# Let My Nuclear Reactors Go: Texas, Utah and Last Energy, Inc. Challenge the NRC

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Does the Nuclear Regulatory Commission ("NRC") have the authority to regulate microreactors and small modular reactors ("SMRs")? According to the plaintiffs in a recent case, the answer is an emphatic "no."

On Dec. 30, 2024, the States of Texas and Utah, along with Last Energy, Inc., a commercial developer of micro-modular nuclear power plants, filed suit against the United States Nuclear Regulatory Commission in a Texas federal court. The plaintiffs argue that the NRC's Utilization Facility Rule incorrectly includes all nuclear reactors under its umbrella of control and imposes unnecessary and burdensome licensing requirements that exceed the agency's statutory authority. Additionally, the plaintiffs contend that the Utilization Facility Rule is arbitrary and capricious due to the NRC's failure to articulate why it requires small reactors to comply with its licensing regime. The plaintiffs seek declaratory relief and vacatur of the rule as it relates to SMRs and microreactors to facilitate the development and deployment of advanced nuclear technology in the United States.

As certain states plan for the looming explosion of energy demand on their grids, nuclear power is increasingly finding its way back into the good graces of state legislators. Advanced nuclear technologies, particularly SMRs and microreactors, are often seen as critical for securing affordable, reliable and safe power and would provide additional economic benefits, including job creation and increased investment. To that end, Texas Governor Greg Abbott has directed the Public Utility Commission of Texas to promote the development of advanced nuclear technology to make Texas a national leader in this field. Similarly, Utah Governor Spencer J. Cox has announced "Operation Gigawatt," an initiative to double Utah's power production in response to an impending energy crisis.

Much smaller and less powerful than the reactors that made hair-raising headlines in the late 20th century, SMRs and microreactors claim to offer numerous safety and technological advantages over traditional nuclear reactors, including extremely low radiation risks, lower cost, greater siting flexibility and faster construction. Additionally, the plaintiffs highlight that these reactors are particularly well-suited for industrial applications, such as providing power for hydraulic fracturing operations in remote locations like Texas's Permian Basin.

Last Energy, Inc. has substantially invested in the development of small nuclear reactors, including $2 million in manufacturing efforts in Texas. Despite having agreements to develop over 50 nuclear reactor facilities across Europe, Last Energy has found it impractical to develop similar projects in the United States due to the NRC's regulatory framework. The complaint points out that non-U.S. regulatory frameworks incorporate a de minimis standard for nuclear power permitting, which require regulators to consider the scale of risk embodied in the technology. This lack of a de minimis standard is the crux of the plaintiffs' arguments.

The NRC's licensing requirements, the plaintiffs contend, are a significant barrier to the use of SMRs and microreactors in the United States. The plaintiffs argue that the NRC's interpretation of

the Atomic Energy Act of 1954 (“AEA”) is misplaced and that the agency’s requirements for companies in the SMR and microreactors space are overly complicated, costly and time-intensive, and such requirements should be reserved for reactors that use significant amounts of nuclear material and pose significant risks to public health and safety. They assert that the NRC’s Utilization Facility Rule exceeds its statutory authority by requiring licenses for all reactors, regardless of size or risk.

The complaint underscores that Congress deliberately narrowed the Atomic Energy Commission’s (the predecessor to the NRC) licensing authority when it passed the AEA in 1954, intending to exclude certain reactors from federal licensing requirements, focusing only on those that use nuclear material in quantities significant to national defense or public health and safety. The plaintiffs therefore argue that the NRC’s Utilization Facility Rule is inconsistent with the legislative intent of the AEA and that the NRC’s misinterpretation has stifled innovation and hindered the development of advanced nuclear technology in the United States.

The plaintiffs seek a declaration from the court that the NRC’s Utilization Facility Rule exceeds its statutory authority under the AEA and request that the court vacate the Utilization Facility Rule and remand it to the NRC for a new rulemaking process that considers the statutory limitations related to common defense and public health and safety.

A copy of the complaint referenced above can be found here: United States District Court, Eastern District of Texas, (Case No. 6:24-cv-00507).