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September 12, 2011

Via Email and U.S. Mail

Charles E. Mullins
John F. Cordes, Jr.
Jeremy M. Suttenger
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

RE: ***In Re Aiken County, et al***
U.S. COA, D.C. Circuit No. 11-1271

Dear Counsel:

We are aware that on September 9, 2011, the Nuclear Regulatory Commission (NRC) issued a Memorandum and Order (Order) in the matter of U.S. Department of Energy (High-Level Waste Repository), Docket No. 63-001-HLW. On the same day, you filed the Order with the court in the instant matter, through a pleading entitled "Underlying Decision in Case."

The Order is contradictory. As we understand the NRC's Internal Commission Procedures, an NRC split vote that fails to affirm or reverse the Atomic Safety Licensing Board's (ASLB) June 29, 2010 decision would leave the denial of DOE's motion to withdraw intact. Therefore, the licensing proceeding should continue. The Order, however, directs the ASLB to, "by the close of the current fiscal year, complete all necessary and appropriate case management activities, *including disposal of all matters currently pending before it...*," as if NRC had reversed the ASLB's decision. (Emphasis added.)

Because you apparently represent that the Order in some way relates to the joint mandamus petition, we request that you clarify the scope of the Order's directive. Specifically, we request that you confirm whether the directive commanding the ASLB to complete "disposal of all matters currently pending before [the ASLB]" by the end of this month directs the ASLB to issue

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an "initial decision" with respect to the DOE license application as prescribed by 10 C.F.R. § 2.713 and identified in 10 C.F.R. Part 2, Appendix D, as occurring on day 955. If the directive does not so direct the ASLB, we ask that you confirm that fact.

In addition, the Order is silent as to the NRC's intended future acts. We request that you confirm whether the NRC intends to make a "final decision approving or disapproving issuance of a construction authorization" for DOE as called for in 42 U.S.C. § 10134(d), and if so, when it plans on making that decision.

Because the Order directs the ASLB to complete an action by the end of the current calendar month, we request that you respond by Thursday, September 15. Thank you for your cooperation.

Sincerely,



ANDREW A. FITZ
Senior Counsel
(360) 586-6752
*Attorney for State of Washington
signing on behalf of all Petitioners*

AAF:dmm

cc: Martin G. Malsch
Charles J. Fitzpatrick
John W. Lawrence