



OFFICE OF THE
GENERAL COUNSEL

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

July 22, 2008

Catherine O'Hagan Wolfe, Clerk
U. S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, N.Y. 10007

RE: Spano v. Nuclear Regulatory Commission, Nos. 07-0324-ag & 07-1276-ag

Dear Ms. Wolfe:

Enclosed you will find an original plus four copies of the Response of the United States Nuclear Regulatory Commission and the United States in Opposition to Motion of Amicus Curiae States of New York and Connecticut to Participate in Oral Argument in the above-referenced case. Please date stamp the enclosed copy of this letter to indicate date of receipt, and return the copy to me in the enclosed envelope, postage pre-paid, at your convenience.

Respectfully submitted,

Grace H. Kim
Senior Attorney
Office of the General Counsel

Enclosures: As stated

cc: service list

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANDREW SPANO, as County Executive of the
County of Westchester, COUNTY OF
WESTCHESTER, NEW JERSEY
ENVIRONMENTAL FEDERATION and
NEW JERSEY CHAPTER OF THE SIERRA
CLUB

Petitioners

v.

U.S. NUCLEAR REGULATORY COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

Nos. 07-0324-ag(L) &
07-1276-ag(Con)

RESPONSE OF THE UNITED STATES
NUCLEAR REGULATORY COMMISSION AND THE UNITED STATES
IN OPPOSITION TO MOTION OF AMICUS CURIAE
STATES OF NEW YORK AND CONNECTICUT
TO PARTICIPATE IN ORAL ARGUMENT

By order dated June 30, 2008, the Court set this case for oral argument on September 12, 2008. The Court allotted 20 minutes in total for oral argument -- ten minutes each for petitioners and respondents. By motion dated July 17, 2008, the States of New York and Connecticut, amici curiae supporting petitioners, requested that the 20-minute oral argument time be expanded to grant five minutes of argument time to New York/Connecticut, resulting in an oral argument allocation of 15 minutes for petitioners' side and only 10 minutes for respondents' side.

On behalf of the United States Nuclear Regulatory Commission and the

United States, we oppose amici curiae's motion to participate in oral argument. As a general matter, neither the Federal Rules of Appellate Procedure nor the Local Rules contemplate participation by amicus curiae in oral argument. See F.R.A.P. 29(g). After considering petitioners' briefs, this Court has already established ten minutes per side as an appropriate time allocation for this case. See Local Rule 34(d). That includes, presumably, oral argument by both petitioners – who filed separate briefs, and under this Court's rules must divide the oral argument time allocated to their side. See Rule 34(d). Allowing yet another set of lawyers, representing New York and Connecticut as amici, to participate on petitioners' side may result in unwieldy and unnecessarily lengthy arguments.

In our view, amici have not shown that the nature and complexity of the issues in this case warrant oral argument time beyond what the Court has already allocated. Multiple briefs have been filed on behalf of and in support of petitioners, including initial and reply briefs filed by each of the two petitioners and two separate amicus curiae briefs, one brief filed by New York/Connecticut and another separate brief filed by County of Rockland, New York – a total of six briefs on petitioners' side. Petitioners and their supporting amici curiae thus already have had ample opportunity to fully air their respective positions and supporting arguments before the Court.

Fundamentally , of course, it is up to this Court, in its discretion, to

decide who participates at oral argument and how much time they have to argue. But we do not believe it would be fair to allow petitioners together with their amici 15 minutes of total oral argument time when the government parties, as respondents, have just 10. Therefore, if the Court in its discretion decides to grant New York and Connecticut, as amici, the five minutes of oral argument they request, in the interest of fairness we respectfully request a corresponding enlargement of our oral argument time. Alternatively, the Court could give New York and Connecticut, as amici, a share of petitioners' 10 minutes.


In sum, while this Court undoubtedly has authority to allocate time as it sees fit, we strongly oppose any allocation of time that does not provide both sides with equal amounts of time to present argument.


Respectfully submitted,


ANN PETERSON

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Environment and Natural
Resources Division
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Dated: July 22, 2008


JOHN F. CORDES, JR.
Solicitor


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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2008, copies of the foregoing Response of the United States Nuclear Regulatory Commission and the United States in Opposition to Motion of Amicus Curiae States of New York and Connecticut for to Participate in Oral Argument were served by mail, postage prepaid, upon the following:

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Grace H. Kim

ANTI-VIRUS CERTIFICATION FORM

See Second Circuit Interim Local Rule 25(a)6.

CASE NAME: Spano, et al. v. NRC

DOCKET NUMBER: 07-0324-ag(L)

I, (please print your name) Grace H. Kim, certify that

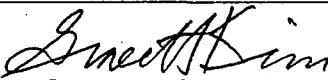
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(Your Signature) Grace H. Kim

Digitally signed by Grace H. Kim
DN: cn=Grace H. Kim, o=Nuclear Regulatory
Commission, ou=OGC, email=Grace.Kim@nrc.gov, c=US
Date: 2008.07.22 08:10:44 -04'00'

Date: 07/22/2008