STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

July 17, 2008

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

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

Re: Spano v. United States Nuclear Regulatory Commission, No. 07-0324ag

N.J. Environmental Federation v. United States Nuclear Regulatory Commission, No. 07-1276ag (CON)

Dear Ms. Wolfe:

Enclosed please find an original and 4 copies of a Motion by Amici Curiae States of New York and Connecticut for Permission to Present Oral Argument in this combined matter. Copies of the motion are being served on counsel for the parties via overnight courier. In addition, copies are being served on counsel and the Second Circuit Clerk's Office via e-mail.

Please enter these submissions in the docket for this case.

Respectfully submitted,

John J. Sipos
Assistant Attorney General
518-402-2251

cc: Grace H. Kim, Esq.
Ann Peterson, Esq.
Matthew Miklave, Esq.
Charlene M. Indelicato, Esq.
Richard Webster, Esq.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 07-0324ag & 07-1276ag (CON)

Caption [use short title]

Spano, et al.

v.

United States Nuclear Regulatory Commission

Motion for: Permission to participate in oral argument as amici curiae

Set forth below precise, complete statement of relief sought:

Amici Curiae States of New York and Connecticut request permission to participate in oral argument and seek five minutes of argument time.

MOVING PARTY: Amicus Curiae States NY & Conn.

☐ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: US Nuclear Regulatory Commission

MOVING ATTORNEY: John J. Sipos, AAG
[name of attorney, with firm, address, phone number, and e-mail]

Office of the New York State Attorney General
The Capitol
Albany, NY 12224
(518) 402-2251
john.sipos@oag.state.ny.us

OPPOSING ATTORNEY: Grace H. Kim, Esq.
[name of attorney, with firm, address, phone number, and e-mail]

Nuclear Regulatory Commission
Office of General Counsel
11555 Rockville Pike Mail
Washington, DC 20555
(301) 415-3605

Court-Judge/Agency appealed from: US Nuclear Regulatory Commission

Please check appropriate boxes:

Has **consent** of opposing counsel:
A. been sought? ☑ Yes ☐ No
B. been obtained? ☐ Yes ☑ No

Is **oral argument** requested? ☑ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been **set**: ☑ Yes ☐ No
If yes, enter date September 12, 2008

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request relief been made **below**? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Signature of Moving Attorney:

Date: July 17, 2008

Has **service** been effected? ☑ Yes ☐ No
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is ☐ **GRANTED** ☐ **DENIED.**

FOR THE COURT: Catherine O'Hagan Wolfe, Clerk of Court

Date: _____

By: _____

Form T-IO80 (Revised 10/31/02)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANDREW J. 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.

UNITED STATES NUCLEAR REGULATORY COMMISSION, and UNITED STATES OF AMERICA,

Respondents.

Docket Nos. 07-0324ag & 07-1276ag (CON)

DECLARATION OF JOHN J. SIPOS IN SUPPORT OF NEW YORK AND CONNECTICUT'S MOTION TO APPEAR AND PARTICIPATE IN ORAL ARGUMENT AS AMICI CURIAE

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

JOHN J. SIPOS hereby declares under penalty of perjury of the laws of the United States that the following is true and correct:

1. I am an Assistant Attorney General in the Environmental Protection Bureau in the office of Andrew Cuomo, Attorney General of the State of New York, The Capitol, Albany, New York 12224. I make this declaration pursuant to Federal Rule of Appellate Procedure 29(g) in support a motion by amici curiae States of New York and Connecticut for permission to participate in oral argument in the above-reference matter and to be allotted five minutes of argument time in addition to the time allotted to the petitioners.

2. This case presents a question of great concern to the citizens of New York and Connecticut: whether the Nuclear Regulatory

Commission ("NRC") may renew a license to operate an aging nuclear power plant for an additional twenty years without considering all of factors that bear on the plant's safety and security in proceedings in which the public can participate. County Executive Andrew J. Spano and the County of Westchester ("Westchester Petitioners") and the New Jersey Environmental Federation and the New Jersey Sierra Club ("New Jersey Petitioners") filed petitions asking the NRC to amend its Part 54 regulations governing the relicensing of nuclear power plants, which narrow the scope of review to age-related degradation of passive structural components and do not require an existing licensee to demonstrate compliance with ongoing safety regulations. Petitioners requested NRC amend its Part 54 relicensing regulations so that it may consider siting and safety criteria – such as changes in local demographics, the adequacy of emergency evacuation plans, and the threat of a terrorist attack – in license renewal proceedings. These criteria have changed significantly since many nuclear power plants were initially licensed in the 1960s and 1970s. The NRC denied petitioners' request, and petitioners have appealed that decision to this Court.

3. On July 10, 2007, the States of New York and Connecticut filed an amici curiae brief in support of petitioners. As set forth more fully in the States' brief, New York and Connecticut have an interest in protecting their citizens and environment by assuring the safe and secure operation of nuclear power plants. A major radiation

release at the Indian Point Energy Center ("Indian Point"), which is located in a densely populated area near New York City and Connecticut, would damage the health and property of millions of people in both New York and Connecticut and could shut down the financial center of the nation. Thus, when NRC considers relicensing an aging nuclear power plant such as Indian Point, New York and Connecticut have a keen interest in ensuring that NRC takes into account all issues that may affect public health and the environment during the period of extended operation.

4. To have a full and fair opportunity to be heard on this important issue, amici curiae States of New York and Connecticut move for permission to participate in oral argument of this case. The two States are actively involved in the license renewal proceedings for the Indian Point reactors as well as other regulatory matters before the NRC and, as such, may be able to provide a unique perspective to the Court during the oral argument. The States request five minutes of oral argument time in addition to the time allotted to the parties.

5. I have conferred with Matthew Miklave, Esq., counsel for Petitioners Spano and Westchester County, and Richard Webster, counsel for Petitioners New Jersey Environmental Federation and New Jersey Chapter of the Sierra Club, who both consent to the States' participation in oral argument. I have also conferred with Grace H. Kim, Esq., counsel for respondent NRC, which does not consent to the

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2008, I caused two copies of the attached Motion for Permission to Present Oral Argument for Amici Curiae States of New York and Connecticut to be served by Federal Express on the following counsel for the parties:

Grace H. Kim, Esq.
U.S. Nuclear Regulatory Commission
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11555 Rockville Pike
Rockville, MD 20852-2738

Ann Peterson, Esq.
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Environment and Natural Resources Division
U.S. Department of Justice
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Charlene M. Indelicato, Esq.
Office of the County Attorney
for the County of Westchester
148 Martine Avenue
White Plains, NY 10601

Richard Webster, Esq.
Eastern Environmental Law Center
Suite 1525
744 Broad Street
Newark, NJ 07102

On the same date, copies of the motion were also sent to the above-listed attorneys via e-mail.

Dated: July 17, 2008

John J. Sipos