

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

IN RE: AIKEN COUNTY,)	No. 10-1050
)	
Petitioner.)	
_____)	
)	
ROBERT L. FERGUSON, et al.,)	
)	
Petitioners)	
v.)	
)	No. 10-1052
UNITED STATES DEPARTMENT)	
OF ENERGY, et al.,)	
)	
Respondents.)	
_____)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Petitioner)	
v.)	
)	No. 10-1069
UNITED STATES DEPARTMENT)	
OF ENERGY, et al.,)	
)	(CONSOLIDATED)
Respondents.)	
)	
_____)	

**REPLY OF THE STATE OF SOUTH CAROLINA
TO RESPONDENTS' OPPOSITION TO MOTION TO EXPEDITE
AND
RESPONSE TO RESPONDENTS' MOTION TO HOLD THE CASES IN
ABEYANCE**

The State of South Carolina, Petitioner in No. 10-1069, offers the following in the way of reply and response to the filings made on April 12, 2010 by DOE, the NRC, and the State of Nevada.¹ In addition to the points incorporated or set forth below, South Carolina would note that it suggested, prior to consolidation of these cases, that “it might be well to place the remaining aspects of this case on the same briefing schedule.” South Carolina Motion for Expedited Briefing at 2, n.1. Now that the cases have been consolidated, it would indeed appear advisable to have the briefing schedule previously set forth apply to dispositive motions and merits briefs pertaining to all aspects of the consolidated cases, including the one being filed today by the State of Washington, assuming that that case is also consolidated into the present case.²

1. Incorporation of Ferguson response by reference.

South Carolina incorporates by reference the reply being filed this date by Petitioners Ferguson, et al., in No. 10-1052. The statements made therein with reference to the Hanford site in Washington apply as well to the Savannah River Site in South Carolina.

¹ To the extent that the NRC and Nevada have opposed expedited consideration, the present reply pertains to their arguments as well as those of DOE, et al., to which this reply primarily responds.

² At such time as the opportunity arises, South Carolina intends to join in Washington’s Motion for Preliminary Injunction.

2. The cases should not be held in abeyance for thirty days, as the Respondents have requested.

Respondents DOE, the Secretary of Energy and the President have moved to hold these cases in abeyance for thirty days, “to allow time for the [NRC] to consider DOE’s request to review the Licensing Board’s April 6, 2010, interlocutory order.” Respondents’ Motion and Response at 6. South Carolina submits that a thirty-day stay of these cases would accomplish nothing, other than additional delay, because if DOE is successful in having the April 6, 2010, interlocutory order reversed, the NRC licensing proceeding will take much longer than thirty days to conclude.

The progress of the licensing proceeding could be expected to take the following course, if the NRC were to decide to reverse the order of the Licensing Board: First, even before deciding the issue, the NRC would presumably permit briefing of some sort on the issue of reversal of the Licensing Board’s order. Briefing could be requested from the existing parties and possibly from the proposed intervenors as well. After a period of consideration, the NRC would issue an order. If the order were to require the Licensing Board to resume consideration of the DOE motion to withdraw, there would still be some time remaining for opposition to intervention by the last two proposed intervenors, followed by reply

briefs by those proposed intervenors.³ It is possible that oral argument would occur with respect to the intervention petitions.

If intervention is denied to any of the parties who have requested it, appeals by those parties would be permitted. *See, e.g., Alternative Research and Development Foundation v. Veneman*, 262 F.3d 406, 409 (D.C. Cir. 2001) (“denial of intervention as of right is an appealable, final order”). On the other hand, even if intervention is granted, the Licensing Board would then provide for a briefing schedule for its consideration of the merits of the motion to withdraw. Presumably, oral argument would follow after the briefs were complete. The Board would then issue its decision after consideration, and then the losing party or parties would appeal to the full Commission, which would repeat the entire briefing and argument process. All of these steps would require a number of months.

It therefore appears quite clear that if the NRC proceeding were to resume before the Licensing Board, as DOE has requested, the conclusion of any Licensing Board proceeding would take much longer than thirty days. If the NRC proceeding does not resume, and DOE appeals the decision not to resume, the final outcome of that appeal would take a long time as well. In the meantime, no stay of DOE’s dismantling actions would apparently be obtainable in the NRC proceeding.

³ Conversely, if the NRC were to decline to reverse the Licensing Board’s decision, then DOE might appeal that decision to this Court, but that appeal would presumably not involve the merits of the motion to withdraw.

The Licensing Board has noted that “[u]nlike the Court of Appeals, the Board has no power to issue injunctions. . . .” 4/6/10 Order at 11. The sum total of all of this is that this Court should deny DOE’s motion to hold these cases in abeyance, because a delay of much longer than thirty days would be inevitable, and in the meantime, absent further action by this Court, DOE could proceed with its activities leading to the dismantling of the Yucca Mountain project.

CONCLUSION

For the reasons set forth above, including the reasons incorporated by reference, South Carolina respectfully submits that the Court should grant the Motions to Expedite, and should require dispositive motions and merits briefs on all aspects of all cases in accordance with the proposed briefing schedule set forth in the motions of South Carolina and of Petitioners Ferguson, et al.

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Respectfully submitted,

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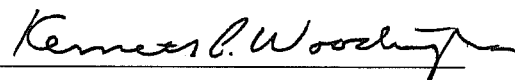
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**D.C. Circuit Bar Application pending

Certificate of Service

I certify that on the 13th day of April, 2010, the foregoing document and its attachments was served on counsel of record by e-mail sent to the following:

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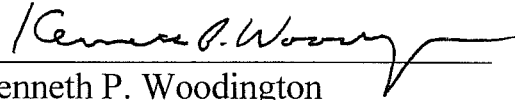
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