

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

January 19, 2007 (4:04pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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)	
In the Matter of:)	January 19, 2007
)	
AmerGen Energy Company, Inc.)	
)	Docket No. 50-219-LR
(License Renewal for Oyster Creek)	
Nuclear Generating Station))	
)	
)	
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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
NOTICE OF PERTINENT NEW CASE LAW AFFECTING APPEAL
AND REQUEST FOR ITS CONSIDERATION

Honorable Commissioners:

On January 12, 2007, the United States Supreme Court denied the petition of Pacific Gas and Electric Co. for a writ of certiorari in the case of San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission, 449 F.3d 1016 (2006), thereby refusing to entertain an appeal from that decision of the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit ruled that the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4321-4337, requires that the question of the vulnerability of a proposed nuclear storage facility to terrorist attack must be included within the NEPA environmental impacts analysis required for licensure of such facility. The decision states that "it is unreasonable for the NRC to categorically

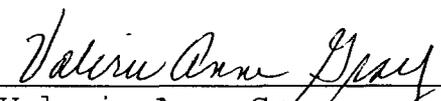
dismiss the possibility of terrorist attack" and rejects prior decisions of the Commission on this point. Mothers for Peace is the only decision of a Circuit Court of Appeals on the issue since the tragic events of September 11, 2001.

The New Jersey Department of Environmental Protection ("NJDEP") raised essentially the same contention to support its attempt to become an intervenor in the Oyster Creek relicensure proceeding. The Atomic Safety and Licensing Board (Board) rejected this contention as speculative. In September 2006, the Commission postponed its decision regarding NJDEP's appeal based on this contention because of the Ninth Circuit decision in Mothers for Peace and the later petition by Pacific Gas and Electric Co. for certiorari in that case.

Since the Supreme Court has denied the petition for certiorari in Mothers for Peace, supra, letting the Ninth Circuit's decision stand, NJDEP requests that the Commission acknowledge that decision to be controlling precedent on NJDEP's NEPA contention and correspondingly reverse the Board's decision and grant NJDEP's petition for intervention in this proceeding.

Respectfully submitted,

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY

By: 
Valerie Anne Gray
Deputy Attorney General

cc: Service List
Certificate of Service Attached

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CERTIFICATE OF SERVICE

I hereby certify that copies of NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S NOTICE OF PERTINENT NEW CASE LAW AFFECTING APPEAL AND REQUEST FOR ITS CONSIDERATION were served this day upon the persons listed below, by E-mail and first class mail, unless otherwise noted.

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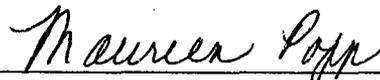
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1/19/07



Maureen Popp