



Sustainable Fuel Cycle

TASK FORCE

www.sustainablefuelcycle.com

June 30, 2010

In response to the recent NRC ASLB decision denying the DOE motion to withdraw the Yucca Mountain license application, the Sustainable Fuel Cycle Task Force (SFCTF) makes the following statement:

On behalf of the Sustainable Fuel Cycle Task Force (SFCTF), we are gratified by the decision yesterday of the Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board (ASLB), which in a unanimous 3-0 decision voted to deny the Department of Energy's (DOE) motion to withdraw its Yucca Mountain license application from NRC's safety review.

The decision was based on the principled reasoning that the DOE has not presented any evidence to show that Yucca Mountain is technically or scientifically unsuitable.

And in addition, the DOE does not have the discretion under the Nuclear Waste Policy Act, as amended, to withdraw the license. On this point, the ASLB in its decision stated:

We do so because the Nuclear Waste Policy Act of 1982, as amended (NWPA),⁷ does not permit the Secretary to withdraw the Application that the NWPA mandates the Secretary file. Specifically, the NWPA does not give the Secretary the discretion to substitute his policy for the one established by Congress in the NWPA that, at this point, mandates progress toward a merits decision by the Nuclear Regulatory Commission on the construction permit.

While the ASLB's decision is likely to be appealed and reviewed by the Commission, any Commission decision is appealable, and therefore will end up in the U.S. Court of Appeals for the District of Columbia where oral arguments are now scheduled to take place on September 23 on a number of consolidated lawsuits filed against DOE for its actions to terminate the Yucca Mountain project.

In light of the fact that the Court will ultimately rule on the critical issue as to whether the DOE has authority and discretion to withdraw the Yucca Mountain license and given the recent, NRC ASLB finding that DOE does not have such authority, we urge the Department to defer any further efforts to terminate this important national project until such time that the Courts have rendered a definitive decision in the matter.

In addition, we call on the Blue Ribbon Commission in light of this unanimous decision by the ASLB to reconsider its decision to exclude the Yucca Mountain project from its consideration and review of alternatives.