



# **POLICY ISSUE**

## **(Information)**

January 17, 2024

SECY-24-0004

FOR: The Commissioners

FROM: Andrew P. Averbach  
Solicitor

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2023)

### PURPOSE:

To inform the Commission of the status of litigation in the courts.

### DISCUSSION:

Enclosed is a report detailing the current status of cases brought in federal court against the U.S. Nuclear Regulatory Commission (NRC) or its officials. It updates the last annual report dated January 24, 2023 (SECY-23-0007). It includes cases filed through the end of 2023 but reflects the status of NRC cases in court as of January 16, 2023.

During the reporting period (Calendar Year 2023), the Commission or NRC officials were sued three times in the courts of appeals.<sup>1</sup> No suits were commenced in federal district court. During this same period, fifteen cases were closed.<sup>2</sup> Federal litigation during the calendar year largely centered on the licensing of spent fuel storage facilities, the renewal of the operating licenses for the Diablo Canyon Power Plant, and on employment-related cases.

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<sup>1</sup> *Fasken v. NRC*, No. 23-60377 (5th Cir.); *San Luis Obispo Mothers for Peace v. NRC*, No. 23-852 (9th Cir); *San Luis Obispo Mothers for Peace v. NRC*, No. 23-3884 (9th Cir).

<sup>2</sup> *Don't Waste Michigan v. NRC*, No. 21-1048 (D.C. Cir.) (consolidated with *Beyond Nuclear v. NRC*, No. 21-1056, *Sierra Club v. NRC*, No. 21-1055, *Fasken Land and Minerals, Ltd. v. NRC*, No. 21-1179, *Beyond Nuclear v. NRC*, No. 21-1230, *Sierra Club v. NRC*, No. 21-1227, *Sierra Club v. NRC*, No. 21-1229, and *Don't Waste Michigan v. NRC*, No. 21-1231); *Oglala Sioux Tribe v. NRC*, No. 20-1489 (D.C. Cir); *Ohio Nuclear-Free Network v. NRC*, No. 21-1162 (D.C. Cir.); *Balderas v. NRC*, No. 21-9593 (10th Cir.); *Ki v. NRC*, No. 20-cv-00130-GHH (D. Md); *Kotzalas v. NRC*, No. 20-cv-02926-PWG (D. Md.); *Tafazzoli v. Hanson*, No. 8:19-cv-00321-DLB (D. Md.).

The number of new filings in 2022 is lower than the number of cases filed in recent years. There were 3 new lawsuits filed in 2022, 19 in 2021, 10 in 2020, 10 in 2019, 4 in 2018, 3 in 2017, 4 in 2016, 11 in 2015, 6 in 2014, and 5 in 2013, for an average of 7.5 new lawsuits per year over the prior ten years.

We have also continued to participate in lawsuits brought by or against the United States and/or its agencies or employees or in which the United States and/or its agencies or employees have been named as third-party defendants.<sup>3</sup> Much of this work has involved responding to requests for documents related to the activities of both the NRC and/or licensees and NRC employees, working with the Department of Justice to draft and review pleadings, and implementing and maintaining litigation holds for materials that may be relevant to ongoing litigation.

Finally, during this reporting period we handled one new "Touhy" request for NRC testimony, depositions, or other evidence for use in private litigation. See Title 10 of the *Code of Federal Regulations* § 9.200 et seq.

Enclosure:  
Litigation Status Report

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CFO  
OEDO  
OGC  
OCAA  
OCA  
OIG  
OPA  
Rgn I  
Rgn II  
Rgn III  
Rgn IV

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<sup>3</sup> *United States v. Tetra Tech*, 3:13-cv-03835-JD (N.D. Cal.) (consolidated).

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2023) DATED  
JANUARY 17, 2024

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