

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1050

September Term 2009

DOE-Yucca Mtn
NRC-63-001

Filed On: May 3, 2010

In re: Aiken County,

Petitioner

Consolidated with 10-1052, 10-1069, 10-1082

BEFORE: Ginsburg, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the petitions for review filed in No. 10-1052, No. 10-1069, and No. 10-1082; the petitions for a writ of mandamus filed in No. 10-1050 and No. 10-1069; the response to the mandamus petition in No. 10-1050, and the reply thereto; the requests for a stay and injunctive relief filed in No. 10-1050, No. 10-1069, and 10-1082; the motions for expedited consideration filed in No. 10-1052 and No. 10-1069, the responses thereto, and the replies; the Rule 28(j) letters; the motion to hold No. 10-1050, et al., in abeyance, and the opposition thereto; and the motion for a preliminary injunction filed in No. 10-1082, the opposition thereto, and the reply, it is

ORDERED that the motion to hold the cases in abeyance be dismissed as moot. The Nuclear Regulatory Commission has issued its decision on the Department of Energy's petition for administrative review. It is

FURTHER ORDERED that the motion for a preliminary injunction filed in No. 10-1082 and the request for a stay of the Atomic Safety and Licensing Board proceedings filed in No. 10-1069 be denied. Petitioners have not satisfied the stringent standards required for an injunction or stay pending court review. See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977);

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D.C. Circuit Handbook of Practice and Internal Procedures 32-33 (2009). In particular, Petitioners have not demonstrated that they are likely to suffer irreparable injury absent a preliminary injunction or stay. See Winter v. Natural Resources Defense Council, 129 S.Ct. 365, 375 (2008). It is

FURTHER ORDERED that the requests for an injunction in No. 10-1050 and No. 10-1069 to prevent the Department of Energy from filing a motion to withdraw the license application be dismissed as moot, in light of the fact that the Department of Energy has already filed such a motion. It is

FURTHER ORDERED that the remaining requests for injunctive relief, construed as requests for permanent injunctions, be referred to the merits panel to which these cases are assigned. It is

FURTHER ORDERED that the petitions for a writ of mandamus be referred to a merits panel. The parties are directed to address in their briefs the issues presented in the petitions, rather than incorporate those arguments by reference. It is

FURTHER ORDERED that the motions for expedited consideration be granted in part. The Clerk is directed to calendar these cases for argument on the first available date in September following the completion of briefing. Due to the expedited nature of these cases, the court will not entertain dispositive motions. The parties should therefore address in their briefs any arguments otherwise properly raised in such motions. Although not otherwise limited, the parties are directed to address in their briefs whether final agency action is necessary to confer jurisdiction over a petition for review filed pursuant to the Nuclear Waste Policy Act, 42 U.S.C. § 10139(a)(1)(A), (B), (C), (D), and, if so, whether final agency action has been taken. It is

FURTHER ORDERED, on the court's own motion, that the parties and amicus curiae submit, by May 10, 2010, proposed formats for the briefing of these cases. The parties and amicus are strongly urged to submit a joint proposal and are reminded that the court looks with extreme disfavor on repetitious submissions and will, where appropriate, require a joint brief of aligned parties with total words not to exceed the standard allotment for a single brief. The parties and amicus are directed to provide detailed justifications for any request to file separate briefs or to exceed in the aggregate the standard word allotment. Requests to exceed the standard word allotment must specify the word allotment necessary for each issue. It is

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FURTHER ORDERED that the Respondents file the certified index to the record within 14 days of the date of this order.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By: */s/*
MaryAnne Lister
Deputy Clerk