

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

BEYOND NUCLEAR, INC., et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	Nos. 20-1187 and 20-1225
UNITED STATES NUCLEAR	)	(Consolidated)
REGULATORY COMMISSION	)	
and the UNITED STATES OF	)	
AMERICA,	)	
	)	
Respondents.	)	

**SIERRA CLUB MOTION TO INTERVENE**

Comes now Sierra Club, pursuant to Federal Rule of Appellate Procedure 15(d) and Local Rule 15(b), and moves to intervene in this Petition for Review. In support of this Motion to Intervene, the Sierra Club states as follows:

1. In Case No. 20-1187, Beyond Nuclear has petitioned the court for review of two orders issued by the U.S. Nuclear Regulatory Commission (NRC) in a licensing proceeding for a nuclear waste storage facility in New Mexico. First, in an Order dated October 29, 2018, the NRC refused to dismiss the licensing proceeding for failure to comply with the Nuclear Waste Policy Act (NWPA) and the Administrative Procedure Act (APA). Second, in Memorandum and Order CLI-20-04, dated April 23, 2020 (CLI-20-04), the

NRC refused to grant Beyond Nuclear a hearing on the question of whether the license application itself violated the NWPA. Beyond Nuclear's Petition for Review presented no other claims, nor did Beyond Nuclear raise any other claims in the licensing proceeding.

2. On June 19, 2020, Don't Waste Michigan and other organizations filed a petition for review of CLI-20-04 in Case No. 20-1225. Their petition for review included a claim that the license application violated the NWPA. The court consolidated the cases by an order dated June 23, 2020.

3. Like Beyond Nuclear and Don't Waste Michigan, *et al.*, Sierra Club sought a hearing before the NRC on the same license application. Sierra Club raised a number of claims, including a claim very similar to Beyond Nuclear's, that the license application violated the NWPA. The NRC Commissioners conclusively decided this NWPA claim in CLI-20-04 along with Beyond Nuclear's NWPA claim. *Id.*, slip op. at 4-8.<sup>1</sup>

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<sup>1</sup> Beyond Nuclear and Sierra Club both claim that provisions in the license application that contemplate federal ownership of the spent nuclear fuel violate the NWPA, and the APA prohibits the NRC from issuing a license with an illegal provision. While Don't Waste Michigan's *et al.*'s claim also concerns a violation of the NWPA, it focuses on the impact of that violation – asserting that, without illegal contracts with the federal government to take title to the spent nuclear fuel, Holtec cannot provide reasonable assurance that it has or will obtain the necessary funds to build, operate, and decommission the facility. The NRC conclusively decided Don't Waste Michigan *et al.*'s NWPA claim in CLI-20-04, slip op. at 41-44.

4. Some claims by Sierra Club, other than its NWPA claim, are still pending before the agency. Therefore, no final decision has been made on Sierra Club's case as a whole; and under the Hobbs Act, 28 U.S.C. § 2344, Sierra Club may not yet file a petition for review of CLI-20-04.

Accordingly, Sierra Club moves the court for permission to intervene in support of Beyond Nuclear's claims related to the NWPA. By allowing Sierra Club to intervene in this proceeding, the court will protect Sierra Club's interest in being heard on the issue of NWPA compliance, which has now been conclusively decided against Beyond Nuclear and Sierra Club on the same grounds. *See* CLI-20-04, slip op. at 4-8. If permitted to intervene in this proceeding for review of CLI-20-04, Sierra Club will not seek to raise the same issue later if and when the NRC rules against Sierra Club on other issues in a final decision.

Sierra Club consulted the NRC and the Department of Justice regarding this motion. They have no objection to the filing of this motion.

/s/ *Wallace L. Taylor*

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**SIERRA CLUB'S DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit

Rule 26.1, Sierra Club makes the following disclosures:

Non-Governmental Corporate Party: Sierra Club

Parent Corporations: None

Publicly Held Company Owning 10% or More of Party's Stock: None

Party's General Nature and Purpose: Sierra Club is a non-profit corporation organized under the laws of California. Its goal is to protect and enhance the environment. In this case, Sierra Club is concerned about storing and transporting at least 100,000 tons of radioactive waste. Sierra Club members live within 35 miles of the proposed radioactive waste storage site at issue in

this case and near the likely routes over which the waste will be transported  
by rail to the proposed storage site.

/s/ *Wallace L. Taylor*

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