



SECRETARY

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

April 5, 2007

DOCKETED  
USNRC

April 5, 2007 (9:21am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Mr. John P. Kelly  
Freeholder Director  
Director of Law and Public Safety  
Ocean County Board of Chosen Freeholders  
P.O. Box 2191  
Toms River, New Jersey 08754

SERVED April 9, 2007

Dear Mr. Kelly:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of February 27, 2007, in which you expressed your disagreement with the Commission's recent decision in the license renewal proceeding for the Oyster Creek Nuclear Generating Station. In that decision, the Commission reached the conclusion that the National Environmental Policy Act (NEPA) does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. The Commission set forth the reasons for its decision in the enclosed Order.

The NRC Staff continues to review the Oyster Creek license renewal application and some issues remain under adjudication. The Commission appreciates your interest in this matter.

A copy of your letter and this response will be served on the participants in the Oyster Creek proceeding.

Sincerely,

Andrew L. Bates  
Acting Secretary of the Commission

Enclosure

cc: Oyster Creek Service List

**THE BOARD OF CHOSEN FREEHOLDERS  
OFFICE OF THE FREEHOLDER DIRECTOR**

OCEAN COUNTY  
TOMS RIVER, NEW JERSEY 08754-2191

**John P. Kelly**  
Director of Law and Public Safety



(732) 929-2003  
Fax (732) 506-5055  
E-mail:  
jkelly@co.ocean.nj.us

February 27, 2007

Dr. Dale E. Klein, Chairman  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

**Re: Oyster Creek Nuclear Plant Relicensing Application**

Dear Dr. Klein:

I am writing to you as Freeholder Director of the Ocean County Board of Chosen Freeholders, the County in which the Oyster Creek Nuclear Plant is located. The Board of Chosen Freeholders have been actively participating in the relicensing application currently before your agency. It has been the strong position of the Board that your agency must take into consideration security issues, both relating to plant operations and spent fuel storage, when considering relicensing. This position has been consistently presented to the NRC on behalf of the Board of Chosen Freeholders.

I have been advised that on February 26, 2007, your agency decided to deny the State of New Jersey's request to conduct a hearing on whether the consequences of a terrorist attack on the Oyster Creek Nuclear Plant should be made part of the review of that plant's application. I am dismayed at the NRC's action since such a requirement was imposed judicially by a recent ruling on spent fuel storage by the 9<sup>th</sup> Circuit Court of Appeals. While I understand that the 9<sup>th</sup> Circuit Court decision is not binding on cases brought forth in New Jersey, it makes absolute good public policy to apply that ruling in this case. It certainly makes no sense then to conclude that the National Environmental Policy Act, enacted 37 years ago, did not include terrorism and that terrorism shouldn't be considered by the NRC. Obviously, terrorism is now a very real concern for facilities such as Oyster Creek Nuclear Plant and must be taken into consideration by the NRC in its deliberations.

I would certainly hope that your agency reconsiders its decision and approves New Jersey's request to hold a hearing on this very important matter. If that is not the case, I will urge the Board of Chosen Freeholders to support the State of New Jersey in an appeal to the 3<sup>rd</sup> US Circuit Court of Appeals so that the question of terrorism can be treated equally across the country. I appreciate your review of this letter and trust that you will take the appropriate action to address this important public policy matter.

Very truly yours,

John P. Kelly  
Freeholder Director  
Director of Law and Public Safety

JPK/AWA:mac

c: United States Senator Robert Menendez  
United States Senator Frank R. Lautenberg  
United States Congressman Christopher H. Smith  
United States Congressman H. James Saxton  
Governor Jon S. Corzine, State of New Jersey  
Senator Leonard T. Connors, Jr.  
Assemblyman Christopher J. Connors  
Assemblyman Brian E. Rumpf  
Lisa P. Jackson, Commissioner, New Jersey Department of Environmental Protection  
Members, Board of Chosen Freeholders  
Timothy Rausch, Site Vice President, Oyster Creek Nuclear Generating Station  
Gail Marsh Saxer, President, League of Women Voters of Ocean County  
Cheryl Rundle-Borowski  
Janet Tauro

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
AMERGEN ENERGY COMPANY, LLC ) Docket No. 50-219-LR  
 )  
 )  
(Oyster Creek Nuclear Generating Station) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LETTER FROM ANDREW L. BATES TO JOHN P. KELLY IN RESPONSE TO HIS LETTER DATED 02/27/07 (ATTACHED) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
E. Roy Hawkens, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Anthony J. Baratta  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Mitzi A. Young, Esq.  
Mary C. Baty, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Richard Webster, Esq.  
Rutgers Environmental Law Clinic  
123 Washington Street  
Newark, NJ 07102-5695

Paul Gunter, Director  
Reactor Watchdog Project  
Nuclear Information  
and Resource Service  
1424 16<sup>th</sup> Street, NW, Suite 404  
Washington, DC 20036

Donald J. Silverman, Esq.  
Kathryn M. Sutton, Esq.  
Alex S. Polonsky, Esq.  
Morgan, Lewis, & Bockius LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004

Docket No. 50-219-LR  
LETTER FROM ANDREW L. BATES TO  
JOHN P. KELLY IN RESPONSE TO HIS  
LETTER DATED 02/27/07

Bradley M. Campbell, Commissioner  
New Jersey Department of  
Environmental Protection  
P.O. Box 402  
Trenton, NJ 08625-0402

Ron Zak  
New Jersey Department of  
Environmental Protection  
Nuclear Engineering  
P.O. Box 415  
Trenton, NJ 08625-0415

Suzanne Leta  
NJPIRG  
11 N. Willow St.  
Trenton, NJ 08608

Jill Lipoti, Director  
New Jersey Department of  
Environmental Protection  
Division of Environmental Safety and Health  
P.O. Box 424  
Trenton, NJ 08625-0424

J. Bradley Fewell, Esq.  
Exelon Corporation  
4300 Warrenville Road  
Warrenville, IL 60555

John A. Covino, Esq.  
Ellen Barney Balint, Esq.  
Valerie Anne Gray, Esq.  
Caroline Stahl, Esq.  
Deputy Attorneys General  
New Jersey Office of the Attorney General  
Environmental Permitting &  
Counseling Section  
Division of Law  
Hughes Justice Complex  
P.O. Box 093  
Trenton, NJ 08625

  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 9<sup>th</sup> day of April 2007