

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

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ROBERT L. FERGUSON, et al.,)	
)	
	Petitioners,)	
)	
	v.)	Case No. 10-1052
)	
UNITED STATES)	
DEPARTMENT OF ENERGY, et al.,)	
)	
	Respondents.)	
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Consolidated with 10-1050, 10-1069

**NOTICE OF PARTICIPATION OF
NUCLEAR ENERGY INSTITUTE, INC. AS AMICUS CURIAE
AND REPRESENTATION OF CONSENT**

Pursuant to Fed. R. App. P. 29 and D.C. Cir. Rule 29, the Nuclear Energy Institute, Inc. (“NEI”) hereby seeks leave to participate as *amicus curiae* in support of petitioners in *Robert L. Ferguson, et al., v. United States Department of Energy, et al.*, No. 10-1052.

1. By Petition dated February 25, 2010, Robert L. Ferguson, William Lampson, and Gary Peterson initiated the above-referenced case to petition this Court “to review, remand, vacate, and/or defer the final action of the President and Secretary of Energy to abandon and not to proceed with plans to apply for and

pursue a license for, and to construct, a repository for high-level radioactive waste at Yucca Mountain, Nevada.”¹

2. NEI has a clear interest in, and unique perspective concerning, the instant proceeding. NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of operational and technical issues. Among NEI’s members are all companies licensed to operate commercial nuclear power plants in the United States. Used nuclear fuel from nuclear power plants operated by these companies will be disposed of at Yucca Mountain if the site is licensed by the U.S. Nuclear Regulatory Commission. Accordingly, the Yucca Mountain project is of unique interest.

3. In addition, NEI members pay more than \$700 million per year in fees into the Nuclear Waste Fund (“Fund”), established under section 302 of the NWPA, 42 U.S.C. § 10222, to cover all costs associated with used nuclear fuel disposal. Thus far, more than \$23 billion has been or is committed to be paid into the Fund.

4. NEI has been authorized by the U.S. Department of Justice and attorneys for Robert L. Ferguson, et al., to represent that both the federal

¹ By Order dated April 8, 2010, the Court consolidated the referenced case with *Aiken County v. United States Department of Energy, et al.*, No. 10-1050; and *State of South Carolina v. United States Department of Energy, et al.*, No. 10-1069.

respondents and petitioners, respectively, do not oppose its participation as *amicus curiae*.

Wherefore, NEI requests leave to participate as *amicus curiae* in the instant case.

Respectfully submitted,

/s/ Michael A. Bauser*

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Dated: April 22, 2010

*Counsel of Record

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(c), D.C. Cir. Rule 25(c), I hereby certify that on this date, April 22, 2010, I caused the foregoing Notice of Participation of Nuclear Energy Institute, Inc. as Amicus Curiae and Representation of Consent and attached Nuclear Energy Institute, Inc.’s Corporate Disclosure Statement to be filed upon the Court through the use of the D.C. Circuit CM/ECF electronic filing system, and thus also served on counsel listed below. In addition, as indicated below, Mr. James Conwell Kilbourne and Mr. William Henry Davidson II were served this same date by U.S. mail, first-class, postage prepaid.

/s/ Michael A. Bauser*

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