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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

)	
GEORGE BERKA,)	
)	Case No. 1:17-cv-02836-APM
Plaintiff,)	
)	REPLY BRIEF IN SUPPORT OF FEDERAL
v.)	DEFENDANT’S MOTION TO DISMISS
)	COMPLAINT FOR LACK OF
NUCLEAR REGULATORY)	JURISDICTION
COMMISSION,)	
)	
Defendant.)	

Plaintiff George Berka seeks judicial review of the denial by the Nuclear Regulation Commission (“NRC”) of his petition for rulemaking. See Compl., ECF 1. Plaintiff does not contest that the Hobbs Act confers jurisdiction upon the Courts of Appeals to review a challenge to a denial of a petition for rulemaking by the NRC if the challenge is filed by a “party aggrieved” within sixty days after the entry of the final order. 28 U.S.C. §§ 2342(4), 2344; 42 U.S.C. § 2239(a)(1)(A); Plaintiff’s Reply and Objection to Motion to Dismiss, ECF 11. Nor does Plaintiff contest that he has brought this claim in the wrong court. *Id.* Plaintiff now argues that the NRC had a “reasonable obligation to inform him about how to appeal its final decision.” *Id.* Specifically, Plaintiff argues that the NRC should have advised him “that he had the option to appeal its decision to the U.S. Court of Appeals,” and provided him “with a brief set of instructions on how to do this.” *Id.*

First, even assuming arguendo that the NRC had an obligation to inform Plaintiff of how to properly appeal the denial of his petition, any alleged failure to fulfill that obligation does not cure the jurisdictional defect in this case. The fact remains that the Hobbs Act vests exclusive jurisdiction in the Court of Appeals to review the NRC's denial of a petition for rulemaking. Moreover, contrary to Plaintiff's assertions, the NRC does not have any obligation to provide legal advice to individuals who petition for a rulemaking.¹ The requirements set forth in 10 C.F.R. § 2.802 expressly limit the extent to which the NRC may consult with a petitioner before, during, and after the petitioning process.² Under 10 C.F.R. § 2.802(b)(1), the assistance that the NRC may provide to a petitioner is limited to:

- (i) Describing the process for filing, docketing, tracking, closing, amending, withdrawing, and resolving a petition for rulemaking;
- (ii) Clarifying an existing NRC regulation and the basis for the regulation; and
- (iii) Assisting the petitioner to clarify a petition for rulemaking so that the Commission is able to understand the issues of concern to the petitioner.

In fact, 10 C.F.R. § 2.802(b)(2) states “[i]n any consultation regarding the drafting or amendment of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the petition for rulemaking.”

The NRC responded to Plaintiff's petition within the limits set forth in 10 C.F.R. § 2.802(b). First, the NRC notified Plaintiff that the petition did not meet any of the

¹ Pro se litigants are allowed more latitude than litigants represented by counsel to *correct defects in service of process and pleadings*. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (emphasis added). However, this latitude “does not constitute a license for a plaintiff filing *pro se* to ignore the Federal Rules of Civil Procedure.” *Akosile v. Armed Forces Ret. Home*, 141 F. Supp. 3d 75, 88 (D.D.C. 2015)(internal quotations and citation omitted).

² This information is also accessible on the NRC's website: <https://www.nrc.gov/about-nrc/regulatory/rulemaking/petition-rule.html>.

requirements for filing a petition for rulemaking. Ex. 2, ECF 9-2. The NRC also notified Plaintiff that he must supplement his petition within ninety days or his request would not be docketed as a petition for rulemaking. *Id.*; *see* 10 C.F.R. § 2.802 (2015). After Plaintiff supplemented his petition, the NRC denied Plaintiff's petition for rulemaking, explaining that the original petition, as well as the supplemental materials he provided, still did not satisfy the criteria under 10 C.F.R § 2.802(c). Ex. 4, ECF 9-2. The NRC explained in detail exactly how Plaintiff's petition for rulemaking was deficient. *Id.* Nothing prevented Plaintiff from filing another petition for a rulemaking with the NRC.

For the foregoing reasons, the NRC's motion to dismiss for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) should be granted.

Respectfully submitted this 19th day of June, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of June, 2018, the foregoing was electronically filed with the Clerk of the Court and served using the CM/ECF system upon all parties and counsel of record.

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