

RAS 11384



JON S. CORZINE
Governor

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ZULIMA V. FARBER
Attorney General

DOCKETED
USNRC

March 10, 2006 (7:48am)

March 9, 2006

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: I/M/O AMERGEN ENERGY COMPANY, LLC. (License Renewal for
Oyster Creek Nuclear Generating Station)
Docket No. 50-219-L.R.

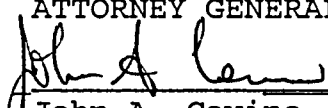
Dear Office of the Secretary:

Enclosed for filing via U.S. Postal Service and E-Mail,
please find original and two copies of Notice of Motion by New
Jersey Department of Environmental Protection (NJDEP) for extension
of time to file appeal, together with supporting affidavit, form of
proposed order and affidavit of service. These papers have been
served on all interested parties as indicated on the enclosed
Certificate of Service.

Respectfully submitted,

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY

By:


John A. Covino
Deputy Attorney General

enclosures
cc: Service List



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SECY-02

In the Matter of:)
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AmerGen Energy Company, LLC)
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)
(License Renewal for Oyster Creek)
Nuclear Generating Station))
)
)

March 9, 2006

Docket No. 50-219

Richard Webster, Esq.
Rutgers Environmental Law Clinic
123 Washington Street
Newark, New Jersey 07102-5695
(Attorney for Nuclear Information & Resource Service and other
petitioners)

PLEASE TAKE NOTICE:

The undersigned, Zulima V. Farber, Attorney General of New Jersey, attorney for Petitioner New Jersey Department of Environmental Protection ("NJDEP"), by John A. Covino, Deputy Attorney General, hereby moves before the Nuclear Regulatory Commission for an Order extending the time for NJDEP to file an appeal with the Commission from the Order of the Atomic Safety and Licensing Board denying NJDEP's request for hearing and petition for leave to intervene in this matter. The extension requested is until and including March 28, 2006.

The undersigned will rely upon the affidavit of John A. Covino filed herewith. As that affidavit sets forth, Richard Webster, Esq., of the Rutgers Environmental Law Clinic, counsel for the Nuclear Information and Resource Service and other petitioners, has consented to this request. Ann P. Hodgdon, Esq., of Commission Staff, has declined to consent. Despite good-faith efforts by counsel for both NJDEP and AmerGen Energy Services, the Department has not received an answer as to AmerGen's consent or lack thereof.

A proposed form of Order is submitted herewith.

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for NJDEP

By: 

John A. Covino
Deputy Attorney General

Served Upon Service List in manner indicated thereon
March 9, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:)

) March 9, 2006

AmerGen Energy Company, LLC)

) Docket No. 50-219

(License Renewal for Oyster Creek)
Nuclear Generating Station))
_____)

AFFIDAVIT IN SUPPORT OF MOTION BY NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOR EXTENSION OF TIME TO FILE APPEAL AND
AFFIDAVIT OF GOOD-FAITH EFFORTS TO CONTACT COUNSEL.

STATE OF NEW JERSEY :

ss

COUNTY OF MERCER :

JOHN A. COVINO, of full age, upon his oath deposes and says:

1. I am a Deputy Attorney General of the State of New Jersey. I am a member of the Environmental Permitting and Counseling Section of the Division of Law, which is a division within the Department of Law and Public Safety.

2. I am one of the attorneys assigned to represent the New Jersey Department of Environmental Protection ("NJDEP") in regard to the proceedings concerning the application of AmerGen Energy Company, LLC ("AmerGen") for renewal of its operating license for the Oyster Creek Nuclear Generating Station ("Oyster Creek").

3. As a State agency standing in the shoes of the State of New Jersey, NJDEP filed a Request for Hearing and Petition for

Leave to Intervene with the Atomic Safety and Licensing Board ("Board") on November 14, 2005.

4. The Board denied NJDEP's request for hearing and petition for leave to intervene. The Board issued its decision by e-mail on February 27, 2006, with hard copy by regular U.S. Mail to follow. My understanding, based upon my reading of the rules and my telephone discussion with an attorney within the Office of the Secretary, is that an appeal by NJDEP to the Nuclear Regulatory Commission ("Commission") from the Board's Order would need to be filed, with accompanying brief, by March 14, 2006.

5. NJDEP intends to file an appeal of the Board's Order with the Commission. This affidavit is submitted in support of a motion by NJDEP for a two-week extension, until and including March 28, 2006, of the time in which to file its appeal and accompanying brief.

6. The issues NJDEP has raised in its request for hearing and petition for leave to intervene are of vital and paramount interest to the State of New Jersey as part of its duty of protecting the public health, safety and environment. The issues which NJDEP has raised reflect that paramount interest. Among the issues NJDEP has alleged are deficiencies in AmerGen's severe accident mitigation analysis, including vulnerability of Oyster Creek to aircraft attacks, such as terrorist attacks. NJDEP will demonstrate that specific terrorist threats referring to Oyster Creek combine with the site-specific design, location and

surrounding metropolitan area population to distinguish Oyster Creek as an exceptional facility which reasonably requires analysis of these deficiencies. The State has a strong interest in having its concerns on those issues, and the other issues NJDEP has raised, addressed within the relicensing proceeding so that they will be satisfactorily resolved before AmerGen is granted permission to continue to operate Oyster Creek for another 20 years.

7. The issues are complex as well as vitally important to the State. NJDEP believes that the complexity of the issues and paramount public interest present extraordinary reasons and ample good cause to meet the standard for the Commission's granting an extension, especially given the fact that both the NJDEP and the Environmental Permitting and Counseling Section of the Division of Law have limited resources and are of course responsible for handling numerous important matters simultaneously with this one.

8. Based on the above, NJDEP requests that the time for filing its appeal and accompanying brief be extended to, and including, March 28, 2006.

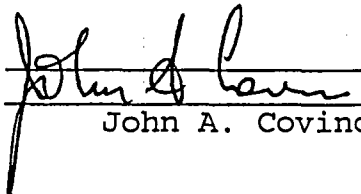
9. The following constitutes my certification of good-faith efforts to contact counsel concerning the obtaining of consent for this motion, as required by the Commission's Rules:

A. I contacted Richard Webster, Esq., of the Rutgers Environmental Law Clinic, attorney for Petitioners Nuclear Information and Resource Service and other groups, on March 16,

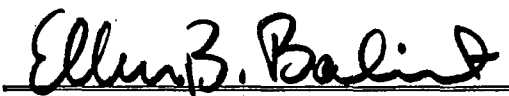
2006 by telephone and Mr. Webster consented to this motion on behalf of his clients.

B. Based on my understanding, Deputy Attorney General ("DAG") Valerie Gray placed a call on the afternoon of March 7, 2006, to Alex S. Polonsky, Esq., of Morgan, Lewis and Bockius, LLP, representing AmerGen and asked for consent to this motion for extension. According to DAG Gray, Mr. Polonsky indicated he would speak to his client and call back. I have personal knowledge that I e-mailed Mr. Polonsky to the same effect at about 5:58 pm on March 8, 2006. Mr. Polonsky replied by e-mail at about 6:38 pm that same day, stating that he had forwarded my request to his client and that he would contact me as soon as he received word from his client. I saw Mr. Polonsky's reply when I arrived at the office at about 8:20 this morning. Mr. Polonsky called me at about 10:30 am today with essentially the same message. I have not heard anything further from Mr. Polonsky.

C. I spoke with Ann P. Hodgdon, Esq., of the Commission Staff by telephone on March 8, 2006. Ms. Hodgdon said that NRC Staff could not consent to this motion.


John A. Covino

Sworn to and subscribed before me this
9th day of March, 2006


Ellen B. Balint
An Attorney-At-Law of New Jersey

In the Matter of:)
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AmerGen Energy Company, LLC)
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)
(License Renewal for Oyster Creek)
Nuclear Generating Station))
)
)

March 9, 2006

Docket No. 50-219

Having considered the New Jersey Department of Environmental Protection's Motion for an extension of time to file appeal and all papers filed in this matter, and for GOOD CAUSE SHOWN,

IT IS SO ORDERED.

Dated at
this day of March, 2006.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:)	March 9, 2006
AMERGEN ENERGY COMPANY, LLC)	
(License Renewal for Oyster Creek)	Docket No. 50-219-L.R.
Nuclear Generating Station)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that the Notice of Motion by Petitioner, New Jersey Department of Environmental Protection, for Extension of Time to File Appeal and the supporting Affidavit of John A. Covino, Deputy Attorney General, were sent on this 9th day of March, 2006, by e-mail and, where designated, also by U.S. Postal Service to each of the following:

Secretary of the Commission:

Form of Service: E-Mail & original and two copies via U.S.P.S.

Mailing Address:

Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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Service List - I/M/O AmerGen Energy, Dkt. #50-0219 Page 2 of 6

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For Nuclear Information and Resource Service; Jersey Shore Nuclear Watch; Grandmothers, Mothers and More for Energy Safety; New Jersey Public Interest Group; New Jersey Sierra Club and New Jersey Environmental Foundation:

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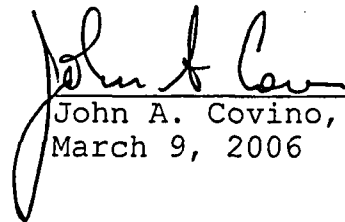
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John A. Covino, D.A.G.
March 9, 2006