



**Issue Date: 12 December 2017**

**OALJ Case No.: 2017-ERA-00011**  
**OSHA Case No.: 2-0050-17-001**

*In the Matter of:*

**JAY KOSACK,**  
*Complainant,*

*v.*

**ENERGY NUCLEAR OPERATIONS, INC.,**  
*Respondent,*

**DOCKETING NOTICE AND ORDER OF DISMISSAL**

This proceeding arises under the employee protection provisions of the Energy Reorganization Act of 1974 (“ERA”), 42 U.S.C. § 5851 and the procedural regulations found at 29 C.F.R. Part 24.

**Background**

Jay Kosack (“Complainant”) filed a complaint with the Secretary of Labor (“Secretary”) on or about October 6, 2016 alleging Entergy Nuclear Operations, Inc. (“Respondent”) discharged him in retaliation for reporting nuclear safety and health concerns and for filing a previous whistleblower complaint. On August 24, 2017, the Secretary, acting through the Regional Supervisory Investigator, Occupational Safety and Health Administration (“OSHA”), found no reasonable cause to believe that Respondent violated the ERA and dismissed the complaint.

On September 22, 2017, Complainant filed an objection with the Office of Administrative Law Judges (“Office”) and requested a hearing before an administrative law judge pursuant to 29 C.F.R. § 24.106. However, before the matter could be set for hearing, Complainant informed this Office by letter dated December 4, 2017 that he filed a complaint in United States District Court “contain[ing] the allegations giving rise to the cause of action” in the above-captioned matter and requested the Department of Labor “discontinue its processing of the instant charge in order to prosecute all claims in one venue.”<sup>1</sup>

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<sup>1</sup> Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within one year after the filing of the complaint, and if the delay is not due to the bad faith of the person seeking relief, such

This Office confirmed that Complainant filed a Third Amended Complaint with the United States District Court for the Southern District of New York on December 4, 2017, which includes the above cause of action. (Case No. 7:14-cv-09605-VB). The filing of such complaint in federal court divests this Office of jurisdiction. *See Stone v. Duke Energy Corp.*, 432 F.3d 320, 322-23 (4th Cir. 2005) (Sarbanes-Oxley case).

**Order**

Accordingly, it is hereby ORDERED that the complaint pending before the Office of Administrative Law Judges filed by Jay Kosack under the Energy Reorganization Act is DISMISSED.

**SO ORDERED.**

**STEPHEN R. HENLEY**  
Chief Administrative Law Judge

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person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. 42 U.S.C. § 5851(b)(4). In this matter, more than one year has passed since Complainant originally filed his complaint and there is no indication of bad faith.