United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-1350 **September Term, 2006**

FILED ON: SEPTEMBER 22, 2006 [993322]

STATE OF NEVADA,
PETITIONER

v.

NUCLEAR REGULATORY COMMISSION AND
UNITED STATES OF AMERICA,
RESPONDENTS

On Petition for Review of a Decision of the
Nuclear Regulatory Commission

Before: RANDOLPH and BROWN, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

J U D G M E N T

This petition for review of a decision of the Nuclear Regulatory Commission was presented to the court, and briefed and argued by counsel. It is

ORDERED and **ADJUDGED** that the petition be dismissed.

Petitioner claims that the Nuclear Regulatory Commission's Waste Confidence Rule, 10 C.F.R. § 51.23 (1984) – which, for our purposes, refers also to the incorporated Waste Confidence Decision, 49 Fed. Reg. 34,688 (Aug. 31, 1984), and the subsequent Waste Confidence Decision Review, 55 Fed. Reg. 38,472 (Sept. 18, 1990) – will skew the judgment of the Commissioners during the Yucca Mountain licensing proceeding expected to occur in several years. We find that petitioner does not have standing to raise this claim because petitioner can point to no injury in fact

as a legal or practical consequence of the Rule.

The Rule has no legal effect in the anticipated Yucca Mountain licensing proceeding. The Rule affects only licensing proceedings for "reactor facility storage pools or independent spent fuel storage installations," 10 C.F.R. § 51.23(b), not proceedings for geologic nuclear waste repositories such as Yucca Mountain. It is of no consequence that the Commission may need to revisit the Rule if it denies the Yucca Mountain license. The tail does not wag the dog; the licensing proceeding may have a legal effect on the Rule, but not vice versa.

The notion that the Rule will have a practical influence on future Commissioners during the Yucca Mountain licensing proceeding is a prediction of bias that is neither actual nor imminent. An injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations and internal quotation marks omitted). Bias in a proceeding that *might* take place *years* from now is not "actual or imminent." Because petitioner can point to no injury in fact, petitioner lacks Article III standing and the court lacks jurisdiction to grant relief.

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 rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk