

NO. 10-1050, 10-1052, 10-1069, 10-1082 *Consolidated*

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

No. 10-1050

IN RE AIKEN COUNTY, Petitioner

No. 10-1052

ROBERT L. FERGUSON, *et al.*, Petitioners,

v.

BARACK OBAMA, President of the United States, *et al.*, Respondents.

No. 10-1069

STATE OF SOUTH CAROLINA, Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY, *et al.*, Respondents.

No. 10-1082

STATE OF WASHINGTON, Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY, *et al.*, Respondents.

PETITIONERS' STATUS REPORT

Petitioners submit this status report pursuant to the Court's July 28, 2010, order granting a stay in this matter, vacating the previously imposed expedited briefing schedule, and requiring the parties to submit monthly reports regarding the status of related litigation before the Nuclear Regulatory Commission (NRC). In short, the status quo remains the same with respect to the NRC: the NRC has not issued any decision in the matter pending before it (or even indicated whether it will, in fact, review the merits of that matter). In contrast, the status quo with respect to the Yucca Mountain repository project itself continues to change: the Department of Energy (DOE) continues to aggressively dismantle the Yucca Mountain repository project.

The matter pending before the NRC involves only one issue: Whether the Department of Energy (DOE) has authority to withdraw the application it submitted to the NRC in 2008 to begin construction of a permanent repository for high level nuclear waste at Yucca Mountain. This issue is not fact-dependent and is purely an issue of law. Despite this, and despite the fact that all parties' briefing was submitted to the NRC by July 19, 2010 (pursuant to the NRC's order requiring an extremely accelerated briefing schedule), the NRC has to date not issued any decision, or even indicated whether it will take review of the matter. This inaction contrasts with a letter from the NRC's Secretary dated August 18, 2010, in which the Secretary assured members of Congress that it "is moving with

all due haste in arriving at a decision relative to review.” See Exhibit A to Petitioners’ August 27, 2010, Status Report.

In the meantime, despite the fact that the NRC’s Construction Authorization Board has denied its motion to withdraw its license application, DOE continues to dismantle the Yucca Mountain project. Petitioners have described DOE’s previous actions in this regard. Petitioners’ June 18, 2010, Joint Merits Brief at 15-16. These actions have nearly reached their culmination. In a letter dated September 20, 2010, DOE has indicated that as of September 30, 2010, the Office of Civilian Radioactive Waste Management (OCRWM), which is the office Congress created in the Nuclear Waste Policy Act to oversee the Yucca Mountain repository project, “will cease to exist.” Exhibit A; 42 U.S.C. § 10224(a).

RESPECTFULLY SUBMITTED this 27th day of September, 2010.

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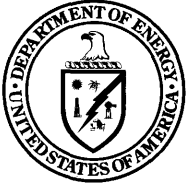
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September 20, 2010

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**POINT-OF-CONTACT FOR YUCCA MOUNTAIN REPOSITORY LICENSE APPLICATION
(LA) FOR CONSTRUCTION AUTHORIZATION**

Our transmittal letter for the subject application dated June 3, 2008, specified the Director, Regulatory Authority Office, Office of Civilian Radioactive Waste Management, as the point-of-contact for any questions regarding NRC staff review and acceptance of the application. Because of the Administration's decision not to pursue development of a repository at Yucca Mountain, the Office of Civilian Radioactive Waste Management will cease to exist as of September 30, 2010. Any future correspondence or questions regarding the license application should be directed to the Department of Energy's outside counsel at the following address:

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Sincerely,

David K. Zabransky
Acting Principal Deputy Director
Office of Civilian Radioactive
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cc:

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CERTIFICATE OF SERVICE

I herby certify that on the 27th day of September 2010, a copy of the foregoing Petitioners' Status Report was filed electronically using the CM/ECF system, which will provide service on the following parties:

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