



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20535-0001

April 27, 2007

OFFICE OF THE
GENERAL COUNSEL

Marcia M. Waldron, Clerk
Office of the Clerk
United States Court of Appeals
For the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106-1790
ATTENTION: DANA M. MOORE

VIA FEDERAL EXPRESS

RE: *State of New Jersey v. U.S. Nuclear Regulatory Commission*, Nos. 06-5140,
07-1559, and 07-1756 (3d Cir.)

Dear Ms. Waldron:

Pursuant to our phone call this morning, I have enclosed the original of a corrected Page 2 to be inserted in the Federal Respondents' Response to the Motions to Intervene in the above-captioned consolidated case. I have spoken by phone this morning with counsel for all parties in this case and all counsel have graciously agreed to allow the substitution of the corrected Page 2 into the original Response before submission to the Court.

Would you please date-stamp the extra copy of this letter to indicate date of filing and kindly return it to me in the enclosed postage-pre-paid envelope at your convenience.

Thank you for your cooperation attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles E. Mullins".

Charles E. Mullins
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission

cc: Kenneth W. Elwell, Esq.
Joseph J. McGovern, Esq.
Matias F. Travieso-Diaz, Esq.
Kathryn Kovacs, Esq., US DOJ

II. Discussion.

1. This consolidated case is filed under jurisdiction of the Hobbs Act, 28 U.S.C. § 2341, *et seq.* Thus, intervention is governed by 28 U.S.C. § 2348, which provides:

The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

28 U.S.C. § 2348.

2. This consolidated case involves challenges to two NRC actions or "Orders": the issuance of the revised version of NUREG-1757 (Case Nos. 06-5140 and 07-1559) and the issuance of an Order on January 12, 2007, denying New Jersey's request for a hearing on the issuance of the NUREG (Case No. 07-1756). SMC has moved to intervene in all three cases, while Gloucester County has moved to intervene in No. 06-5140 only.

Neither SMC nor Gloucester County filed comments with the NRC on the draft revisions to NUREG-1757. Thus, neither participated as a "party" before the agency in the "proceeding" that led to the issuance of the revised NUREG-1757.²

Likewise, Gloucester County did not file a pleading with the agency addressing New Jersey's request for a hearing on the issuance of the NUREG. But SMC did file a response in

²By use of the word "proceeding" to describe the process leading to the issuance of NUREG-1757, the Federal Respondents do not concede that the issuance of NUREG-1757 was a "final" Order within the meaning of the Hobbs Act. Earlier in this proceeding, we filed a motion to dismiss New Jersey's petitions as premature, but this Court has held over decision on that motion until after full briefing. *See* Order dated April 11, 2007.