

June 7, 2019

Mark Langer, Clerk of Court
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

SUBJECT: *Beyond Nuclear, Inc. v. NRC, No. 18-1340*

Dear Mr. Langer:

As provided by Fed. R. App. P. 28(j) and D.C. Cir. R. 28(f), Petitioner Beyond Nuclear submits this response to the Federal Respondents' letter of June 3, 2019 ("Letter"). Contrary to their assertion, Beyond Nuclear's appeal of the Atomic Safety and Licensing Board's Memorandum and Order ("LBP-19-04") does not demonstrate the lack of finality of the U.S. Nuclear Regulatory Commission's ("NRC's") October 29, 2018 Order ("2018 Order") that is the subject of Petitioner's petition for review. Letter at 1.

Petitioner's administrative appeal of NRC Licensing Board Memorandum and Order LBP-19-04 seeks review by the NRC Commissioners of whether, under the Administrative Procedure Act ("APA") and Nuclear Waste Policy Act ("NWPA"), the NRC may approve a license application containing provisions that would violate the NWPA if implemented. This question is related to, but entirely distinct from, the central question addressed in the 2018 Order appealed by Petitioner to this court: whether the APA prohibits the NRC from even *entertaining* an application that violates the NWPA on its face.

As Petitioner explained in its May 14, 2019 letter to the court, in LBP-19-04 the Licensing Board did not (and could not) address the lawfulness of the agency's very conduct of the Holtec International licensing proceeding. Therefore, that issue was not addressed in Petitioner's appeal of LBP-19-04. Instead, that issue was conclusively decided by the NRC Commissioners in the 2018 Order, which is now properly before the court.

Sincerely,

s/Diane Curran

s/Mindy Goldstein
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322

Counsel to Beyond Nuclear

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

BEYOND NUCLEAR, INC.,)	
)	
)	
Petitioner,)	Case No. 18-1340
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

PETITIONER’S CERTIFICATE OF COMPLIANCE

I certify that the foregoing letter from Petitioner’s counsel to the court complies with the formatting and type-volume restrictions of the rules of the U.S. Court of Appeals for the District of Columbia Circuit. The letter was prepared in 14-point, single spaced, Times New Roman font, using Microsoft Word, in accordance with Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6). The letter contains 235 words and therefore complies with Fed. R. App. P. 28(j).

s/Diane Curran

Diane Curran

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Counsel for Petitioner

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)	

CERTIFICATE OF SERVICE

I, Diane Curran, hereby certify that on June 7, 2019, I served the foregoing letter from Diane Curran and Mindy Goldstein to Mark Langer and Certificate of Compliance on the parties to this case by posting them on the U.S. Court of Appeals' ECF website:

s/Diane Curran

Diane Curran

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