

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

Sustainable Energy and Economic  
Development Coalition, Public Citizen,  
Susan Dancer,  
Petitioners,

v.

Docket No. 16-1108

United States Nuclear Regulatory Commission  
And the United States of America,

Respondents

**PETITIONERS' MOTION TO HOLD PETITION  
FOR REVIEW IN ABEYANCE**

Pursuant to Fed. R. App. P. 27 Petitioners hereby moves to hold in abeyance their petition for review of a decision by the U.S. Nuclear Regulatory Commission (“NRC”) to license the South Texas Units 3 & 4 nuclear power plant. Petitioners request the Court to delay review of its claim that the NRC violated the Atomic Energy Act (“AEA”), the National Environmental Policy Act (“NEPA), and the Administrative Procedure Act (“APA”) by basing its licensing decision for South Texas Units 3 & 4 on the NRC’s Continued Storage of Spent Nuclear Fuel Final Rule, 70 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”) and the supporting Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, 70 Fed. Reg. 56,263 (Sept. 19, 2014) (“GEIS”).

The lawfulness of the Continued Spent Fuel Storage Rule and GEIS is now before the Court in *New York v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (“*New York II*”), to which Petitioner is a party.<sup>1</sup> Petitioners’ petition for review also raises other claims related to the application of the Atomic Energy Act, 42 U.S.C. 2133(d) in NRC Memorandum and Order CLI-15-07 concerning the prohibition against foreign control or domination of a nuclear power plant project. Petitioners also seek to defer this issue.

Because the Court’s ruling in *New York II* will resolve petitioners’ claim regarding the lawfulness of NRC’s reliance on the Continued Spent Fuel Storage Rule and GEIS, however, petitioners respectfully submit that the Court should hold the resolution of that claim in abeyance pending the outcome of *New York II*.

## **BACKGROUND**

This petition for review relates in part to actions taken by the NRC on remand from this Court’s decision in *New York I*. In response to the Court’s decision in *New York I*, the NRC issued the Continued Spent Fuel Storage Rule and GEIS. In *Beyond Nuclear v. NRC*, No. 14-1216 (filed Oct. 29, 2014), petitioners and other organizations challenged the Rule and GEIS on the grounds that they violate the Atomic Energy Act, NEPA, and the APA. The Beyond

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<sup>1</sup> In *New York II*, the petitioners have appealed the Continued Spent Fuel Storage Rule and GEIS issued by the NRC on remand from *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*New York I*”).

Nuclear petitioners' appeal was consolidated with other appeals of the Rule and GEIS in *New York II*. Petitioners do not seek to brief issues related to the Continued Spent Fuel Storage Rule and GEIS in this case now because it was previously briefed in *New York II* to which SEED is a party.

In this petition for review, petitioners also challenge the NRC's decision to issue a combined license ("COL") for South Texas Units 3 & 4, based on the NRC's application of the Atomic Energy Act, 42 U.S.C. 2133(d) that prohibits licensing of projects that are subject to foreign ownership control or domination. As stated above, petitioners seek to hold this issue in abeyance, as well.

## **ARGUMENT**

Petitioners request the Court to hold this petition for review in abeyance with respect to the issue that the NRC's reliance on the Continued Spent Fuel Storage Rule and GEIS for the South Texas Project Units 3 and 4 licensing decision is unlawful. The Court's decision in *New York II* will fully resolve that claim. Once this Court decides *New York II*, petitioners will seek application of that decision to this petition for review. If the petitioners in *New York II* prevail, petitioners herein will seek reversal of the South Texas Units 3 and 4 licensing decision until the NRC promulgates a new rule and GEIS that come into compliance with NEPA, the AEA, and the APA. If the government prevails in

*New York II*, petitioners will drop the claim from this case. Under the circumstances, therefore, to brief the same issues in both this case and *New York II* would be unnecessary, duplicative, and wasteful of the Court's and the parties' resources. Petitioners note that this Court has granted similar relief in *Beyond Nuclear v. NRC*, No. 15-1173 (Order dated October 5, 2015); *Missouri Coalition for the Environment v. NRC*, No. 15-1114 (Order dated May 22, 2015); and *Blue Ridge Environmental Defense League v. NRC*, No. 15-1258 (Consolidated) (Order dated August 7, 2015).

As noted above, the extant petition for review also raises issues concerning application of 42 U.S.C. 2133(d). In *Beyond Nuclear, Inc. v. NRC* (D.C. Cir. No. 15-1173), petitioners raised issues concerning the Continued Storage Rule and issues concerning a quality assurance program and transmission line corridor. The court held all issues in abeyance in that matter, as is sought herein

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

Accordingly, Petitioners respectfully request that this Court hold its petition for review of the South Texas Project Units 3 and 4 licensing decision in abeyance pending the resolution of *New York II*.

Respectfully submitted,

Robert V. Eye

Robert V. Eye, KS. Sup. Ct. No. 10689

Robert V. Eye Law Office, LLC

Suite 1010

4840 Bob Billings Parkway

Lawrence, Kansas 66049

785-234-4040 Phone

785-749-1202 Fax

[bob@kauffmaneye.com](mailto:bob@kauffmaneye.com)

(admission pending)

Counsel for Petitioners

Date: May 5, 2016

#### CERTIFICATE OF SERVICE

Undersigned certifies that on May 5, 2016, a copy of the foregoing Motion to Hold Petition for Review in Abeyance was filed with the Clerk of the Court and served on counsel of record through the CM/ECF system.

Robert V. Eye