



**U.S. Department of Justice**

Environment and Natural Resources Division

E.Durkee  
90-13-5-13056

*Appellate Section*  
*P.O. Box 23795*  
*L'Enfant Plaza Station*  
*Washington, DC 20026-3795*

*Telephone (202) 514-2748*  
*Facsimile (202) 353-1873*

April 8, 2010

Mr. Mark J. Langer  
Clerk of Court  
US Court of Appeals for the DC Circuit  
333 Constitution Ave., N.W.  
Washington, DC 20001

Re: *In re: Aiken County*, No. 10-1050

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j) and D.C. Cir. R. 28(f), the federal respondents hereby respond to the Petitioner Aiken County's letter and citation of supplemental authorities dated April 6, 2010. In that letter, Aiken County points this Court to a memorandum and order from the Atomic Safety Commission & Licensing Board, and suggests "that this order has implications on Petitioner's petition for relief before this court, including arguments by the parties related to exhaustion and ripeness." That order, however, is an interlocutory order of an administrative hearing tribunal within the Nuclear Regulatory Commission<sup>1/</sup> and does not necessarily reflect the views of the Commission itself. On Monday, April 12, 2010, the Department of Energy intends to request review of the Boards's interlocutory order by the Commission, the body with the final authority over NRC adjudications.

Sincerely,  
/s/ John F. Cordes  
*Counsel for Nuclear Regulatory Commission*

/s/ Ellen J. Durkee  
*Counsel for Department of Energy*

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<sup>1/</sup> As indicated at p. 1, n. 1 of "Respondents' Response in Opposition to the Petition," the Licensing Board is not a proper respondent in this lawsuit, and takes no position on any issue before this Court.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(c), D.C. Circuit Rule 25(c), and this Court's Administrative Order of May 15, 2009, I hereby certify that on this date, April 8, 2010, I caused the foregoing letter to be filed upon the Court through the use of the D.C. Circuit CM/ECF electronic filing system, and thus also served counsel of record. The resulting service by e-mail is consistent with the preferences articulated by all counsel of record in the Service Preference Report.

s/  
Ellen J. Durkee  
Attorney, Appellate Section  
Environment & Natural Resources Division  
P.O. Box 23795, L'Enfant Plaza Station  
Washington, D.C. 20530  
(202) 514-4426