

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

BEYOND NUCLEAR, INC., et al.)	
)	
Petitioners,)	
)	
v.)	
)	Nos. 20-1187 and 20-1225
UNITED STATES NUCLEAR)	(Consolidated)
REGULATORY COMMISSION)	
and the UNITED STATES OF)	
AMERICA,)	
)	
Respondents.)	

**FASKEN LAND AND MINERALS, LTD. AND PERMIAN BASIN
LAND AND ROYALTY OWNERS MOTION FOR LEAVE
TO INTERVENE**

Comes now Fasken Land and Minerals, Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”), pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(b) and move to intervene in the above-captioned Petition for Review. In support of this Motion to Intervene, Fasken and PBLRO state as follows:

1. In Case No. 20-1187, Beyond Nuclear has petitioned the court for review of two orders issued by the U.S. Nuclear Regulatory Commission (“NRC”) in a licensing proceeding for a proposed nuclear waste storage facility in New Mexico. First, in an Order dated October 29, 2018, the NRC refused to dismiss the licensing proceeding for failure to comply with the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§10101, *et seq.* (“NWPA”) and the Administrative Procedure Act, 5 U.S.C. §§702(2)(A), 702(2)(C) (“APA”). Second, in Memorandum and Order CLI-20-04, dated April 23, 2020, the NRC refused to grant Beyond Nuclear a hearing on the question of whether the license application itself violated the NWPA. Beyond

Nuclear's Petition for Review presented no other claims, nor did Beyond Nuclear raise any other claims in the licensing proceeding.

2. On June 19, 2020, Don't Waste Michigan and other organizations filed a petition for review of CLI-20-04 in Case No. 20-1225. Their petition for review included a claim that the license application violated the NWP. The Court consolidated the cases by an order dated June 23, 2020.

3. Like Beyond Nuclear and Don't Waste Michigan, *et al.*, Fasken and PBLRO sought a hearing before the NRC on the same license application. Fasken and PBLRO had raised two claims, including a claim very similar to Beyond Nuclear's, that the license application violated the NWP. The NRC Commissioners conclusively decided this NWP claim in CLI-20-04, along with Beyond Nuclear's NWP claim. *Id.*, slip op. at 4-8.¹

4. One claim by Fasken and PBLRO, other than their NWP claim, is still pending before the agency. Therefore, no final decision has been made on Fasken's and PBLRO's case as a whole; and under the Hobbs Act, 28 U.S.C. § 2344, Fasken and PBLRO may not yet file a petition for review of CLI-20-04.

5. Accordingly, Fasken and PBLRO respectfully move the Court for permission to intervene in support of Beyond Nuclear's claims related to the NWP. By allowing Fasken and PBLRO to intervene in this proceeding, the Court will protect their interests in being heard on the issue of NWP

¹ Beyond Nuclear and Fasken and PBLRO both claim that provisions in the license application that contemplate federal ownership of the spent nuclear fuel violate the NWP, and the APA prohibits the NRC from issuing a license with an illegal provision. While Don't Waste Michigan *et al.*'s claim also concerns a violation of the NWP, it focuses on the impact of that violation – asserting that, without illegal contracts with the federal government to take title to the spent nuclear fuel, Holtec cannot provide reasonable assurance that it has or will obtain the necessary funds to build, operate, and decommission the proposed facility. The NRC conclusively decided Don't Waste Michigan *et al.*'s NWP claim in CLI-20-04, slip op. at 41-44.

compliance, which has now been conclusively decided against Beyond Nuclear and Fasken and PBLRO on the same grounds. *See* CLI-20-04, slip op. at 4-8. If permitted to intervene in this proceeding for review of CLI-20-04, Fasken and PBLRO will not seek to raise this same issue later if and/or when the NRC rules against Fasken and PBLRO on its other factual based claim in a final decision in the Holtec licensing proceeding.

6. Fasken and PBLRO assert that they have a substantial interest in the final determination of this matter before the Court. First, in the event this Court decides in Petitioner's favor as to the NWPA compliance issue, Fasken's and PBLRO's other remaining claim in the licensing proceeding would be rendered moot. In other words, the determination of NWPA compliance is a threshold issue that should be expedited to promote adjudicatory efficiencies and preserve resources. Second, Fasken and PBLRO advocate on behalf of oil and gas producers, royalty owners and operators who have substantial economic interests that will be jeopardized by the agency's action in issuing a license, including but not limited to, significant adverse impacts on their property values in close proximity to the proposed project and along transportation routes throughout the Permian Basin.²

7. Fasken and PBLRO further assert that this Motion to Intervene is timely pursuant to Federal Rule of Appellate Procedure 15(d). Beyond Nuclear's Petition for Review was received and filed with the Court on June

² Fasken and PBLRO have been drilling and extracting oil in the region for over 80 years. PBLRO members have mineral leases beneath and surrounding the proposed Holtec project and graze cattle within five miles of the site. Fasken owns and/or leases property (over 2,000 acres) related to oil and gas activities located approximately two miles directly west and adjacent to the proposed Holtec site and has four producing wells on this acreage. Additionally, Fasken owns approximately 160,000 acres of grazing property and operates significant agricultural operations nearby that would be negatively impacted by the NRC licensing.

4, 2020, and Fasken's and PBLRO's Motion to Intervene is submitted on June 30, 2020. Given the less than thirty (30) day interval between these filings, Fasken's and PBLRO's Motion has been submitted in accordance with Federal Rule of Appellate Procedure 15(d).

8. Fasken and PBLRO consulted the NRC and the Department of Justice regarding this Motion. They have no objection to the filing of this Motion.

Dated this 30th day of June, 2020.

Respectfully submitted by:

/s/ Allan Kanner

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and Minerals, Ltd. and Permian Basin
Land and Royalty Owners*

CERTIFICATE OF SERVICE

I, Allan Kanner, hereby certify that I caused a true and correct copy of Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners Motion for Leave to Intervene to be served by United States mail and/or electronic mail via the Court's electronic filing system on all parties in the above-captioned matters.

Dated this 30th day of June, 2020.

Respectfully submitted by:

/s/ Allan Kanner

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**FASKEN LAND AND MINERALS, LTD. AND PERMIAN BASIN LAND
AND ROYALTY OWNERS DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners make the following disclosures:

Fasken Land and Minerals, Ltd.

Non-Governmental Corporate Party: Fasken Land and Minerals, Ltd. (“Fasken”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: Fasken is a limited partnership organized and existing under the laws of Texas. Fasken is a for profit organization engaged in oil and gas extraction and production activities. Fasken is a founding member of the Permian Basin Coalition of Land and Royalty Owners and Operators (“PBLRO”).

PBLRO

Non-Governmental Corporate Party: The Permian Basin Coalition of Land and Royalty Owners and Operators.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party's General Nature and Purpose: PBLRO is a registered 501(c)(4) non-profit, organized and existing under the laws of the State of Texas and based in Midland, Texas. PBLRO is a public welfare organization dedicated to protecting the interests of the Permian Basin and informing the public about the threats and risks of high-level nuclear waste.

Dated this 30th day of June, 2020.

Respectfully submitted by:

/s/ Allan Kanner

KANNER & WHITELEY, LLC

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