

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1050

Consolidated With Nos. 10-1052, 10-1069, 10-1082, 10-1084

IN RE AIKEN COUNTY,
PETITIONER

ON PETITIONS FOR MANDAMUS AND PETITIONS FOR REVIEW
AND INJUNCTIVE RELIEF

RESPONDENTS' STATUS REPORT

In response to the Court's Order of July 28, 2010, directing that the parties file a status report by August 27, 2010, and every thirty days thereafter,^{1/} Federal Respondents submit the following report:

The Nuclear Regulatory Commission continues to have under active deliberation the 23 briefs filed on or before July 19, 2010, by 13 participants in the licensing proceeding addressing whether the Nuclear Regulatory Commission should review, and reverse or uphold, the Atomic Safety and Licensing Board's

^{1/} The July 28, 2010, Order granted Respondents' motion to vacate the briefing and oral argument schedule and to hold the cases in abeyance, and ordered "these cases be held in abeyance pending further proceedings before the respondent agency consistent with the motion." *Id.* The Court ordered the parties to file status reports at 30-day intervals and to file motions to govern future proceedings within 10 days from the Commission's "final decision in its pending review of the Licensing Board's June 29, 2010 decision." *Id.*

June 29, 2010, order denying the Department of Energy's motion to withdraw with prejudice its application to construct a high-level waste repository at Yucca Mountain, Nevada. The Commission has not yet issued a final decision in response to those briefs.

Although the Commission has in fact not made a final decision in its pending review of the Licensing Board's decision, on September 27, 2010, Petitioners filed a motion (opposed by Respondents) asking the Court to lift the stay of these cases and to set an expedited briefing schedule. In their reply and so-called "Supplemental Filing" regarding this motion Petitioners point to an internal budget guidance memorandum related to NRC's temporary execution of its budget under a Continuing Resolution and suggest that NRC has made a "decision" to "terminat[e] review of the license application without an official Commission vote." Petitioners' Supplemental Filing at 1. Petitioners' characterization of events at NRC is not, however, correct as Respondents explain in a response to Petitioners' Supplemental Filing, that has been filed simultaneously with this status report.

Furthermore, as also explained in that response, Petitioners cannot use their current lawsuits to seek judicial review of the temporary NRC budget guidance both because these consolidated suits were filed long before issuance of the budget

guidance and because they have a motion pending before the Commission protesting the budget guidance and seeking relief. On October 7, 2010, Petitioners filed a motion before the Commission raising virtually identical arguments to those raised in their reply and “Supplemental Filing” filed in this Court. *See* Motion for a Commission Order Reinstating the Technical Review of the Yucca Mountain License Application, October 7, 2010 (on file at NRC). In addition, the State of Nevada had earlier filed before the Commission a mirror-image petition seeking to halt further NRC Staff review. *See* State of Nevada Petition for Relief with Respect to Possible Issuance of a Partial Safety Evaluation Report for Yucca Mountain, June 14, 2010 (on file at NRC). Petitioners’ October 7, 2010, motion and Nevada’s petition are pending before the Commission.

Respectfully submitted,

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October 27, 2010
DJ # 90-13-5-13056

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(c), D.C. Circuit Rule 25(c), and this Court's Administrative Order of May 15, 2009, I hereby certify that on this date, October 27, 2010, I caused the foregoing status report to be filed upon the Court through the use of the D.C. Circuit CM/ECF electronic filing system, and thus also served on counsel of record. The resulting service is consistent with the preferences articulated by counsel of record in the Service Preference Report. I have also served a copy by U.S. Mail to the following addresses:

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