

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-1419**September Term, 2021****NRC-CLI-05-19****Filed On: July 28, 2022**

Ohngo Gaudadeh Devia,

Petitioner

v.

U.S. Nuclear Regulatory Commission and
United States of America,

Respondents

Private Fuel Storage, L.L.C. and Skull Valley
Band of Goshute Indians,
Intervenors

Consolidated with 05-1420, 06-1087

BEFORE: Rogers, Millett, and Wilkins, Circuit Judges**ORDER**

Upon consideration of the motion to vacate, the responses thereto, and the reply, it is

ORDERED that these consolidated cases be dismissed as moot and the motion to vacate be denied. These cases, which involve challenges to a license issued by the Nuclear Regulatory Commission ("NRC") for the construction and operation of a facility to store nuclear waste on land leased from the Skull Valley Band of Goshute Indians ("the Band"), have been held in abeyance since 2007. See Devia v. NRC, 492 F.3d 421, 424–28 (D.C. Cir. 2007). Petitioner the State of Utah now moves pursuant to United States v. Munsingwear, Inc., 340 U.S. 36 (1950), and A.L. Mechling Barge Lines, Inc. v. United States, 368 U.S. 324 (1961), for vacatur of certain of the underlying agency decisions on the ground that these cases have become moot pending review. The Band, which initially intervened on behalf of the NRC to defend the issuance of the license, now supports Utah's motion. According to the Band, it no longer favors the

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project and will not renew the expired lease or agree to any new lease for the land on which the storage facility is licensed to be built.

We agree with the Band that its decision that it will no longer lease the land on which the facility is licensed to be built renders these cases moot, and the cases are therefore dismissed on that ground. See, e.g., Conservation Force, Inc. v. Jewell, 733 F.3d 1200, 1204 (D.C. Cir. 2013) (observing that “a case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome” (internal quotation marks omitted)). However, we decline to vacate the underlying agency decisions. The Band’s voluntary action resulted in these cases becoming moot, and vacatur generally is not warranted in such situations. See N. Cal. Power Agency v. NRC, 393 F.3d 223, 225 (D.C. Cir. 2004) (observing that “vacatur would usually not be ordered” where “the party seeking relief from the judgment below caused the mootness by voluntary action”). And Utah has not shown that its challenge to the issuance of the NRC license was ever ripe for review. See Munsingwear, 340 U.S. at 41 (observing that vacatur is intended “to prevent a judgment, unreviewable *because of mootness*, from spawning any legal consequences” (emphasis added)). Under these circumstances, Utah and the Band have not shown that vacatur is warranted. See U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship, 513 U.S. 18, 25 (1994) (observing that vacatur is an equitable remedy, not an automatic right).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam