

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 Commission should review, and reverse or uphold, the Atomic Safety and Licensing Board's June 29, 2010, order

^{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.*

denying the Department of Energy's motion to withdraw with prejudice its application to construct a high-level waste repository at Yucca Mountain, Nevada.

In four letters from individual Commissioners, dated November 4 or November 5, 2010, that responded to a November 1, 2010, inquiry from Senator James Inhofe, individual Commissioners stated: Commissioner Svinicki filed her vote with Secretary of the Commission on the matter on August 25, 2010; Commissioner Ostendorff entered his vote on August 26, 2010; Commissioner Magwood registered his vote on September 15, 2010; Chairman Jaczko first voted on August 25, 2010 and subsequently withdrew his vote and continued active consultation with colleagues before re-voting on October 29, 2010. The letters from these Commissioners did not disclose how they voted. Copies of the four letters are attached.

Chairman Jaczko's letter indicated that "initial votes on adjudicatory matters are essentially an exchange of preliminary views for discussion and deliberation among the Commissioners." He added that "[n]ot until deliberations are complete does the Commission vote on a final Order ... , which is publicly affirmed, and is the public record of the Commission's decision." The Commission has not yet issued a final decision in response to the briefs in the Yucca Mountain proceeding.

Respectfully submitted,

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For Respondents President Obama & DOE

November 24, 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, November 24, 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:

Mr. William Henry Davidson III
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1611 Devonshire Drive, Second Floor
P.O. Box 8568
Columbia, SC 29202-8568

Ms. Anne Williams Cottingham
Nuclear Energy Institute
1776 Eye Street N.W.
Washington, DC 20006-3708

/s/ Ellen J. Durkee
U.S. Dep't of Justice
Env't & Natural Res. Div.
P.O. Box 23795 (L'Enfant Station)
Washington, DC 20026-3795
(202) 514-4426
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001



CHAIRMAN

November 5, 2010

The Honorable James M. Inhofe
Ranking Member, Committee on Environmental and Public Works
United States Senate
Washington, DC 20510

Dear Senator Inhofe:

This is in response to your November 1, 2010 letter about the adjudicatory proceeding regarding the withdrawal of the Yucca Mountain license application. This is an unusual request. Under the Commission's voting process, initial votes on adjudicatory matters are essentially an exchange of preliminary views for discussion and deliberation among the Commissioners. Not until deliberations are complete does the Commission vote on a final Order. The decision of the Commission as a collegial body is captured in this final Order, which is publicly affirmed, and is the public record of the Commission's decision. Therefore, my response to your request must be limited in nature.

Regarding my vote, I first voted on August 25, 2010. I subsequently withdrew my vote and continued active consultation with my colleagues before re-voting on October 29, 2010.

Thank you for your interest in an ongoing adjudication currently before the Commission, and for respecting the importance of maintaining the integrity of the internal deliberative process.

Sincerely,

A handwritten signature in black ink, appearing to read "G. B. Jaczko", with a long horizontal flourish extending to the right.

Gregory B. Jaczko



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

COMMISSIONER

November 4, 2010

The Honorable James M. Inhofe
Ranking Member, Committee on
Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Inhofe:

I write in response to your November 1, 2010 letter regarding the U.S. Department of Energy's request to withdraw its license application for development of a deep, geologic repository at Yucca Mountain.

I filed my vote on this matter with the Secretary of the Commission on August 25, 2010.

Respectfully,

A handwritten signature in black ink, appearing to read "Kristine L. Svinicki".

Kristine L. Svinicki



COMMISSIONER

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

November 4, 2010

The Honorable James M. Inhofe
United States Senate
SR-453 Russell Senate Office Building
Washington, DC 20510

Dear Senator Inhofe:

Thank you for your letter dated November 1, 2010. On August 26, 2010, I entered my vote on the adjudicatory matter referenced in your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. C. Ostendorff".

William C. Ostendorff



COMMISSIONER

November 5, 2010

The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-6175

Dear Senator Inhofe:

Thank you for your recent letter inquiring into the status of the appeal, pending before the Nuclear Regulatory Commission, of the Construction Authorization Board's decision to deny the Department of Energy's motion to withdraw its license application for a High-Level Waste Repository at Yucca Mountain, Nevada.

In your letter, you asked whether I have voted in this adjudicatory matter, and if so, when I voted. I have voted, and I registered my vote on September 15, 2010.

I hope you find this letter responsive to your request.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Magwood, IV".

William D. Magwood, IV