

Nos. 23-1300 and 23-1312

In the Supreme Court of the United States

NUCLEAR REGULATORY COMMISSION, et al.,
PETITIONERS

v

STATE OF TEXAS, et al., RESPONDENTS

INTERIM STORAGE PARTNERS, LLC, PETITIONER

v

STATE OF TEXAS, et al., RESPONDENTS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

**BRIEF FOR AMICI CURIAE
U.S. SENATORS TED CRUZ AND JOHN CORNYN, AND
REPRESENTATIVES JODEY ARRINGTON, HENRY
CUELLAR, AUGUST PFLUGER, AND RONNY JACKSON
IN SUPPORT OF RESPONDENTS**

JASON R. LAFOND
Counsel of Record
ELI BARRISH
SCOTT, DOUGLASS, &
MCCONNICO LLP
303 Colorado Street,
Suite 2400
Austin, Texas 78701
(512) 495-6300
jlafond@scottdoug.com

Counsel for Amici Curiae

January 22, 2025

TABLE OF CONTENTS

Interest of Amici Curiae..... 1

Summary of Argument..... 2

Argument..... 4

I. The Commission’s Actions Are Beyond the Authority Congress Delegated. 4

 A. Congress’s choices in the NWPA preclude the challenged licenses..... 5

 B. Congress did not authorize licensing of off-site spent fuel storage facilities in the Atomic Energy Act of 1954..... 13

 1. Congress did not include long-term storage of spent fuel as a “use” in the AEA..... 14

 2. The Commission’s regulatory history does not support petitioners’ interpretation. 20

II. Storing Thousands of Tons of Highly Radioactive Material Above the Permian Basin Threatens the Well-Being of Texas and the Whole Country..... 21

 A. The United States’ economy and energy future depend on the Permian Basin. 23

 B. Spent fuel stored above the Permian Basin is an enticing target for terrorists. 27

Conclusion 30

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Adams Fruit v. Barrett</i> , 494 U.S. 638 (1990)	4, 13
<i>Am. Ship Bldg. v. NLRB</i> , 380 U.S. 300 (1965).....	7
<i>ATF v. FLRA</i> , 464 U.S. 89 (1983)	4, 7
<i>Cnty. of Maui v. Haw. Wildlife Fund</i> , 590 U.S. 165, 178–79 (2020).....	10, 11
<i>FDA v. Brown & Williamson Tobacco</i> , 529 U.S. 120 (2000).....	4
<i>Fed. Mar. Comm’n v. Seatrain Lines</i> , 411 U.S. 726, 745 (1973).....	13
<i>Fla. Power & Light v. Westinghouse Elec.</i> , 826 F.2d 239 (4th Cir. 1987)	18
<i>Gonzales v. Oregon</i> , 546 U.S. 243 (2006).....	4, 13
<i>In re Torwico Elec.</i> , 8 F.3d 146 (3d Cir. 1993).....	15
<i>Ind. Mich. Power v. DOE</i> , 88 F.3d 1272 (D.C. Cir. 1996).....	6, 9
<i>Kerr-McGee Chem. v. NRC</i> , 903 F.2d 1 (D.C. Cir. 1990).....	14, 16
<i>Me. Yankee Atomic Power v. United States</i> , 225 F.3d 1336 (Fed. Cir. 2000)	9
<i>Massachusetts v. DOT</i> , 93 F.3d 890 (D.C. Cir. 1996).....	15
<i>MCI Telecomms. v. AT&T</i> , 512 U.S. 218 (1994)	4

N.J. Dep't of Env't Prot. v. NRC,
561 F.3d 132 (3d Cir. 2009)29

New York v. NRC, 681 F.3d 471 (D.C. Cir. 2012)12

N. States Power v. DOE,
128 F.3d 754 (D.C. Cir. 1997).....9

*Pac. Gas & Elec. v. State Energy Res. Conservation
& Dev. Comm'n*, 461 U.S. 190 (1983).....14

Perrin v. United States, 444 U.S. 37 (1979)14

San Luis Obispo Mothers for Peace v. NRC,
449 F.3d 1016 (9th Cir. 2006).....29

SEC v. Sloan, 436 U.S. 103 (1978)20

Va. Uranium v. Warren, 587 U.S. 761 (2019)15

Statutes

4 U.S.C. § 8(e)17

42 U.S.C.

§ 2073(a)(2).....19

§ 2073(a)(4).....15

§§ 2093(a)(4), 2111(a).....15

§ 2133(a)19

§ 2210i(b)13

§ 7133(a)(8).....7

§ 10131(a)(2).....2

§ 10151(a)(1).....8

§§ 10151(a)(3), 10155.....8

§ 10153.....12

§§ 10153, 10198(a)12

§§ 10155, 10168.....21

§ 10155(d)10

§ 10155(d)(6).....10

§ 10168.....	10
§ 10168(d)(1).....	11
§ 10222(a)(5).....	8
§ 10222(b)(1)(A).....	8
Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919	
§ 1(a).....	14
§ 2(c)–(f).....	14, 16
§ 11(o)–(p), (v).....	14
§ 52.....	19
§§ 63(4) & 81.....	15
§ 81	
Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49.....	9
Energy and Water Development Appropriations Act, 1981, Pub. L. No. 96-367, 94 Stat 1331.....	6
Low-Level Radioactive Waste Policy Act, Pub. L. No. 96-573, 94 Stat. 3347.....	19
§ 4(a)(1)(A).....	15
Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. No. 95-604, 92 Stat 3021.....	14, 19
§ 201.....	16
§ 202(a).....	19
Congressional Materials	
H.R. 13358, 95th Cong. (1978).....	6
Nuclear Waste Policy Amendments Act of 2000, S. 1287, 106th Cong. (2000).....	9
H.R. 14290, 95th Cong. (1978).....	6

<i>Industrial Radioactive Waste Disposal: Hearings Before the Special Subcomm. on Radiation of the Joint Comm. on Atomic Energy, 86th Cong. (1959)</i>	15
<i>Nuclear Waste and Facility Siting Policy: Hearings Before the S. Comm. on Energy & Nat. Res., 96th Cong. (1979).....</i>	6
<i>Nuclear Waste Disposal: Hearings Before the Subcomms. on Sci., Tech., & Space, and on Surface Transp. of S. Comm. on Commerce, Sci., & Transp., 95th Cong. (1978).....</i>	6
<i>Nuclear Waste Management: Hearings Before the Subcomm. on Fossil & Nuclear Energy Rsch., Devel., & Demonstration of the H. Comm. on Sci. & Tech., 95th Cong. (1978).....</i>	6
<i>Spent Fuel Storage and Disposal: Hearings on H.R. 2586, H.R. 1071, H.R. 1791, and H.R. 2762 Before the Subcomm. on Energy & Power of the H. Comm. on Interstate & Foreign Commerce, 96th Cong. (1979).....</i>	6
Regulations	
10 C.F.R. Pt. 50 App'x F (1971)	20
10 C.F.R. § 72.30(f)(2).....	17
10 C.F.R. Pt. 72 Subpt. L	12
Agency Materials	
22 Fed. Reg. 1591 (Mar. 12, 1957)	18
45 Fed. Reg. 74,693 (Nov. 12, 1980)	5, 17, 19, 21

50 Fed. Reg. 5548 (Feb. 11, 1985).....	8
86 Fed. Reg. 68,244 (Dec. 1, 2021).....	9
AEC, Management of Commercial High Level and Transuranium-Contaminated Radioactive Waste (1974)	11
AEC, Regulatory Guide 3.24 (Dec. 1974)	16, 19, 21
BIA, Record of Decision for the Construction and Operation of an ISFSI (2006)	11
BLM, Record of Decision Addressing Right-of-Way Applications U 76985 and U 76986 (2006).....	7, 30
EIA, Permian Basin production January 2010 through December 2021, https://perma.cc/H975-S8Z2	23
EIA, Permian production forecast growth driven by well productivity, pipeline capacity (Aug. 2024), https://perma.cc/NK69-U7JQ	25
EIA, Short-Term Energy Outlook (Dec. 2024)	25
EIA, Texas State Energy Profile, https://perma.cc/52KL-7ZMD	26
EIA, U.S. Crude Oil and Natural Gas Proved Reserves, Year-End 2022 (Apr. 2024)	26
EPA, Environmental Impact Statement Comments (1974)	11
Holtec Final Env'tl Impact Statement (July 2022) ..	12
<i>In re Interim Storage Partners</i> , 92 N.R.C. 463 (Dec. 17, 2020).....	29

Letter from Private Fuel Storage, LLC to Commission (Dec. 20, 2012), https://tinyurl.com/46et5fk8	11
NRC, 1975 Annual Report (1976).....	5, 16, 18, 19
NRC, 1983 Annual Report (1984).....	4, 6
NRC, Information Handbook on Independent Spent Fuel Storage Installations (1996).....	20, 21
NRC license issued to Private Fuel Storage, LLC (Feb. 21, 2006), https://tinyurl.com/5x8e23p7	21
Sandia Nat'l Labs., Transport of Radionuclides in Urban Environs (May 1978).....	29

Other Authorities

<i>“Economic powerhouse”: Permian basin contributes over \$100 billion, 800,000 jobs on leading U.S. oil and gas production, World Oil (July 15, 2024), https://perma.cc/ZT3T-NC4X.....</i>	26
GAO, Accumulation of Spent Nuclear Fuel (2012) ..	15
GAO, Commercial Nuclear Waste (2011).....	21
GAO, Commercial Spent Nuclear Fuel (2021).....	12
GAO, Operation of Monitored Retrievable Storage Facility Is Unlikely by 1998 (1991).....	10
Diana Hackenburg, Permian Energy Development Lab guiding region through economic innovation (Sept. 5, 2024), https://perma.cc/JBU9-RLVB	24
Interpol, The protection of critical infrastructures against terrorist attacks (2018)	28

Duncan Mansfield, *Tennessee Narrowly Dodged*
Bullet in Tense '72 Hijack Episode, L.A. Times
(Sept. 23, 2001)28

Nat'l Rsch. Council, Safety and Security of
Commercial Spent Nuclear Fuel Storage (2006)..28

Eileen Sullivan, *More Migrants on Terrorism*
Watch List Crossed U.S. Border,
N.Y. Times (Nov. 15, 2023).....29

The Oxford English Dictionary Online.....16

ACRONYMS

AEA	Atomic Energy Act of 1954
AEC	Atomic Energy Commission
CISFSI	Consolidated Interim Spent Fuel Storage Installation
DOE	Department of Energy
ISFSI	Interim Spent Fuel Storage Instal- lation
NRC	Nuclear Regulatory Commission
NWPA	Nuclear Waste Policy Act of 1982

INTEREST OF AMICI CURIAE¹

Amici curiae are United States Senators Ted Cruz and John Cornyn, and Representatives Jodey Arrington, Henry Cuellar, August Pfluger, and Ronny Jackson.

Amici represent Texas in Congress, the State most directly affected by the Nuclear Regulatory Commission's unauthorized licensing of Interim Storage Partners LLC and Holtec International (Licensees) to indefinitely house thousands of tons of highly radioactive spent nuclear fuel at so-called "consolidated interim spent fuel storage installations" or CISFSIs. And as members of Congress, amici have strong institutional interests in protecting both the country's prosperity and the security of its energy supply, as well as Congress's exclusive authority to enact legislation and delegate regulatory authority. Amici also sit on committees with legislative and oversight jurisdiction on issues and agencies affected by this litigation. Thus, amici also have an interest in the faithful implementation of agency authorizing statutes, including the Nuclear Waste Policy Act of 1982 (NWPA) and the Atomic Energy Act of 1954 (AEA).

Amici submit this brief to urge the Court to affirm the Fifth Circuit's judgment and to limit the Commission's authority to that conferred by Congress.

¹ No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from amici curiae, and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The accumulation of highly radioactive spent fuel is “a national problem” and a “major subject[] of public concern.” 42 U.S.C. § 10131(a)(2). Congress addressed that national problem with a comprehensive legislative solution in the NWPA, as amended. In the NWPA, Congress directed the Department of Energy (DOE) to begin disposing of spent fuel by January 31, 1998, either in long-term storage or a permanent repository. DOE didn’t meet and still hasn’t met this statutory and contractual obligation. Meanwhile, and as the NWPA directs, most accumulated spent fuel is in interim storage co-located at existing nuclear facilities.

The Nuclear Regulatory Commission thinks it has found a better solution: Siting *private* facilities for the centralization and long-term storage of spent fuel until DOE establishes a permanent repository. These facilities—one in west Texas and the other nearby in southeastern New Mexico—aim to eventually stow 140,000 metric tons of spent fuel in thousands of above-ground canisters.

But Congress never authorized the Commission to license private facilities to centralize and store the country’s accumulated spent fuel. And the Commission (including its predecessor) never tried until 2006—an initial attempt thwarted by other federal agencies. Yet petitioners claim the Commission has had this authority since the dawn of commercial nuclear power in 1954.

As respondents show, petitioners are mistaken. Neither the NWPA nor the AEA authorize the Commission’s licensing activity. Additional statutory and regulatory history confirm respondents’

interpretation. Text and history also show that the Commission's interloping conflicts with Congress's express choices, including its direction that no centralized interim storage of the country's accumulated spent fuel would break ground without heavy input and consent from affected States and until the Commission licenses a geologic repository for final disposal.

The locations of Licensees' facilities show why. While the sites are remote and the local soil may check some environmental boxes, the chosen locations present an enormous threat to the country's security and economic well-being. Each sits atop the Permian Basin in the middle of the country's most prolific oil-producing region. The Permian Basin fuels the country's economy and safeguards the country's strategic energy independence.

The Commission's actions threaten this essential resource. Stockpiling highly radioactive material in massive above-ground farms sets up an enticing target for adversaries who've shown they will stop at nothing to harm us. Now put that target in a region of immense strategic importance and the attraction will likely prove irresistible. Neither the private parties seeking to operate these facilities nor the Commission is equipped to consider the broader ramifications of their siting decisions. Only Congress is.

The Court should affirm the Fifth Circuit's judgments vacating the licenses.

ARGUMENT

I. The Commission's Actions Are Beyond the Authority Congress Delegated.

Judicial review of agency actions has lately generated much debate. The issues presented here, however, should not be controversial. It's axiomatic across ideological lines that agencies may exercise only the authority Congress delegates to them. *See, e.g., Gonzales v. Oregon*, 546 U.S. 243, 258–59 (2006); *FDA v. Brown & Williamson Tobacco*, 529 U.S. 120, 132–33 (2000); *Adams Fruit v. Barrett*, 494 U.S. 638, 649–50 (1990); *ATF v. FLRA*, 464 U.S. 89, 97 (1983).

The NWPA “defines the Federal Government’s overall program for the management of spent fuel and high-level waste from commercial nuclear power operations.” NRC, 1983 Annual Report 57 (1984). That program doesn’t include private accumulation and centralization of spent fuel, let alone over the objection of affected States while a permanent repository remains hypothetical. Even if private centralization of spent fuel for long-term storage were “a good idea, . . . it was not the idea Congress enacted into law.” *MCI Telecomms. v. AT&T*, 512 U.S. 218 232 (1994). The challenged licenses conflict with the NWPA and so must be vacated.

The AEA is no salve. Congress pointedly did not address the back end of the nuclear fuel cycle there. Indeed, when Congress enacted the AEA, the nuclear fuel cycle did not even include long-term storage of spent fuel. Thus, the AEA’s text and context defeat the Commission’s claimed authority.

A. Congress's choices in the NWPA preclude the challenged licenses.

Congress enacted the NWPA after significant deliberation to address the problem of accumulating spent fuel and other high-level waste from commercial nuclear power. Its solution occupies the field and excludes the solutions offered by Licensees and sanctioned by the Commission.

1. Spent fuel came to the fore in the late 1970s. As recently as 1976, the Commission presumed that spent fuel would be reprocessed into new reactor fuel, with the waste from reprocessing transferred to the federal government—either at a geologic repository or a planned retrievable surface storage facility. *See* NRC, 1975 Annual Report 59–60 (1976); *see also* Texas Br. 3 (discussing reprocessing); *infra*, pp. 17–19 (same). It was only upon President Carter's indefinite "deferral of reprocessing of spent fuel in April 1977" that policymakers recognized "that the storage of spent fuel . . . would be a likely additional new step in the nuclear fuel cycle." 45 Fed. Reg. 74,693, 74,693 (Nov. 12, 1980).

Congress shortly thereafter began considering the best way to address this emerging issue. The 95th Congress saw multiple hearings and bills on the

topic.² The 96th Congress saw still more.³ And the 97th “Congress created a comprehensive scheme for the interim storage and permanent disposal of high-level radioactive waste [including spent fuel] generated by civilian nuclear power plants.” *Ind. Mich. Power v. DOE*, 88 F.3d 1272, 1273 (D.C. Cir. 1996).

The NWPA for the first time established a statutory basis for centrally managing the Nation’s commercially produced spent fuel. It “specifies both policy and action on interim spent fuel storage, pending development of a repository or ‘monitored retrievable storage.’” 1983 Annual Report 57. The Act directed DOE to begin accepting spent fuel from utilities for long-term storage or permanent disposal by January 31, 1998. And in the interim, the Act placed primary responsibility for storing spent fuel on the utilities and communities that most directly benefited from the corresponding energy production, by requiring that spent fuel remain in storage at the reactors until DOE could take it.

² *E.g.*, *Nuclear Waste Disposal: Hearings Before the Subcomms. on Sci., Tech., & Space, and on Surface Transp. of S. Comm. on Commerce, Sci., & Transp.*, 95th Cong. (1978); *Nuclear Waste Management: Hearings Before the Subcomm. on Fossil & Nuclear Energy Rsch., Devel., & Demonstration of the H. Comm. on Sci. & Tech.*, 95th Cong. (1978); H.R. 14290, 95th Cong. (1978); H.R. 13358, 95th Cong. (1978).

³ *E.g.*, *Nuclear Waste and Facility Siting Policy: Hearings Before the S. Comm. on Energy & Nat. Res.*, 96th Cong. (1979); *Spent Fuel Storage and Disposal: Hearings on H.R. 2586, H.R. 1071, H.R. 1791, and H.R. 2762 Before the Subcomm. on Energy & Power of the H. Comm. on Interstate & Foreign Commerce*, 96th Cong. (1979); Energy and Water Development Appropriations Act, 1981, Pub. L. No. 96-367, 94 Stat 1331, 1332.

2. Petitioners says that while Congress deliberated this issue, the Commission hastily filled the void, promulgating regulations in 1980 that would decades later allow it to license private facilities to centralize and store the country’s entire spent fuel inventory. If that is what the Commission’s regulations in 10 C.F.R. Part 72 accomplished, they went too far. As both the years of work Congress put into the NWPA and the Act’s breadth make plain, the Commission’s actions reflect just the type of “unauthorized assumption . . . of a major policy decision properly made by Congress” that this Court has long rejected. *ATF*, 464 U.S. at 108 (cleaned up); *accord Am. Ship Bldg. v. NLRB*, 380 U.S. 300, 318 (1965).

Regardless, Congress’s choices in the NWPA preclude the Commission’s challenged licenses. As the respondents explain, the NWPA created a binary regime for handling spent fuel until a permanent repository came online: Immediate storage at the reactor or consolidated interim storage at federal facilities. *See* Texas Br. 30; Fasken Br. 6–7, 17–19. Thus, DOE has repeatedly rejected proposals to centralize spent fuel at CIFSIs like those licensed here—private facilities away from reactors—as outside “the Department’s overall strategy for the management of spent nuclear fuel.”⁴

The Commission at first recognized the NWPA’s clear limits on private storage:

⁴ BLM, Record of Decision Addressing Right-of-Way Applications U 76985 and U 76986 at 15–16 (2006) (quoting and discussing correspondence from DOE to Senator Orrin Hatch); *see also* 42 U.S.C. § 7133(a)(8) (giving DOE “Nuclear waste management responsibilities”).

The primary responsibility for providing interim storage of spent nuclear fuel rests with the persons owning and operating civilian nuclear power reactors. *This responsibility is to be implemented* through the effective use of existing storage facilities *at the reactor sites* and by the timely addition of new *on-site storage* capacity “where practical.”

50 Fed. Reg. 5548, 5548 (Feb. 11, 1985) (emphases added; quoting 42 U.S.C. § 10151(a)(1)).

The Commission now seizes on “where practical” as an opening for non-federal alternatives to onsite storage. NRC Br. 44. But it earlier confirmed the NWPA’s true directive: If onsite storage were not practical, the alternative was “1900 metric tons of storage capacity” in one or more *federal* facilities “for spent nuclear fuel from reactors that cannot reasonably provide adequate storage capacity on site.” 50 Fed. Reg. at 5548; 42 U.S.C. §§ 10151(a)(3), 10155.

At the last step for handling spent fuel, the federal government takes spent fuel permanently. The NWPA requires utilities operating nuclear power plants to enter standard contracts requiring DOE’s acceptance of spent fuel beginning January 31, 1998. 42 U.S.C. § 10222(a)(5).⁵ “Congress found this objective so important when it promulgated the Act that it took the unusual action of specifying that all the contracts must contain this explicit requirement.” *Me. Yankee Atomic Power v. United States*, 225 F.3d 1336,

⁵ The Act prohibited the Commission from issuing licenses to any operator who has not “entered into a contract with the Secretary” or who “is [not] actively and in good faith negotiating with the Secretary for a contract.” 42 U.S.C. § 10222(b)(1)(A).

1342 (Fed. Cir. 2000). “Under the plain language of the statute,” DOE “was to begin disposing of [spent fuel] by a day certain.” *Ind. Mich. Power*, 88 F.3d at 1276. DOE’s “clear duty to take the spent fuel from the owners and generators by the deadline imposed by Congress” exists “whether or not it has a repository or interim storage facility.” *N. States Power v. DOE*, 128 F.3d 754, 759 (D.C. Cir. 1997).

The NWPA leaves no room for private consolidation of spent fuel. Until a permanent national repository is built, reactors store spent fuel onsite. If onsite storage capacity proved insufficient for some reactors, emergency interim storage at federal facilities was to fill in. Then DOE would shortly thereafter take SNF permanently. *See* Texas Br. 30; Fasken Br. 17–18.

To be sure, the decades since the NWPA have not gone to Congress’s plan. DOE has failed to meet its obligation to accept spent fuel and authorization for DOE’s emergency interim storage program has since expired. And so spent fuel storage and disposal remains a pressing issue. But any new solution is Congress’s responsibility, not the Commission’s.⁶

3. Three other NWPA provisions—two about siting and one about licensing—highlight the conflict between the Act and the Commission’s actions.

⁶ *Cf.* Nuclear Waste Policy Amendments Act of 2000, S. 1287, 106th Cong. (2000) (vetoed). As recently as 2022, Congress appropriated funds to DOE for “interim storage activities,” Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 225, which are directed toward “enabl[ing] near-term consolidation and temporary storage of spent nuclear fuel . . . until the fuel can be moved to final disposal.” 86 Fed. Reg. 68,244, 68,245 (Dec. 1, 2021).

The NWPA’s siting requirements for consolidated storage confirm that the challenged licenses are off the table. Siting emergency interim storage facilities includes substantial participation by affected States. 42 U.S.C. § 10155(d). And if DOE planned to store 300 or more tons of spent fuel at a single facility in a State, that State could veto the site, which only a Congressional joint resolution could override. *Id.* § 10155(d)(6). The manifest purpose of these provisions is to provide for a State’s participation and consent before centralizing spent fuel within its borders.

The Commission reads the NWPA as leaving it free to bypass that scheme and unilaterally saddle a State with *thousands* of tons of spent fuel over its objection. Congress could not “have intended to create such a large and obvious loophole in one of the key . . . innovations of the” NWPA. *Cnty. of Maui v. Haw. Wildlife Fund*, 590 U.S. 165, 178–79 (2020).

Petitioners’ proposed loophole would also render ineffective the NWPA provisions governing the siting of a long-term monitored retrievable storage facility.

The NWPA directed DOE to study the need and propose sites serving the same function of CISFSIs—“long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities.” 42 U.S.C. § 10168. DOE’s first attempt to site such a facility in Tennessee failed in the face of fierce opposition; the State rightly feared that the facility would become permanent. *See* GAO, *Operation of Monitored Retrievable Storage Facility Is Unlikely* by 1998 at 9 (1991).

Tennessee’s concern is familiar. That concern has thwarted “interim” centralization of nuclear waste for

50 years. In the early 1970s, the Commission’s predecessor proposed a concept nearly identical to Licensees’ CISFSIs—“interim storage” of high-level nuclear waste at a centralized “Remote Surface Storage Facility.”⁷ The EPA shut down that plan, rejecting the Atomic Energy Commission’s (AEC) environmental review because of EPA’s “major concern” that interim storage would become “a permanent repository.”⁸ And when the Commission first tried to license a private facility in the early 2000s to centrally store spent fuel—on tribal lands—the Bureau of Indian Affairs rejected the tribe’s related lease because the agency had no confidence that spent fuel, once stored, would ever leave.⁹

Congress responded to that very concern in the wake of the Tennessee debacle by amending the NWPA to condition centralized interim storage on finalizing a permanent repository. Congress mandated (in addition to the State’s veto right) that any license to DOE for such a facility provide that the facility’s construction could only begin when the Commission licensed construction of the permanent repository. 42 U.S.C. § 10168(d)(1).

It makes little sense that Congress would leave the Commission free to create a de facto permanent repository by other means. *See Maui*, 590 U.S. at 178–79. But that’s just what the Commission did here. It’s

⁷ AEC, Management of Commercial High Level and Transuranium-Contaminated Radioactive Waste § 1.2.8.1 (1974).

⁸ EPA, Environmental Impact Statement Comments 5, 7 (1974).

⁹ BIA, Record of Decision for the Construction and Operation of an ISFSI 19, 22, 26 (2006). Citing this decision, the facility’s operator abandoned its license. Letter from Private Fuel Storage, LLC to Commission (Dec. 20, 2012), <https://tinyurl.com/46et5fk8>.

no accident that Licensees' CISFSIs are designed to store far more commercial spent fuel than presently exists.¹⁰ With no permanent repository in sight, these facilities are intended and destined to become de facto permanent solutions for the nation's commercial spent fuel. That is the reality for any centralized storage facility decoupled from a permanent repository. *See New York v. NRC*, 681 F.3d 471, 479 (D.C. Cir. 2012).

The licensing authority the NWPA did grant the Commission in the new waste regime also conflicts with the Commission's actions. The challenged licenses include the use of certain Commission-approved dry-storage casks at the Licensees' CISFSIs. *See* JA.291; Holtec Final Emt'l Impact Statement 2-4 (July 2022); *see also* 42 U.S.C. §§ 10153, 10198(a); 10 C.F.R. Pt. 72 Subpt. L. But Congress gave the Commission authority to license approved dry-cask technology only "for use *at the site* of any civilian nuclear power reactor," *not* at off-site CISFSIs like those licensed here. 42 U.S.C. § 10153 (emphasis added).

Congress did not give the Commission authority to allow Licensees to use the casks necessary for their CISFSIs because those facilities have no place in the scheme Congress created.

¹⁰ Combined, they are designed to store 140,000 metric tons of spent fuel. *See* JA.75; Holtec Final Emt'l Impact Statement App'x C C-4 (July 2022). In 2021, around 86,000 metric tons of spent fuel was in storage. DOE, Spent Nuclear Fuel and Reprocessing Waste Inventory 11 (2021). This amount "grows by about 2,000 metric tons each year." GAO, Commercial Spent Nuclear Fuel 1 (2021).

B. Congress did not authorize licensing of off-site spent fuel storage facilities in the Atomic Energy Act of 1954.

Petitioners hand-wave Congress's choices in the NWPA, insisting that the Commission's authority exercised here preexisted the NWPA and continues to exist since the NWPA did not retract it. *E.g.*, NRC Br. 42–43. To conjure the Commission's authority to license private, centralized, off-site storage of spent fuel, petitioners blend the Commission's discrete powers to license the use of various components they say make up spent fuel. *See id.* 30–35.

Petitioners' witches'-brew interpretation of the AEA runs headlong into this Court's prescription "that an agency may not bootstrap itself into an area in which it has no jurisdiction." *Adams Fruit*, 494 U.S. at 650 (quoting *Fed. Mar. Comm'n v. Seatrain Lines*, 411 U.S. 726, 745 (1973)); *see also, e.g.*, 42 U.S.C. § 2210i(b) (one of several provisions treating "byproduct materials, source materials," and "special nuclear materials" as items distinct from "high-level radioactive waste" and "spent nuclear fuel"). And "[t]he importance of the issue . . . makes the oblique form of the claimed delegation all the more suspect." *Gonzales*, 546 U.S. at 267.

Amici endorse respondents' contrary interpretation and offer the following historical observations that further undermine the Commission's claimed authority.

1. Congress did not include long-term storage of spent fuel as a “use” in the AEA.

The AEA does not address the storage or disposal of spent fuel. *See* NRC Br. 32. That absence makes sense—when Congress enacted the AEA, spent fuel’s entire existence was considered fleeting. More broadly, Congress in the AEA simply didn’t broach the back end of the commercial nuclear fuel cycle. This historical context is key to understanding the AEA’s reach today because words must maintain their meaning from “the time Congress enacted the statute.” *Per-rin v. United States*, 444 U.S. 37, 42 (1979).

a. The AEA as originally enacted focuses intently and unsurprisingly on “the development, use, and control of atomic energy.” AEA (Pub. L. No. 83-703, 68 Stat. 919) § 1(a). Its provisions don’t reach beyond commercial activities directed at *creating* atomic energy: the “*processing and utilization* of source, byproduct, and special nuclear material.” *Id.* § 2(c)–(f) (emphasis added); *see also id.* § 11(o)–(p), (v); NRC Br. 33 (“A ‘primary purpose of the Act ‘was, and continues to be, the promotion of nuclear power.’” (quoting *Pac. Gas & Elec. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 221 (1983))).

The AEA was comprehensive as to the subjects it reached, but it reached only those subjects directly tied to creating atomic energy. *See Kerr-McGee Chem. v. NRC*, 903 F.2d 1, 3 (D.C. Cir. 1990) (observing that the regulatory jurisdiction created by the AEA over the nuclear fuel cycle was not comprehensive); *cf.* Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. No. 95-604, 92 Stat 3021 (extending—24 years later—the Commission’s jurisdiction to “wastes

produced by the extraction or concentration of uranium or thorium from source material”). It doesn’t reach either the *front end*¹¹ or the *back end* of the nuclear fuel cycle (originally reprocessing waste and now also spent fuel).

At the time Congress enacted the AEA, the back end of the commercial nuclear fuel cycle was “viewed . . . primarily as a technical problem that could be solved when necessary by applying existing technology.” GAO, *Accumulation of Spent Nuclear Fuel* 18 (2012). And so Congress turned its attention to back-end fuel cycle issues only *after* it enacted the AEA. *See generally Industrial Radioactive Waste Disposal: Hearings Before the Special Subcomm. on Radiation of the Joint Comm. on Atomic Energy*, 86th Cong. (1959).¹²

b. The thrust of the AEA wholly undermines petitioners’ resort to the catch-all licensing provisions Congress tied to the “use” or “uses” of regulated materials. *See, e.g.*, NRC Br. 31–36 (relying on AEA §§ 63(4) & 81 (codified at 42 U.S.C. §§ 2093(a)(4), 2111(a)) (“source” and “byproduct” materials), and 42 U.S.C. § 2073(a)(4) (1958 amendment authorizing the Commission to license “possession” of “special nuclear material” “for such other uses as the Commission determines to be appropriate to carry out the purposes

¹¹ *See Va. Uranium v. Warren*, 587 U.S. 761, 768 (2019) (uranium mining).

¹² Absent Congressional action, States regulate waste disposal through the exercise of their police powers. *See, e.g., Massachusetts v. DOT*, 93 F.3d 890, 894 (D.C. Cir. 1996); *In re Torwico Elec.*, 8 F.3d 146, 147–50 (3d Cir. 1993); *see also* Low-Level Radioactive Waste Policy Act, Pub. L. No. 96-573 § 4(a)(1)(A), 94 Stat. 3347.

of this chapter”)). Congress did not include indefinite storage of *unused* material as a *use* of that material.

Congress chooses its words carefully. For special nuclear and source materials, Congress chose the nouns “use” and “uses,” meaning “[t]he act of putting something to work, or employing or applying a thing, for any (esp. a beneficial or productive) purpose; the fact, state, or condition of being put to work, employed, or applied in this way.” *Use* (n.), The Oxford English Dictionary Online (OED Online). For byproduct materials, “use” appears as a verb but with the same result because the Congress limited licensing to “useful applications.” AEA § 81.

Putting those materials to work jibes with the AEA’s historical context as a whole. At the time, “all three types of material were considered useful” by Congress. *Kerr-McGee*, 903 F.2d at 2; *cf.* Pub. L. No. 95-604 § 201 (later amending the AEA’s definition of “byproduct material” to include certain wastes). So Congress addressed each material in the context of its active use—“processing and utilization.” AEA § 2(c)–(f); *see also Utilize*, OED Online (“To make or render useful; to convert to use, turn to account.”); NRC Br. 36–37 (“makes use of”).

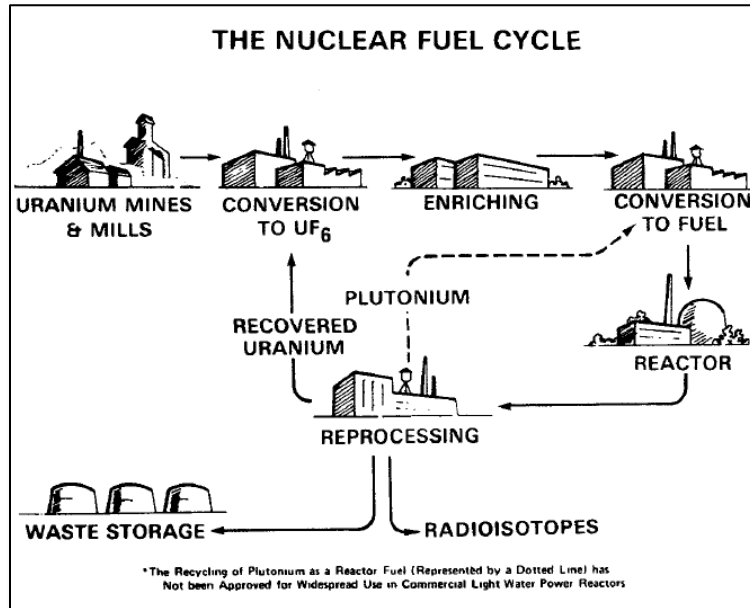
An ISFSI doesn’t use nuclear material. Rather, “[a]n ISFSI will function solely in a protective custodial capacity.” AEC, Regulatory Guide 3.24 at 1 (Dec. 1974). Indefinite storage is *nonuse* of the stored material. At a storage facility, one puts to use the means of storage, not the material stored. The material is a passive object of storage. Indeed, non-use makes the material “waste”—*useless*. *See* 1975 Annual Report 58 (“On a long-term basis, spent fuel must either be reprocessed to recover the valuable uranium and

plutonium for recycling in new reactor fuel, or managed as radioactive waste.”); 45 Fed. Reg. at 74,693 (“The Commission has stated that spent fuel from power reactors is high-level waste . . .”).

The Commission recognizes the difference between storage and use; for instance, its storage regulations refer to “areas where radioactive materials are *used and/or stored*.” 10 C.F.R. § 72.30(f)(2) (emphasis added). Congress knows the difference, too—directing, for example, that the Nation’s “flag should never be fastened, displayed, *used, or stored* in such a manner as to permit it to be easily torn, soiled, or damaged in any way.” 4 U.S.C. § 8(e) (emphasis added). Because storage isn’t use, a license for storage falls outside the materials-licensing provisions petitioners rely on.

c. For at least two additional historical reasons specific to spent fuel, Congress in the 1950s (when it enacted the catch-all licensing provisions) wouldn’t have considered “[s]afely storing spent fuel so that reactors can continue operating or can be safely decommissioned,” NRC Br. 33, a “use” under the AEA.

One, for decades, including when Congress enacted the AEA, spent fuel was treated as a mere temporary state between old and new nuclear fuel. That is because “reprocessing” recovers most material from spent fuel and turns it into either highly radioactive inputs (uranium and plutonium) for new fuel or less radioactive inputs for use in other industries (radioisotopes). Spent fuel deserved no independent attention:



1975 Annual Report 53.¹³

“Reprocessing . . . was from the beginning . . . regarded and actively advanced by the AEC as not only an available means for disposal of spent fuel . . . but as the only proper and acceptable method.” *Fla. Power & Light v. Westinghouse Elec.*, 826 F.2d 239, 245 (4th Cir. 1987); see 22 Fed. Reg. 1591 (Mar. 12, 1957) (AEC committing to reprocess commercial spent fuel if no private reprocessing venture emerged). Not until President Carter’s indefinite “deferral of reprocessing of spent fuel in April 1977” did policymakers recognize “that the storage of spent fuel . . . would be a likely

¹³ Off-site “waste storage” was not a commercial concern—the AEC directed that all waste from reprocessing spent fuel be sent to the federal government for disposal. See 10 C.F.R. Pt. 50 App’x F (1971).

additional new step in the nuclear fuel cycle.” 45 Fed. Reg. at 74,693.

When spent fuel storage and disposal became an issue, Congress responded with specific legislation, *see supra*, Part I.A, just as it had with other waste issues related to the nuclear fuel cycle. *See, e.g.*, Pub. L. Nos. 95-604 & 96-573.

Two, to the extent spent fuel includes “special nuclear material,” *see* NRC Br. 32–33, then the federal government at the time held “[a]ll rights, title, and interest in or to” spent fuel. AEA § 52. Congress thus had no reason to address either a circumstance in which spent fuel went unutilized or commercial ventures designed around long-term passive possession of spent fuel.

d. Limiting the Commission’s authority to what Congress delegated doesn’t “preclude . . . licenses for *onsite* storage of spent nuclear fuel.” NRC Br. 41–42. A facilities license governs the use of a nuclear reactor. 42 U.S.C. § 2133(a). And handling waste generated from active use of a facility is integral to that use. *See* NRC Br. 39; 1975 Annual Report 18–19 (treating “waste handling systems” as part of the “design of the facility”); Regulatory Guide 3.24 at 1 (“ISFSIs historically have been integral parts of either fuel reprocessing plants or nuclear power plants.”). The same necessarily goes for a materials-license allowing the “use” of nuclear material at a licensed facility. *See, e.g.*, 42 U.S.C. § 2073(a)(2); *see also id.* § 2201(b); *cf.* Pub. L. No. 95-604 § 202(a) (amending the AEA to require NRC to include in certain materials licenses conditions relating to handling waste produced from use).

Under the AEA, then, the NRC may license onsite facilities for storing spent fuel by modifying the reactor's facilities license or the materials license(s) connected to the reactor facility. This is precisely how the Commission conceives of ISFSI licenses issued for onsite storage—"in a sense, a renewal of authorization" previously issued under other authority. NRC, Information Handbook on Independent Spent Fuel Storage Installations 1–2 (1996). It's also precisely how the NRC's predecessor handled interim storage at licensed facilities. *See* 10 C.F.R. Pt. 50 App'x F (1971).

A wholly independent license would be necessary only for a site otherwise unconnected to either a licensed facility or an active use of regulated material. That is, only for the Licensees' CIFSIs here. And it is those licenses that Congress never authorized the Commission to issue.

2. The Commission's regulatory history does not support petitioners' interpretation.

Petitioners push back, insisting that the Commission's history of licensing commercial spent fuel storage shows the AEA reaches the licenses at issue here (or at least that Congress acquiesced in the Commission's discovered jurisdiction). *E.g.*, NRC Br. 38. But "the construction placed on the statute by the Commission, though of long standing," can't survive if it "is . . . inconsistent with the statutory mandate." *SEC v. Sloan*, 436 U.S. 103, 118 (1978). Just as in *Sloan*, "it is not apparent from the record that on any of the occasions when" the Commission claimed the licensing authority it exercised here "the Commission actually addressed in any detail the statutory authorization under which it took that action." *Id.* at 118.

At any rate, the Commission's regulatory history points the opposite direction. It took the AEC 20 years to discover its authority under the AEA to license spent fuel storage facilities "independent and separate from either a nuclear power plant or a fuel reprocessing plant." Regulatory Guide 3.24 at 1. And it was another 32 years before the Commission first licensed such a facility. *See* NRC license issued to Private Fuel Storage, LLC (Feb. 21, 2006), <https://tinyurl.com/5x8e23p7>.¹⁴ The 50+ years it took the Commission to use Congress's supposed authorization confirm that authorization never occurred.

All evidence confirms that the Commission has never had the authority to issue the challenged licenses. The locations it blessed here show why.

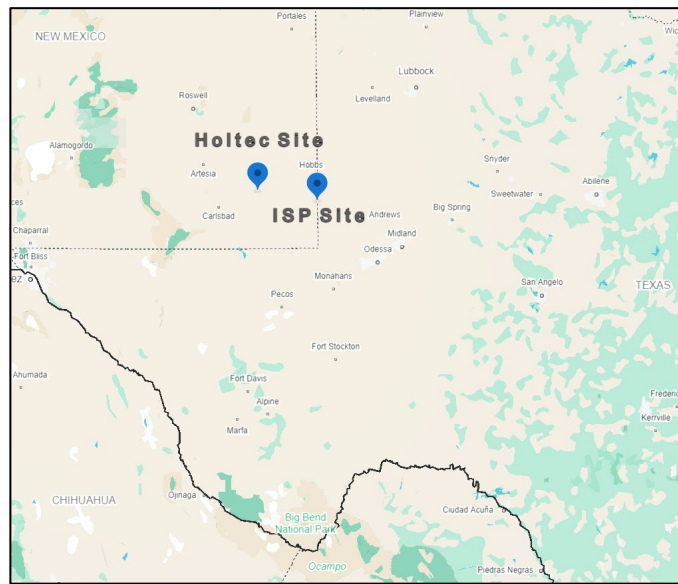
II. Storing Thousands of Tons of Highly Radioactive Material Above the Permian Basin Threatens the Well-Being of Texas and the Whole Country.

Spent nuclear fuel is "one of the most hazardous substances on earth." GAO, Commercial Nuclear Waste 1 (2011). Its disposal poses grave risks, which is why the NWPA imposes stringent requirements on siting centralized storage facilities. *See* 42 U.S.C. §§ 10155, 10168. Despite these risks, the Commission licensed two vast spent fuel storage facilities 40 miles apart to sit atop the Permian Basin, the lynchpin of economic and energy security for the entire nation:

¹⁴ All earlier away-from-reactor storage was in conjunction with fuel reprocessing facilities. *See* 45 Fed. Reg. 74698; Information Handbook on Independent Spent Fuel Storage Installations 2-1 ("All current site-specific ISFSIs are owned and operated by 10 CFR Part 50 power reactor license holders.").

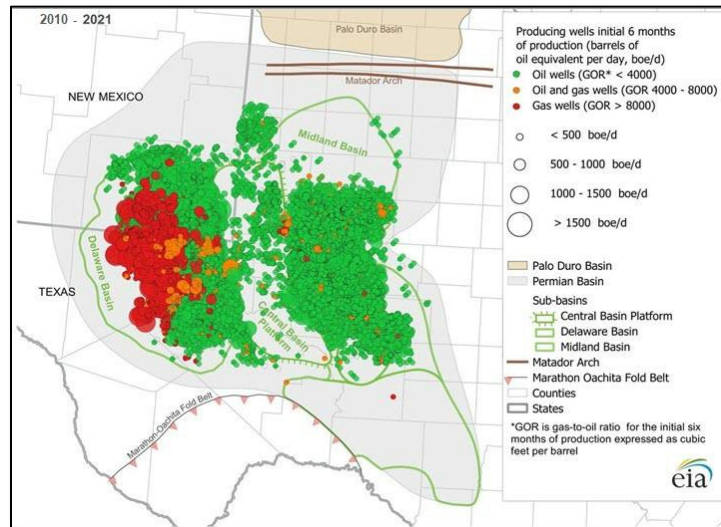


15



¹⁵ <https://perma.cc/8MDH-E8CD>.

That decision invites economic disaster. The licensed facilities sit in the middle of hundreds of thousands of oil and natural gas wells:



Energy Info. Admin. (EIA), Permian Basin production January 2010 through December 2021: 2021 map, <https://perma.cc/H975-S8Z2>. The sites' location in one of the world's most active areas for oil and gas production and close to an unsecured border presents a uniquely appealing target for sabotage and terrorism. Such an attack would have significant national security ramifications.

Accumulating and storing spent fuel at these facilities is unconscionably reckless.

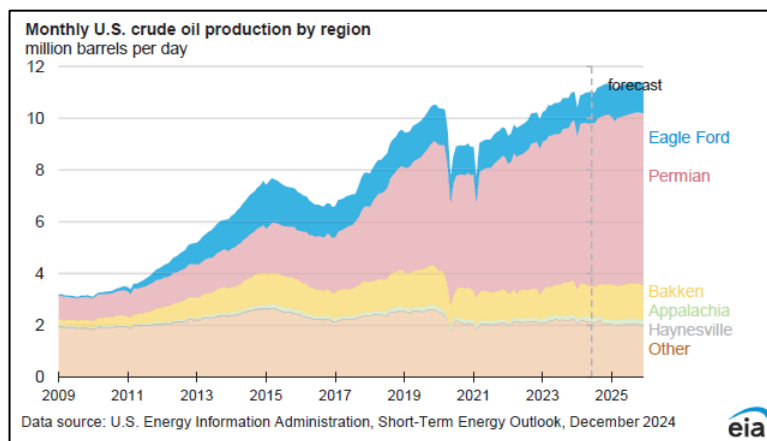
A. The United States' economy and energy future depend on the Permian Basin.

The Permian Basin is among America's most important natural resources and "a cornerstone of the U.S. energy economy." Diana Hackenburg, Permian

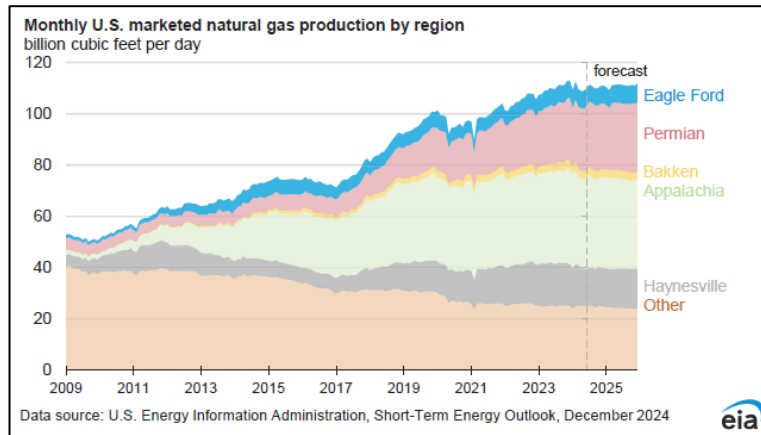
Energy Development Lab guiding region through economic innovation (Sept. 5, 2024), <https://perma.cc/JBU9-RLVB>. The region holds vast deposits of oil and natural gas. As our country's energy needs have grown, so has the strategic significance of the Permian Basin. Investments in jobs and infrastructure have transformed the Permian Basin into one of the most productive energy hubs in the world. Its resources don't just support the economies of Texas and New Mexico, they ensure energy security across the country. The Permian Basin literally fuels this nation's critical infrastructure and economy.

By extension, the region also plays a vital role in national security. And its importance will only grow. Recent events have demonstrated the continued primacy of energy independence. No other region is more essential to American energy security.

1. The Permian Basin is singularly productive. It accounts for nearly half the country's crude oil production:



EIA, Short-Term Energy Outlook: Chart Gallery (Dec. 2024). And 15 percent of its natural gas production:



Id.

Oil production in the Permian Basin is forecast to surpass 6.5 million barrels *per day* in 2025, *id.* Tbl. 4a, with gas production exceeding 26 billion cubic feet per day, *id.* Tbl. 5a. Those figures put the Permian Basin in rare company. If the region's 86,000 square miles were a country, it would be the fourth-largest oil producer in the world. Nothing else in the United States comes close. There are more active rigs in the Permian Basin than in the rest of the Lower 48 States combined. EIA, Permian production forecast growth driven by well productivity, pipeline capacity (Aug. 2024), <https://perma.cc/NK69-U7JQ>.

The Permian Basin is also reliable. It has produced hydrocarbons for a century. Over the past decade, technological advances have propelled the Permian Basin past its 1970s productivity peak, reversing years of decline. And much of the region's resources still remain untapped. EIA estimates that as

of 2018, proven reserves in the Permian Basin exceeded 11 billion barrels of oil and 46 trillion cubic feet of natural gas. EIA, U.S. Crude Oil and Natural Gas Proved Reserves, Year-End 2022 (Apr. 2024).

The Permian Basin’s economic significance will only continue to grow. Billions of investment dollars have poured into the region, outfitting its wells with the most efficient and advanced infrastructure. Most of the forecasted growth in oil and natural gas production will come from the Permian Basin. By 2050, the region will produce \$350 billion in gross product and support 1,200,000 jobs for the nation’s economy. *“Economic powerhouse”: Permian basin contributes over \$100 billion, 800,000 jobs on leading U.S. oil and gas production*, World Oil (July 15, 2024), <https://perma.cc/ZT3T-NC4X>.

The region’s importance to Texas also cannot be overstated. “Texas is the top crude oil- and natural gas-producing state in the nation” and “has the most crude oil refineries and the most refining capacity in the nation.” EIA, Texas State Energy Profile, <https://perma.cc/52KL-7ZMD>. And in 2023, Permian Basin production alone added \$3.6 billion to Texas’ Permanent University Fund and the Permanent School Fund and billions more to state and local tax revenue. *“Economic powerhouse”, supra*.

2. Energy security is national security. That adage remains as true now as it did in the 1970s, when OPEC strategically curtailed its oil supply to the United States. The vulnerability of the United States to foreign manipulation of the oil market shocked the Nation. And although we’ve come a long way since then—building up domestic energy production capacity and decreasing dependence on fossil fuels—recent

events are a vivid reminder of the importance of energy independence. They've also shown that the Permian Basin has global importance.

In 2022, Russia's invasion of Ukraine sparked the first truly global energy crisis. Russia targeted Ukrainian energy infrastructure while also cutting off natural gas pipelines to Europe. In the words of the president of the European Commission, Russia was "using energy as a weapon."

The United States has been relatively insulated from the Russian-led European energy crisis. In fact, as Russia squeezes global energy supply, the Permian Basin becomes still more important. Because of its energy independence, the United States was able to step into the gap left by Russia, supplying fuel to its European allies.

Though the United States came through this most recent energy crisis relatively unscathed, energy independence will continue to be of paramount national importance. Domestic energy consumption will continue to grow, as both a driver and output of economic growth. And although renewable energy is forecast to be the fastest-growing fuel source, it is a long way from supplanting hydrocarbons. Consumption of natural gas will continue to increase, and will remain the second-largest fuel source—after oil. America's future depends on the continued vitality of the Permian Basin.

B. Spent fuel stored above the Permian Basin is an enticing target for terrorists.

The threat of terror attacks against CISFSIs is real. In 2004, Congress asked the National Research Council to produce a classified report on this topic.

The 2006 unclassified version concludes that “attacks by knowledgeable terrorists with access to appropriate technical means are possible.” Nat’l Rsch. Council, Safety and Security of Commercial Spent Nuclear Fuel Storage 6 (2006) (Rsch. Council Rep.).

Nuclear facilities are always targets. For example, in 1972, hijackers took control of a domestic passenger flight and threatened to crash it into a nuclear weapons plant in Oak Ridge, Tennessee. Duncan Mansfield, *Tennessee Narrowly Dodged Bullet in Tense ’72 Hijack Episode*, L.A. Times (Sept. 23, 2001). More recently, al-Qaida “included unidentified nuclear plants among an expanded list of targets for the September 11, 2001, attacks.” Rsch. Council Rep. 35. And “[i]n 2016, two nuclear power plants in Belgium were locked down under the suspicion of an attempt by ISIL to attack, infiltrate or sabotage the facilities.” Interpol, *The protection of critical infrastructures against terrorist attacks* 21–22 (2018). Thus, “[t]he protection of nuclear and other radioactive materials and their associated facilities against terrorist attacks and other hazards is a priority goal of the International Atomic Energy Agency.” *Id.* at 139.

These dangers are magnified here. The thousands of storage casks to be used in these facilities are “designed to ensure safe storage of spent fuel, not to resist terrorist attacks.” Rsch. Council Rep. at 64 (footnote omitted). “[A]ttacks by knowledgeable terrorists with access to advanced weapons might cause considerable physical damage to a spent fuel storage facility, especially in a suicide attack.” *Id.* at 35. And in addition to any loss of life at the facility attacked, a successful breach of a cask could spread radioactive material hundreds of miles on the region’s strong winds.

Cf. Sandia Nat'l Labs., Transport of Radionuclides in Urban Environs 157–178, 185–209 (May 1978) (modeling dispersal). To make matters worse, these facilities are near the country's southern border, which individuals on the terrorist watch list have crossed in recent years. Eileen Sullivan, *More Migrants on Terrorism Watch List Crossed U.S. Border*, N.Y. Times (Nov. 15, 2023).

Still more, the very act of centralizing thousands of tons of spent fuel in CISFSIs paints a bullseye for terrorists. As the September 11, 2001 attack on the Pentagon makes clear, strategic assets are attractive targets. An attack causing a radioactive release across the Permian Basin would effectively disable the nation's energy supply. In the wake of an attack, just the risk of radioactive contamination would shut down oil and gas production indefinitely. Parts of the region could be commercially inaccessible for years. Even if the risk of a successful attack is small, the consequences are dire enough that the threat looms large.

Yet the Commission is not equipped to and does not account for the threat of terrorism in licensing ISFSIs or CISFSIs. It views “the possibility of a terrorist attack” as “speculative and simply too far removed from” its licensing decisions to deserve attention under the relevant statutes. *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1030 (9th Cir. 2006). (citation omitted).¹⁶

¹⁶ The Ninth Circuit rejected the Commission's view, 449 F.3d at 1030–32, but the Commission continues to ignore terrorism risk for storage facilities outside the Ninth Circuit, *see In re Interim Storage Partners*, 92 N.R.C. 463, 489 (Dec. 17, 2020). *See also N.J. Dep't of Env't Prot. v. NRC*, 561 F.3d 132 (3d Cir. 2009).

Even so, citing the threat of terrorism, the Bureau of Land Management denied necessary rights-of-way for the Commission's first attempt to site private centralized spent fuel storage. The agency was "distinctly unsatisfied at best that the effects of a terrorist-initiated event ha[d] been given adequate consideration" by the Commission. BLM, Record of Decision Addressing Right-of-Way Applications U 76985 and U 76986 at 22 (2006).

Terrorism is a substantial threat, even if evaluating that risk is outside the Commission's ken. The Commission's limited licensing review makes at least one thing clear: Congress, not the Commission, is the forum to weigh that risk against any benefit from private centralization of spent fuel.

CONCLUSION

The Court should affirm the judgment of the court of appeals and limit the Commission's authority to that conferred by Congress.

Respectfully submitted,
JASON R. LAFOND
Counsel of Record
ELI BARRISH
SCOTT, DOUGLASS, &
MCCONNICO LLP
303 Colorado Street,
Suite 2400
Austin, Texas 78701
(512) 495-6300
jlafond@scottdoug.com

Counsel for Amici Curiae

January 22, 2025