

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' SECOND SUPPLEMENTAL STATUS REPORT

Petitioners submit this status report pursuant to the Court's August 3, 2012 Order in which the Court ordered that this case be held in abeyance and that, by December 14, 2012, the parties file updates on the status of Fiscal Year 2013 appropriations with respect to the issues presented in this case, and the Court's December 12, 2012 Order which extended the status report deadline until January 4, 2013.

Simply put, no appropriations decisions have been made which prohibit the Nuclear Regulatory Commission ("NRC") from using available funds to continue the agency's mandatory review of the Yucca Mountain license application. Waiting for January 4, 2013 on the possibility "that the ongoing negotiations between the Executive Branch and the Legislative Branch will address the underlying issue in this case," as requested by Respondents, has yielded no change. The statutory command of the Nuclear Waste Policy Act has not been altered by any act of Congress. It continues to stand as the law of the land.

As discussed in Petitioners' Status Report dated September 28, 2012 [Docket No. 1397206], Congress in September 2012 passed and the President signed a Continuing Resolution which will run until March 2013. This Continuing Resolution contains no "statutory text that makes clear that the Nuclear Regulatory Commission may not use any appropriated money (including

previously appropriated funds) for the Yucca Mountain licensing process”
See August 3, 2012 Order, Kavanaugh, J. concurring. On the contrary, the Continuing Resolution specifically allows for activities to be started or resumed if authorized by law and funding is available, as is the case in the instant controversy.

On January 2, 2013, the President signed the American Taxpayer Relief Act of 2012 (H.R. 8). Like the Continuing Resolution, the American Taxpayer Relief Act does not prohibit NRC from using available funding for the Yucca Mountain licensing process. Indeed, it makes no reference to it.

The basis upon which the Court delayed issuing mandamus – to see whether the 112th Congress’s Fiscal Year 2013 appropriations decisions might result in some change in the NWPA which currently obligates the NRC to move forward – no longer exists. Because the decision as enunciated by the nation’s representatives and recorded in the Nuclear Waste Policy Act has not been altered, the NRC’s obligations to move forward on the license application, using the funding provided by law, should be enforced.

Mandamus should issue immediately.

RESPECTFULLY SUBMITTED this 4th day of January 2013,

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January 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 4th day of January 2013, in Columbia, South Carolina.

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