

No. 11-1045 (consolidated with Nos. 11-1051, 11-1056, 11-1057)

ORAL ARGUMENT HAS NOT BEEN SCHEDULED

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

**STATE OF NEW YORK, *et al.*,
Petitioners,
v.**

**UNITED STATES NUCLEAR REGULATORY COMMISSION and
THE UNITED STATES OF AMERICA,
*Respondents,***

**STATE OF NEW JERSEY, *et al.*
*Intervenors.***

**On Petition for Review of Orders by the
United States Nuclear Regulatory Commission**

BRIEF FOR RESPONDENTS

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Television, 129 S. Ct. at 1810. See also *Transcontinental Gas Pipe Line Corp. v. FERC*, 518 F.3d 916, 919 (D.C. Cir. 2008).

SUMMARY OF THE ARGUMENT

The Waste Confidence decision and related environmental rule in 10 C.F.R. § 51.23(a), like those that preceded it since 1984, faithfully adhere to the instructions in this Court's remand in *Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979), and also fulfill NRC's important responsibilities under the AEA and the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* Based on a full record, NRC reasonably found that safe disposal of HLW in a geologic repository will be available when necessary, and that spent nuclear fuel can be stored safely and without significant environmental impacts until ultimate disposal.

Contrary to petitioners' views, the Waste Confidence decision on its face is *not* a licensing decision. Rather, the Waste Confidence decision supports NRC reactor licensing decisions with generic findings that can be utilized to determine environmental impacts associated with spent fuel generated by licensed reactors. Hence, the Waste Confidence decision carries out this Court's directive in *Minnesota*, which created the framework for the Waste Confidence rulemaking.