

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

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

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SOUTHERN ALLIANCE FOR  
CLEAN ENERGY,

Petitioner,

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION  
COMMISSION and the UNITED  
STATES OF AMERICA,

Respondents,

Case No. 15-1427

**PETITIONER’S MOTION TO HOLD PETITION  
FOR REVIEW IN ABEYANCE**

Pursuant to Fed. R. App. P. 27, Petitioner, Southern Alliance for Clean Energy (“SACE”), hereby moves to hold in abeyance the attached petition for review of pending the Court’s decision in a related rulemaking appeal now before the Court. This case should be held in abeyance because the outcome of the rulemaking appeal will be dispositive of this appeal.

**BACKGROUND**

This petition for review relates to actions taken by the NRC on remand from this Court’s decision in *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*State of New York I*”). In response to the Court’s decision in *State of New York*

I, the NRC issued the Continued Storage of Spent Nuclear Fuel Rule, 70 Fed. Reg. 56,238 (Sept. 19, 2014) (“Rule”) and the Generic Environmental Impact Statement for the Continued Storage of Spent Nuclear Fuel, 70 Fed. Reg. 56,263 (Sept. 19, 2014) (“GEIS”).

In *Beyond Nuclear v. NRC*, No. 14-1216, SACE and other organizations challenged the Rule and GEIS on the grounds, *inter alia*, that they violate the National Environmental Policy Act (“NEPA”) and the Administrative Procedure Act (“APA”). SACE’ appeal was consolidated with other appeals of the Rule and GEIS in *State of New York v. NRC*, Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (“*State of New York II*”). Briefing has been completed and the parties are awaiting oral argument.

In this appeal, SACE seeks review of the NRC’s decision to issue an operating license for Watts Bar Unit 2, to the extent the licensing decision relies on the Rule and GEIS. In filing this appeal, SACE seeks to ensure that any decision rendered by this Court in *State of New York II* will be applied to the Watts Bar Unit 2 licensing decision.

## **ARGUMENT**

SACE requests that the attached Petition for Review be held in abeyance, pending this Court’s decision in *State of New York II*. Briefing in that case will resolve, in their entirety, all of the NEPA and APA claims that apply to this

Petition for Review. SACE has not raised any other claims in this appeal. Once this Court decides *State of New York II*, SACE will seek application of that decision to this petition for review.

This Court has granted motions to hold other reactor licensing appeals in abeyance on the same grounds in:

- *Missouri Coalition for the Environment v. United States Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1114 (filed Apr. 23, 2015; motion to hold in abeyance granted May 22, 2015);
- *Beyond Nuclear vs. United States Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1173 (filed June 19, 2015; motion to hold in abeyance granted Oct. 5, 2015); and
- *Blue Ridge Environmental Defense League v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1258 (filed Aug. 6, 2015) (motion to hold in abeyance granted Aug. 7, 2015 and consolidated with *Blue Ridge Environmental Defense League v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1259 (filed Aug. 6, 2015); *Blue Ridge Environmental Defense League v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1260 (filed Aug. 6, 2015); *Nuclear Information and Resource Service v. United States Nuclear Regulatory Commission and*

*the United States of America*, No. 15-1261 (filed Aug. 6, 2015); *Sustainable Energy and Economic Development Coalition v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1262 (filed Aug. 6, 2015); and *Beyond Nuclear v. United States Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1263 (filed Aug. 6, 2015)).

In all of the above-cited cases, the Petitioners seek to ensure that any decision rendered by the Court in *State of New York II* is applied in individual reactor licensing cases. They do not seek to conduct duplicative litigation, on review of individual reactor licensing decisions, of the issues raised in *State of New York II*.

SACE has consulted with the NRC and the United States on this motion. Federal Respondents do not oppose the relief that SACE has requested but take no position at this time on the effect of a decision in *State of New York II* on this or any other petition for review.

Accordingly, SACE respectfully requests that this Court hold SACE' Petition for Review in abeyance pending the resolution of *State of New York II*.

Respectfully submitted,



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November 20, 2015

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

SOUTHERN ALLIANCE FOR CLEAN ENERGY, Petitioner, v. UNITED STATES NUCLEAR REGULATORY COMMISSION COMMISSION and the UNITED STATES OF AMERICA, Respondents, Case No. \_\_\_\_\_

CERTIFICATE OF SERVICE

I, Diane Curran, certify that between November 20 and 23, 2015, I served the foregoing Petitioner’s Motion to Hold Petition for Review in Abeyance on the following by first-class mail:

Loretta Lynch, Attorney General United States Department of Justice 950 Pennsylvania Avenue N.W. Washington, D.C. 20530-001

Annette L. Vietti-Cook, Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Also by e-mail to: Annette.vietti-cook@nrc.gov

1 Pursuant to 28 U.S.C. § 2344, the Attorney General’s copies were served by first-class registered mail with a request for a return receipt.

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Respectfully submitted,



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