

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

SERVED 02/26/07

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Gregory B. Jaczko  
Peter B. Lyons

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In the Matter of )  
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NUCLEAR MANAGEMENT COMPANY, LLC ) Docket No. 50-255-LR  
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(Palisades Nuclear Plant) )  
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CLI-07-09

**MEMORANDUM AND ORDER**

This order responds to a June 22, 2006, "Notice" filed by a group of environmental and public interest organizations<sup>1</sup> requesting that the NRC redraft the supplemental environmental impact statement for the Palisades Nuclear Plant license renewal, and also requesting an extension of time to submit late-filed proposed contentions on the environmental impacts of

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<sup>1</sup> Don't Waste Michigan; West Michigan Environmental Action Council; the Citizens Action Coalition of Indiana; Canadian Coalition for Nuclear Responsibility/Regroupement pour la surveillance du nucléaire; Citizens for Alternatives to Chemical Contamination; Citizens Resistance at Fermi Two; Citizens for Renewable Energy; Huron Environmental Activist League; Clean Water Action; Home for Peace and Justice; Great Lakes United; Nuclear Information and Resource Service ("NIRS"); IHM Justice, Peace and Sustainability Office; Indigenous Environmental Network; International Institute of Concern for Public Health; Lone Tree Council; Kalamazoo River Protection Association; Michigan Citizens for Water Conservation; Michigan Land Trustees; Michigan Environmental Council; Michigan Interfaith Climate and Energy Campaign/Voices for Earth Justice; National Environmental Trust; Nuclear Energy Information Service; Nuclear-Free Great Lakes Campaign; Nuclear Policy Research Institute; Nukewatch; Radiological Evaluation & Action Project, Great Lakes; Sierra Club, Mackinac (Michigan) Chapter; and Van Buren County Greens. This list of organizations includes some who petitioned for intervention in the licensing proceeding and others who commented on the environmental impact statement process for the proposed license renewal.

terrorist attacks on the plant during the license renewal period. In an order affirming the Atomic Safety and Licensing Board's ruling on contentions in this proceeding, we stated that we would address that request at a later time.<sup>2</sup>

The groups' request is denied. As explained in today's ruling in *Oyster Creek*,<sup>3</sup> the potential impacts of terrorism fall outside the scope of a license renewal proceeding and are not appropriate subjects for analysis under the National Environmental Policy Act.<sup>4</sup>

### I. BACKGROUND

In March, 2005, Nuclear Management Company, LLC, applied to renew its license to operate the Palisades Nuclear Plant for a twenty-year period starting in 2011.<sup>5</sup> A number of environmental organizations, including several who signed on to the request we consider today, attempted to intervene in the license renewal proceeding. Although the Licensing Board found that the groups had shown standing, it ruled that none had offered an admissible contention.<sup>6</sup> The Commission affirmed the Board's ruling.<sup>7</sup>

In a separate matter involving a spent fuel storage facility on the Diablo Canyon reactor site in California, the U.S. Court of Appeals for the Ninth Circuit issued a decision ruling (in part) against the NRC.<sup>8</sup> The Ninth Circuit found unreasonable the NRC's refusal to analyze

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<sup>2</sup> CLI-06-17, 63 NRC 727, 734 n.31 (2006).

<sup>3</sup> *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-\_\_\_, 65 NRC \_\_\_ (Feb. 26, 2007).

<sup>4</sup> 42 U.S.C. §§ 4321 et seq.

<sup>5</sup> The renewed license was issued on January 17, 2007.

<sup>6</sup> LBP-06-10, 63 NRC 314 (2006).

<sup>7</sup> CLI-06-17, 63 NRC at 734.

<sup>8</sup> *San Louis Obispo Mothers for Peace v. NRC* 449 F.3d 1016 (9<sup>th</sup> Cir. 2006), *cert. denied*, No. 06-466 (Jan. 16, 2007).

the environmental effects of “terrorism” in its licensing proceedings. Weeks later, a number of organizations, most of which had never sought entry into this proceeding before, filed their “Notice” and requested that we take steps that they see as necessary to comply with the Ninth Circuit’s ruling.

## II. ANALYSIS

As stated in the *Oyster Creek*<sup>9</sup> decision issued today, we continue to believe that the National Environmental Policy Act does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. The *Oyster Creek* decision explains in depth our reasoning for refusing to follow that decision outside the Ninth Circuit. Those reasons pertain here as well. As we stated in *Oyster Creek*, there is no basis for admitting this terrorism contention in this, or any other, license renewal proceeding. “Terrorism contentions are, by their very nature, directly related to security and are therefore, under our [license renewal] rules, unrelated to the ‘detrimental effects of aging.’ Consequently, they are beyond the scope of, not ‘material’ to, and inadmissible in, a license renewal proceeding.”<sup>10</sup> Moreover, as a general matter, NEPA “imposes no legal duty on the NRC to consider intentional malevolent acts... in conjunction with commercial power reactor license renewal applications.”<sup>11</sup> The claimed impact is too attenuated to find the proposed federal action to be the ‘proximate cause’ of that impact.

Furthermore, as explained today in our decision in *Grand Gulf*,<sup>12</sup> any new contention on the subject of terrorism in this proceeding would be inexcusably late. Would-be intervenors

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<sup>9</sup> See *Oyster Creek*, CLI-07-, slip op. at 5-7.

<sup>10</sup> See *id.* at 5, quoting *McGuire/Catawba*.

<sup>11</sup> *Id.*, at 5-6.

<sup>12</sup> *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-\_\_ (Feb. 26, 2007), slip op. at 2-3.

must file contentions at the outset of the proceeding, on the basis of the applicant's environmental report.<sup>13</sup> An appeals court ruling does not constitute "new information" on which a party can file a new contention.<sup>14</sup> Whereas some of the organizations that submitted the June 22, 2006 request (e.g. NIRS) filed a hearing request that included a terrorism contention,<sup>15</sup> that contention was later withdrawn.<sup>16</sup> We view it as waived.

### III. CONCLUSION

For the foregoing reasons, and the reasons given in the *Oyster Creek* decision issued today, we reject the request that the EIS be redrafted to consider terrorism and for an extension of the time for filing contentions.

IT IS SO ORDERED.

For the Commission

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, MD  
this 26<sup>th</sup> day of February, 2007

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<sup>13</sup> 10 C.F.R. § 2.309(f)(2).

<sup>14</sup> *Grand Gulf*, CLI-07-\_\_\_, slip op. at 2-3. See also 10 C.F.R. §2.309(f)(2)(i).

<sup>15</sup> See Request for Hearing and Petition to Intervene (Aug. 8, 2005), at 9.

<sup>16</sup> See Petitioners' Combined Reply to NRC Staff and Nuclear Management Company Answers (Sept. 16, 2005) at 55.

**Commissioner Gregory B. Jaczko, Respectfully Dissenting:**

As I explain in more detail in my dissent in *Oyster Creek*, I respectfully disagree with my colleagues on the majority's decision to ignore the Ninth Circuit's ruling outside of the Ninth Circuit's geographical boundary. The majority's decision to maintain its posture of no NEPA terrorism reviews outside of the Ninth Circuit is, I believe, an unnecessary and risky decision that, unfortunately, will not provide regulatory stability or national consistency. And, while the majority contends that following the Ninth Circuit's mandate nationwide is unnecessary and superfluous, I believe the opposite to be true. Regardless of what eventually is determined to be the "right" legal answer, the practical reality is that the agency must and will find a way to consider the impacts of terrorism in a NEPA analysis, at least regarding applications within the jurisdiction of the Ninth Circuit. Thus, I believe the right policy answer is to have a consistent, nationwide approach to a NEPA terrorism analysis.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-07-09) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution, with copies by electronic mail as indicated.

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 26<sup>th</sup> day of February 2007