



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 10, 2014

Mark Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

RE: In re Aiken County, et al., No. 11-1271 (Merits Decision Issued August 13, 2013)
(Rehearing and Rehearing *En Banc* denied October 28, 2013)

Dear Sir;

This case is currently pending before this Court on a motion by four Petitioners – the states of Washington and South Carolina, as well as Aiken County, South Carolina and Nye County, Nevada – for an award of attorneys’ fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(b).¹ Pursuant to Fed. R. App. P 28(j), Respondents advise the Court of a development in this case.

In their Motion seeking fees, Petitioners asked this Court to “order that [the Nuclear Regulatory Commission] shall not attempt to fund an award of such fees from the Nuclear Waste Fund.” Motion at 12. In response, we advised the Court that we believed Petitioners had not properly raised this issue. Response at 20 n.11. But we also advised the Court that we would “seek advice from the U.S. Government Accountability Office (“GAO”) concerning the source of any funds to be disbursed in response to these outstanding fee motions.” *Id.*

The GAO has now stated that it will not address this issue while it is still pending before this Court. See Letter of September 8, 2014, attached as Exhibit 1 to this letter.

Respectfully submitted,

____s/Charles E. Mullins____
CHARLES E. MULLINS
Senior Attorney
Office of the General Counsel

Attachment: As stated

¹ Another Petitioner filed a motion for attorneys’ fees pursuant to 28 U.S.C. § 2412(d). Respondents subsequently reached a settlement resolving that claim.



G A O

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Comptroller General
of the United StatesUnited States Government Accountability Office
Washington, DC 20548

B-325807

September 8, 2014

Ms. Maureen Wylie
Chief Financial Officer
Nuclear Regulatory Commission
Washington, D.C. 20555Subject: *Nuclear Regulatory Commission — Payment of Attorneys' Fees*

Dear Ms. Wylie,

In a letter dated May 6, 2014, we notified you of our acceptance of your request for decision regarding the extent to which the Nuclear Regulatory Commission (NRC) should use its lump-sum appropriation or Nuclear Waste Fund appropriation to pay for certain attorneys' fees pursuant to the Equal Access to Justice Act (EAJA). For the reasons discussed below, we are rescinding our acceptance of your request.

The question before us is currently pending before the U.S. Court of Appeals for the District of Columbia Circuit. As part of their request for attorneys' fees following the court's ruling on the merits in *In re Aiken*, certain prevailing parties asked that any award of attorneys' fees paid by the Nuclear Regulatory Commission (NRC) not be funded with amounts from the Nuclear Waste Fund. 725 F.3d 255 (D.C. Cir. 2013), *petitioners' motion for attorneys' fees filed*, No. 11-1271 (Feb. 25, 2014). NRC responded, in part, indicating that they would seek advice from GAO "concerning the source of any funds to be disbursed in response to these outstanding fee motions." *Id.*, *respondents' response to petitioners' motion for attorneys' fees*, No. 11-1271 (Mar. 31, 2014).

As we discussed during our September 4, 2014 phone call, GAO's longstanding policy is to refrain from addressing matters that are pending in litigation. For this reason, we are rescinding our acceptance of your request. Once this matter is no longer pending before the court, you may contact our office and renew your request for decision.

Sincerely yours,

Katherine S. Lenane
Assistant General Counsel
For Appropriations Law

CERTIFICATE OF SERVICE

I certify that on September 11, 2014, I filed *Respondents' Letter pursuant Rule 28(j)* in Case No. 13-1260 with the U.S. Court of Appeals for the District of Columbia Circuit by filing it with the Court's CM/ECF system. That method is calculated to serve:

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Respectfully submitted,

____s/Charles E. Mullins____
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DATED: September 11, 2014