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**Via CM/ECF**

Lyle W. Cayce  
Clerk of Court  
United States Court of Appeals  
Fifth Circuit  
600 S. Maestri Place  
New Orleans, Louisiana 70130

**Re: *State of Texas, et al. v. Nuclear Regulatory Commission, et al.*,  
No. 21-60743**

Dear Mr. Cayce:

*Ohio Nuclear-Free Network v. NRC*, No. 21-1162 (D.C. Cir. Nov. 15, 2022), does not support the Commission’s argument that the Texas Petitioners were required to intervene in agency proceedings to be “part[ies] aggrieved” under the Hobbs Act. 28 U.S.C. § 2344.

*First, Ohio Nuclear* did not involve a party attacking “the agency action . . . as exceeding the power of the Commission,” *Am. Trucking Ass’ns, Inc. v. ICC*, 673 F.2d 82, 85 n.4 (5th Cir. 1982) (per curiam), in which case no participation in agency proceedings is required. The *Ohio Nuclear* petitioner’s briefing was instead focused on the Commission’s NEPA obligations—not whether the Commission lacked statutory authority in the first instance. Here, by contrast, Texas challenged the Commission’s statutory authority. Moreover, intervening to argue the statutory authority problem would have been futile because the Commission had already pre-determined the question. Texas Reply Br. 23.

*Second, Ohio Nuclear* is inapposite because here, as the Commission has conceded, parties who did intervene in the agency’s proceedings raised a materially similar statutory authority argument. *See* Commission Br. 18-19 (Commission

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admitting “other organizations . . . raised contentions raising a wide spectrum of issues, including the assertions that the NRC lacks authority to issue a license for an away-from-reactor storage facility”); *see also id.* at 35 (similar). Even if the Commission were right about the need to intervene below (it is not), this would more than suffice for purposes of the Hobbs Act. *See* Texas Reply Br. 23-24.

*Finally*, the D.C. Circuit’s intervention requirement is atextual. Texas Reply Br. 22. “Congress intended to provide for initial court of appeals review of all final orders in licensing proceedings whether or not a hearing before the [NRC] occurred or could have occurred.” *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 737 (1985). The Hobbs Act’s text merely requires that one be a “party aggrieved” to seek judicial review. *Wales Transp., Inc. v. ICC*, 728 F.2d 774, 776 n.1 (5th Cir. 1984). The filing of comments—like what Texas did here—satisfies that requirement. Texas Reply Br. 23.

Respectfully submitted.

/s/ Michael R. Abrams

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cc: counsel of record (via CM/ECF)