

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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BEYOND NUCLEAR, INC.

Petitioner,

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION and the  
UNITED STATES OF AMERICA,

Respondents.

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) Case No. 15-1173  
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**PETITIONER’S MOTION TO HOLD PETITION  
FOR REVIEW IN ABEYANCE**

Pursuant to Fed. R. App. P. 27, Petitioner, Beyond Nuclear, Inc., hereby moves to hold in abeyance a portion of the attached petition for review of a decision by the U.S. Nuclear Regulatory Commission (“NRC”) to license the Fermi Unit 3 nuclear power plant. Beyond Nuclear asks the Court to delay review of its claim that the NRC violated the Atomic Energy Act (“AEA”), the National Environmental Policy Act (“NEPA”), and the Administrative Procedure Act (“APA”) by basing its licensing decision for Fermi Unit 3 on the NRC’s Continued Storage of Spent Nuclear Fuel Final Rule, 70 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”) and the supporting Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, 70 Fed. Reg. 56,263 (Sept. 19, 2014) (“GEIS”). The lawfulness of the Continued Spent Fuel

Storage Rule and GEIS is now before the Court in *New York v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (“*New York II*”), to which Petitioner is a party.<sup>1</sup>

Beyond Nuclear’s petition for review also raises other claims, which Beyond Nuclear does not seek to defer. Because the Court’s ruling in *New York II* will resolve Beyond Nuclear’s claim regarding the lawfulness of NRC’s reliance on the Continued Spent Fuel Storage Rule and GEIS, however, Beyond Nuclear respectfully submits that the Court should hold the resolution of that claim in abeyance pending the outcome of *New York II*.

## **BACKGROUND**

This petition for review relates in part to actions taken by the NRC on remand from this Court’s decision in *New York I*. In response to the Court’s decision in *New York I*, the NRC issued the Continued Spent Fuel Storage Rule and GEIS. In *Beyond Nuclear v. NRC*, No. 14-1216 (filed Oct. 29, 2014), Beyond Nuclear and other organizations challenged the Rule and GEIS on the grounds that they violate the Atomic Energy Act, NEPA, and the APA. Beyond Nuclear’s appeal was consolidated with other appeals of the Rule and GEIS in *New York II*. The petitioners’ initial briefs in that case are due June 29, 2015.

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<sup>1</sup> In *New York II*, the petitioners have appealed the Continued Spent Fuel Storage Rule and GEIS issued by the NRC on remand from *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*New York I*”).

In this petition for review, Beyond Nuclear challenges several aspects of the NRC's decision to issue a combined license ("COL") for Fermi Unit 3, including the NRC's approval of the Quality Assurance program for Fermi Unit 3 and the NRC's environmental review of the transmission line corridor. In addition, Beyond Nuclear challenges the NRC's unlawful reliance on the Continued Spent Fuel Storage Rule and GEIS for compliance with the AEA, NEPA, and APA. Beyond Nuclear does not seek to brief issues related to the Continued Spent Fuel Storage Rule and GEIS in this case now, because it is currently briefing those issues as a party to *New York II*.

## **ARGUMENT**

Petitioner requests the Court to hold this petition for review in abeyance with respect to Beyond Nuclear's claim that the NRC's reliance on the Continued Spent Fuel Storage Rule and GEIS for the Fermi Unit 3 licensing decision is unlawful. The Court's decision in *New York II* will fully resolve that claim. Once this Court decides *New York II*, Beyond Nuclear will seek application of that decision to this petition for review. If the petitioners in *New York II* prevail, Beyond Nuclear will seek reversal of the Fermi Unit 3 COL decision until the NRC promulgates a new rule and GEIS that come into compliance with NEPA, the AEA, and the APA. If the government prevails in *New York II*, Beyond Nuclear will drop the claim from this case. Under the circumstances, therefore, to brief the

same issues in both this case and *New York II* would be unnecessary, duplicative, and wasteful of the Court's and the parties' resources. Beyond Nuclear notes that on May 22, 2015, the Court granted a motion to hold in abeyance another reactor licensing appeal that is related to *New York II*, *Missouri Coalition for the Environment v. NRC*, No. 15-1114 (filed Apr. 23, 2015).

Beyond Nuclear has consulted with the NRC and the United States on this motion. Federal Respondents do not oppose the relief that Beyond Nuclear has requested but take no position at this time on the effect of a decision in *New York II* on this or any other petition for review.

Accordingly, Beyond Nuclear respectfully requests that this Court hold a portion of its petition for review of the Fermi Unit 3 licensing decision in abeyance pending the resolution of *New York II*.

Respectfully submitted,

/s/ Terry J. Lodge  
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Counsel for Petitioner

Date: July 22, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of July, 2015, I caused true and correct copies of the foregoing “Motion to Hold in Abeyance” to be served, via deposit in the Court’s Electronic Case Filing system, upon Michelle Albert, Esq., Michelle.Albert@nrc.gov, Andrew Averbach, Esq., Andrew.Averbach@nrc.gov, David A. Repka, Esq., drepka@winston.com, Tyson R. Smith, Esq., trsmith@winston.com, and Jon P. Christinidis, Esq., christinidisj@dteenergy.com.

July 22, 2015

Date

/s/ Terry J. Lodge

Terry J. Lodge

Counsel for Petitioner