

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

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AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

- 1. CASE NO. 14-1210 2. DATE DOCKETED: 10-27-2014
- 3. CASE NAME (lead parties only) State of New York v. U.S. Nuclear Regulatory Comm'n
- 4. TYPE OF CASE: Review Appeal Enforcement Complaint Tax Court
- 5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? Yes No
If YES, cite statute _____
- 6. CASE INFORMATION:
 - a. Identify agency whose order is to be reviewed: U.S. Nuclear Regulatory Comm'n
 - b. Give agency docket or order number(s): NRC-2012-0246
 - c. Give date(s) of order(s): Sept. 19, 2014
 - d. Has a request for rehearing or reconsideration been filed at the agency? Yes No
If so, when was it filled? _____ By whom? _____
Has the agency acted? Yes No If so, when? _____
 - e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
Please see attachment.
 - f. Are any other cases involving the same underlying agency order pending in this Court or any other?
 Yes No If YES, identify case name(s), docket number(s), and court(s)
Please see attachment.
 - g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
 Yes No If YES, give case name(s) and number(s) of these cases and identify court/agency:

 - h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? Yes No If YES, provide program name and participation dates.

Signature /s/ John Sipos Date 11-26-2014
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ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

New York et al. v. U.S. Nuclear Regulatory Comm'n

No. 14-1210

Attachment to Agency Docketing Statement (6.e. & 6.f.)

6.e. Basis of Petitioners' Standing

Petitioner States seek judicial review of NRC's Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel ("GEIS"), 79 Fed. Reg. 56,263 (Sept. 19, 2014) (voted on by the Commission on August 26, 2014, CVR 2014-0072), which finds that the continued storage of spent nuclear fuel in storage pools at nuclear reactor sites indefinitely beyond the licensed operating life of a reactor will have primarily "small" environmental impacts. Petitioners also challenge NRC's Final Rule for Continued Storage of Spent Nuclear Fuel ("Continued Storage Rule"), 79 Fed. Reg. 56,238 (Sept. 19, 2014) (also voted on August 26, 2014), which adopts the GEIS as the basis for making decisions regarding nuclear reactors and on-site waste storage facilities, including licensing and relicensing decisions.

The Continued Storage Rule and GEIS allow NRC to license and relicense nuclear reactors and on-site waste storage facilities without any further analysis of the environmental impacts of indefinite continued storage of nuclear waste at over a hundred sites around the

country, including at sites within the Petitioner States and in nearby States. The States challenge the GEIS and Continued Storage Rule on several grounds, including that the GEIS fails to (1) analyze fully the environmental impacts of continued storage of spent fuel at reactor sites, (2) discuss a reasonable range of alternatives to the continuation of current storage practices, (3) discuss mitigation measures, or (4) consider site-specific differences.

The States have concrete interests in a full and accurate review by NRC of the environmental impacts of continued, indefinite storage of spent fuel at reactor sites in their States and neighboring States, including assessment of alternatives, mitigation measures, and site-specific factors. The GEIS failed to do such a review. In combination with the Continued Storage Rule, the GEIS also precludes the States—where nine spent-fuel pools are located—from raising site-specific concerns regarding each reactor site, including seismicity, population density, infrastructure integrity issues, subsurface geology, possibility of safe evacuation of affected populations and site-specific impacts of severe accidents, among others. They also foreclose the States from

ever raising the environmental impacts of spent-fuel storage within those States and nearby States.

Spent-fuel pools are susceptible to fire and releases of radioactive substances from a wide range of conditions, including natural phenomena, operator error, and equipment failure. There is a risk that the environmental impacts of a fire in a spent-fuel pool would be severe, extending over a geographic area larger than a State's boundaries and continuing for decades. A spent-fuel pool fire would endanger public health, the environment, and the natural resources of the States. It would also threaten the States' fiscs in multiple ways, including increasing the costs to the State of health care and requiring the State to incur cleanup costs. *See* Comments Submitted by the Attorneys General of the States of New York, Vermont, Connecticut, and the Commonwealth of Massachusetts, and the Prairie Island Indian Community on the Nuclear Regulatory Commission's Draft Waste Confidence GEIS and Proposed Rule at 1-4, 87-91 (Dec. 20, 2013) ("Multi-State Comments"); Additional Comments Submitted by the Attorney General of the State of New York on the Nuclear Regulatory Commission's Draft Waste Confidence GEIS and Proposed Rule at 1-22,

31-41, 72-82 (Dec. 20, 2013) (“Additional New York Comments”); Additional Comments of the State of Vermont and the State of Connecticut on the Nuclear Regulatory Commission’s Draft Waste Confidence GEIS and Proposed Rule (Dec. 20, 2013) (“Additional Vermont and Connecticut Comments”).

Spent-fuel pools are also susceptible to leaks. Indeed, spent-fuel pools at the Indian Point nuclear power plant in New York have already discharged radioactive contaminants into groundwater at high levels and those contaminants have migrated to the Hudson River. Leaks from spent-fuel pools endanger public health, the environment, and the natural resources of the States. They also threaten the States’ fiscs in multiple ways, including increasing the costs to the State of health care and requiring the State to incur cleanup costs. *See* Multi-State Comments at 101-11; Additional New York Comments at 37-41.

The spent-fuel pools serving the two Indian Point reactors are of particular concern to New York and Connecticut. Seventeen million people live within fifty miles of Indian Point, which is on the Hudson River twenty-four miles north of New York City. Entergy Nuclear Operations, Inc., the owner of the reactors, has applied to renew the

reactors' licenses, one of which expired in 2013 but was extended pending a decision on the relicensing application, and the other of which will expire in 2015. The GEIS and Continued Storage Rule prevent consideration in the license renewal proceedings of the environmental impacts of the spent-fuel pools. See Multi-State Comments at 1-2, 4; Additional New York Comments at 1-22.

The State of Vermont has an ongoing interest in the management of spent nuclear fuel at the Vermont Yankee Nuclear Power Station ("Vermont Yankee"). When the reactor was licensed in 1972, the Atomic Energy Commission stated that the reactor's spent fuel would be promptly transported to an out-of-state reprocessing facility. Vermont Yankee Nuclear Power Station Final EIS, ML061880207:93-94 (July 1972). But none of the spent fuel has ever been removed from the reactor property and much of it remains in an elevated spent-fuel pool. When Vermont Yankee applied to renew its license in 2006, Vermont claimed that the plant had failed to provide new and significant information regarding how long spent fuel would be stored on site. The NRC licensing board rejected that claim on the basis of a prior version of the temporary-storage rule. *Entergy Nuclear Vt. Yankee, LLC*

(Vermont Yankee Nuclear Power Station), 64 N.R.C. 131, 167-70 (Sept. 22, 2006). In March 2011, NRC renewed Vermont Yankee's license for twenty years. *See Multi-State Comments* at 2-3. The plant's owners intend to take Vermont Yankee offline by December 31, 2014, leaving more than 42 years' worth of spent fuel on the site.

The States' injuries would be redressed by a decision from the Court finding that the GEIS violates NEPA and invalidating the Continued Storage Rule on the grounds that NRC failed to undertake an appropriate review of the environmental impacts of long-term storage of spent nuclear fuel in on-site storage pools.

The States note that they submitted comments on the proposed Continued Storage Rule and draft GEIS. *See Multi-State Comments; Additional New York Comments; Additional Vermont and Connecticut Comments.* The States also participated in various NRC meetings and made various other submissions to NRC concerning the storage of spent nuclear fuel, draft GEIS, and proposed rule.

6.f. Other Cases Involving the Same Agency Order Pending in This Court or Any Other

- *Prairie Island Indian Community v. United States Nuclear Regulatory Commission*, Case 14-1212, D.C. Cir.

- *Beyond Nuclear, Inc. et al. v. United States Nuclear Regulatory Commission*, Case 14-1216, D.C. Cir.
- *Natural Resources Defense Council v. United States Nuclear Regulatory Commission*, Case 14-1217, D.C. Cir.