

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

No. 11-1271

In re: AIKEN COUNTY, et al., Petitioners,

U.S. NUCLEAR REGULATORY COMMISSION, et al., Respondents.

NOTICE OF UNDERLYING DECISION IN CASE

On July 29, 2011, Petitioners filed this action seeking a Writ of Mandamus from this Court directing the U.S. Nuclear Regulatory Commission to take several specified actions. The Petition seeks, *inter alia*, an order from this Court directing the Commission “to issue its final decision regarding review of the June 29, 2010” order issued by the NRC’s Atomic Safety and Licensing Board (“Licensing Board”) “within 30 days.” *See* Petition at 29. The Licensing Board order had denied a Motion filed by the U.S. Department of Energy, seeking to withdraw the Application to construct a high-level waste repository at Yucca Mountain, Nevada.

On September 9th, 2011, the Commission issued a decision stating that it “finds itself evenly divided on whether to take the affirmative action of overturning or upholding the Board’s decision.” *U.S. Department of Energy* (High-Level Waste Repository), CLI-11-07, 74 NRC \_\_ (2011), Slip Op. at 1. The Commission also noted that “[c]onsistent with budgetary limitations, the Board has taken action to preserve information associated with this adjudication.” *Id.* (footnote omitted).

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Finally, the Commission ordered the Licensing Board “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 and comprehensively documenting the full history of the adjudicatory proceeding.” *Id.* at 1-2.

A copy of the Commission’s decision is attached.

Respectfully submitted,

\_\_\_\_s/Charles E. Mullins\_\_\_\_  
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(301) 415-1618

Dated: September 9, 2011

Attachment: Commission Order

Filed by EC/CMF

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

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Kristine L. Svinicki  
George Apostolakis  
William D. Magwood, IV  
William C. Ostendorff

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High-Level Waste Repository)

Docket No. 63-001-HLW

**CLI-11-07**

**MEMORANDUM AND ORDER**

On June 30, 2010, the participants were invited to submit briefs as to whether the Commission should review, and reverse or uphold, the Board's decision denying the Department of Energy's motion to withdraw its construction authorization application with prejudice.<sup>1</sup> Upon consideration of all filings in this matter, the Commission finds itself evenly divided on whether to take the affirmative action of overturning or upholding the Board's decision.

Consistent with budgetary limitations, the Board has taken action to preserve information associated with this adjudication.<sup>2</sup> In furtherance of this, we hereby exercise our inherent supervisory authority to direct the Board to, by the close of the current fiscal year, complete all

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<sup>1</sup> See LBP-10-11, 71 NRC \_\_\_ (June 29, 2010) (slip op.); Order (June 30, 2010) (unpublished).

<sup>2</sup> See generally Memorandum of Daniel J. Graser, Licensing Support Network Administrator (LSNA), to the Administrative Judges, "Shutdown of the Licensing Support Network" (July 26, 2011); Order (Concerning LSNA July 26, 2011 Memorandum) (July 28, 2011) (unpublished).

necessary and appropriate case management activities, including disposal of all matters currently pending before it and comprehensively documenting the full history of the adjudicatory proceeding.

IT IS SO ORDERED.<sup>3</sup>

For the Commission

**[NRC SEAL]**

**/RA/**

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 9<sup>th</sup> day of September, 2011.

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<sup>3</sup> Commissioner Apostolakis has recused himself from this adjudication and, therefore, did not participate in this matter. See Notice of Recusal (July 15, 2010).

In the Matter of )  
)  
U.S. DEPARTMENT OF ENERGY )  
(High-Level Waste Repository) )  
)

Docket No. 63-001-HLW  
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**, dated September 9, 2011, have been served upon the following persons by Electronic Information Exchange.

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**COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**

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**COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
**COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
**COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
**COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
**COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**

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[Original Signed by Linda D. Lewis]

Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 9<sup>th</sup> day of September 2011