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STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT  
05609-1001

October 24, 2008

BY OVERNIGHT MAIL AND EMAIL

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, NY 10007

Re: Blumenthal v. United States Nuclear Regulatory  
Commission, 08-4833-ag

Dear Ms. Wolfe:

Enclosed please find the original and four copies of:

- (1) Motion to Intervene of the State of Vermont and the Vermont Department of Public Service;
- (2) Motion Information Form
- (3) Antivirus Certification Form
- (4) Electronic Notification Form; and
- (5) Certificate of Service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rebecca Ellis".

Rebecca Ellis  
Assistant Attorney General

Enclosures

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

Caption [use short title]

Docket Number(s): 08-4833-ag

Blumenthal v United States Nuclear Regulatory Commission

Motion for: Leave to Intervene of the State of VT and VT Dept' of Public Service

Set forth below precise, complete statement of relief sought: The State of Vermont and the Vermont Department of Public Service seek to intervene

in the petition filed by Robert Blumenthal, Attorney General of Connecticut, seeking to vacate

a decision of the Nuclear Regulatory Commission dated August 1, 2008.

MOVING PARTY: State of Vermont and Vermont Dep't of Public Service

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: U.S. Nuclear Regulatory Commission

MOVING ATTORNEY: Rebecca Ellis

[name of attorney, with firm, address, phone number and e-mail] Rebecca Ellis Vermont Attorney General's Office, 109 State Street, Montpelier VT 05609 (802)839-0515 rellis@atg.state.vt.us ellisvermont@yahoo.com

OPPOSING ATTORNEY [Name]:

[name of attorney, with firm, address, phone number and e-mail] Annette L. Vietti-Cook, Esq. and James Adler, Esq. U.S. Nuclear Regulatory Commission 11555 Rockville Pike, Rockville MD 20852-2738

Court-Judge/Agency appealed from: Nuclear Regulatory Commission

Please check appropriate boxes:

- Has consent of opposing counsel: A. been sought? B. been obtained? Is oral argument requested? Has argument date of appeal been set? If yes, enter date

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

- Has request for relief been made below? Has this relief been previously sought in this Court? Requested return date and explanation of emergency:

Signature of Moving Attorney:

[Handwritten signature]

Date: 10/24/08

Has service been effected? [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:

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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RICHARD BLUMENTHAL,  
ATTORNEY GENERAL OF  
CONNECTICUT,

Petitioner,

Docket No. 08-4833-ag

-against-

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA

Respondents

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MOTION FOR LEAVE TO INTERVENE  
OF THE STATE OF VERMONT AND  
VERMONT DEPARTMENT OF PUBLIC SERVICE

Pursuant to Federal Rule of Appellate Procedure 15(d), the State of Vermont and the Vermont Department of Public Service (collectively "Vermont") hereby move for leave to intervene as party petitioner in the petition for review filed by Richard Blumenthal, Attorney General of Connecticut, on or about September 30, 2008. Vermont files its motion to intervene within thirty (30) days after the petition for review was filed. As explained below, Vermont has a direct and substantial interest in the outcome of

this petition for review. Accordingly, the Court should permit Vermont to intervene as a petitioner.

#### **Background**

In a decision dated August 1, 2008, the Nuclear Regulatory Commission ("NRC") denied two petitions for rulemaking ("PRM"), one filed by the Commonwealth of Massachusetts and the other filed by the State of California, that requested the NRC amend its regulations concerning the analysis of the environmental impacts of the high density storage of spent nuclear fuel in large water pools, known as spent fuel pools ("SFPS"). As a result of the August 1, 2008, determination, the NRC will continue its policy of refusing to examine the environmental impacts of high-density spent fuel storage during nuclear plant license renewal proceedings.

The State of Vermont, as well as other States, submitted comments in support of the petitions. The States (collectively "Petitioners") asserted that new and significant information reveals, among other things, that the NRC incorrectly characterized the environmental impacts of high-density spent fuel storage as "insignificant" in its National Environmental Policy Act ("NEPA") Generic Environmental Impact Statement ("GEIS") for the renewal of

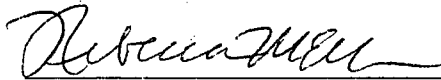
nuclear power plant licenses. Specifically, the Petitioners asserted that an accident or a malicious act could result in a SFP being drained, either partially or completely, of its cooling water. The Petitioners further asserted that this drainage would then cause the stored spent fuel assemblies to heat up and then ignite which could then result in the release of a substantial amount of radioactive material into the environment. Thus, the Petitioners maintain that the determinations reached in the NRC's 12-year-old Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437 (May 1996) and its associated regulations, e.g. 10 C.F.R. Part 51, are no longer valid.

#### **Vermont's interest**

Vermont Yankee Nuclear Power Station is located in Vernon, Vermont. The owners of Vermont Yankee are in the process of seeking a 20-year renewal of the plant's operating license. And finally, Vermont Yankee stores radioactive material in high-density spent fuel pools, which are the subject of the NRC's rulemaking decision. Thus, Vermont has a direct and substantial interest in the outcome of this rulemaking decision.

Dated: October 24, 2008  
Montpelier, Vermont

WILLIAM S. SORRELL  
ATTORNEY GENERAL



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Attorneys for the State of  
Vermont and the Vermont  
Department of Public Service

SARAH HOFMANN  
Director of Public Advocacy  
Vermont Dep't of Public Service  
112 State Street  
Montpelier VT 05620

Attorney for the Vermont  
Department of Public Service

CERTIFICATE OF SERVICE

I, Rebecca M. Ellis, certify that a copy of the Motion for Leave to Intervene of the State of Vermont and Vermont Department of Public Service was sent via U.S. first class mail on October 24, 2008 to the following counsel:

Robert Snook  
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State of Connecticut  
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Tel. (301)415-1656

Michael Mukasey  
Attorney General of the United States  
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Washington D.C. 20044

**Courtesy Copies by email:**

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Docket: 08-3903-ag

Sarah Hofmann  
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Rebecca M. Ellis

United States Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

To Those Who Practice in the Second Circuit:

Beginning December 1, 2002, you may elect to receive electronic notification of all summary orders and opinions issued by the court in any case in which you are the attorney of record or a pro se litigant. If you wish to be served electronically, please complete the form below and return it to the Clerk's Office at your earliest convenience. **Please complete a separate form for each case in which you elect to receive electronic notification.**

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**ELECTRONIC NOTIFICATION AGREEMENT**

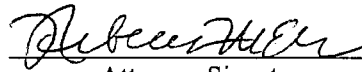
I hereby elect and agree to receive electronic notification of all summary orders and opinions produced by or filed in the Office of the Clerk in the appeal listed below. I agree that electronic notice will be the only notice I receive from the Office of the Clerk and, in the event the automated system that produces these documents is not available, the Clerk may deposit copies of these documents in the United States Mail for first class delivery.

Short Caption: Blumenthal v. United States Nuclear Regulatory Commission

Docket Number: 08-4833-ag

Rebecca Ellis

Attorney Name (print)



Attorney Signature

Firm Name and Address: Vermont Attorney General's Office  
109 State Street  
Montpelier VT 05609

Voice Number: (802)828-3181

Fax Number: (802)828-2154

E-mail Address: basay@atg.state.vt.us

I prefer to receive notice by:  Fax  E-mail (pdf (Adobe) format)

Special Instructions: Please send courtesy copies to:  
(if any) ellisvermont@yahoo.com  
Sarah.Hofmann@state.vt.us

**NOTE: Documents longer than fifteen (15) pages will not be faxed.**



ANTI-VIRUS CERTIFICATION FORM

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

CASE NAME: Blumenthal v. United States Nuclear Regulatory Commission

DOCKET NUMBER: 08-4833-ag

I, (please print your name) Rebecca Ellis, certify that

I have scanned for viruses the PDF version of the attached document that was submitted in this case as

an email attachment to  <agencycases@ca2.uscourts.gov>.

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If you know, please print the version of revision and/or the anti-virus signature files \_\_\_\_\_

Scan Engine Version (32-bit) 5300.2777; DAT Version 5410.0000

(Your Signature) *Rebecca Ellis*

Date: 10/24/08