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May 5, 2016

Mark Langer, Clerk of Court
U.S. Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

Re: *State of New York v. U.S. Nuclear Regulatory Comm'n*, Nos. 14-1210 et al.

Dear Mr. Langer:

The States and Tribe hereby respond to the Nuclear Regulatory Commission's letter concerning *Natural Resources Defense Council v. NRC*, No. 14-1225 (D.C. Cir. Apr. 26, 2016) (*NRDC*). NRC's attempt to rely on *NRDC* overlooks that the regulatory regime in *NRDC* required site-specific review of environmental impacts, whereas the regime challenged here *precludes* it.

NRDC concerns a Commission rule requiring site-specific environmental analysis of alternatives to mitigate severe reactor accidents (SAMA), *either* when licensing a reactor *or* when relicensing it. Op. 8. The rule "constitutes a generic determination" that "one SAMA per plant is sufficient." *Id.*

Here, NRC attempts to avoid *ever* performing a site-specific analysis of the environmental impacts of indefinitely storing spent nuclear fuel at *any* nuclear plant, although the National Environmental Policy Act (NEPA) requires NRC to evaluate these impacts. See States and Tribe Br. 24-31; Reply 4-10. Instead, NRC has issued a generic environmental impact statement (GEIS) that concededly does not capture the range of circumstances known to exist at the Nation's plants, and a Continued Storage Rule that forbids future-site-specific review (see Reply 18-19). NRC has never conducted a site-specific analysis of risks, mitigation measures, and alternatives for a spent-fuel pool accident at New York's multi-reactor Indian Point plant, the multi-reactor Prairie Island plant, or other plants with distinctive features not captured in the GEIS—and has given no indication that it intends to do so absent intervention by this Court.

Contrary to NRC's contentions, *NRDC* does not suggest that NRC may satisfy its NEPA obligations through a waiver process, or that the waiver process affords a meaningful or appropriate remedy here. NEPA requires NRC to analyze environmental impacts, mitigation measures, and alternatives for every licensed plant in the first instance—whether an interested party requests it or not. *NRDC* does not hold otherwise. Rather, *NRDC* upheld a waiver process because one round of site-specific review had already happened (Op. 8, 18, 23), and sustained NRC's waiver denial on the ground that the petitioner was attempting to collaterally attack a regulation and failed to raise contentions unique to a particular plant (Op. 2).

Respectfully,

/s/ Andrew W. Amend

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