

NO. 11-1271

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

In Re: AIKEN COUNTY, SOUTH CAROLINA;
ROBERT L. FERGUSON; WILLIAM LAMPSON; GARY PETERSEN;
STATE OF SOUTH CAROLINA; STATE OF WASHINGTON;
NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS; NYE COUNTY, NEVADA, Petitioners.

UNITED STATES NUCLEAR REGULATORY COMMISSION,
and GREGORY B. JACZKO, Chairman of the United States
Nuclear Regulatory Commission, Respondents.

**MOTION OF THE NUCLEAR ENERGY INSTITUTE, INC.
ON CONSENT FOR LEAVE TO FILE A BRIEF AMICUS CURIAE
IN SUPPORT OF THE PETITIONERS**

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September 23, 2011

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

In Re: AIKEN COUNTY, SOUTH
CAROLINA; ROBERT L. FERGUSON;
WILLIAM LAMPSON; GARY
PETERSEN; STATE OF SOUTH
CAROLINA; STATE OF WASHINGTON;
NATIONAL ASSOCIATION OF
REGULATORY UTILITY
COMMISSIONERS; NYE COUNTY,
NEVADA,

Petitioners,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION, and
GREGORY B. JACZKO, Chairman of
the United States Nuclear Regulatory
Commission,

Respondents.

Case No. 11-1271

**MOTION OF THE NUCLEAR ENERGY INSTITUTE, INC.
ON CONSENT FOR LEAVE TO FILE A BRIEF AMICUS CURIAE
IN SUPPORT OF THE PETITIONERS**

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure and D.C.
Cir. Rule 29, the Nuclear Energy Institute, Inc. ("NEI") hereby seeks leave to
participate as *amicus curiae* in support of petitioners in *In Re: Aiken County, et al.*
v. United States Nuclear Regulatory Commission, No. 11-1271.

1. On July 29, 2011, Petitioners filed a Petition for Writ of Mandamus (Agency Action Unreasonably Withheld) to compel the U.S. Nuclear Regulatory Commission (NRC) to meet its mandatory obligation under the Nuclear Waste Policy Act (NWPA), 42 U.S.C. §§ 10101-10270, to “consider” the U.S. Department of Energy’s (DOE) license application for authorization to construct the Yucca Mountain geologic repository for high-level nuclear waste, as specifically required by 42 USC § 10134(d). Petitioners further asked the Court to require the NRC to meet its mandatory obligation under the NWPA to approve or disapprove that DOE license application within three years of its submission—which the NRC has not done. Petitioners alleged that the NRC has unreasonably and unlawfully withheld its consideration of the application by withholding its decision regarding DOE’s March 3, 2010 motion to withdraw the Yucca Mountain repository license application. The NRC Atomic Safety and Licensing Board (ASLB) denied DOE’s motion to withdraw on June 29, 2010. For more than 13 months, NRC failed to issue a decision on whether it would review the ASLB’s decision, and, if so, whether it would reverse or uphold that decision. Petitioners also asserted that NRC has terminated the NRC staff’s review of the Yucca Mountain license application and allowed effective suspension of the adjudication before the ASLB.

2. On September 9, 2011, the NRC issued a Memorandum and Order that addressed this review. On the same day, counsel for the NRC submitted that Order to this Court through a “Notice of Underlying Decision in Case” (ECF Doc. #1328539). On September 16, 2011, Petitioners filed a Response to the ‘Notice of Underlying Decision’ and Motion for Expedited Consideration, alleging that the NRC’s Memorandum and Order does not moot their Petition, that a writ of mandamus should still issue, and that NRC should be ordered to issue a final decision on the merits of DOE’s license application.

3. NEI has a clear interest in, and unique perspective concerning, the instant proceeding. NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of operational and technical issues. NEI’s members include all companies licensed to operate commercial nuclear power plants in the United States. Used nuclear fuel from nuclear power plants operated by these NEI member companies will be disposed of at Yucca Mountain if that repository site is licensed by the U.S. Nuclear Regulatory Commission. Accordingly, the Yucca Mountain project is of unique interest to NEI and its members.

4. In addition, NEI members pay more than \$700 million per year in fees into the Nuclear Waste Fund (“Fund”), established under section 302 of the NWSA, to cover all costs associated with used nuclear fuel disposal. Thus far,

more than \$35 billion has been or is committed to be paid into the Fund (including outstanding one-time fees plus allocation of interest).

5. NEI's participation in this proceeding as *amicus curiae* will not prejudice or unduly burden any other party. As an *amicus*, NEI will necessarily "take the proceeding as it finds it" and does not seek to inject new issues into the proceeding or alter the record developed by the parties.

6. NEI has contacted the attorneys for the petitioners and respondents by email to ask if they object to NEI's participation. Counsel for petitioners Aiken County, South Carolina, the State of South Carolina, the State of Washington, the State of Nevada, Nye County, Nevada, the National Association of Regulatory Utility Commissioners, Robert L. Ferguson, Gary Petersen, William Lampson, and counsel for respondent U.S. Nuclear Regulatory Commission, have authorized NEI to represent that they do not object to NEI's participation as *amicus curiae*.

Wherefore, for the foregoing reasons, NEI moves the Court for leave to participate as *amicus curiae* in the instant case.

Respectfully submitted,

/s/ Anne W. Cottingham
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Dated: September 23, 2011

CERTIFICATE OF SERVICE

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure and D.C. Cir. Rule 25(c), I hereby certify that on this date, September 23, 2011, I caused the foregoing "Motion of the Nuclear Energy Institute, Inc. on Consent for Leave to File a Brief Amicus Curiae In Support of the Petitioners" and attached "Nuclear Energy Institute, Inc.'s Corporate Disclosure Statement" 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 listed below.

/s/ Anne W. Cottingham*

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I further certify that I have served the same on the following counsel via email and First Class U.S. Mail as follows:

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GREGORY B. JACZKO, Chairman of)
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Commission,)

Respondents.)

Case No. 11-1271

**NUCLEAR ENERGY INSTITUTE, INC.'S
CORPORATE DISCLOSURE STATEMENT**

The Nuclear Energy Institute, Inc. ("NEI"), a not-for-profit corporation under Section 501(c)(6) of the Internal Revenue Code, is the association representing the nuclear energy industry. NEI's mission is to ensure the

development of policies that promote the beneficial uses of nuclear energy and technologies in the United States and around the world. NEI does not have any parent companies, and no publicly-held company has a 10 percent or greater ownership interest in NEI.

Respectfully submitted,

/s/ Anne W. Cottingham*

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