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Caution

As of: Sep 05, 2007

**INDIANA MICHIGAN POWER COMPANY, ET AL., PETITIONERS v.
DEPARTMENT OF ENERGY AND UNITED STATES OF AMERICA,
RESPONDENTS NORTHERN STATES POWER COMPANY (MINNESOTA), ET
AL., INTERVENORS**

No. 95-1279 Consolidated with 95-1321, 95-1463

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

*319 U.S. App. D.C. 209; 88 F.3d 1272; 1996 U.S. App. LEXIS 18154; 43 ERC (BNA)
1033; 26 ELR 21406*

January 17, 1996, Argued

July 23, 1996, Decided

PRIOR HISTORY: **[**1]** On Petitions for Review of
an Order of the Department of Energy.

DISPOSITION: Vacated and remanded

LexisNexis(R) Headnotes

*Administrative Law > Agency Rulemaking > Rule
Application & Interpretation > General Overview
Administrative Law > Judicial Review > Standards of
Review > Statutory Interpretation*

[HN1] In reviewing an agency's construction of a statute entrusted to its administration, the court follows the two-step statutory analysis established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). First, the court asks whether Congress has spoken unambiguously to the question at hand. If it has, then the court's duty is clear: The court must follow that language and give it effect. If not, the court considers the agency's action under the second step of *Chevron*, deferring to the agency's interpretation if it is reasonable and consistent with the statute's purpose.

*Energy & Utilities Law > Nuclear Power Industry >
Disposal, Storage & Transport*

*Environmental Law > Hazardous Wastes & Toxic
Substances > Radioactive Substances > High Level
Waste*

[HN2] Section 302(a)(5)(B) of the Nuclear Waste Policy Act of 1982 states that in return for the payment of fees the Department of Energy, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste and spent nuclear fuel.

COUNSEL: Jay E. Silberg argued the cause for utility petitioners/ intervenors, with whom Michael A. Carvin, Vincent J. Colatriano, George L. Edgar and Michael A. Bauser were on the briefs. Don L. Keskey argued the cause for the state petitioners, with whom Thomas L. Casey, Henry J. Boynton, Lester M. Bridgeman, Patricia M. French, Jocelyn F. Olson, Robert S. Golden, Jr., John W. Malley, Jr., Lawrence F. Barth, John F. Povilaitis, Edward W. O'Neill, Roger W. Steiner, Barbara E. James, Lawrence G. Malone, John S. Gillig, Robert D. Vandiver, Richard C. Bellak, Mary W. Cochran, Paul R. Hightower, John W. Campbell, L. Steven Grasz, Michael A. Gross, Judith S. Yogman, Bryan G. Moorhouse, Susan S. Miller, Kevin P. Maloney, Charles F. Walker, Diane Munns,

Michael B. Hare, Charles L. Moulton, Wynn E. Arnold, Caroline Vachier, Helene S. Wallenstein, James E. Ryan, Jr., James R. Carroll and Ben Stead were on the briefs. Robert T. Stephan, Larry G. Watterworth, Jeffrey A. Keevil, James E. Weging, Robert W. Parnacott, Douglas E. Eidahl, Harvey Y. Morris and James R. Anderson entered appearances.

John A. Bryson, [**2] Attorney, United States Department of Justice, argued the cause for respondent, with whom Lois J. Schiffer, Assistant Attorney General, Martin W. Matzen, Attorney, and Marc Johnston, Deputy General Counsel, United States Department of Energy, were on the brief.

JUDGES: Before: WILLIAMS, GINSBURG and SENTELLE, Circuit Judges.

OPINION BY: SENTELLE

OPINION

[*1273] SENTELLE, Circuit Judge: The Nuclear Waste Policy Act ("NWP") of 1982 authorized the Secretary of Energy ("Secretary") to enter contracts with owners and generators of high-level radioactive waste and spent nuclear fuel ("SNF") under which the private parties were to pay the Secretary statutorily imposed fees in return for which the Secretary, "beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or [SNF] involved..." 42 U.S.C. § 10222(a)(5)(B) (1994). Petitioners are utilities and state commissions who paid fees to the Secretary under the statute. They seek review of the Department of Energy's ("DOE") final interpretation declaring that the Department has no obligation to perform its part of the contractual bargain. We conclude that the Department's interpretation is not valid and we therefore allow [*3] the petition for review.

Background

In the NWP, Congress created a comprehensive scheme for the interim storage and permanent disposal of high-level radioactive waste generated by civilian nuclear power plants. NWP establishes that, in return for a payment of fees by the utilities, DOE will construct repositories for SNF, with the utilities generating the waste bearing the primary responsibility for interim storage of SNF until DOE accepts the SNF "in accordance with the provisions of this chapter." 42 U.S.C.

§ 10131(a)(5).

The NWP requires the utilities to enter into standard contracts with DOE for the disposal of the waste. According to the statute, the contracts shall provide that:

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel as provided in this subchapter.

[**4] 42 U.S.C. § 10222(a)(5). The final standard contract adopted by DOE, following notice and comment, states that "the services to be provided by DOE under this contract shall begin, after commencement of facility operations, not later than January 31, 1998 and shall continue until such time as all SNF ... from the civilian nuclear power reactors specified ... has been disposed of." 10 C.F.R. § 961.11, Art. II (1996).

[*1274] In 1993, several states and utilities became concerned about DOE's ability to meet its obligations under the NWP. Therefore, they requested DOE to address its responsibilities under the NWP, particularly section 302(a)(5), 42 U.S.C. § 10222(a)(5), and the January 31, 1998 deadline. Daniel Dreyfuss, Director of DOE's Office of Civilian Radioactive Waste Management, responded in a letter that DOE "does not have a clear legal obligation under the [NWP] to accept [SNF] absent an operational repository or other facility." In February 1994, DOE's Secretary, Hazel O'Leary, indicated that, while at the time NWP was enacted DOE "envisioned that it would have a waste management facility in operation and prepared to begin acceptance of [SNF] in 1998," DOE subsequently [*5] concluded it did not have "a clear legal obligation under the [NWP] to accept [SNF] absent an operational repository or other facility constructed under the [NWP]."

LEXSEE 128 F3D 754



Caution

As of: May 11, 2007

NORTHERN STATES POWER COMPANY, ET AL., PETITIONERS v. UNITED STATES DEPARTMENT OF ENERGY AND UNITED STATES OF AMERICA, RESPONDENTS IES UTILITIES, INC., ET AL., INTERVENORS

No. 97-1064, Consolidated with Nos. 97-1065, 97-1370, 97-1398

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

327 U.S. App. D.C. 20; 128 F.3d 754; 1997 U.S. App. LEXIS 32052; 45 ERC (BNA) 1783; 28 ELR 20231

**September 25, 1997, Argued
November 14, 1997, Decided**

SUBSEQUENT HISTORY: Certiorari Denied November 30, 1998, Reported at: *1998 U.S. LEXIS 7595; 1998 U.S. LEXIS 7584.*

PRIOR HISTORY: [****1**] On Petitions for Writs of Mandamus Directed to the United States Department of Energy.

DISPOSITION: Petition granted in part; Retained jurisdiction over this case pending compliance with the mandate issued.

LexisNexis(R) Headnotes

Civil Procedure > Remedies > Writs > Common Law Writs > Mandamus

[HN1] The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. Mandamus is proper only if (1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to plaintiff. The party seeking mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable.

*Energy & Utilities Law > Nuclear Power Industry > Disposal, Storage & Transport
Environmental Law > Hazardous Wastes & Toxic Substances > Radioactive Substances > High Level Waste*

[HN2] The text of the Nuclear Waste Policy Act clearly demonstrates a congressional intent that the U.S. Department of Energy (DOE) assume a contractual obligation to perform by the 1998 deadline, without qualification or condition. DOE's duty to take the materials by the 1998 deadline is also an integral part of the Standard Contract, which provides that the DOE shall begin disposing of the high-level radioactive waste and spent nuclear fuel by January 31, 1998. *10 C.F.R. § 961.11*, art. II.

Energy & Utilities Law > Nuclear Power Industry > Disposal, Storage & Transport

[HN3] The Standard Contract provides a scheme for dealing with delayed performance. *10 C.F.R. § 961.11*, art. IX.

Administrative Law > Judicial Review > Remedies > Mandamus

Civil Procedure > Remedies > Writs > Common Law Writs > Mandamus

[HN4] A federal appellate court has the authority, through the process of mandamus, to correct any misconception of its mandate by a lower court or administrative agency subject to its authority.

Energy & Utilities Law > Nuclear Power Industry > Disposal, Storage & Transport

[HN5] Article IX of the Standard Contract of the Department of Energy describes an unavoidable delay for accepting nuclear waste as a party's failure to perform its obligations arising out of causes beyond the control and without the fault or negligence of the party failing to perform. *10 C.F.R. § 961.11*, art. IX.A. The contract goes on to list a few examples of circumstances beyond the reasonable control of the delayed party: acts of God, or of the public enemy, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

COUNSEL: Jay E. Silberg argued the cause for utility petitioners, with whom David J. Cynamon and Mindy A. Buren, were on the briefs.

Don L. Keskey, Assistant Attorney General, argued the cause for state petitioners, with whom Frank J. Kelley, Attorney General, Thomas L. Casey, Henry J. Boynton and Larry G. Watterworth, Assistant Attorneys General, Michigan, Robert S. Golden, Jr., Assistant Attorney General, Connecticut, Robert D. VanDiver, General Counsel, Florida Public Service Commission, Judith S. Yogman and Leslie Greer, Assistant Attorneys General, Massachusetts, Rolayne Ailts Wiest, Assistant Attorney General, South Dakota, Greg Huwe, Assistant Attorney General, Minnesota, Michael A. Gross, Assistant Attorney General, Florida, Mary W. Cochran, General Counsel, Arkansas Public Service Commission, Bryan G. Moorhouse, General Counsel, and Susan S. Miller, Assistant General Counsel, Maryland Public Service Commission, Roger W. Steiner, Assistant General Counsel, Missouri Public Service [**2] Commission, Charles F. Walker and Kevin P. Maloney, Deputy Attorneys General, Delaware, Carla J. Stovall, Attorney General, and John W. Campbell, Deputy Attorney General, Kansas, Diane Munns, Acting General Counsel, Iowa Utilities Board, Conrad Smith, Vermont, Lawrence F. Barth, Assistant Counsel, Veronica A. Smith, Deputy

Chief Counsel, and John F. Povilaitis, Chief Counsel, Pennsylvania Public Utility Commission, Steven M. Schur, Chief Counsel, and David Ludwig, Attorney, Public Service Commission of Wisconsin, Edward W. O'Neill and Robert C. Cagen, Public Utilities Commission of California, Lawrence G. Malone, Solicitor, New York State Public Service Commission, Lester M. Bridgeman, Alabama Public Service Commission, James J. Grawe, Assistant Attorney General, Kentucky, M. Brent Hare, Assistant Attorney General, Maryland, Caroline Vachier and Helene S. Wallenstein, Deputy Attorneys General, New Jersey, James R. Anderson, Assistant Consumer Advocate, New Hampshire, Jeffrey B. Pine, Attorney General, Paul J. Roberti and Alan M. Schoer, Special Assistant Attorneys General, Rhode Island, Shirley E. Guntharp, Deputy Attorney General, and Charles L. Moulton, Assistant Attorney General, [**3] Arkansas, George M. Fleming, Mississippi Public Service Commission, L. Steven Grasz, Deputy Attorney General, Nebraska, Frank Spencer, Special Assistant Attorney General, Mississippi, Wynn E. Arnold, Assistant Attorney General, New Hampshire, Ben Stead, Iowa, Carl Josephson, Assistant Attorney General, Virginia, F. David Butler, General Counsel, Public Service Commission of South Carolina, Thomas D. Warren, State Solicitor, Maine, Charles E. Johnson, Special Assistant Attorney General, North Dakota Public Service Commission, Daniel B. Dovenbarger, Deputy Attorney General, Indiana, Sammy R. Kirby, Deputy General Counsel, North Carolina Utilities Commission, Duane W. Luckey and Steven T. Nourse, Assistant Attorneys General, Public Utilities Commission of Ohio, Joel H. Peck, Senior Counsel, and C. Meade Browder, Jr., Attorney, Virginia State Corporation Commission, Gary J. Newell and Frances E. Francis, Public Systems Group, Michael R. Fontham, and Noel J. Darce, Louisiana Public Service Commission, Charles D. Gray, General Counsel, and James Bradford Ramsay, Assistant General Counsel, National Association of Regulatory Utility Commissioners, and Eric A. Eisen, Arizona Corporation [**4] Commission, were on the briefs.

John A. Bryson, Attorney, U.S. Department of Justice, argued the cause and filed the brief for respondents. Martin W. Matzen, Attorney, entered an appearance.

William H. Chambliss, Senior Counsel, and C. Meade Browder, Jr., Attorney, were on the brief for intervenor Virginia State Corporation Commission.

Michael A. Bauser was on the brief for intervenor Northeast Utilities Service Company.

JUDGES: Before: WILLIAMS, GINSBURG and SENTELLE, Circuit Judges. Opinion for the Court filed by Circuit Judge SENTELLE.

OPINION BY: SENTELLE

OPINION:

[*755] SENTELLE, *Circuit Judge*: In *Indiana Michigan Power Co. v. Department of Energy*, 319 U.S. App. D.C. 209, 88 F.3d 1272 (D.C. Cir. 1996), we held that the Nuclear Waste Policy Act ("NWPA") imposes on the Department of Energy ("DOE") an unconditional obligation to begin disposing of high-level radioactive waste and spent nuclear fuel (collectively, "SNF") by January 31, 1998. After we issued our decision, DOE nonetheless informed various utilities and state commissions ("petitioners") that it would not accept the SNF [*756] for disposal by the 1998 deadline. Petitioners now seek a writ of mandamus requiring DOE to comply with *Indiana Michigan* [**5] and begin disposing of the SNF by the statutory deadline. We hold that the Standard Contract between DOE and the utilities provides a potentially adequate remedy if DOE fails to fulfill its obligations by the deadline, and thus do not grant in full the writ requested by petitioners. We do agree, however, that DOE's current approach toward contractual remedies is inconsistent with the NWPA and with our prior decision in *Indiana Michigan*. We thus grant the petition in part, and issue a writ of mandamus precluding DOE from advancing any construction of the Standard Contract that would excuse its delinquency on the ground that it has not yet established a permanent repository or an interim storage program.

I. Background

In the NWPA, Congress, confronting the "national problem" posed by the accumulation of spent nuclear fuel and radioactive waste produced by various domestic sources, 42 U.S.C. § 10131(a)(2), created a scheme whereby the federal government would have the responsibility to provide for the permanent disposal of the SNF, and the costs of such disposal would be borne by the owners and generators of the waste and spent fuel. 42 U.S.C. § 10131(a)(4). The plan provided [**6] that the owners and generators of the SNF would have the

primary responsibility to provide and pay for its interim storage until the Secretary of Energy accepts the material "in accordance with the provisions of this chapter." 42 U.S.C. § 10131(a)(5).

As part of this regulatory program, Congress authorized the Secretary to enter into contracts with the owners and generators for the acceptance, transportation, and ultimate disposal of the SNF. 42 U.S.C. § 10222(a)(1). Congress left open many of the terms of the contracts, but specifically dictated, *inter alia*, the deadline by which DOE must begin disposing of the SNF. In the language of the statute, the "contracts entered into under this section shall provide that ... in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter." 42 U.S.C. § 10222(a)(5)(B). "Payment of fees" referred to hefty contributions into a so-called Nuclear Waste Fund by owners and generators of the SNF.

In accordance with the NWPA, DOE adopted the final Standard Contract after notice [**7] and comment. The language of the Standard Contract is slightly different than that of the statute, but does include the requirement that disposal begin by January 31, 1998: "the services to be provided by DOE under this contract shall begin, after commencement of facility operations, not later than January 31, 1998 and shall continue until such time as all SNF and/or HLW [high-level radioactive waste] from the civilian nuclear power reactors ... has been disposed of." 10 C.F.R. § 961.11, Art. II (1996).

In 1993, various utilities and state agencies became concerned about DOE's ability to meet the 1998 deadline, and thus asked the Department to address how it would go about performing its responsibilities. The Department, apparently anticipating that it would not be ready to take the SNF by the deadline, took the position that it did not have a clear legal obligation to accept the SNF absent an operational repository or other facility. In its Final Interpretation of Nuclear Waste Acceptance Issues, issued in 1995, DOE announced that it "does not have an unconditional statutory or contractual obligation to accept high level waste and spent nuclear fuel beginning January 31, 1998 [**8] in the absence of a repository or interim storage facility constructed under the [NWPA]." 60 Fed. Reg. 21,793-94. The Department also took the position that "it lacks statutory authority under the Act to provide

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Northern States Power Company, et al., Petitioners v. United States Department of Energy and United States of America, Respondents; IES Utilities, Inc., et al., Intervenors, Consolidated with Nos. 97-1065, 97-1370 and 97-1398; In Re: Maine Yankee Atomic Power Co., Petitioner; In Re: Southern Nuclear Operating Co., et al., Petitioners

No. 97-1064 Consolidated with Nos. 97-1065, 97-1370 and 97-1398, No. 98-1069, No. 98-1070

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

1998 U.S. App. LEXIS 12919

May 5, 1998, Filed

NOTICE: [*1] RULES OF THE DISTRICT OF COLUMBIA CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

DISPOSITION: Motions to Consolidate granted. Motions from the Department of Energy to Dismiss the suits of Maine Yankee and Southern Nuclear; the Motions for Enforcement of the Mandate from the State Petitioners, the Utility Petitioners, and Connecticut Yankee; and the Petitions for Rehearing from Yankee Atomic and the Department of Energy, denied.

COUNSEL: For NORTHERN STATES POWER COMPANY (MINNESOTA), FLORIDA POWER & LIGHT COMPANY, DUKE POWER COMPANY, VERMONT YANKEE NUCLEAR POWER CORPORATION, NIAGARA MOHAWK POWER CORPORATION, GPU NUCLEAR CORPORATION, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, WISCONSIN PUBLIC SERVICE CORPORATION, UNION ELECTRIC COMPANY, DETROIT EDISON COMPANY, PUBLIC SERVICE ELECTRIC & GAS COMPANY, FLORIDA POWER CORPORATION, WOLF CREEK NUCLEAR OPERATING CORPORATION, KANSAS GAS AND ELECTRIC

COMPANY, KANSAS CITY POWER & LIGHT COMPANY, KANSAS ELECTRIC POWER COOPERATIVE, INC., INDIANA MICHIGAN POWER COMPANY, PECO ENERGY COMPANY, VIRGINIA ELECTRIC AND POWER COMPANY, CONSUMERS POWER COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, CENTERIOR ENERGY CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., DUQUESNE LIGHT COMPANY, MIDAMERICAN ENERGY COMPANY, NEW YORK POWER AUTHORITY, PENNSYLVANIA POWER & LIGHT COMPANY, ENTERGY SERVICES, INC., ROCHESTER GAS AND ELECTRIC CORPORATION, TEXAS UTILITIES ELECTRIC COMPANY, CAROLINA POWER & LIGHT COMPANY, PACIFIC GAS AND ELECTRIC COMPANY, COMMONWEALTH EDISON COMPANY, BOSTON EDISON COMPANY, Petitioners (97-1064): Mindy A. Buren, David J. Cynamon, Jay Eliot Silberg, Shaw, Pittman, Potts & Trowbridge, Washington, DC.

For DEPARTMENT OF ENERGY, Respondent (97-1064): Marc Johnston, U.S. Department of Energy (DOE), Washington, DC.

For DEPARTMENT OF ENERGY, UNITED STATES OF AMERICA, Respondents (97-1064): Martin William Matzen, Attorney, John Alan Bryson, Attorney, Lois Jane Schiffer, Assistant Attorney General, U.S. Department of Justice, (DOJ) Environment & Natural Resource Div,

Washington, DC.

For IES UTILITIES, INC., CENTRAL IOWA POWER COOPERATIVE, CORN BELT POWER COOPERATIVE, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT YANKEE ATOMIC POWER COMPANY, NORTH ATLANTIC ENERGY SERVICE CORPORATION, Intervenor for Petitioners (97-1064): Michael Alan Bauser, Morgan, Lewis & Bockius, Washington, DC.

For AMERICAN PUBLIC POWER ASSOCIATION, PIEDMONT MUNICIPAL POWER AGENCY, CONNECTICUT MUNICIPAL ELECTRIC ENERGY COOPERATIVE, MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY, FLORIDA MUNICIPAL POWER AGENCY, THE NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC., THE ELECTRIC DEPARTMENT, of the City of Burlington, Vermont, THE ELECTRIC DEPARTMENT, of Braintree, Massachusetts, CITY OF ANAHEIM, CALIFORNIA, CITY OF RIVERSIDE, CALIFORNIA, CITY OF BANNING, CALIFORNIA, CITY OF AZUSA, CALIFORNIA, Intervenor (97-1064): Frances Enseki Francis, Gary James Newell, Spiegel & McDiarmid, Washington, DC.

For ARIZONA CORPORATION COMMISSION, Intervenor for Petitioner (97-1064): Eric A. Eisen, Law Office of Eric A. Eisen, Bethesda, MD.

For NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, Intervenor for Petitioner (97-1064): James Bradford Ramsay, Charles Douglas Gray, National Association of Regulatory Utility Commissioners, Washington, DC.

For VIRGINIA STATE CORPORATION COMMISSION, Intervenor for Petitioner (97-1064): Joel H. Peck, Virginia State Corporation Commission, Richmond, Va.

For VIRGINIA STATE CORPORATION COMMISSION, Intervenor for Petitioner (97-1064): Charles Meade Browder, Jr., William H. Chambliss, Virginia State Corporation Commission, Richmond, VA.

For LOUISIANA PUBLIC SERVICE COMMISSION, Intervenor (97-1064): Michael R. Fontham, Noel Joseph Darce, Stone, Pigman, Walther, Wittmann & Hutchinson, New Orleans, LA.

For LOUISIANA PUBLIC SERVICE COMMISSION, Intervenor (97-1064): Brian Andrew Eddington, Law Offices of Brian A. Eddington, Baton Rouge, LA.

For MICHIGAN PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Thomas L. Casey, Sol Gen, Don L. Keskey, UU, Attorney General's Office of State of Michigan, (AGO) Michigan Public Service, Lansing, MI.

For STATE OF MINNESOTA, MINNESOTA DEPARTMENT OF PUBLIC SERVICE, MINNESOTA PUBLIC UTILITIES COMMISSION, Petitioners (97-1065): Gregory P. Huwe, Attorney General's Office of State of Minnesota, St. Paul, MN.

For STATE OF CONNECTICUT, CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL, Petitioners (97-1065): Robert S. Golden, Jr., Attorney General's Office of State of Connecticut, Department of Public Utility Control, New Britain, CT.

For STATE OF FLORIDA, Petitioner (97-1065): Michael Allen Gross, Office of the Attorney General for State of Florida, Tallahassee, FL.

For FLORIDA PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Robert D. Vandiver, Richard C. Bellak, Public Service Commission of Florida, Tallahassee, FL.

For ARKANSAS PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Mary Woodford Cochran, Arkansas Public Service Commission, Little Rock, AR.

For COMMONWEALTH OF MASSACHUSETTS, Petitioner (97-1065): Judith S. Yogman, Leslie B. Greer, Attorney General's Office of State of Massachusetts, Boston, MA.

For MARYLAND PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Bryan G. Moorhouse, Susan Stevens Miller, Public Service Commission of Maryland, Baltimore, MD.

For SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, Petitioner (97-1065): Rolayne Ailts Wiest, Public Utilities Commission of South Dakota, Pierre, SD.

For -MISSOURI PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Roger W. Steiner, Missouri Public Service Commission, Jefferson City, MO.

For STATE OF DELAWARE, Petitioner (97-1065): Charles F. Walker, Kevin P. Maloney, Attorney General's Office of State of Delaware, Wilmington, DE.

For WISCONSIN PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Steven M. Schur, Barbara E. James, David Albert Ludwig, Electric Division, Public Service Commission of Wisconsin, Madison, WI.

For STATE OF KANSAS, Petitioner (97-1065): John W. Campbell, Carla J. Stovall, Attorney General's Office of State of Kansas, Topeka, KS.

For KANSAS CORPORATION COMMISSION, Petitioner (97-1065): Dan Riley, Kansas Corporation Commission, Topeka, KS.

For IOWA UTILITIES BOARD, Petitioner (97-1065): Diane Munns, Iowa Utilities Board, Des Moines, IA.

For CALIFORNIA PUBLIC UTILITIES COMMISSION, Petitioner (97-1065): Harvey Y. Morris, Edward W. O'Neill, Public Utilities Commission of the State of California, San Francisco, CA.

For STATE OF VERMONT, VERMONT PUBLIC SERVICE BOARD, Petitioners (97-1065): J. Wallace Malley, Jr., Attorney General, Conrad P. Smith, Attorney General's Office of State of Vermont, Montpelier, VT.

For NEW YORK STATE PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Lawrence G. Malone, Public Service Commission of New York, Albany, NY.

For PENNSYLVANIA PUBLIC UTILITY COMMISSION, Petitioner (97-1065): Lawrence F. Barth, John F. Povilaitis, Veronica A. Smith, Pennsylvania Public Utility Commission, Harrisburg, PA.

For ALABAMA PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Lester M. Bridgeman, Miller, Hamilton, Snider & Odom, Mobile, AL.

For COMMONWEALTH OF KENTUCKY, Petitioner (97-1065): James J. Grawe, Office of the Attorney General of State of Kentucky, Frankfort, KY.

For STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS, Petitioner (97-1065): Paul J. Roberti, Alan M. Shoer, Attorney General's Office of State of Rhode Island, Providence, RI.

For STATE OF ARKANSAS, Petitioner (97-1065): Shirley E. Guntharp, Charles L. Moulton, Attorney General's Office of State of Arkansas, Little Rock, AR.

For STATE OF MARYLAND, Petitioner (97-1065): Michael Brent Hare, Maryland Energy Administration, Office of the Attorney General, Annapolis, MD.

For NEW HAMPSHIRE OFFICE OF THE CONSUMER ADVOCATE, Petitioner (97-1065): James Roger Anderson, Office of Consumer Advocate of State of New Hampshire, Concord, NH.

For STATE OF NEW HAMPSHIRE, Petitioner (97-1065): Wynn Edmund Arnold, Attorney General's Office of State of New Hampshire, Concord, NH.

For STATE OF NEBRASKA, Petitioner (97-1065): L. Steven Grasz, Attorney General's Office of State of Nebraska, Lincoln, NE.

For STATE OF IOWA, Petitioner (97-1065): Ben Stead, Office of Consumer Advocate for the State of Iowa, Des Moines, IA.

For STATE OF NEW JERSEY BOARD OF PUBLIC UTILITIES, Petitioner (97-1065): Helene Schorr Wallenstein, Caroline Vachier, Attorney General's Office of State of New Jersey, Newark, NJ.

For STATE OF ILLINOIS, Petitioner (97-1065): James E. Ryan, Jr., Attorney General's Office of State of Illinois, Chicago, IL.

For ILLINOIS COMMERCE COMMISSION, Petitioner (97-1065): James Edwin Weging, Illinois Commerce Commission, Chicago, IL.

For STATE OF MISSISSIPPI, Petitioner (97-1065): Robert Franklin Spencer, Attorney General's Office of State of Mississippi, Jackson, MS.

For MISSISSIPPI PUBLIC SERVICE COMMISSION, Petitioner (97-1065): George M. Fleming, Mississippi Public Service Commission, Jackson, MS.

For NORTH DAKOTA PUBLIC SERVICE COMMISSION, Petitioner (97-1065): Charles E. Johnson, Public Service Commission of North Dakota, Bismarck, ND.

For COMMONWEALTH OF VIRGINIA, Petitioner

(97-1065): Roger L. Chaffe, Sr Asst Atty Gen, John Paul Woodley, Jr., Dep Atty Gen, Carl Josephson, Assistant Attorney General, Attorney General's Office of State of Virginia, Richmond, VA.

For STATE OF INDIANA, Petitioner (97-1065): Daniel B. Dovenbarger, Attorney General's Office of State of Indiana, Indianapolis, IN.

For PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, Petitioner (97-1065): Fred David Butler, Public Service Commission of South Carolina, Columbia, SC.

For NORTH CAROLINA UTILITIES COMMISSION, Petitioner (97-1065): Sammy R. Kirby, North Carolina Utilities Commission, Raleigh, NC.

For STATE OF MAINE, Petitioner (97-1065): Thomas D. Warren, Attorney General's Office of State of Maine, Augusta, ME.

For PUBLIC UTILITIES COMMISSION OF OHIO, Petitioner (97-1065): Duane William Luckey, Steven T. Nourse, Assistant Attorney General, Attorney General's Office of State of Ohio, Columbus, OH.

For STATE OF MICHIGAN, Petitioner (97-1065): Henry James Boynton, Thomas L. Casey, Sol Gen, Don L. Keskey, UU, Larry G. Watterworth, Attorney General's Office of State of Michigan, (AGO) Michigan Public Service, Lansing, MI.

For DEPARTMENT OF ENERGY, Respondent (97-1065): Marc Johnston, U.S. Department of Energy (DOE), Washington, DC.

For DEPARTMENT OF ENERGY, Respondent (97-1065): Martin William Matzen, Attorney, John Alan Bryson, Attorney, Lois Jane Schiffer, Assistant Attorney General, U.S. Department of Justice, (DOJ) Environment & Natural Resource Div, Washington, DC.

For UNITED STATES OF AMERICA, Respondent (97-1065): John Alan Bryson, Attorney, Lois Jane Schiffer, Assistant Attorney General, U.S. Department of Justice, (DOJ) Environment & Natural Resource Div, Washington, DC.

For AMERICAN PUBLIC POWER ASSOCIATION, PIEDMONT MUNICIPAL POWER AGENCY, CONNECTICUT MUNICIPAL ELECTRIC ENERGY

COOPERATIVE, FLORIDA MUNICIPAL POWER AGENCY, THE NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC., THE ELECTRIC DEPARTMENT, CITY OF ANAHEIM, CALIFORNIA, CITY OF RIVERSIDE, CALIFORNIA, CITY OF BANNING, CALIFORNIA, CITY OF AZUSA, CALIFORNIA, MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY, Intervenor (97-1065): Frances Enseki Francis, Gary James Newell, Spiegel & McDiarmid, Washington, DC.

For ARIZONA CORPORATION COMMISSION, Intervenor (97-1065): Eric R. Eisen, Law Office of Eric A. Eisen, Bethesda, MD.

For NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, Intervenor (97-1065): James Bradford Ramsay, Charles Douglas Gray, National Association of Regulatory Utility Commissioners, Washington, DC.

For VIRGINIA STATE CORPORATION COMMISSION, Intervenor (97-1065): Joel H. Peck, Virginia State Corporation Commission, Richmond, Va.

For VIRGINIA STATE CORPORATION COMMISSION, Intervenor (97-1065): Charles Meade Browder, Jr., Virginia State Corporation Commission, Office of General Counsel, Richmond, VA.

For ILLINOIS POWER COMPANY, Petitioner (97-1370): Mindy A. Buren, David J. Cynamon, Jay Eliot Silberg, Shaw, Pittman, Potts & Trowbridge, Washington, DC.

For DEPARTMENT OF ENERGY, Respondent (97-1370): Marc Johnston, U.S. Department of Energy (DOE), Washington, DC.

For DEPARTMENT OF ENERGY, UNITED STATES OF AMERICA, Respondents (97-1370): Lois Jane Schiffer, Assistant Attorney General, U.S. Department of Justice, (DOJ) Environment & Natural Resource Div, Washington, DC.

For In re: YANKEE ATOMIC ELECTRIC COMPANY, Petitioner (97-1398): Robert Lawrence Shapiro, Jerry Stouck, Spriggs & Hollingsworth, Washington, DC.

For In re: MAINE YANKEE ATOMIC POWER COMPANY, Petitioner (98-1069): David J. Cynamon, Jay Eliot Silberg, Shaw, Pittman, Potts & Trowbridge,