

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:16-00391-JMC
	)	
UNITED STATES;	)	
	)	
UNITED STATES DEPARTMENT OF	)	
ENERGY;	)	
	)	
DR. ERNEST MONIZ, in his official capacity as	)	
Secretary of Energy;	)	
	)	
NATIONAL NUCLEAR SECURITY	)	
ADMINISTRATION; and	)	
	)	
LT. GENERAL FRANK G. KLOTZ,	)	
in his official capacity as Administrator of the	)	
National Nuclear Security Administration and	)	
Undersecretary for Nuclear Security;	)	
	)	
Defendants.	)	
	)	

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**PLAINTIFF SOUTH CAROLINA’S MOTION FOR RECONSIDERATION**

Pursuant to Rules 54, 59, and 60 of the Federal Rules of Civil Procedure and principles of equity, Plaintiff State of South Carolina (South Carolina or State) respectfully moves this Court to reconsider, amend or alter, and provide the State relief from this Court’s October 31, 2016 Order (ECF No. 56).

As more fully explained in the memorandum supporting this Motion, this Court’s finding that the Federal Defendants’ sovereign immunity had not been waived and that therefore this Court was without jurisdiction to provide the full relief requested by the State for the Federal Defendants’ unlawful inaction was based on clear errors of law and works an injustice against the State. The

Court misapprehended the Administrative Procedures Act (APA) and applied a jurisdictional analysis that conflicts with the plain language and purposes of the APA and the relevant case law. Accordingly, this Court should amend its Order to apply the appropriate jurisdictional analysis under the APA focused on the “agency action” at issue in this case and find that this Court has jurisdiction over, and that the Federal Defendants have waived their sovereign immunity with respect to, all of the State’s requests for relief to remedy the Federal Defendants’ unlawful inaction.

In the alternative, this Court should find that it has jurisdiction over the Secretary for all the State’s requests for relief because the State is seeking a writ of mandamus against the Secretary to force him to perform his statutory duties, and thus, no waiver of sovereign immunity is needed.

The Court should also amend its Order to remove any discussion of 28 U.S.C.A. § 1500 because issues regarding Section 1500 were not, and are not, before this Court and because neither party has raised any issues or presented any arguments regarding Section 1500.

*[Signature Page Follows]*

Respectfully submitted,

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November 28, 2016  
Columbia, South Carolina