

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

No. 10-1082

STATE OF WASHINGTON,
Petitioner

v.

UNITED STATES DEPARTMENT OF ENERGY, et al.,
Respondents

RESPONDENTS' MOTION FOR EXTENSION OF TIME
TO RESPOND TO THE PETITIONER STATE OF WASHINGTON'S MOTION
FOR PRELIMINARY INJUNCTION

Respondents U.S. Department of Energy ("DOE") and Dr. Steven Chu, Secretary of Energy, hereby move for an extension of time to file a response to the State of Washington's motion for preliminary injunction until Friday, April 23, 2010. As specified below, the DOE has agreed to stay for 21 days further action to effectuate a shutdown of the Yucca Mountain program in order to provide additional time for response and consideration of the motion for preliminary injunction.

On April 13, 2010, the State of Washington filed a Petition for Review and For Declaratory and Injunctive Relief seeking review of decisions by DOE and the Secretary of Energy to terminate development of a permanent depository for high-

level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada. At the same time, the State filed a motion for preliminary injunction seeking to enjoin the Department and the Secretary “from taking any further actions to terminate or dismantle operations” relating to the Yucca Mountain site. On April 13, 2010, this Court entered an order directing the Respondents to file a response to the State’s motion by 9:00 a.m., Thursday, April 15, 2010.

In its motion for preliminary injunction, the State of Washington asserts that the respondents’ actions violate the Nuclear Waste Policy Act, the National Environmental Policy Act, and the Administrative Procedure Act. The merits of many of these claims have not been briefed before an administrative tribunal and none briefed in federal court. Consequently, it will require more than the currently allotted response time for the undersigned to consult with their client, DOE, and to adequately analyze and brief the arguments asserted by the State. Furthermore, staff from the Appellate Section, Environment and Natural Resources Division, U.S. Department of Justice, who have been working on the responses in the related petitions filed in *In Re Aiken County*, No. 10-1052, and consolidated cases, are currently unavailable to work on this response for a variety of reasons, but we are recalling staff who are on business-related travel to return to Washington to work on this motion.

The State argues that a preliminary injunction is necessary to preserve the status quo as Energy, it asserts, is “aggressively terminating” the Yucca Mountain project. P.I. Motion, at 19. The undersigned have consulted with Scott Blake Harris, the General Counsel of the Department of Energy, and he has authorized us to represent that the DOE agrees not to undertake further actions to effectuate a shutdown of the Yucca Mountain Program, including terminating employees, terminating contracts, or instructing its contractors to end ongoing work for a period of 21 days from this filing through May 5, 2010, in order for the attorneys in the Department of Justice to have adequate time to prepare a response to the State’s motion and for the Court to have adequate time to consider the motion and response.^{1/}

^{1/} This would not affect DOE’s pre-existing commitment to assist employees who of their own accord wish to move to other DOE programs. The fact that employees remain with DOE will in fact facilitate the Department’s ability to re-start licensing activities if the current suspension of those activities is lifted. Furthermore, this course of action is taken in the interest of minimizing potential harm to employees.

Also, as indicated in respondents’ motion and response filed in *In re Aiken County, et al.*, No. 10-1050, on April 12, 2010, DOE has sought interlocutory review by the Nuclear Regulatory Commission of the NRC Licensing Board’s order suspending consideration of petitions to intervene and DOE’s motion to withdraw its license application. The Commission now has DOE’s request under advisement. If further response from DOE in connection with that request is necessary during the 21-day period, DOE would intend to respond. However, as specified above, DOE will take no further steps to effectuate a shutdown of the Yucca Mountain Program.

Consequently, for the foregoing reasons, the DOE and Secretary Chu move for an extension of time for all Respondents to file a response to the State's motion for preliminary injunction to April 23, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(c), D.C. Circuit Rule 25(c), I hereby certify that on April 14, 2010, I caused the foregoing to be filed upon the Court through the use of the D.C. Circuit CM/ECF electronic filing system, and thus also served counsel of record. The resulting service by e-mail is consistent with the preferences articulated by all counsel of record in the Service Preference Report. In addition, pursuant to the Court's April 8, 2010, order, I caused four paper copies to be hand delivered to the Clerk's Office on April 14, 2010.

s/
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