

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**BEYOND NUCLEAR, INC. and
SIERRA CLUB, INC.*Petitioners,*

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION,
and UNITED STATES OF
AMERICA,*Respondents.*

Case No. 24-1318

**UNOPPOSED MOTION OF NUCLEAR ENERGY INSTITUTE FOR
LEAVE TO INTERVENE IN SUPPORT OF RESPONDENTS**

In accordance with Rule 15(d) of the Federal Rules of Appellate Procedure, D.C. Circuit Rule 15(b), 28 U.S.C. § 2348, and 42 U.S.C. § 2239(b), the Nuclear Energy Institute (NEI) respectfully moves for leave to intervene in support of the Respondents, the U.S. Nuclear Regulatory Commission (NRC) and the United States of America, in the above-captioned case. NEI has confirmed with counsel for both of the Respondents and the Petitioners, Beyond Nuclear and Sierra Club, that this motion is unopposed.

BACKGROUND

On October 7, 2024, Petitioners filed a petition for review challenging NRC’s final rule on “Renewing Nuclear Power Plant Operating Licenses—Environmental Review,” 89 Fed. Reg. 64,166 (Aug. 6, 2024) (the Rule).

Petitioners allege that the Rule violates the National Environmental Policy Act (NEPA) and the Administrative Procedure Act by adopting conclusions from Revision 2 to NUREG-1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (Aug. 2024) (License Renewal GEIS). The License Renewal GEIS identifies and evaluates environmental issues for license renewal and determines which issues are likely to have similar impacts across all nuclear power plants or specific subsets of plants (*i.e.*, generic issues) and which may vary in impact, thereby requiring plant-specific analysis. Petitioners contend that the 2024 License Renewal GEIS contains flawed analyses and, therefore, ask this Court to reverse and vacate the Rule.

The Atomic Energy Act authorizes NRC to issue licenses to operate commercial power plants for up to 40 years.¹ These licenses can be renewed in 20-year increments,² allowing plants to continue providing clean, reliable energy. License renewal is imperative given skyrocketing U.S. electricity demand and the

¹ 42 U.S.C. § 2133(c).

² 10 C.F.R. § 54.31(b).

nuclear operating fleet's vital role in meeting U.S. energy security, grid reliability, economic, and climate mitigation goals.³ But to obtain a renewal, a plant must undergo a thorough NRC review, including a NEPA review that focuses on the potential environmental impacts of continued operation of the plant for another 20 years.⁴

To make the license renewal environmental process more efficient and predictable, NRC amended its NEPA regulations at 10 C.F.R. Part 51 in 1996 to incorporate the conclusions in the original License Renewal GEIS.⁵ Since then, NRC has regularly reviewed and updated the License Renewal GEIS and its Part 51 regulations. For instance, NRC revised the License Renewal GEIS and associated regulations in 2013 to incorporate new environmental insights.⁶

The Rule under challenge is the latest revision and accounts for a subsequent license renewal term (*i.e.*, a second renewal term allowing plant operations for up to 80 years). It reflects lessons learned, knowledge gained, and experience

³ See, e.g., GridStrategies, The Era of Flat Power Demand is Over at 3 (Dec. 2023), <https://gridstrategiesllc.com/wp-content/uploads/2023/12/National-Load-Growth-Report-2023.pdf>.

⁴ See NRC, Backgrounder, Reactor License Renewal at 2-5 (Jan. 2022), <https://www.nrc.gov/docs/ML0506/ML050680253.pdf>.

⁵ NRC, Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,485 (June 5, 1996).

⁶ NRC, Final Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282 (June 20, 2013).

accumulated from license renewal reviews since the 2013 update, and, among other things, considers new scientific data and methodologies relevant to assessing the environmental impacts of nuclear power plant license renewal.⁷

STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION

Federal Rule of Appellate Procedure 15(d) provides that a motion for leave to intervene “must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.” This “simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought.”⁸ As discussed below, NEI readily satisfies these requirements.

NEI’s motion is timely because it was filed within 30 days after Petitioners filed their petition for review. This motion also is being filed at an early stage of this case and before any dispositive motions are due. Thus, granting this motion will not disrupt or delay this case.

NEI seeks leave to intervene because the organization and its members have direct and substantial interests in this case that would otherwise go unrepresented.⁹

⁷ See Rule, 89 Fed. Reg. at 64,170.

⁸ *Synovus Fin. Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991).

⁹ See *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (intervention should be granted if the “representation of [the movant’s] interest

NEI is the trade association for the commercial nuclear energy industry, representing hundreds of members, including all U.S. commercial nuclear power plant operators. NEI's mission is to promote the use and growth of nuclear energy through efficient operations and effective policy. A core function of NEI is to represent its members' interests in rulemakings and litigation that address issues critical to the industry. NEI has a direct and substantial interest in ensuring a stable, predictable, and efficient review process for reactor license renewal applications, and the License Renewal GEIS furthers that interest by optimizing efficiency in the renewal process and reducing duplicative efforts.

Given the importance of these issues, NEI actively participated in the rulemaking at hand by submitting detailed comments and engaging alongside other stakeholders,¹⁰ whose inputs NRC fully considered before it issued the Rule and

'may be' inadequate") (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

¹⁰ See, e.g., Nuclear Energy Institute Comments on NRC Proposed Rule – Renewing Nuclear Power Plant Operating Licenses – Environmental Review (NRC-2018-0296) (May 2, 2023), <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML23123A407>; NRC, Official Transcript of Public Comments-Gathering Meeting on PR-51—Renewing Nuclear Power Plant Operating Licenses—Environmental Review (Evening Session) at 44-45 (Mar. 16, 2023) (testimony from NEI), <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML23082A152>.

2024 License Renewal GEIS.¹¹ NEI's commitment to the renewal process reflects the interests of its reactor licensee members, many of whom are currently navigating the license renewal application process, developing applications, or evaluating the costs and benefits of renewal.¹² Indeed, a recent NEI survey found that more than 93% of the 95 units surveyed plan to operate for 80 years, underscoring the need for an efficient, reliable license renewal framework to support continued operation.¹³

NRC initiated this rulemaking after determining that the 2013 License Renewal GEIS did not adequately analyze the subsequent license renewal period, thereby limiting applicants' ability to rely on the GEIS in certain pending proceedings.¹⁴ In the absence of an updated GEIS, applicants have faced

¹¹ See, e.g., 2024 License Renewal GEIS, Appendix A, Comments Received on the Environmental Review (more than 300 pages of detailed responses to public comments), <https://www.nrc.gov/docs/ML2408/ML24086A527.pdf>. In developing the 2024 License Renewal GEIS and the Rule, NRC also considered comments received from the public during the public scoping period and comments received on plant-specific supplements to the 2013 License Renewal GEIS.

¹² See NEI, *The Future of Nuclear Power: 2024 Update Survey* at 3-4 (Oct. 2024), <https://nei.org/www.nei.org/files/f9/f9922ae5-98cb-449c-a004-785ef37b8105.pdf>.

¹³ NEI, *The Future of Nuclear Power: 2024 Update Survey* at 5 (Oct. 2024), <https://nei.org/www.nei.org/files/f9/f9922ae5-98cb-449c-a004-785ef37b8105.pdf>.

¹⁴ See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-22-2, 95 NRC 26 (2022); *Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-22-4, 95 NRC 44 (2022).

significant delays and uncertainty while waiting for a revised analysis and rule to be issued. Alternatively, they have been required to conduct a full suite of site-specific environmental analyses with the risk of protracted challenges to their applications in NRC administrative hearings.

By adopting the 2024 License Renewal GEIS and the Rule, NRC has extended the stable, predictable, and efficient regulatory process used for initial license renewal to subsequent license renewal. NRC's generic analysis method under NEPA, affirmed by this and other courts,¹⁵ promotes regulatory consistency and administrative efficiency. It also provides substantial cost savings to NEI's members, with projected industry-wide savings of \$89.5 million.¹⁶ NEI's participation in this case is therefore essential to ensure that the industry's interest in a stable and efficient NRC environmental review process for license renewals is properly represented.

CONCLUSION

For these reasons, NEI respectfully requests leave to intervene in support of the Respondents, as the Rule and supporting 2024 License Renewal GEIS play a

¹⁵ See, e.g., *New York v. NRC*, 824 F.3d 1012, 1019 (D.C. Cir. 2016) (citing *New York v. NRC*, 681 F.3d 471, 480 (D.C. Cir. 2012)); *Massachusetts v. NRC*, 708 F.3d 63, 68 (1st Cir. 2013); *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 101 (1983).

¹⁶ See Rule, 89 Fed. Reg. at 64,167.

critical role in ensuring an efficient, reliable process for the continued safe operation of nuclear plants across the United States. NEI's participation will ensure that industry's direct and substantial interests are fully represented and that the Rule's benefits are preserved for the nation's clean energy future.

Respectfully submitted,

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Dated: November 4, 2024

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(g), I certify the following:

1. This motion complies with the word limit of Fed. R. App. P. 27(d)(2) because it contains 1,455 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it was prepared using Microsoft Word in a proportionally spaced typeface in 14-point Times New Roman font.

Respectfully submitted,

/s/ Jonathan M. Rund

Dated: November 4, 2024

CERTIFICATE OF PARTIES AND AMICI CURIAE

In accordance with D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), movant-intervenor NEI certifies that all parties, intervenors, and amici appearing in this Court are listed in Petitioners' Certificate as to Parties, Rulings, and Related Cases.

Respectfully submitted,

/s/ Jonathan M. Rund

Dated: November 4, 2024

CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1(a) and D.C. Circuit Rules 26.1 and 27(a)(4), NEI submits the following corporate disclosure statement. NEI is a nonprofit organization incorporated in the District of Columbia. NEI is a “trade association” as that term is defined in D.C. Circuit Rule 26.1(b). NEI has no parent company and no publicly held company has any ownership interest in NEI.

NEI represents the policy interests of its members in the nuclear power industry, including nuclear power plant licensees, reactor designers and advanced technology companies, architect and engineering firms, fuel suppliers and service companies, consulting services and manufacturing companies, companies involved in nuclear medicine and nuclear industrial applications, radionuclide and radiopharmaceutical companies, universities and research laboratories, law firms, labor unions, and international electric utilities.

Respectfully submitted,

/s/ Jonathan M. Rund

Dated: November 4, 2024