

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DON'T WASTE MICHIGAN., et al.)

Petitioners,)

v.)

No. 21-1048,
consolidated with No. 21-1056

UNITED STATES NUCLEAR)

REGULATORY COMMISSION and the)

UNITED STATES OF AMERICA,)

Respondents.)

SIERRA CLUB)

Petitioner,)

v.)

No. 21-1055

UNITED STATES NUCLEAR)

REGULATORY COMMISSION and the)

UNITED STATES OF AMERICA,)

Respondents.)

**RESPONDENTS' CONSENT MOTION TO CONSOLIDATE AND
UNOPPOSED MOTION TO HOLD PETITIONS IN ABEYANCE
PENDING AGENCY RESOLUTION OF ADJUDICATORY
PROCEEDINGS**

These three Petitions for Review involve orders of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) related to the licensing of a proposed consolidated interim storage facility for the storage of spent nuclear fuel in Andrews County, Texas. With the consent of all Petitioners, Respondents seek further consolidation of the Petitions so that all three Petitions can be considered by the Court in one proceeding. Further, Respondents request that the Court hold the Petitions in abeyance until the adjudicatory proceedings before the agency concerning the proposed facility are completed. Petitioners do not oppose this request.

1. The Court has already consolidated two of the Petitions for Review—Nos. 21-1048 (Don’t Waste Michigan et al.) and 21-1055 (Beyond Nuclear, Inc.). The third Petition (No. 21-1055—Sierra Club) challenges the NRC’s actions in the same licensing proceeding and involves either the same arguments as, or arguments that are substantially similar or related to, ones that the Petitioners in the other cases intend to raise (although Sierra Club’s arguments were resolved in a separate decision of the Commission). These arguments arise under the Atomic Energy Act, the National Environmental Policy Act, and the Nuclear Waste Policy Act. Petitioners consent to the consolidation of Sierra Club’s Petition for Review with the Petitions for Review filed by Don’t Waste Michigan and Beyond Nuclear. Further, we have been informed by counsel for the licensee, Interim Storage

Partners (“ISP”), which intends to move to intervene in all three Petitions, that ISP does not object to further consolidation.

2. Respondents further request that all three Petitions, as consolidated, be held in abeyance pending resolution by the Commission of additional adjudicatory proceedings related to the same consolidated interim storage facility that is the subject of the Commission decisions that are currently before the Court. Specifically, on February 23, 2021, Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners (collectively, “Fasken”) filed an appeal to the Commission of a decision issued by the NRC’s Atomic Safety and Licensing Board, denying Fasken’s request to reopen the adjudicatory record and for leave to file new contentions. Fasken had previously raised arguments by the Commission that were addressed in the same adjudicatory decision, CLI-20-14, from which *Beyond Nuclear* and *Don’t Waste Michigan* (and its-co petitioners) seek judicial review here. Fasken’s pending appeal to the Commission may affect the issuance of a license for the facility, or, if it does not, Fasken may seek judicial review before this Court regarding issues that are the same as, or are substantially related to, the ones that are currently before the Court.

3. These Petitions are in the same procedural posture as *Beyond Nuclear v. NRC*, Case No. 20-1187 (consolidated with No. 20-1225), in which the Court, by order dated October 8, 2020 (ECF # 1865467) held in abeyance petitions for

review concerning a different consolidated interim storage facility so that additional issues raised by Fasken could be resolved by the Commission. In light of the similarity of these circumstances to *Beyond Nuclear v. NRC*, No. 20-1187 (consolidated with No. 20-1225), held in abeyance by order dated October 8, 2020, Petitioners Beyond Nuclear, Don't Waste Michigan et al., and Sierra Club do not oppose Federal Respondents' motion for an abeyance in these petitions for review. We are likewise informed by counsel for ISP that ISP consents to an abeyance.

For the foregoing reasons, Federal Respondents request that (a) Case No. 21-1055 be consolidated with Case Nos. 21-1048 and 21-1056; and (b) the Petitions, as consolidated, be held in abeyance, with direction that the parties file motions to govern further proceedings within 30 days of the completion of proceedings before the NRC.

Respectfully submitted,

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Dated: March 3, 2021

CERTIFICATE OF COMPLIANCE

I certify that RESPONDENTS' CONSENT MOTION TO CONSOLIDATE AND UNOPPOSED MOTION TO HOLD PETITIONS IN ABEYANCE PENDING AGENCY RESOLUTION OF ADJUDICATORY PROCEEDINGS 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 motion was prepared in 14-point, double spaced, Times New Roman font, using Microsoft Word 2013, in accordance with Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6). The motion contains 607 words and therefore complies with Fed. R. App. P. 27(d)(2)(A).

/s/ Andrew P. Averbach

Andrew P. Averbach

Solicitor

U.S. Nuclear Regulatory Commission

March 3, 2021