

reviewable by section 2239 of title 42.” 28 U.S.C. § 2342(4) (2006). A piece-by-piece application of this provision makes clear that it governs Plaintiff’s case. First, Defendant’s denial of Plaintiff’s petition for rulemaking is a final order. *See Gage v. Atomic Energy Comm’n*, 479 F.2d 1214, 1222 n.27 (D.C. Cir. 1973). Second, Defendant substitutes for its predecessor, the Atomic Energy Commission. *See Nat. Res. Def. Council, Inc. v. U.S. NRC*, 606 F.2d 1261, 1265 n.9 (D.C. Cir. 1979). Third, Defendant’s rejection of Plaintiff’s petition to amend the regulation governing nuclear plant license terminations is judicially reviewable under 42 U.S.C. § 2239, which governs “any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees.” 42 U.S.C. § 2239(a)(1)(A) (1996). Accordingly, the Court of Appeals has exclusive jurisdiction. Other courts, when faced with a similar case, have reached the same conclusion. *See Ohio Edison Co. v. Zech*, 701 F. Supp. 4, 6 (D.D.C. 1988); *Cent. for Nuclear Responsibility, Inc. v. U.S. NRC*, 586 F. Supp. 579, 580–81 (D.D.C. 1984); *see also Gage*, 479 F.2d at 1222 n.27 (advising petitioners to petition for rulemaking and notifying them that a denial of such petition “would constitute a final order reviewable by this court”).

III.

Instead of transferring the case to the Court of Appeals, the court dismisses the case for untimeliness. Under 28 U.S.C. § 2344, a plaintiff must file a challenge to a final order issued by the Nuclear Regulatory Commission within 60 days. 28 U.S.C. § 2344 (1966); *see also Nat. Res. Def. Council v. NRC*, 666 F.2d 595, 602 (D.C. Cir. 1981). Here, Defendant issued its final order on June 19, 2015, when it notified Plaintiff that his petition would not be docketed because the petition did not satisfy the agency’s regulations. *See Def.’s Mot., Ex. 4*. Plaintiff challenged that decision in this court on December 18, 2017, nearly two-and-a-half years later.

In opposition, Plaintiff argues that Defendant should have “advised him that he had the option to appeal its decision to the U.S. Court of Appeals,” and provided instructions accordingly.

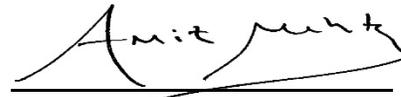
Pl.'s Opp'n, ECF No. 11, at 1. Plaintiff does not cite any legal authority for this argument, and the court could not find any legal authority for such an obligation. The argument, therefore, does not alter the court's decision, and the case is untimely.

IV.

For the foregoing reasons, Defendant's Motion to Dismiss, ECF No. 9, is granted with prejudice for lack of jurisdiction.

A separate, final order accompanies this Memorandum Opinion.

Dated: December 19, 2018


Amit P. Mehta
United States District Judge