of the Earth is not a publicly held corporation. No parent corporation or publicly held company has a 10% or greater ownership interest in Friends of the Earth.

October 28, 2014

Respectfully submitted,

Jessica Olson
Ayres Law Group
Suite 850
1707 L St, NW
Washington, DC 20036
(202) 452-9211
olsonj@ayreslawgroup.com

Counsel for Friends of the Earth

CERTIFICATE OF SERVICE

I certify on this 28th day of October 2014 that I served a copy of the foregoing Petition for Review and Disclosure Statement by U.S. Mail, postage prepaid, on the following:

U.S. Nuclear Regulatory Commission
Office of the General Counsel
11545 Rockville Pike,
Rockville, MD 20852

Allison MacFarlane
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD 20852

Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Jennifer Post
Pacific Gas and Electric Company
77 Beale St., B30A
San Francisco, CA 94105

John Bernetich
Ayres Law Group
Suite 850
1707 L St NW
Washington, DC 20036
(202) 452-9211
bernetichj@ayreslawgroup.com