



OFFICE OF THE
GENERAL COUNSEL

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

January 5, 2021

BY ELECTRONIC FILING

Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103

Re: *Public Watchdogs v. NRC*, No. 20-70899
Notice of Supplemental Authority

Dear Ms. Dwyer:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, Respondent Nuclear Regulatory Commission (NRC), on behalf of Federal Respondents, informs the Court of a decision in a case that is related to this Petition for Review.

On December 29, 2020, this Court issued a published decision in *Public Watchdogs v. Southern California Edison Co.*, No. 19-56531, affirming the district court's dismissal, for lack of jurisdiction, of Public Watchdogs' claim against the NRC related to spent fuel storage and decommissioning activities at the San Onofre Nuclear Generating Station. Specifically, this Court held that the Hobbs Act required Public Watchdogs to file its claims directly in the court of appeals rather than in the district court. It further noted that Public Watchdogs could submit to the NRC (and in fact had submitted and sought judicial review of the agency's disposition of) a citizen petition for enforcement action pursuant to the NRC's regulation at 10 C.F.R. § 2.206. In our brief in the instant case, we described Case No. 19-56531 and its relationship to the instant case. Federal Respondents' Br. at 14-15, 58.

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The Court's decision in Case No. 19-56531 noted the pendency of the Petition for Review in the instant case, but it did not reach the district court's alternative holding that it lacked jurisdiction to review the agency's enforcement-related decisions under 5 U.S.C. § 701(a)(2), because those decisions were "presumptively unreviewable." Slip op. at 21 & n.5, 38 n.11. Our brief in the instant case addresses the argument that the Court in Case No. 19-56531 did not reach—that the agency's denial of a petition for enforcement action pursuant to 10 C.F.R. § 2.206 is presumptively unreviewable and that Petitioner Public Watchdogs has failed to rebut this presumption here. *See* Federal Respondents' Br. at 22-41.

Respectfully,

/s/ Andrew P. Averbach
Solicitor