

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.)	

TENTH 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 tenth 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).

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 said that future Congressional appropriations were “uncertain” and “suspended” the proceeding (LBP-11-24).

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.).² On August 3, 2012, this Court held that case in abeyance and directed the parties to “file, no later than December 14, 2012, updates on the status of Fiscal Year 2013 appropriations with respect to the issues presented.”

² Separately, Nye County (Nevada) and several other petitioners sought judicial review of NRC’s suspension of proceedings. *Nye County v. NRC*, 12-1136 (D.C. Cir.). This Court has held that case in abeyance pending disposition of the *Aiken County* mandamus case.

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/ _____
ROBERT P. STOCKMAN
Attorney
Appellate Section
Environmental and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7415
Washington, D.C. 20044
(202) 353-1834

/S/ _____
JOHN F. CORDES
Solicitor
(301) 415-1956

/S/ _____
JEREMY M. SUTTENBERG
Attorney
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555
(301) 415-2871

/S/ _____
ROGER B. MOORE
Rossmann and Moore, LLP
380 Hayes Street, Suite One
San Francisco, CA 94102
(415) 861-1401

/S/ _____
ANNE W. COTTINGHAM
Nuclear Energy Institute
1776 Eye St., N.W., Suite 400
Washington, DC 20006-3795
(202) 739-8139

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2012, a copy of the foregoing "TENTH 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