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Via CM/ECF

Lyle W. Cayce
Clerk of Court
United States Court of Appeals
Fifth Circuit
600 S. Maestri Place
New Orleans, Louisiana 70130

Re: *State of Texas, et al. v. Nuclear Regulatory Commission, et al.*, No. 21-60743

Dear Mr. Cayce:

At oral argument, counsel for Fasken mentioned that the NRC’s website identifies independent spent fuel storage installations, or “ISFSIs.” Oral Arg. Tr. at 50:45-51:23. The Court invited counsel to furnish that information in a 28(j) letter. *Id.* 51:30-35.

The NRC’s website contains a map showing twelve¹ “away from reactor” ISFSIs in the United States. <https://www.nrc.gov/images/reading-rm/doc-collections/maps/isfsi.png> (Attached as Ex. 1). That “away from reactor” moniker is misleading, however, and all those facilities are materially different from what NRC licensed in this case.

Of the twelve facilities, three are operated by DOE; one, Private Fuel Storage (“PFS”), is the facility at issue in *Bullcreek* and was never constructed²; and GE Morris is the *sui generis* former reprocessing facility discussed in briefing.³

The remaining seven privately operated facilities are associated with and located at decommissioned, or decommissioning, reactors. The NRC’s description of these facilities as “away-from-reactor” is an artificial regulatory construction based on the fact that the storage is the only remaining actively licensed operation at the site. *See Proposed Rule, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning*, 87 Fed. Reg. 12,254, 12,265 n.4 (Mar. 3, 2022); *see also* Final Rule; *Licensing Requirements of the*

¹ The ten facilities referenced by counsel were based on an April 2021 map (<https://www.nrc.gov/docs/ML2111/ML21116A041.pdf>).

² PFS is the only other facility not associated with a decommissioned reactor and that contemplates consolidated storage of spent fuel from various reactors across the country. Unlike ISP, the PFS license did not permit the storage of DOE-titled spent fuel.

³ Texas Reply Br. at 12-13.

Storage of Spent Fuel in an Independent Fuel Spent Storage Installation, 45 Fed. Reg. 74,693, 74,698 (Nov. 12, 1980) (similar under “Definition of the term ‘Independent’”). Notwithstanding the NRC’s artificial regulatory label, these operations are still occurring “at the site of [a] civilian nuclear power reactor” in the statutory sense, 42 U.S.C. § 10151(a)(1), even though the reactor has been decommissioned. The ISP facility at issue in this case, by contrast, would be a new construction far from the “site” of any “civilian nuclear power reactor.”

Respectfully submitted,

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cc: all counsel via ECF.

Exhibit 1

