

No. 03-74628

**IN THE
United States Court of Appeals**

FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE, SIERRA CLUB,
and PEG PICARD,
Petitioners,

v.

THE UNITED STATES NUCLEAR REGULATORY COMMISSION
and the UNITED STATES OF AMERICA,
Respondents

PACIFIC GAS & ELECTRIC COMPANY,
Intervenor-Respondent.

ON PETITION FOR REVIEW OF ORDERS OF
THE UNITED STATES NUCLEAR REGULATORY COMMISSION

**MOTION OF THE NUCLEAR ENERGY INSTITUTE FOR LEAVE TO
FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS**

Robert W. Bishop
Michael A. Bauser
Ellen C. Ginsberg
Nuclear Energy Institute
1776 I Street, N.W. Suite 400
Washington, D.C. 20006
(202) 739-8000

Jay E. Silberg
Matias F. Travieso-Diaz
D. Sean Barnett
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Pursuant to Federal Rule of Appellate Procedure 29(a), the Nuclear Energy Institute (“NEI”) hereby moves this Court for leave to file a brief as *amicus curiae*, supporting Respondents. Counsel for Petitioners, Respondents, and Intervenor-Respondent have indicated that none of the parties oppose NEI’s participation as *amicus curiae* in this proceeding. In support of its motion, NEI states as follows:

NEI’s Interest

1. NEI is an organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory matters as well as generic operational and technical issues. NEI’s members include all entities licensed by the U.S. Nuclear Regulatory Commission (“NRC”) to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry. As a representative of the nuclear industry, NEI has a vital interest in the regulatory framework for the licensing of independent spent fuel storage installations (“ISFSIs”) such as the one involved in the instant Petition.

2. NEI’s interest is evidenced by its participation, as an *amicus curiae*, in the lead proceedings before the NRC which form the basis for the agency’s decision in the instant case. *Private Fuel Storage L.L.C.* (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI; *Duke Cogema Stone & Webster* (Sa-

vannah River Mixed Oxide Fuel Fabrication Facility), Docket No. 070-03098; *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit No. 3), Docket No. 50-423-LA-3; *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-369-LR50-370-LR50-413-LR50-414-LR. *See, e.g., Dominion Nuclear Connecticut, Inc. (Millstone Power Station, Unit 3)*, CLI-02-27, 56 NRC 367, 369 n.6 (2002).

Reasons Why An NEI Amicus Brief is Desirable and Relevant

3. NEI has represented the interests of its members before Congress, Executive Branch agencies, various regulatory bodies, and state policy forums. NEI is actively engaged in studying numerous issues related the security of nuclear facilities, emergency response planning for nuclear facilities, and the potential consequences of terrorist attacks against nuclear facilities, and advocating policies based on NEI's analysis of such issues. For example, NEI submitted comments on a proposed rulemaking by the Federal Emergency Management Agency – “REP: Planning and Preparing for a Fast-Breaking Event,” 68 Fed. Reg. 49783 (2003) – for which NEI commissioned a study by the Electric Power Research Institute (“EPRI”) that analyzed various accident scenarios at nuclear power plants, including possible effects from a terrorist attack. NEI likewise commissioned a study by EPRI that examined the potential effects of an aircraft crashing into structures that house reactor fuel at U.S. nuclear power plants.

4. If granted leave to participate as *amicus curiae*, NEI will file a brief presenting the nuclear industry's perspective on the issues before the Court. NEI can uniquely provide such a perspective based on the expertise of its members and NEI's own studies and analyses of issues related to Petitioners' claims.

5. In particular, NEI's brief will assist this Court in understanding how the environmental impacts of ISFSIs (and other nuclear facilities) are estimated, and the problems that would arise from trying to undertake the sort of speculative analyses Petitioners assert should be conducted. These matters are not unique to Diablo Canyon or to ISFSIs, but pertinent to all nuclear facilities, as well as many other federally-licensed facilities and projects.

Conclusion

For the foregoing reasons, NEI's Motion for Leave to File Brief as an *amicus curiae* should be granted.

Robert W. Bishop
Michael A. Bauser
Ellen C. Ginsberg
Nuclear Energy Institute
1776 I Street, N.W. Suite 400
Washington, D.C. 20006
(202) 739-8000

Respectfully submitted,

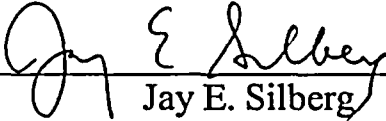


Jay E. Silberg
Matias F. Travieso-Diaz
D. Sean Barnett
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Dated: May 19, 2004

CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1, the Nuclear Energy Institute ("NEI") states that is an international association of organizations that participate in the nuclear energy and technologies industry, including companies that operate nuclear power plants, design and engineering firms, fuel suppliers and service companies, companies involved in nuclear medicine and nuclear industrial applications, radionuclide and radiopharmaceutical companies, universities and research laboratories, and labor unions. NEI has over 260 corporate members in 15 countries. NEI has no shareholders or other owners.



Jay E. Silberg

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2004, copies of the foregoing "Motion of the Nuclear Energy Institute for Leave to File an Amicus Curiae Brief in Support of Respondents" and "Corporate Disclosure Statement" were served as follows:

By Federal Express:

Office of the Clerk
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526 (Original and fifteen copies)

By First Class Mail, postage prepaid:

John Ashcroft
United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

John Cordes, Esq.
Office of the Solicitor
Nuclear Regulatory Commission
Washington, DC 20555

Charles E. Mullins, Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Stephen H. Lewis
Office of General Counsel
Mail Stop 0-15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036

Richard F. Locke, Esq.
Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120

David A. Repka, Esq.
Winston & Strawn LLP
1400 L Street, N.W.
Washington, DC 20005-3502

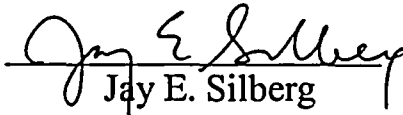
Ms. Darcie L. Houck
California Energy Commission
1516 Ninth Street
Sacramento, CA 94556

Bill Lockyer, Attorney General
State of California
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

Thomas F. Reilly, Attorney General
Commonwealth of Massachusetts
200 Portland Street
Boston, MA 02114

Mark Shurtleff, Attorney General
State of Utah
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873

Christine O. Gregoire, Attorney General
State of Washington
1125 Washington Street
P.O. Box 40100
Olympia, WA 98504-1000


Jay E. Silberg