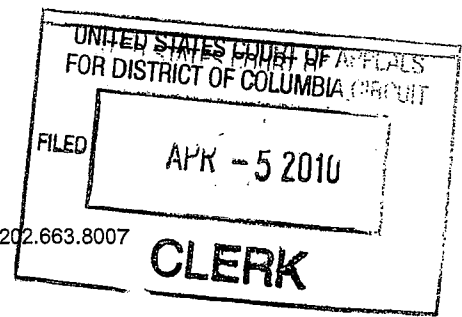


pillsbury

Pillsbury Winthrop Shaw Pittman LLP

2300 N. Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

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



APR - 5 2010

RECEIVED

Jay E. Silberg

tel 202.663.8063

jay.silberg@pillsburylaw.com

April 5, 2010

BY HAND DELIVERY

Mr. Mark J. Langer
Clerk, United States Court of Appeals
For the District of Columbia Circuit
333 Constitution Ave., NW
Rm. 5523
Washington, DC 20001

10-1076

Re: Joint Petition for Review

Dear Mr. Langer:

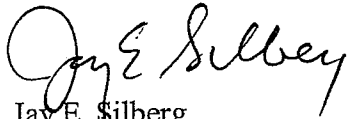
Enclosed for filing please find an original and five copies of the Joint Petition for Review and of the Joint Corporate Disclosure Statement seeking review of a final decision and action of, and/or failure to act by the U.S. Department of Energy ("DOE"). Please stamp one of the copies of each of the Joint Petition for Review and Joint Corporate Disclosure Statement and return them to the courier delivering the copies for filing. Two of the remaining copies of each document are to be served on the DOE and the Attorney General of the United States.

Courtesy copies of the Joint Petition for Review and the Joint Corporate Disclosure Statement were served on DOE, the Attorney General, and the National Association of Regulatory Utility Commissioners.

April 5, 2010
Page 2

Also enclosed is a check for \$450.00 to cover the docketing fee for this Joint Petition for Review.

Sincerely,



Jay E. Silberg
Counsel for Joint Petitioners

cc: Eric H. Holder, Jr., Esq., U.S. Attorney General
Scott Blake Harris, Esq., DOE
James Bradford Ramsay, Esq., National Association of Regulatory Utility
Commissioners

Enclosures: As stated

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RECEIVED IN THE UNITED STATES COURT OF APPEALS
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UNITED STATES COURT OF APPEALS
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- INC.,)
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- NEBRASKA PUBLIC POWER DISTRICT,)

Case No. 10-1076

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Petitioners,)
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v.)
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THE UNITED STATES DEPARTMENT OF)
ENERGY)
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and)
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THE UNITED STATES OF AMERICA,)
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Respondents.)
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JOINT PETITION FOR REVIEW

Pursuant to 42 U.S.C. § 10139, 5 U.S.C. § 702, and Fed. R. App. P. 15(a), the Nuclear Energy Institute (“NEI”), Florida Power & Light Company (“FPL”), NextEra Energy Seabrook, LLC (“NextEra Seabrook”), NextEra Energy Duane Arnold, LLC (“NextEra DAEC”), NextEra Energy Point Beach, LLC (“NextEra Point Beach”), Omaha Public Power District (“OPPD”), PSEG Nuclear LLC (“PSEG”), Indiana Michigan Power Company (“I&M”), Energy Northwest (“EN”), PPL Susquehanna, LLC (“PPL Susquehanna”), Northern States Power Company d/b/a Xcel Energy (“Xcel Energy”), The Detroit Edison Company (“Detroit Edison”), Wolf Creek Nuclear Operating Corporation (“WCNOC”), Kansas Gas and Electric Company d/b/a Westar Energy (“KGE”), Kansas City Power & Light Company (“KCPL”), Kansas Electric Power Cooperative, Inc.

("KEPCo"), and Nebraska Public Power District ("NPPD") petition this Court for review of the final decision and action of, and/or failure to act by, the United States Department of Energy ("DOE") as set forth in the DOE letter dated October 8, 2009 (attached hereto as Exhibit 1), which rejected NEI's request on its own behalf and on behalf of its members (including the other Joint Petitioners) that DOE (1) promptly perform the annual review of the Nuclear Waste Fund fee required by Section 302(a)(4) of the Nuclear Waste Policy Act ("NWPA"), 42 U.S.C. § 10222(a)(4), to account for the present status and cost of the nuclear waste program; and (2) immediately suspend collection of fee payments to the Nuclear Waste Fund.

FP&L, NextEra Seabrook, NextEra DAEC, NextEra Point Beach, OPPD, PSEG, I&M, EN, PPL Susquehanna, Xcel Energy, Detroit Edison, WCNOC, KGE, KCPL, KEPCo, NPPD, and all other NEI members who own civilian nuclear power reactors pay the Nuclear Waste Fund fee, which is the subject of NEI's request to DOE and DOE's October 8, 2009 letter.

This Court has jurisdiction over this matter pursuant to NWPA Section 119(a)(1), 42 U.S.C. § 10139(a)(1). Venue properly lies in this Court pursuant to NWPA Section 119(a)(2), 42 U.S.C. § 10139(a)(2). This Joint Petition is brought

within the 180 day period set forth in NWPA Section 119(c), 42 U.S.C. § 10139(c), based upon the October 8, 2009 date of the DOE letter.

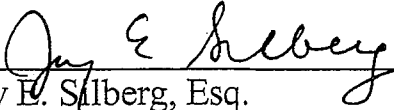
Petitioners request that the Court grant the following relief:

1. Declare that the DOE decision and action, or failure to act, to not account for the termination of the Yucca Mountain repository program in the annual review of the Nuclear Waste Fund fee is arbitrary and capricious and contrary to applicable law;
2. Declare that the DOE decision and action, or failure to act, to refuse to suspend collection of the Nuclear Waste Fund fee is arbitrary and capricious and contrary to applicable law;
3. Direct DOE to immediately suspend collection of the Nuclear Waste Fund fee pending DOE's compliance with the annual review provisions of Section 302 of the NWPA, 42 U.S.C. § 10222; and

4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

Ellen C. Ginsberg, Esq.
Vice President, General Counsel, and
Secretary
Michael A. Bauser, Esq.
Deputy General Counsel
NUCLEAR ENERGY INSTITUTE
1776 I St., NW, Suite 400
Washington, DC 20006
202-739-8000


Jay E. Silberg, Esq.
PILLSBURY WINTHROP SHAW
PITTMAN LLP
2300 N Street, NW
Washington, DC 20037
(202) 663-8000
Counsel for Nuclear Energy Institute,
Florida Power & Light Company,
NextEra Energy Seabrook, LLC,
NextEra Energy Duane Arnold, LLC,
NextEra Energy Point Beach, LLC,
Omaha Public Power District, PSEG
Nuclear LLC, Indiana Michigan Power
Company, Energy Northwest, PPL
Susquehanna LLC, Northern States
Power Company d/b/a Xcel Energy, The
Detroit Edison Company, Wolf Creek
Nuclear Operating Corporation, Kansas
Gas and Electric Company d/b/a Westar
Energy, Kansas City Power & Light
Company, Kansas Electric Power
Cooperative, Inc., and Nebraska Public
Power District

Dated: April 5, 2010

EXHIBIT 1



Department of Energy

Washington, DC 20585

October 8, 2009

Mr. Marvin Fertel
President and Chief Executive Officer
Nuclear Energy Institute
1776 I Street, NW
Suite 400
Washington, D.C. 20006-3708

Dear Mr. Fertel:

This letter is in response to your letter dated July 8, 2009, to Secretary Chu regarding the need for an updated fee adequacy analysis and your recommendation to suspend payments to the Nuclear Waste Fund. As Acting Director for the Office of Civilian Radioactive Waste Management, the Secretary has requested I respond to your letter.

Section 302 of the Nuclear Waste Policy Act of 1982, as amended (NWPAct), authorizes the Secretary of Energy to enter into a contract "with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel of domestic origin for the acceptance of title and subsequent transportation and disposal of such waste or spent nuclear fuel"; that section further provides that in return for the payment of fees by the contract holder, the Federal Government will dispose of the contract holder's spent nuclear fuel and high-level radioactive waste. Additionally, that section requires that the fee and interest yield sufficient funds to offset the Government's expenditures in carrying out these responsibilities. These fees are deposited in the Nuclear Waste Fund in the U.S. Treasury. The current balance in the Nuclear Waste Fund is approximately \$23 billion.

Section 302 of the NWPAct also requires the Secretary of Energy to review annually the amount of the fee to determine whether projected fee collections will provide sufficient revenues to offset overall Program costs. The disposition of spent nuclear fuel is to be a full-cost recovery program. If the Secretary of Energy "determines that either insufficient or excess revenues are being collected" in order to cover the costs, the Secretary must "propose an adjustment to the Fee to ensure full cost recovery."

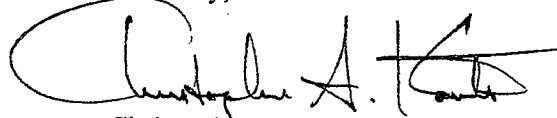
The Department of Energy has consistently determined that the current fee of 1/10-cent per kilowatt hour is adequate to cover the total system life cycle costs of disposing of the commercial spent nuclear fuel and high-level radioactive waste, using the assumptions in place at the time; and, in accordance with the Act, the fee will continue to be reviewed annually. On July 27, 2009, in response to Senate Energy and Water Appropriations language in H.R. 3183 related to suspension of collection of the fee, the Administration issued a Statement of Administration Policy stating that all of the fees collected in the



Nuclear Waste Fund are essential to meet the obligations of the Federal Government for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste.

We fully appreciate your perspective on this issue, and the Department will certainly take into consideration the views of the nuclear industry as the policy process unfolds regarding how the Department should meet its contractual obligations to the nuclear industry for the management of spent nuclear fuel. If you have any questions and would like to discuss this matter further, please call me at 202-586-6850.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher A. Kouts". The signature is stylized with a large, looped initial "C" and a long horizontal stroke at the end.

Christopher A. Kouts
Acting Director
Office of Civilian Radioactive
Waste Management

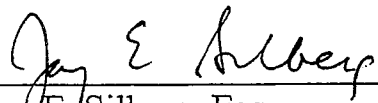
Certificate of Service

I hereby certify that courtesy copies of the foregoing Joint Petition for Review and the Joint Corporate Disclosure Statement were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid this 5th day of April, 2010:

Eric H. Holder, Jr., Esq.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Scott Blake Harris, Esq.
General Counsel
U.S. Department of Energy
Room 6A-245
1000 Independence Avenue, SW
Washington, D.C. 20585

James Bradford Ramsay
General Counsel
National Association of Regulatory
Utility Commissioners
1101 Vermont Ave., NW
Suite 200
Washington, DC 20005



Jay E. Silberg, Esq.
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2300 N Street, NW
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(202) 663-8000

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Case No. 10-1076

)

) Petitioners,

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) v.)

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) THE UNITED STATES DEPARTMENT OF)

) ENERGY)

))

) and)

))

) THE UNITED STATES OF AMERICA,)

))

) Respondents.)

))

JOINT CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. R. 26.1, Joint Petitioners respectfully submit this Joint Corporate Disclosure Statement identifying (1) the parent corporation for each Joint Petitioner and any publicly held corporation that owns 10% or more of each Joint Petitioner’s stock or other ownership shares; and (2) the general nature and purpose for each Joint Petitioner, insofar as is relevant to this litigation:

1. Joint Petitioner Nuclear Energy Institute (“NEI”) is a trade association organized under Section 501(c)(6) of the Internal Revenue Code. NEI has no parent corporation and no share owners. NEI is responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including matters governed by the Nuclear Waste

Policy Act (“NWPA”). NEI’s members include all entities licensed to generate electricity from civilian nuclear power reactors in the United States who pay fees into the Nuclear Waste Fund in accordance with the provisions of NWPA Section 302(a), 42 U.S.C. § 10222(a).

2. FPL Group, Inc. is the parent company of Joint Petitioner Florida Power & Light Company (“FPL”) and owns all of its stock. FPL is an electric utility company and owns and operates the Turkey Point Nuclear Plant, Units 3 and 4, located in Florida City, Florida, and also owns and operates the St. Lucie Nuclear Plant, Unit 1, and is the majority owner and operator of St. Lucie Nuclear Plant, Unit 2. Both St. Lucie Units are located in Jensen Beach, Florida. FPL pays fees into the Nuclear Waste Fund for these four reactor units. FPL is a member of NEI.

3. FPL Group, Inc. is the parent company and owns all the stock of FPL Group Capital Inc., which is the parent company of and owns NextEra Energy Resources, LLC, which in turn is the parent company of and owns ESI Energy, LLC, which in turn is the parent company of and owns Joint Petitioners NextEra Energy Seabrook, LLC (“NextEra Seabrook”), NextEra Energy Duane Arnold, LLC (“NextEra DAEC”),

and NextEra Energy Point Beach, LLC (“NextEra Point Beach”).

NextEra Seabrook is the majority owner and operator of Seabrook Station, a single reactor unit located near Seabrook, New Hampshire.

NextEra DAEC is the majority owner and operator of the Duane Arnold Energy Center, a single reactor unit located near Palo, Iowa.

NextEra Point Beach owns and operates the Point Beach Nuclear Plant, Units 1 and 2, located near Two Rivers, Wisconsin. NextEra Seabrook, NextEra DAEC, and NextEra Point Beach each pay fees into the Nuclear Waste Fund for their respective reactors and are each a member of NEI.

4. Joint Petitioner Omaha Public Power District (“OPPD”) is a public corporation and political subdivision of the State of Nebraska which has no parent corporation or other share owner. OPPD owns and operates the Fort Calhoun Station, a single reactor unit located near Omaha, Nebraska. OPPD pays fees into the Nuclear Waste Fund for the Fort Calhoun Station. OPPD is a member of NEI.
5. Joint Petitioner PSEG Nuclear LLC (“PSEG”) is a wholly-owned subsidiary of PSEG Power LLC, which is a wholly-owned subsidiary of Public Services Enterprise Group, a publicly traded holding

company. PSEG solely owns and operates Unit 1 of the Hope Creek Nuclear Generating Station, and is the majority owner and operator of Units 1 and 2 of the Salem Nuclear Generating Station. All three units are located in Salem County, New Jersey. PSEG pays fees into the Nuclear Waste Fund for these three nuclear reactor units. PSEG is a member of NEI.

6. American Electric Power Company, Inc. is the parent company of Joint Petitioner Indiana Michigan Power Company (“I&M”) and owns all of its stock. I&M is an electric utility company and owns and operates the Donald C. Cook Nuclear Plant, Units 1 and 2, located near Bridgman, Michigan. I&M pays fees into the Nuclear Waste Fund for these two reactor units. I&M is a member of NEI.
7. Joint Petitioner Energy Northwest (“EN”) is a municipal corporation and joint operating agency of the State of Washington. EN has no parent company, and no publicly held corporation owns 10% or more of the stock of EN. EN owns and operates the Columbia Generating Station, a single reactor unit located near Richland, Washington. EN pays fees into the Nuclear Waste Fund for Columbia Generating Station. EN is a member of NEI.

8. Joint Petitioner PPL Susquehanna, LLC (“PPL Susquehanna”) is a wholly-owned subsidiary of PPL Generation, LLC, which is a wholly-owned subsidiary of PPL Energy Supply, LLC, which is a wholly-owned subsidiary of PPL Energy Funding Corporation, which is a wholly-owned subsidiary of PPL Corporation, a publicly traded holding company. PPL Susquehanna is the majority owner and operator of Units 1 and 2 of the Susquehanna Steam Electric Station located near Berwick, Pennsylvania. PPL Susquehanna pays fees into the Nuclear Waste Fund for the Susquehanna Steam Electric Station. PPL Corporation is a member of NEI.

9. Xcel Energy Inc. is the direct and ultimate parent company of Joint Petitioner Northern States Power Company d/b/a/ Xcel Energy (“Xcel Energy”). Xcel Energy owns and operates the Prairie Island Nuclear Generating Plant, Units 1 and 2, near Red Wing, Minnesota, and the Monticello Nuclear Generating Plant, a single reactor unit in Monticello, Minnesota. Xcel Energy pays fees into the Nuclear Waste Fund for the Prairie Island and Monticello units. Xcel Energy Inc. is a member of NEI.

10. Joint Petitioner The Detroit Edison Company (“Detroit Edison”) is a wholly-owned subsidiary of DTE Energy Company. Detroit Edison owns and operates the Fermi Nuclear Power Plant Unit 2, a single reactor unit near Newport, in Monroe County, Michigan. Detroit Edison pays fees into the Nuclear Waste Fund for the Fermi Nuclear Power Plant Unit 2. Detroit Edison is a member of NEI.

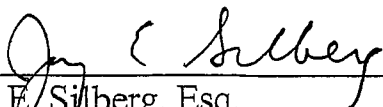
11. Joint Petitioner Kansas Gas and Electric Company d/b/a Westar Energy (“KGE”) is a wholly-owned subsidiary of Westar Energy, Inc., a publicly traded company. Joint Petitioner Kansas City Power & Light Company (“KCPL”) is a wholly-owned subsidiary of Great Plains Energy Incorporated, a publicly traded company. Joint Petitioner Kansas Electric Power Cooperative, Inc. (“KEPCo”) is an electric utility and a cooperative, non-profit membership corporation that issues no stock and has no owners. Joint Petitioners KGE, KCPL, and KEPCo are each partial owners of the Wolf Creek Generating Station, a single reactor unit located in Coffey County, Kansas. Joint Petitioner Wolf Creek Nuclear Operating Corporation (“WCNOC”) is a wholly-owned subsidiary of KGE, KCPL, and KEPCo and operates the Wolf Creek Generating Station on behalf of its owners. WCNOC, as agent for its owners, pays fees into the Nuclear Waste Fund for the

Wolf Creek Generating Station. WCNOG, KGE, KCPL, and KEPCo are members of NEI.

12. Joint Petitioner Nebraska Public Power District (“NPPD”) is a public corporation and political subdivision of the State of Nebraska which has no parent corporation or other share owner. NPPD owns and operates the Cooper Nuclear Station, a single reactor unit located near Brownville, Nebraska. NPPD pays fees into the Nuclear Waste Fund for the Cooper Nuclear Station. NPPD is a member of NEI.

Ellen C. Ginsberg, Esq.
Vice President, General Counsel, and
Secretary
Michael A. Bauser
Deputy General Counsel
NUCLEAR ENERGY INSTITUTE
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Respectfully submitted,


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Counsel for Nuclear Energy Institute,
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NextEra Energy Seabrook, LLC,
NextEra Energy Duane Arnold, LLC,
NextEra Energy Point Beach, LLC,
Omaha Public Power District, PSEG
Nuclear LLC, Indiana Michigan Power
Company, Energy Northwest, PPL
Susquehanna, LLC, Northern States
Power Company d/b/a/ Xcel Energy,
The Detroit Edison Company, Wolf
Creek Nuclear Operating Corporation,
Kansas Gas and Electric Company d/b/a
Westar Energy, Kansas City Power &
Light Company, Kansas Electric Power
Cooperative, Inc., and Nebraska Public
Power District

Dated: April 5, 2010