

NO. 11-1271

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

In Re: AIKEN COUNTY, SOUTH CAROLINA; ROBERT L. FERGUSON; WILLIAM LAMPSON; GARY PETERSEN; STATE OF SOUTH CAROLINA; STATE OF WASHINGTON; NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS; NYE COUNTY, NEVADA, Petitioners.

UNITED STATES NUCLEAR REGULATORY COMMISSION,
and GREGORY B. JACZKO, Chairman of the United States Nuclear
Regulatory Commission, Respondents.

PETITIONERS' FOURTH SUPPLEMENTAL STATUS REPORT

On April 5, 2013, Respondent U.S. Nuclear Regulatory Commission (“NRC”) advised the Court that it now has an increased amount of Nuclear Waste Fund carryover money (up to \$13.6 million) available to move forward on its Congressional mandate under the Nuclear Waste Policy Act, 42 U.S.C. § 10101 *et seq.* (1982) (“NWPA”).¹ NRC’s Third Status Report asserts that this Waste Fund carryover money is not enough “to complete the proceeding.” As this Court is

¹ DOE has approximately \$17 million in unobligated nuclear waste disposal carryover funds, and \$8 million in obligated carryover funds. *See* Brief of United States as Amicus Curiae (Jun. 22, 2012).

aware, Congress does not appropriate from the outset sufficient funds to start and complete this or any other major federal project spanning years if not decades.

Petitioners reiterate that NRC's "complete the proceeding" argument suggests that if an agency lacks enough cash-on-hand to complete multiyear (let alone multi-decade) projects, the agency is free to ignore its Congressional mandate. This argument is especially troubling where, as here, NRC unilaterally stopped performing its mandatory work while appropriated funds were available. *See* Oral Argument Tr. 59:25-60:2 (Randolph, J.: "[W]hy should Congress appropriate money when the Commission is acting in defiance of the congressional mandate?").

Petitioners also reiterate that critical steps in the repository process (such as release of the un-redacted Safety Evaluation Reports, *see* Petrs.' Response to Brief of the United States as Amicus Curiae (July 6, 2012) at 8-10) can be undertaken with available Waste Fund carryover money.² The Yucca Mountain Safety Evaluation Reports, which the NRC Chairman blocked from public release (see Petrs'. Br. at 15-16) would provide the public and Congress with NRC's conclusions as to whether the Yucca Mountain license application fits the regulatory criteria NRC has promulgated. Oral Argument Tr. 9:12-20. Release of

² NRC concedes that release of the Yucca Mountain Safety Evaluation Reports can be accomplished with available carryover money. Argument Tr. 37:20-21.

the Safety Evaluation Reports is a critical next step in the NRC's consideration of the Yucca Mountain license application. *See* 10 C.F.R. Part 2, Appendix D; JA 795 (NRC Staff informing the ASLB that the failure to release the SER was a factor preventing the agency from meeting its statutory obligation); JA 522 (ASLB stating that "Few non-NEPA contentions can be adjudicated before relevant portions of the SER are issued.").

Mandamus should issue immediately.

RESPECTFULLY SUBMITTED this 5th day of April 2013,

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April 2013, a copy of the foregoing was filed using the CM/ECF system which will serve the same on all parties of record as follows:

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DATED this 5th day of April 2013, in Columbia, SC.

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