

UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

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No. 11-1271

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**IN RE AIKEN COUNTY, ET AL.**

On Petition for Writ of Mandamus (Agency Action Unreasonably Withheld)

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**RESPONDENTS' THIRD STATUS REPORT**

In order to keep the Court apprised of relevant information, Respondent U.S. Nuclear Regulatory Commission ("NRC") hereby files this status report, advising the Court of an update in the amount of carryover funds available to the agency for the Yucca Mountain licensing proceeding.

Our initial brief advised the Court that the NRC had approximately \$10 million available in unobligated carryover money appropriated from the Nuclear Waste Fund at that time. *See* Respondents' Brief at 45 n.28. At oral argument, we advised the Court that, through closing out contracts related to the proceeding and recouping obligated funds, this amount had grown to approximately \$10.4 million, *see e.g.*, Tr. 30 (May 2, 2012); Respondents' Response to Brief of the United States *Amicus Curiae* (June 29, 2012) at 4 n.3, and we later advised the Court that the amount had increased to \$10.5 million. *See* Respondents' Initial Status Report

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(January 4, 2013) at 2 n.2.

The NRC has continued to close out contracts related to the Yucca Mountain proceeding and has recouped some additional funds that have been added to the previous carryover amount. As a result, the NRC currently has \$11.1 million in unobligated carryover money appropriated from the Waste Fund and \$2.5 million of obligated, unexpended money appropriated from the Waste Fund.

Although we present this information to the Court in the interest of full disclosure, this additional money does not constitute a material change in the agency's financial status or, in our view, affect the arguments previously made in this case. Whether the amount available is \$10.5 million, \$11.1 million, or even \$13.6 million (the maximum amount available if all obligated Waste Fund money could be used for the proceeding), the NRC lacks sufficient money appropriated from the Waste Fund to complete the proceeding. *See, e.g.*, Respondents' Brief at 43-45; Respondents' Response to the Brief of the United States *Amicus Curiae* at 4-6; Respondents' Initial Status Report at 4. Even Petitioners agree with this assessment. *See* Tr. 70. Thus, as we have previously explained, given the agency's financial status and Congress's decision not to appropriate additional Waste Fund money for either NRC or the Department of Energy to continue the proceeding, this Court should deny the petition for a writ of mandamus.

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Respectfully submitted,

    s/Andrew P. Averbach      
ANDREW P. AVERBACH  
Solicitor

    s/Jeremy M. Suttenger      
JEREMY M. SUTTENBERG  
Attorney

    s/Charles E. Mullins      
CHARLES E. MULLINS  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, Maryland 20852  
(301) 415-1618

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