

NO. 10-1050, 10-1052, 10-1069, 10-1082 *Consolidated*

---

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

---

No. 10-1050

IN RE AIKEN COUNTY, Petitioner

---

No. 10-1052

ROBERT L. FERGUSON, *et al.*, Petitioners,

v.

BARACK OBAMA, President of the United States, *et al.*, Respondents.

---

No. 10-1069

STATE OF SOUTH CAROLINA, Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY, *et al.*, Respondents.

---

No. 10-1082

STATE OF WASHINGTON, Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY, *et al.*, Respondents.

---

**PETITIONERS' STATUS REPORT**

---

The consolidated Petitioners provide this Status Report, in the event that it is necessary, as set forth herein.

In late October 2010, when Petitioners were contemplating the filing of their Supplemental Filing Regarding Motion To Lift Stay And Set Expedited Briefing Schedule, one of the counsel for Petitioners was advised by Court staff that the filing of Petitioner's Motion to Lift Stay on September 27, 2010, had obviated the need for a further status report because the motion automatically lifted the abeyance order.

Nevertheless, Petitioners would advise that defendants President Obama, Secretary Chu and the Department of Energy (DOE) continue to ignore the June 29, 2010, decision of the ASLB, and continue to shut down the Yucca Mountain project, as described in Petitioners' aforementioned Motion to Lift Stay, in Petitioners' Reply Memorandum, filed October 15, 2010, in connection with that motion, and in the Supplement to that filing, which was filed on October 25, 2010. In addition, the Nuclear Regulatory Commission's (NRC) Chair has taken unilateral action and instructed NRC staff to shut down its review of the DOE's license application, in violation of the ASLB decision.

Although apparently the NRC has taken internal votes as long as three months ago regarding its review of the ASLB decision, the matter has still not yet been decided in a formal vote of the Commission. The NRC has now taken no

action for three months longer than the court's original order granting expedited review provided for, and five times longer than the NRC gave the ASLB to review it. Further information about the actions and inactions of the NRC, as these have come to be disclosed to Congress in November, are set forth in the Respondents' Status Report, filed on November 24, 2010.

Again, the Petitioners urge that the Court grant Petitioner's outstanding Motion, filed on September 28, and reset this matter for briefing and hearing. The NRC has taken no action of substance in this case for five months. The ASLB ruled that DOE may not withdraw its license application, yet the NRC continues to allow DOE to shut down the project. The Court should not permit the government to manipulate the judicial process so as to deny parties their statutory right to review.

RESPECTFULLY SUBMITTED this 29th day of November, 2010.

*s/ Thomas R. Gottshall*  
THOMAS R. GOTTSBALL  
ALEXANDER SHISSIAS  
S. ROSS SHEALY  
Haynsworth Sinkler Boyd, P.A.  
Post Office Box 11889  
Columbia, SC 29211-1889

*Attorneys for Aiken County*

*s/ Barry M. Hartman*  
BARRY M. HARTMAN  
CHRISTOPHER R. NESTOR  
CHRISTOPHER R. TATE\*  
JOHN ENGLERT\*  
K&L Gates LLP  
1601 K Street, N.W.  
Washington, DC 20005-1600  
*\*not admitted*

*Attorneys for Robert L. Ferguson,  
William Lampson, and Gary Petersen*

HENRY DARGAN MCMASTER\*  
Attorney General for the State of  
South Carolina

JOHN W. MCINTOSH\*

ROBERT D. COOK\*

LEIGH CHILDS CANTEY\*

Post Office Box 11549

Columbia, SC 29211

*\*not admitted*

*s/ Kenneth P. Woodington*

WILLIAM HENRY DAVIDSON, II

KENNETH PAUL WOODINGTON

Davidson, Morrison & Lindemann

1611 Devonshire Dr., 2nd Floor

Post Office Box 8568

Columbia, SC 29202-8568

*Attorneys for the State of  
South Carolina*

*s/ James B. Ramsay*

JAMES BRADFORD RAMSAY

ROBIN J. LUNT

National Assoc. of Regulatory Utility  
Commissioners

1101 Vermont Ave. N.W., Suite 200

Washington, DC 20005

*Attorneys for Intervenor-Petitioner  
NARUC*

ROBERT M. MCKENNA\*  
Attorney General

*s/ Andrew A. Fitz*

ANDREW A. FITZ

TODD R. BOWERS

State of Washington

Office of the Attorney General

Post Office Box 40117

Olympia, WA 98504-0117

*\*not admitted*

*Attorneys for State of Washington*

**CERTIFICATE OF SERVICE**

I herby certify that on the 29th day of November 2010, a copy of the foregoing Petitioners' Status Report was filed electronically using the CM/ECF system, which will provide service on the following parties:

Avila, Aaron Peter	aaron.avila@usdoj.gov efile_app.enrd@usdoj.gov aaronpavila@yahoo.com
Bauser, Michael Alan	mab@nei.org
Bowers, Todd R.	toddb@atg.wa.gov
Brabender, Allen Michael	allen.brabender@usdoj.gov efile_app.enrd@usdoj.gov
Cordes, John F., Jr.	John.Cordes@nrc.gov
Durkee, Ellen J.	ellen.durkee@usdoj.gov
Fitz, Andrew Arthur	andyf@atg.wa.gov dianam@atg.wa.gov ecyolyef@atg.wa.gov
Fitzpatrick, Charles J.	cfitzpatrick@nuclearlawyer.com smontesi@nuclearlawyer.com
Gottshall, Thomas Rush	tgottshall@hsblawfirm.com lgantt@hsblawfirm.com bvaldes@hsblawfirm.com
Hartman, Barry M.	barry.hartman@klgates.com klgateseservice@klgates.com
Jones, Lisa Elizabeth	lisa.jones@usdoj.gov efile_app.enrd@usdoj.gov
Lawrence, John W.	jlawrence@nuclearlawyer.com lborski@nuclearlawyer.com
Lunt, Robin Kimlin Jensen	rlunt@naruc.org
Malsch, Martin Guilbert	mmalsch@nuclearlawyer.com cfitzpatrick@nuclearlawyer.com
Ramsay, James Bradford	jramsay@naruc.org
Shealy, Samuel Ross Beheler	rshealy@hsblawfirm.com

Shissias, Alexander George	ashissias@hsblawfirm.com, efoster@hsblawfirm.com
Woodington, Kenneth Paul	kwoodington@dml-law.com sstafford@dml-law.com jangus@dml-law.com

I herby certify that service of the same was made on the following parties

by first class United States mail:

Mr. Kilbourne, James Conwell  
U.S. Department of Justice  
Environment & Natural Resources Division  
PO Box 23795, L'Enfant Plaza Station  
Washington, DC 20026-3795

Davidson, William Henry, II  
Davidson Morrison & Lindemann, PA  
1611 Devonshire Drive, Second Floor  
PO Box 8568  
Columbia, SC 29202-8568

Ms. Cottingham, Anne Williams  
Nuclear Energy Institute  
1776 Eye Street, NW  
Washington, DC 20006-3708

*s/ Andrew A. Fitz*  
\_\_\_\_\_  
ANDREW A. FITZ  
TODD R. BOWERS  
State of Washington  
Office of the Attorney General  
Post Office Box 40117  
Olympia, WA 98504-0117