

**UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT**

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AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 15-1173 2. DATE DOCKETED: 6/19/2015
3. CASE NAME (lead parties only) Beyond Nuclear, Inc. v. U.S. Nuclear Regulatory Commission
4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ☐ Yes ☒ No
If YES, cite statute _____
6. CASE INFORMATION:
- a. Identify agency whose order is to be reviewed: Nuclear Regulatory Commission
- b. Give agency docket or order number(s): CLI-14-10, CLI-15-01, CLI-15-04, CLI-15-12, CLI-15-13
- c. Give date(s) of order(s): 12/14/2014, 1/13/2015, 2/26/2015, 4/23/2015, 4/30/2015
- d. Has a request for rehearing or reconsideration been filed at the agency? ☐ Yes ☒ No
If so, when was it filed? n/a By whom? n/a
Has the agency acted? ☐ Yes ☐ No If so, when? _____
- e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
Please see attached addendum
- f. Are any other cases involving the same underlying agency order pending in this Court or any other?
☒ Yes ☐ No If YES, identify case name(s), docket number(s), and court(s)
Please see attached addendum
- g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
☐ Yes ☒ No If YES, give case name(s) and number(s) of these cases and identify court/agency:
No, other than as described in the addendum responding to 6(f)
- h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ☐ Yes ☒ No If YES, provide program name and participation dates.

Signature /s/ Terry J. LodgeDate 7/22/2015Name of Counsel for Appellant/Petitioner Terry J. LodgeAddress 316 N. Michigan St., Suite 520, Toledo, OH 43604-5627E-Mail tjlodge50@yahoo.comPhone (419) 255-7552Fax (419) 255-7552

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

Addendum to Beyond Nuclear Docketing Statement for No. 15-1173

Question 6(e): “Identify the basis of appellant’s/petitioner’s claim of standing.”

To establish standing, a party filing suit in federal court must demonstrate three elements: first, that he or she has suffered a cognizable injury; second, that the injury is fairly traceable to the opposing party’s conduct; and third, that a favorable court decision would be likely to redress the injury. *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000). In this Circuit, an agency’s failure to comply with the procedural requirements of the National Environmental Policy Act (“NEPA”) comprises a cognizable injury for purposes of establishing standing. *Nat’l Parks Conservation Ass’n v. Manson*, 414 F.3d 1, 4 (D.C. Cir. 2005).

Here, Petitioner has been injured by the Nuclear Regulatory Commission’s failure to comply with NEPA and the Atomic Energy Act by (1) failing to require an environmental impact statement, or inclusion within the Fermi 3 EIS, of the 29-mile long, 300-foot-wide electricity transmission corridor by means of which Fermi 3 would be connected to the electrical grid; and (2) by refusing to order a significant reworking and re-creation, essentially from the ground up, of the Quality Assurance arrangements for Fermi 3.

Here, Beyond Nuclear has a member who lives within fifty (50) miles of the

proposed Fermi 3 site, Colan Keith Gunter. Gunter is the Beyond Nuclear member who was represented by the organization throughout the six-year Fermi 3 Combined Operating License proceeding just completed at the NRC. The factual recitation presented in Gunter's attached July 21, 2015 declaration establishes Beyond Nuclear's representational standing under the test established in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 342-343 (1977), viz., an association has standing to bring suit on behalf of its members when (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members. *Warth v. Seldin*, 422 U.S. 490.

Question 6(f): "Are any other cases involving the same underlying agency order pending in this Court or any other?"

Yes. *New York v. NRC*, No. 14-1210 (D.C. Cir.) consolidated with Nos. 14-1212, 14-1216, 14-1217 (D.C. Cir.) and *Missouri Coalition for the Environment v. NRC*, No. 14-1114 (D.C. Cir.) (held in abeyance under order dated May 22, 2015).

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

Beyond Nuclear, Inc.,)	Case No. 15-1173
Petitioner,)	
-vs-)	
U.S. Nuclear Regulatory Commission)	
and United States of America,)	
Respondents,)	
and)	
DTE Electric Co.,)	
Intervenor.)	

DECLARATION OF COLAN KEITH GUNTER

Under penalty of perjury, I, Colan Keith Gunter, hereby declare as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. I am a current member of Beyond Nuclear, Inc. (“Beyond Nuclear”). I agree with Beyond Nuclear’s mission of advocacy against commercial nuclear power and in favor of long-term reliance on sustainable energy alternatives, and I believe my health and well-being depend upon the health of the environment in the region where I live. I have authorized Beyond Nuclear to pursue this lawsuit seeking review by the Court of Appeals of certain adjudicated and other adversary

decisions rendered by the Nuclear Regulatory Commission in administrative litigation concerning the Combined Operating License Application (“COLA”) for the proposed Fermi 3 nuclear power plant in Monroe County, Michigan. Intervenor DTE Electric Company is the protagonist of the COLA.

3. I have been a member of Beyond Nuclear since 2007, and as a member, my interests have been continuously represented by Beyond Nuclear since 2009 in a formal public intervention against the Fermi 3 COLA.

4. I live at 15784 Whitby, Livonia, Michigan. My home lies within fifty (50) miles of the proposed Fermi 3 nuclear power plant site. Fifty miles is the radius in which the U.S. Nuclear Regulatory Commission (“NRC”) presumes a nuclear reactor accident will cause harm to my health and safety.

5. I am concerned about the health and safety risks posed by the operation of Fermi 3 if it is built and commences operations. I am concerned that the operation of the plant could adversely affect my health and safety and the integrity of the environment in which I live. I am particularly concerned about the risk of the accidental release of radiation into the environment and the potential harm to groundwater and surface waters.

6. In order to ensure that the licensing decision for the proposed Fermi Unit 3 nuclear power plant protects my interests in a safe and healthy environment, I have authorized Beyond Nuclear to represent me in this petition for review of the NRC’s DTE Electric Company; Fermi Unit 3 Combined License and Record of Decision; Issuance, 80 Fed. Reg. 26,302 (May 7, 2015) and determinations made in five (5) underlying opinions issued by the assigned Atomic Safety and Licensing Board or the Commission.

7. If this Court reverses the NRC’s issuance of the Combined Operating License and Record of Decision, my concerns about the licensing of Fermi 3 would be lessened. Further, if this Court requires the NRC to require a comprehensive quality assurance program at DTE for Fermi 3, to undertake an Environmental Impact Statement for the 29-mile transmission line corridor associated with Fermi 3, and to make safety findings and conduct an adequate environmental analysis of the waste storage scheme for Fermi 3, my concerns may be redressed by this lawsuit.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

July 21, 2015
Date

Colan Keith Gunter
Colan Keith Gunter