

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-1300

UNITED STATES NUCLEAR REGULATORY COMMISSION, ET AL., PETITIONERS

v.

STATE OF TEXAS, ET AL.

No. 23-1312

INTERIM STORAGE PARTNERS, LLC, PETITIONER

v.

STATE OF TEXAS, ET AL.

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

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, the Solicitor General, on behalf of the federal petitioners, respectfully moves to divide the oral argument for petitioners in these consolidated cases. The United States requests the following division of argument time: 20 minutes for the federal petitioners,¹ 10

¹ The federal parties are the United States Nuclear Regulatory Commission and the United States. They are the petitioners in No. 23-1300.

minutes for the private petitioner, Interim Storage Partners (ISP),² and 30 minutes for respondents.³ We respectfully request that the federal petitioners be allowed to open the argument and to present rebuttal. Counsel for ISP has agreed to this motion.

These consolidated cases arise out of petitions for court of appeals review filed by respondents, alleging that the United States Nuclear Regulatory Commission exceeded its statutory authority by granting a license that would permit ISP to store spent nuclear fuel away from the site of a nuclear reactor. Pet. App. 9a. ISP intervened on the side of the federal petitioners "to represent its interest[]" in its license. Ibid. The court held that respondents had permissibly petitioned for review under an ultra vires exception to the requirement in the Hobbs Act, 28 U.S.C. 2341 et seq., that only "part[ies] aggrieved" may seek judicial review of agency action, 28 U.S.C. 2344. Pet. App. 18a-20a. The court also held that the Commission lacks statutory authority to license offsite storage of spent nuclear fuel. Id. at 21a-30a. The court vacated the license that the Commission had granted to ISP. Id. at 30a.

² ISP is the petitioner in No. 23-1312.

³ Respondents are the State of Texas; Greg Abbott, Governor of the State of Texas; the Texas Commission on Environmental Quality; Fasken Land and Minerals, Limited; and Permian Basin Land and Royalty Owners. They are respondents in both of the consolidated cases.

The federal petitioners and ISP filed separate petitions for a writ of certiorari seeking review of the court of appeals' decision. The questions before the Court are: (1) whether the Hobbs Act, which authorizes a "party aggrieved" by an agency's "final order" to petition for review in a court of appeals, 28 U.S.C. 2344, allows nonparties to obtain review of claims asserting that an agency order exceeds the agency's statutory authority; and (2) whether the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101 et seq., permit the Commission to license private entities to temporarily store spent nuclear fuel away from the nuclear reactor sites where the spent fuel was generated.

Dividing the argument time for petitioners between the federal petitioners and ISP would be of material assistance to this Court. The federal petitioners have a substantial interest in these cases because they were named respondents in the court of appeals; because they have a significant interest in the correct interpretation of the Hobbs Act's "party aggrieved" requirement, which provides the basis for review of actions taken by numerous agencies; and because they have important interests in protecting the Commission's statutory authority to issue licenses under the Atomic Energy Act and the Policy Act. ISP also has a substantial interest in these cases because it intervened as a respondent in

the court of appeals and because the court vacated ISP's license to store spent nuclear fuel.

We accordingly request that the Court grant the motion for divided argument.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

JANUARY 2025