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August 29, 2025

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:

On August 14, 2025, the Court requested letter briefs advising what the Court should do on remand in the above-captioned case following the United States Supreme Court's decision in *Nuclear Regulatory Commission v. Texas*, 605 U.S. 665 (2025). Texas and Fasken jointly submit this letter brief in response and advise the Court to dismiss Texas's and Fasken's petitions for review for lack of jurisdiction.

In its decision, the Supreme Court concluded that "Texas and Fasken were not parties to the Commission's licensing proceeding and are not entitled to obtain judicial review of the Commission's licensing decision." *Id.* at 690. It therefore remanded "with instructions to deny or dismiss the petitions for review." *Id.*

Of those two options – deny or dismiss – the Court should dismiss. Dismissal is appropriate when the Court lacks jurisdiction; denial is appropriate for review on the merits. *See Delgado-Reynua v. Gonzalez*, 450 F.3d 596, 601 (5th Cir. 2006). Here, the Supreme Court was clear that Texas's and Fasken's non-party status was a jurisdictional defect. *See Nuclear Regulatory Commission*, 605 U.S. at 673 ("the Hobbs Act limits jurisdiction to a 'party' aggrieved and . . . neither Fasken nor Texas successfully intervened as a 'party'"). This Court therefore lacks jurisdiction to consider Texas's and Fasken's petitions for review and should dismiss them.

Respectfully submitted,

KANNER & WHITELEY, L.L.C.

/s/ Allan Kanner

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cc: all counsel via ECF.