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Supreme Court Clarifies Path for Nuclear License Challenges and NRC Authority

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The Supreme Court's decision in *NRC v. Texas* gives nuclear energy generators and storage facilities, as well as NRC, the latest win in the decades-long struggle over used-fuel storage.

Used fuel from electricity generation historically has been stored on-site at nuclear plants around the country. Efforts to fulfill Congress's mandate that the US establish long-term, consolidated federal storage have been beset with litigation and mired in political controversy.

As federal efforts have been delayed, the idea of using commercially operated off-site storage for interim purposes has gained momentum. This case arose when Texas and a Permian Basin landowner challenged NRC's licensing of a West Texas interim storage facility before the Fifth Circuit, which vacated the license.

- The 6-3 majority opinion, penned by Justice Kavanaugh, affirmed that only “intervenor” in what has historically been a painstaking, years-long, NRC license adjudication process may challenge licenses in court.
- The decision mitigates industry concerns that license opponents could circumvent agency review, “sandbagging” NRC and other participants and extending the review process, simply by waiting to surface arguments until a court challenge.
- Without reaching the merits, the majority also suggested that NRC has authority to license offsite used-fuel storage, contrary to Texas' arguments and Justice Gorsuch's dissent, joined by Justices Thomas and Alito.

Only Intervenors in NRC's Adjudication May Challenge Licenses

Overtaking the Fifth Circuit, the Court ruled that only intervenors in NRC's adjudication were “parties” allowed to sue under the Hobbs Act, which governs challenges to NRC licenses. Neither submitting comments nor seeking intervention conferred party status. An NRC denial of intervention must be challenged directly, not collaterally in an attack on the license.

The Court also rejected the Fifth Circuit's holding that the challengers could sue irrespective of “party” status because NRC's action was “*ultra vires*.” The Court reaffirmed its strong reluctance to allow *ultra vires* claims if Congress has provided a statutory right to review.

For potential challengers, intervention in NRC's adjudication is now clearly essential.

Without a Merits Ruling, the Court Suggests NRC May License Offsite Storage

Because Texas's suit was impermissible, the Court did not rule on NRC's authority to license private storage away from reactor sites. Responding to the dissent's arguments that NRC lacked authority, however, the majority noted that considerable "history and precedent" supported NRC.

Although the majority made clear that the issue remains open, it appears that NRC is likely to prevail in future challenges to its authority to license private offsite storage. In turn, future challenges to such licenses will likely focus on specific elements of those decisions, rather than on NRC's authority overall.

The Court's opinion comes at a critical juncture for the nuclear energy industry. In May 2025, the President issued four executive orders to reform the regulation of nuclear power and promote a quadrupling of nuclear power capacity by 2050. While the executive orders also seek to promote used fuel recycling and a permanent repository, the *NRC v. Texas* dicta should give the industry more peace of mind regarding waste storage options as it considers adding generation capacity.

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