

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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NEW JERSEY DEPARTMENT OF )  
ENVIRONMENTAL PROTECTION, )

Petitioner, )

v. )

U.S. NUCLEAR REGULATORY )  
COMMISSION, et al., )

Respondents. )

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No. 07-2271

**MOTION OF THE NUCLEAR ENERGY INSTITUTE ON CONSENT FOR  
LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF  
THE RESPONDENTS AND AFFIRMANCE**

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January 29, 2008

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

Petitioner,

v.

U.S. NUCLEAR REGULATORY  
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THE RESPONDENTS AND AFFIRMANCE**

Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure, the Nuclear Energy Institute, Inc. ("NEI") hereby moves for leave to participate as amicus curiae in this proceeding. NEI requests that the Court accept for filing the accompanying amicus curiae brief in support of the Respondents and affirmance.

The background of this Motion is as follows. On November 9, 2007, counsel for NEI filed with the Clerk for the U.S. Court of Appeals for the Third Circuit and served on the parties in this case a "Notice of Participation of Nuclear

Energy Institute as Amicus Curiae and Representation of Consent.” (For the convenience of the Court, a copy of that Notice is included as an Attachment to this Motion.) In that Notice, NEI stated that attorneys for Petitioner New Jersey Department of Environmental Protection and for Respondents U.S. Nuclear Regulatory Commission, United States of America and Amergen Energy Company, L.L.C. have authorized NEI to represent that they consent to its participation as amicus curiae in the instant case.

NEI did not include with its November 9, 2007, Notice a motion for leave to participate as amicus curiae because it interpreted the language of Fed. R. App. P. 29(a) to require such a motion only if all parties have *not* consented to the filing of an amicus brief.<sup>1</sup> Subsequently, a representative of the Office of the Clerk, U.S. Court of Appeals for the Third Circuit, contacted counsel for NEI by telephone and indicated that it would be necessary for NEI to move for leave to file an amicus brief. This motion ensued.

Consistent with Fed. R. App. P. 29(b), NEI has a clear and direct interest in this proceeding. NEI, a not-for-profit corporation under Section 501(c)(6) of the

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<sup>1</sup> With respect to the filing of a brief amicus curiae, Fed. R. App. P. 29(a) states:

**“When Permitted.** The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.”

Internal Revenue Code, is the trade association responsible for representing the nuclear industry before the executive, judicial and legislative branches of government on generic regulatory, technical and legal issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear power plant designers, major architect/engineer firms, nuclear fuel fabrication facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear industry. As such, NEI's members include all entities that previously have sought renewed licenses, those entities whose license renewal applications currently are pending before the NRC, and licensees who will seek renewals in the future.

Further consistent with Fed. R. App. P. 29(b), the filing of an amicus curiae brief is desirable in this case in that matters asserted in NEI's brief are directly relevant to the disposition of this case. NEI's mission is to ensure the development of policies that promote the beneficial uses of nuclear energy and technologies in the United States and around the world. Therefore, NEI has a vital interest in ensuring that the NRC regulations governing nuclear power plant license renewal, such as those at issue in this appeal, are promulgated and implemented based upon sound legal, regulatory, and technical principles. To that end, NEI participated actively in the development of the NRC's license renewal regulatory framework, and maintains expertise in license renewal issues. NEI also seeks to elucidate the

broader importance of nuclear power as a source of baseload electric generation in the United States, and the related importance of precluding unnecessary disruption of the license renewal process.

NEI's participation in this proceeding as amicus curiae will not prejudice or unduly burden any other party. As an amicus, NEI will necessarily "take the proceeding as it finds it" and does not seek to inject new issues into the proceeding or alter the record developed by the parties.

WHEREFORE, for the foregoing reasons, NEI respectfully moves the Court for leave to participate as amicus curiae in this proceeding. We ask that the Court accept for filing the accompanying brief amicus curiae and consider the important issues discussed therein.

Respectfully submitted,



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DATED: January 29, 2008

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

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U.S. NUCLEAR REGULATORY  
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No. 07-2271

**NOTICE OF PARTICIPATION OF NUCLEAR ENERGY INSTITUTE AS  
AMICUS CURIAE AND REPRESENTATION OF CONSENT**

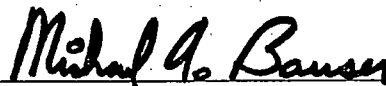
Pursuant to Fed. R. Ap. P. 29, the Nuclear Energy Institute, Inc. ("NEI") hereby notices its participation as amicus curiae in support of Respondents through the filing of this "Notice of Participation of Nuclear Energy Institute, Inc. as Amicus Curiae and Representation of Consent."

1. By Petition dated April 25, 2007, the New Jersey Department of Environmental Protection initiated the above-captioned proceeding, No. 07-2271, seeking review of an Order of the U.S. Nuclear Regulatory Commission ("NRC") pertaining to the renewal of the NRC license for the Oyster Creek Nuclear Generating Station.

2. NEI has been authorized by attorneys for both the Petitioner and Respondents to represent that Petitioner and Respondents consent to its participation as amicus curiae.

WHEREFORE, NEI notices its participation as amicus curiae in the instant case, No. 07-2271.

Respectfully submitted,



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Dated: November 9, 2007

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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NEW JERSEY DEPARTMENT OF )  
ENVIRONMENTAL PROTECTION, )

Petitioner, )

v. )

U.S. NUCLEAR REGULATORY )  
COMMISSION, et al., )

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Respondents. )

No. 07-2271

**CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury that on January 29, 2008, I served the "Motion of the Nuclear Energy Institute on Consent to File a Brief Amicus Curiae in Support of Respondents and Affirmance" in Case No. 07-2271, by placing the original and 3 copies in an overnight delivery service, postage prepaid, addressed to this Court, along with email service of an electronic copy in PDF format. I also served two copies of the Motion on each of the individuals listed below by both overnight delivery service, postage prepaid, and email service of an electronic copy in PDF format.

I hereby certify that the electronic copy of the Motion served on this Court was scanned for viruses using the Symantec Antivirus Program 10.1.5.5000,



Version 11/4/2007, Rev. 9, and was found to be virus-free. I also certify that the text of the electronic copy of the Motion and the paper copies of the Motion served are identical.

Respectfully submitted,



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