

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

BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	
U.S. NUCLEAR REGULATORY)	
COMMISSION and the)	No. 15-1173
UNITED STATES OF AMERICA,)	
)	
Respondents,)	
)	
DTE ELECTRIC COMPANY,)	
)	
Respondent-Intervenor.)	
)	

**JOINT MOTION TO CONTINUE TO HOLD
PETITION FOR REVIEW IN ABEYANCE**

As required by the Court, the parties hereby submit a joint motion to govern the above-captioned petition for review of an order in the licensing proceeding for the Fermi Unit 3 nuclear reactor, now that the Court has issued a decision in *State of New York v. NRC*, Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated).¹ On June 3, 2016, the Court denied the petitions for

¹ Nine other, similar petitions for review have been previously held in abeyance: *Missouri Coalition for the Environment, Inc. v. U.S. Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1114 (filed Apr. 23, 2015); *Blue Ridge Environmental Defense League v. U.S. Nuclear Regulatory Commission and the United States of America*, No. 15-1258 (filed Aug. 6, 2015) (consolidated by Order dated August 7, 2015 with *Blue Ridge Environmental Defense League v. U.S. Nuclear Regulatory Commission and the United States of America*, No. 15-1259 (filed Aug. 6, 2015); *Blue Ridge Environmental Defense League v. U.S. Nuclear Regulatory Commission and the United States of America*, No. 15-1260 (filed Aug. 6, 2015); *Nuclear Information and Resource Service v. U.S. Nuclear Regulatory Commission and the United States of America* (No. 15-

Generic Environmental Impact Statement ("GEIS").

The Environmental Petitioners in *State of New York* intend to petition the Court for rehearing *en banc*. Therefore, the parties hereby request the Court to continue to hold the above-captioned petition for review in abeyance pending the outcome of the petition for rehearing *en banc*. The parties propose to file an additional motion to govern this petition for review within 30 days of the Court's decision on the petition for rehearing.

The parties have agreed that unless the Court's decision in *State of New York* is modified on rehearing or on writ of certiorari, all issues related to the Continued Spent Fuel Storage Rule and GEIS, whether under the National Environmental Policy Act, the Administrative Procedure Act, or the Atomic Energy Act, are resolved by *State of New York* and will not be litigated in the above-captioned case. The parties' agreement does not affect whether petitioner can present before the Commission a petition for waiver, pursuant to 10 C.F.R. § 2.335, of the Continued Storage Rule in any individual licensing proceeding.

Respectfully submitted,

Counsel for Petitioner:

/s/ Terry J. Lodge
Terry J. Lodge

1261) (filed Aug. 6, 2015); *Sustainable Energy and Economic Development Coalition v. U.S. Nuclear Regulatory Commission and the United States of America* (No. 15-1262); and *Beyond Nuclear v. U.S. Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1263 (filed Aug. 6, 2015)); *Southern Alliance for Clean Energy v. U. S. Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1427 (filed Nov. 20, 2015); and *Sustainable Energy and Economic Development Coalition v. U.S. Nuclear Regulatory Commission and the United States of America*, No. 16-1108 (filed Apr. 11, 2016). Similar motions are being filed in these other proceedings to continue to hold them in abeyance.

USCA Case #15-1173 Document #1623111
316 North Michigan St., Suite 520
Toledo, OH 43604-5627
419-255-7552
E-mail: tjlodge50@yahoo.com

Filed: 07/05/2016 Page 3 of 5

Counsel for Respondents:

/s/ Evelyn S. Ying

EVELYN S. YING

Attorney

Appellate Section

Environment and Natural

Resources Division

U.S. Department of Justice

P.O. Box 7415

Washington, DC 20044-7415

Phone: (202) 514-4786

Fax: (202) 353-1873

evelyn.ying@usdoj.gov

/s/ Andrew P. Averbach

ANDREW P. AVERBACH

Solicitor

/s/ Michelle D. Albert

MICHELLE D. ALBERT

Attorney

Office of the General Counsel

U.S. Nuclear Regulatory Commission

11555 Rockville Pike

Rockville, MD 20852-2738

Phone: (301) 287-9259

Fax: (301) 415-3725

Michelle.Albert@nrc.gov

Counsel for Respondent-Intervenor:

/s/ David A. Repka

DAVID A. REPKA

/s/ Tyson R. Smith

TYSON R. SMITH

WINSTON & STRAWN LLP

1700 K Street, NW

Washington, DC 20006

Phone: (202) 282-5726

Fax: (202) 282-5100

drepka@winston.com

trsmith@winston.com

CERTIFICATE OF SERVICE

-
I certify that on July 5, 2016, I served the foregoing “Joint Motion to Continue to Hold Petition for Review in Abeyance” on the following by posting it on the Court’s Electronic Case Filing System:

Evelyn S. Ying, Esq.
Appellate Section
Environment and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7415
Washington, DC 20044-7415
evelyn.ying@usdoj.gov

Andrew P. Averbach, Esq.
Solicitor
Michelle D. Albert, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738
Michelle.Albert@nrc.gov

David A. Repka, Esq.
Tyson R. Smith, Esq.
WINSTON & STRAWN LLP
1700 K Street, NW
Washington, DC 20006
drepka@winston.com
trsmith@winston.com

Respectfully,

/s/ Terry J. Lodge
Terry J. Lodge, Esq.
Counsel for Petitioner

July 5, 2016