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April 23, 2010

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

Re: *In re Aiken County, Ferguson v. Obama, South Carolina v. Department of Energy*,
Consolidated Case Nos. 10-1050, 10-1052, 10-1082

Dear Mr. Langer:

Petitioners Robert Ferguson, Gary Petersen, and William Lampson (“Ferguson Petitioners”) respond to Respondents’ April 21, 2010 Rule 28(j) letter.

Respondents’ submission should be disregarded. Rule 28(j) is a mechanism for bringing “pertinent and significant authorities” to the Court’s attention. The NRC staff opinion appended to Respondents’ Rule 28(j) submission is not pertinent “authorit[y]”, but instead constitutes purported evidence in support of Respondents’ position that there is no final action that this Court may review. Submission of such evidence is a misuse of Rule 28(j). *See Utah v. Department of Interior, et al.*, 535 F.3d 1184, 1195 n. 7 (10th Cir. 2008), *citing Trans-Sterling, Inc. v. Bible*, 804 F.2d 525, 528 (9th Cir. 1986) ; *DiBella v. Hopkins*, 403 F.3d 102, 118 (2d Cir. 2005). The same is true with any subsequent filing relating to the NRC proceeding. .

Even if this were a proper Rule 28(j) submission, it should be disregarded in No. 10-1052. The Ferguson Petitioners neither named the NRC in their petition nor directly challenged the DOE’s decision to seek withdrawal of its license application from the NRC. More importantly, it is clear that Respondents’ decision to shut down the Yucca Mountain project has been implemented by numerous actions independent of, and prior to, the filing of the motion to withdraw the application. *See, e.g.*, Petition for Review Exhibit A at 24 (February 8, 2010 letter from DOE to Nevada Department of Conservation and Natural Resources withdrawing water applications).

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Respectfully submitted,

A handwritten signature in cursive script that reads "Barry M. Hartman". The signature is written in black ink and includes a long, horizontal flourish at the end.

Barry M. Hartman

Counsel for the Ferguson Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on the 23th day of April, 2010, a copy of the foregoing was served by use of the Court's Electronic Filing System, upon the following persons:

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