

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-1018

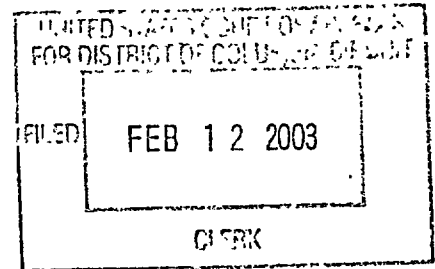
September Term, 2002

Filed On:

Margene Bullcreek, et al.,
Petitioners

v.

Nuclear Regulatory Commission and United States of
America,
Respondents



No. 03-1022

State of Utah,
Petitioner

v.

Nuclear Regulatory Commission and United States of
America,
Respondents

ORDER

It is **ORDERED**, on the court's own motion, that the above-captioned cases be consolidated. Petitioner in case 03-1022 is directed to file a docketing statement and statement of issues on or before March 14, 2003.

FOR THE COURT:

Mark J. Langer, Clerk

BY: *Lisa M. English*
Lisa M. English
Deputy Clerk

A True copy:

United States Court of Appeals
for the District of Columbia Circuit
By: *Lisa M. English*, Deputy Clerk

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United States Court of Appeals

District of Columbia Circuit
Washington, D.C. 20001-2366

General Information
(202) 216-7000

Facsimile Number
(202) 219-853

ENTRY OF APPEARANCE

Case No. _____

CAPTION _____

v. _____

PARTY

The Clerk will enter my appearance as counsel for:

- Appellant(s)
- Petitioner(s)

Name of Party

- Appellee(s)
- Respondent(s)

Name of Party

- Intervenor(s)

Name of Party

- Amicus Curiae

Name of Party

ATTORNEY

Name _____

Phone _____

Name _____

Phone _____

Name _____

Phone _____

Firm _____

Address _____

NOTE: Must be submitted by a member of the Bar of the USCA for the D.C. Circuit.

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

FEB 12 2003

RECEIVED

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UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED FEB 12 2003
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF UTAH,

Petitioner,

vs.

UNITED STATE NUCLEAR REGULATORY
COMMISSION, and the UNITED STATES OF
AMERICA,

Respondent,

PETITION FOR REVIEW

03-1022

Pursuant to 28 U.S.C. §§ 2342-44, 42 U.S.C. § 2239(a)(1)(A) and (b)(1), 5 U.S.C. §§ 703, 704, 706, and Rule 15, Federal Rules of Appellate Procedure, the State of Utah petitions this Court for review of the Nuclear Regulatory Commission's Memorandum and Order, CLI-02-29, docketed and served on 18 December 2002 ("the Order") to the extent the Order denies Utah's Petition to Institute Rulemaking filed 11

February 2002. That denial constitutes final agency action subject to immediate appellate review. (Utah does not petition for review of the Order to the extent the Order resolves Utah's Suggestion of Lack of Jurisdiction filed 11 February 2002 in the licensing proceeding known as In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI.)

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

Relief is sought on these grounds: Pursuant to 10 CFR 2.802(a), the State of Utah ("Utah") petitioned the Nuclear Regulatory Commission ("the Commission" or "the NRC") to amend its regulations governing independent spent fuel storage installations ("ISFSIs), 10 CFR Part 72, to the extent those regulations may be deemed to relate to a privately owned, away-from-reactor, spent nuclear fuel storage facility. Specifically, Utah petitioned that the Commission amend the ISFSI regulations to make clear that licensing is allowed only for federally owned and operated away-from-reactor, spent nuclear fuel ("SNF") storage facilities and not for an away-from-reactor storage facility when privately owned. The requested amendment is necessary to bring the Part 72 regulation into conformity with governing federal law, the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§ 10101 *et seq.* The Order denied Utah's Petition to Initiate Rulemaking.

Utah prays for an order from this Court directing that the Commission add the

following language, or an appropriate equivalent, to 10 CFR Part 72 as section 72.2(d):

Notwithstanding any other provision in this Part, this Part does not authorize the licensing of any privately owned, away-from-reactor, spent nuclear fuel storage facility. Under federal law, storage of spent nuclear fuel from commercial nuclear power plants at an away-from-reactor storage facility is not allowed except in a Monitored Retrievable Storage facility owned and operated by the federal government pursuant to the Nuclear Waste Policy Act of 1982, as amended. An away-from-reactor, spent nuclear fuel storage facility is any ISFSI not located on, or adjacent to, a reactor site.

Dated: 11 February 2003



MONTE N. STEWART
Special Assistant Attorney General
HELEN A. FROHLICH
Assistant Attorney General
MARK L. SHURTLEFF
Utah Attorney General
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2003, I served a true and correct copy of the foregoing **PETITION FOR REVIEW** via United States first-class mail, postage prepaid, to each of the following:

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