

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF NEVADA,)	
)	
Petitioner)	
)	
v.)	
)	No. 09-1133
U.S. NUCLEAR REGULATORY COMMISSION,)	
)	
Respondent)	
)	
Nuclear Energy Institute,)	
)	
Intervenor)	

FIFTH JOINT STATUS REPORT

In this case, petitioner (the State of Nevada) challenges a Nuclear Regulatory Commission (NRC) final rule on dose standards for the proposed Yucca Mountain radioactive material repository. On March 12, 2010, this Court entered an order holding the case in abeyance, and directing the parties to file status reports at 90-day intervals beginning June 10, 2010.¹ This is the fifth such status

¹ The Court entered the same order in the pending companion litigation involving the Environmental Protection Agency's Yucca Mountain Rule, a case that is also held in abeyance. *Nevada v. EPA*, Nos. 08-1237 & 08-1345.

report. NRC is filing it on behalf of all parties.

As our original status report indicated, this Court held this case in abeyance in response to an unopposed motion by Nevada seeking that relief. Nevada's motion pointed out that the U. S. Department of Energy (DOE), which had been seeking an NRC license to construct the Yucca Mountain repository, had recently filed a motion before the NRC to withdraw its license application with prejudice. Nevada's motion to hold this case in abeyance indicated that "disposition of DOE's motion to withdraw the Yucca Mountain license application, and any challenges to that motion, could substantially alter, narrow, or even remove entirely issues that otherwise would be raised in this action." (Nevada Motion, at 4).

That remains the case. The NRC proceedings relating to DOE's motion to withdraw the application are not yet complete. On June 29, 2010, an NRC Licensing Board (an adjudicatory hearing tribunal) denied DOE's motion to withdraw, but on June 30, 2010, the Commission solicited briefs on whether it should review, and reverse or uphold, the Licensing Board decision. Briefing on the motion to withdraw issue was completed on July 19, 2010. The

Commission received a total of 23 briefs from 13 litigants. The Commission has not yet issued a decision in response to those briefs. One of the five NRC Commissioners, Commissioner Apostolakis, has recused himself.

Finally, it should be noted that various parties have filed suit in this Court challenging DOE's actions to withdraw its Yucca Mountain license application. *In re: Aiken County*, No. 10-1050 (and consolidated cases). On July 28, 2010, this Court entered an order holding that litigation in abeyance pending completion of NRC proceedings on DOE's motion to withdraw, but on December 10, 2010, this Court granted a motion by petitioners to lift the abeyance order and directed the parties to complete briefing. That case was orally argued on March 22, 2011. The Court has not yet issued a decision.

The parties agree that the current case should continue to be held in abeyance because of ongoing legal uncertainty over DOE's withdrawal of its Yucca Mountain license application. The parties will file another status report or a motion to govern further proceedings, as appropriate, in accordance with the Court's March 12, 2010, order holding this case in abeyance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2011, a copy of the foregoing “FIFTH JOINT STATUS REPORT” was filed with the Clerk and served upon all counsel of record in the case through the CM/ECF System.

_____/s/_____

John F. Cordes
Solicitor, NRC