



OFFICE OF THE
GENERAL COUNSEL

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

June 3, 2019

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

Re: *Beyond Nuclear, Inc. v. NRC*, No. 18-1340

Dear Mr. Langer:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, Respondent Nuclear Regulatory Commission (NRC), on behalf of Federal Respondents, hereby informs the Court of another development before the agency related to the above-referenced matter. The development does not change, and in fact supports, the conclusion in our motion to dismiss that the pending petition in this Court should be dismissed.

We previously advised the Court that on May 7, 2019, the NRC's Atomic Safety and Licensing Board (Board) issued Memorandum and Order LBP-19-04 denying admission of the contention raised by Beyond Nuclear, Inc. (petitioner before the Court) related to the NRC's authority to issue a license to Holtec International for a spent fuel storage facility that contemplates storing spent fuel to which the Department of Energy holds title. Today, Beyond Nuclear appealed the Board's decision to the Commission (sitting in review of the Board) pursuant to 10 C.F.R. § 3.211.

As we discuss on pages 4-5 and page 8 of our motion to dismiss, this Court should dismiss Beyond Nuclear's petition for review because it does not challenge a final order of the Commission, and because the issue is not yet ripe for review. Beyond Nuclear's appeal of LBP-19-4 further demonstrates that the agency's decisionmaking process was not final at the time that the petition was filed, and that the Commission's adjudication of the issues that Beyond Nuclear has raised before the Court remains ongoing.

Respectfully,

/s/ Andrew P. Averbach
Solicitor

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on June 3, 2019, I served a copy of the foregoing letter on the parties to this case and filed it with the U.S. Court of Appeals for the District of Columbia Circuit by uploading it to the Court's CM/ECF system.

/s/ Andrew P. Averbach

Andrew P. Averbach

Solicitor

U.S. Nuclear Regulatory Commission