

Saving Billions for Nuclear Plants and Their Electricity Customers

Client:	The Nuclear Energy Institute and 15 utilities owning and operating nuclear power plants
Industry:	Energy
Area of Law:	Regulatory
Venue:	U.S. Court of Appeals for the District of Columbia Circuit
Result:	Order that the Department of Energy stop collecting \$750 million per year in waste disposal fees



“[T]he Secretary’s position is so obviously disingenuous that we have no confidence that another remand would serve any purpose.... [It] reminds us of the lawyer’s song in the musical, Chicago—‘Give them the old razzle dazzle.’”

—Judge Laurence Silberman, U.S. Court of Appeals for the District of Columbia, ruling in favor of our clients from the nuclear energy industry

For almost 40 years, Pillsbury has been a leading force in the U.S. nuclear energy industry’s efforts to develop and implement a national nuclear waste program. After the Obama Administration cancelled the planned Yucca Mountain waste repository in Nevada, Pillsbury convinced the U.S. Court of Appeals for the District of Columbia Circuit in 2013 to stop the government from continuing to collect \$750 million per year in fees from nuclear power producers for a now nonexistent waste disposal program.

On behalf of the Nuclear Energy Institute (NEI) and 15 nuclear utilities, and working with the National Association of Regulatory Utility Commissioners (NARUC), Pillsbury lawyers were able to get the Department of Energy to admit that it would not adjust the nuclear waste fees despite the cancellation of the Yucca Mountain project. The team then challenged DOE’s refusal to act by filing a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit.

Shortly before scheduled oral argument, DOE issued a report which purported to meet its obligation to annually review the fee. The court then ruled the suit challenging the program was premature because of the report, but invited the Pillsbury team to come back with a challenge to the report itself. Pillsbury promptly filed a new lawsuit.

The court ruled in June 2012 that the DOE’s report was “legally defective” and ordered DOE to submit a report that met the law’s requirements. Six months later, DOE issued a new report, which Pillsbury promptly challenged again.

In November 2013, two months after a Pillsbury partner argued the case for NEI, NARUC and the individual utilities, the appeals court handed down a stinging rebuke to the DOE. The Department’s method for calculating the fee, the court wrote, was “absolutely useless” and “flatly unreasonable.”

Until some permanent solution to the problem of nuclear waste disposal was put in place, the ruling stated, “it seems quite unfair to force petitioners to pay fees for a hypothetical option, the costs of which might well—the government apparently has no idea—be already covered.”

The court ordered that DOE take the required steps to set the nuclear waste fee to zero, which will now save the nuclear utility industry \$750 million per year, for “so long as the government has no viable alternative to Yucca Mountain.”