



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 8, 2014

Mark Langer, Clerk of Court  
United States Court of Appeals  
for the District of Columbia Circuit  
333 Constitution Ave., NW  
Washington, DC 20001

RE: *Friends of the Earth v. U.S. Nuclear Regulatory Commission, et al.*,  
No. 14-1213 (D.C. Cir.)

I write on behalf of the Federal Respondents, the U.S Nuclear Regulatory Commission (“NRC”) and the United States, to correct (or, at a minimum, to expand upon) the answers provided by the Petitioners in the Docketing Statement filed December 1, 2014 in the above-referenced case.

1. Counsel for Petitioner responded to Question 6.c. by stating that the action under review was the NRC’s “approval of Revision 21 to the Final Safety Analysis Report as Updated for Diablo Canyon Power Plant Units 1 and 2, dated September 2013 without the required license amendment proceeding.” Counsel for Petitioner then attached an initial decision denying a Dissenting Professional Opinion, which it claims was the first public notice that the NRC had approved Revision 21. However, that document does not reflect any NRC action on Revision 21.

The sole document reflecting NRC action on Revision 21 is a document entitled “Memorandum from Peter Bamford, Project Manager, to Michael Markley, Chief, Plant Licensing IV-1 (June 23, 2014). That document reflects any and all NRC action on Revision 21. The document was non-public when issued, but was placed on the NRC’s public website and the accession number provided to counsel for Petitioner on November 21, 2014.

2. Counsel for Petitioner responded to Question 6.e by asserting that Petitioner Friends of the Earth (FOE) satisfied the standing requirements. See Attachment to Docketing Statement at 1-2. An organization like FOE can have standing to sue if at least one member of the organization has standing to sue. This Court has held that a Petitioner who has not participated in an administrative proceeding (as here) must demonstrate standing at the start of the case. *Sierra Club v. EPA*, 292 F.3d 895, 898-901 (D.C. Cir. 2002). But neither the Docketing Statement nor the Petition for Review attaches affidavits from FOE members demonstrating that they have standing to sue. Instead, FOE’s Docketing Statement contains a generalized assertion that the *Sierra Club* Court held was insufficient to justify standing. *Id.* The Federal Respondents will address this issue in a Motion to Dismiss, which we intend to file on December 10, 2014.

3. Counsel for Petitioner answered “No” to question 6(g), which inquires whether there 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.” The attachment to Docketing Statement then cites a pending proceeding before the

Commission which is described as “involving different legal issues.” See Attachment to Docketing Statement at 2.

Contrary to the answer provided, the proceeding before the Commission involves the same exact legal issues that are raised by the Petition for Review in this case. In both cases, FOE claims that the NRC “approved” Revision 21 and that the approval required the NRC to offer a hearing on that action. The Federal Respondents will also address this issue in the Motion to Dismiss, which we plan to file on December 10, 2014.

Respectfully,

\_\_\_s/Charles E. Mullins\_\_\_  
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Filed by CM/ECF

**CERTIFICATE OF SERVICE**

I certify that on December 8, 2014, I filed a *Letter to Mark Langer, Clerk of Court* for the U.S. Nuclear Regulatory Commission in Case No. 14-1213 with the U.S. Court of Appeals for the District of Columbia Circuit by filing it with the Court's CM/ECF system. That method is calculated to serve:

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Respectfully submitted,  
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