

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.)	

SEVENTH 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 seventh such

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.

status 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).

The fate of the NRC licensing proceeding remains uncertain. On June 29, 2010, an NRC Licensing Board (an adjudicatory hearing tribunal) denied DOE's motion to withdraw (LBP-10-11), but on June 30, 2010, the Commission solicited briefs on whether it should review, and reverse or uphold, the Licensing Board decision. On September 9, 2011, the Commission issued a decision stating that it "finds itself evenly divided on whether to take the

affirmative step of overturning or upholding the board’s decision” (CLI-11-7). On September 30, 2011, the Licensing Board pointed to “uncertain” future appropriated funds for the licensing proceeding and “suspended” the proceeding (LBP-11-24).²

It should be noted that in 2010 various parties filed suit in this Court challenging DOE’s actions to withdraw its Yucca Mountain license application. On July 1, 2011, this Court dismissed those suits for lack of jurisdiction. *In re Aiken County*, 645 F.3d 428, 438 (D.C. Cir. 2011). Subsequently, on July 29, 2011, the same petitioners who filed suit in 2010, along with others, filed a new lawsuit, captioned a Petition for Writ of Mandamus (Agency Action Unreasonably Withheld), claiming unreasonable delays at NRC and seeking judicial relief. *In re: Aiken County*, No. 11-1271 (D.C. Cir.). This Court has established a briefing schedule in that case that makes petitioners’ opening brief due on December 5, 2011, and NRC’s answering brief on January 11, 2012. No date for oral argument has yet been set.

² The deadline for seeking judicial review of NRC actions under the Nuclear Waste Policy Act is 180 days. *See Nuclear Energy Institute v. EPA*, 373 F.3d 1251, 1285-89 (D.C. Cir. 2004) (discussing 42 U.S.C. § 10139(c)).

In these circumstances, with NRC's Yucca Mountain proceeding suspended and its resumption uncertain, the parties agree that the current case should continue to be held in abeyance. 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,

/S/
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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2011, a copy of the foregoing "SEVENTH 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