



NUCLEAR ENERGY INSTITUTE

Ellen C. Ginsberg
Deputy General Counsel

BY FEDERAL EXPRESS

February 17, 2004

John Joseph Moakley, Clerk
United States Court of Appeals
for the First Circuit
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: Citizens Awareness Network, Inc. v. United States Nuclear Regulatory Commission
No. 04-1145

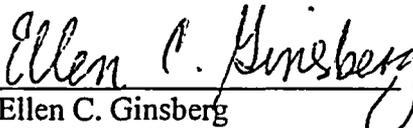
Dear Mr. Moakley:

On behalf of the named movant, enclosed please find for filing an original plus three copies of the "Motion of Nuclear Energy Institute, Inc. for Leave to Intervene" and "Nuclear Energy Institute's Corporate Disclosure Statement."

Also enclosed is a self-addressed stamped envelope in which we request you return a stamped copy of this filing.

Thank you for your assistance.

Sincerely,


Ellen C. Ginsberg
Nuclear Energy Institute, Inc.

Enclosures

cc (w/enclosure): Service List



**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

| | | |
|-----------------------------------|---|-------------|
| CITIZENS AWARENESS NETWORK, INC., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 04-1145 |
| |) | |
| UNITED STATES NUCLEAR |) | |
| REGULATORY COMMISSION, et al., |) | |
| |) | |
| Respondents. |) | |
| |) | |

**MOTION OF NUCLEAR ENERGY INSTITUTE, INC.
FOR LEAVE TO INTERVENE**

The Nuclear Energy Institute, Inc. ("NEI") hereby moves for leave to intervene as of right in the above-captioned case pursuant to the provisions of 28 U.S.C. § 2348, Rule 15(d) of the Federal Rules of Appellate Procedure, and Circuit Rule 15(d). NEI seeks to intervene in support of the U.S. Nuclear Regulatory Commission ("NRC") and NEI offers the following grounds for its motion.

1. By Petition dated January 26, 2004, Citizens Awareness Network, Inc. initiated the above-captioned proceeding seeking review of the Nuclear Regulatory Commission's

issuance of regulations embodied in 10 C.F.R. Part 2,¹ published in the Federal Register on January 14, 2004.² These regulations prescribe, among other things, hearing procedures to be applied to various types of licensing and regulatory actions adjudicated by the NRC, including construction and operating licenses for nuclear power reactors, license amendments, license terminations, license renewals, early site permits for new nuclear reactors, and design certifications for new nuclear reactor designs.

2. NEI moves to intervene as of right in the instant proceeding pursuant to the "Hobbs Act," which states in pertinent part:

Any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right . . . in any proceeding to review the order.³

3. NEI was a party to the NRC rulemaking proceeding leading to adoption of the subject regulations in 10 C.F.R. Part 2. NEI's participation included the submission of formal written comments in response to the NRC's notice of proposed rulemaking.⁴

4. NEI has a clear interest in the instant proceeding. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, materials licensees, and vendors to the nuclear industry, all of whom are required to apply for, maintain and terminate licenses or request other regulatory approvals for which an opportunity for hearing will be offered. NEI, on behalf of its members, is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects

¹ Although the rulemaking primarily revises 10 C.F.R. Part 2, conforming changes were also made to 10 C.F.R. Parts 1, 50, 51, 52, 54, 60, 63, 70, 72, 73, 75, 76, and 110.

² 69 Fed. Reg. 2182.

³ 28 U.S.C. 2348

⁴ 66 Fed. Reg. 19610 (2001).

of generic operational and technical issues. NEI regularly engages in litigation on behalf of its members when generic regulatory or other matters affecting the nuclear industry are at issue.

5. NEI's interest in the instant proceeding is further demonstrated by the following three examples: (1) NEI's power reactor members have applied for 1,898 license amendments over the previous four years, and a rate similar to the historic average of 474 license amendments per year can be expected to continue. (2) Eight NEI power reactor members have been granted 23 renewed licenses in the past three years; 17 NEI power reactor members currently are in the process of seeking a renewed license; and 8 NEI power reactor members have formally notified the NRC of their intent to apply for license renewal (six in 2004 and two in 2005). (3) At least three vendor members of NEI have formally announced their intent, within the next 15-30 months, to apply for design certification for new standard reactor designs. For each of the three types of licensing actions described above, the revised regulations at issue in this proceeding would govern the conduct of the hearing.⁵

6. NEI members will be harmed if the NRC fails to conduct effective and efficient adjudicatory proceedings. NEI members will directly bear the economic and other costs resulting from the inefficiency and delay associated with more formal, trial-type hearing procedures used for most licensing actions under the Part 2 regulations prior to their revision. The revisions to 10 C.F.R. Part 2 were promulgated because the hearing procedures previously used in agency adjudications occasioned "needless delay" and other costs for all litigants, including the NEI members whose licensing requests were at issue. As stated by the NRC in adopting the regulations:

The Commission believes that there is a need to take some action to improve the management of the adjudicatory process to avoid *needless delay* and unproductive litigation. Using less formal hearing processes with simplified procedures for

⁵ The final rule applies to proceedings noticed on or after February 14, 2004, the effective date of the final rule.

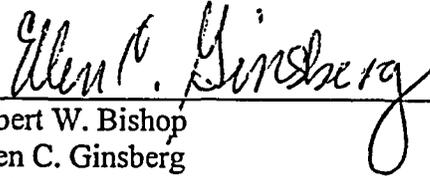
most types of proceedings along with a requirement for well-supported specific contentions in all cases can improve NRC hearings, limit unproductive litigation, and at the same time ease the burdens in hearing preparation and participation for all participants.

69 Fed. Reg. at 2188 (emphasis added).

7. NEI has been informed by the attorney for Petitioner CAN that it does not oppose NEI's intervention in this proceeding. NEI understands the NRC plans to respond to the motions to intervene filed in this proceeding, but to date, has not opposed NEI's intervention.

8. WHEREFORE, NEI requests that its motion to intervene in the instant case be granted on the grounds and for the reasons stated above.

Respectfully submitted,



Robert W. Bishop
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Michael A. Bauser
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(202) 739-8140

Dated: February 17, 2004

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FOR THE FIRST CIRCUIT

CITIZENS AWARENESS NETWORK, INC.,)
)

Petitioner,)
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v.)

No. 04-1145

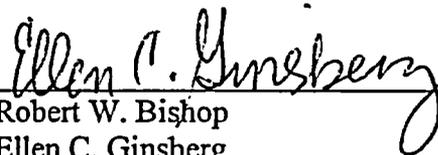
UNITED STATES NUCLEAR)
REGULATORY COMMISSION, et al.,)
)

Respondents.)
)

**NUCLEAR ENERGY INSTITUTE'S
CORPORATE DISCLOSURE STATEMENT**

Nuclear Energy Institute, Inc. ("NEI"), a not-for-profit 501(c)(6) corporation, is a trade association representing the nuclear energy industry. Its objective is to ensure the development of policies that promote the beneficial uses of nuclear energy and technologies in the United States and around the world. NEI does not have any parent companies, and no publicly-held company has a 10 percent or greater ownership interest in NEI.

Respectfully submitted,



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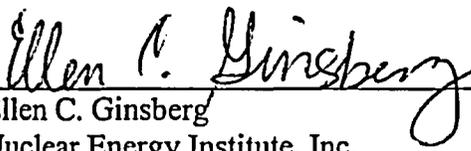
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing "Motion of Nuclear Energy Institute, Inc. for Leave to Intervene" and "Nuclear Energy Institute's Corporate Disclosure Statement" upon those listed on the attached service list by U.S. mail, first class, postage prepaid.


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Dated: February 17, 2004

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