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Newark, NJ 07102

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easternenvironmental.org

BY OVERNIGHT COURIER

June 8, 2009

Office of the Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790.

Re: Petition for Review of Decisions Associated with License Renewal of Oyster
Creek Nuclear Power Plant - Docket No. 09-2567

Dear Ms. Koperna:

We have obtained our CM/ECF id and password and are waiting for registration approval. In the interim, please find one copy of each of the documents we will file electronically upon approval:

1. Entry of Appearance
2. Civil Appeal Information Statement
3. Concise Summary of the Case
4. Corporate Disclosure forms for appellants
5. Docketing Statement
6. Certification of Service

Respectfully submitted;

A handwritten signature in black ink, appearing to read 'Richard Webster', is written over a long, sweeping horizontal line that extends across the right side of the page.

Richard Webster, Esq.

Enclosures

c.c. Eric Holder, U.S. Attorney General
John Cordes, Jr., Office of General Counsel, NRC
Civil Process Clerk, U.S. Attorney's Office
J. Bradley Fewell, Exelon Corporation

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT



No. 09-2567

New Jersey Environmental Federation vs. U.S. Nuclear Regulatory Commission

ENTRY OF APPEARANCE

Please list names of all parties represented, using additional sheet(s) if necessary:

see attached

Indicate the party's role IN THIS COURT (check only one):

Checkboxes for Petitioner(s), Appellant(s), Intervenor(s), Respondent(s), Appellee(s), Amicus Curiae

(Type or Print) Counsel's Name Mr. Richard Webster
X Mr. Ms. Mrs. Miss

Firm Eastern Environmental Law Center

Address 744 Broad Street, Suite 1525

City, State, Zip Code Newark, NJ 07102

Phone (973) 424-1166 Fax (973) 710-4653

Primary E-Mail Address (required) rwebster@easternenvironmental.org

Additional E-Mail Address info@easternenvironmental.org

Notices generated from the Court's ECF system will be sent to both the primary e-mail and additional e-mail addresses.

SIGNATURE OF COUNSEL: [Handwritten signature]

COUNSEL WHO FAILS TO FILE AN ENTRY OF APPEARANCE WILL NOT BE ENTITLED TO RECEIVE NOTICES OR COPIES OF DOCUMENTS INCLUDING BRIEFS AND APPENDICES UNTIL AN APPEARANCE HAS BEEN ENTERED.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE COURT OF APPEALS FOR THE THIRD CIRCUIT OR WHO HAVE SUBMITTED A PROPERLY COMPLETED APPLICATION FOR ADMISSION TO THIS COURT'S BAR MAY FILE AN APPEARANCE FORM. (BAR ADMISSION IS WAIVED FOR FEDERAL ATTORNEYS.)

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED AND THAT COUNSEL SIGN THE FORM IN THE APPROPRIATE AREA.

This entry of appearance must be served on all parties.

List of Parties Represented

- New Jersey Environmental Federation
- Sierra Club
- Nuclear Information and Resource Service
- New Jersey Public Interest Research Group
- Grandmothers, Mothers and More for Energy Safety

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CIVIL APPEAL INFORMATION STATEMENT

COUNSEL FOR APPELLANT: This statement is due to be filed with the Clerk of the Court of Appeals not later than **10** days from the docketing of the notice of appeal.

COUNSEL FOR APPELLEE: If any information in appellant's statement is incorrect, counsel for appellee is directed to file a copy of this statement not later than 7 days after service.

SHORT CAPTION WITH IDENTITY OF APPELLANT:

New Jersey Environmental Federation v. U.S. Nuclear Regulatory Commission

APPEAL FROM DISTRICT COURT:

District: _____

D.C. Docket No.: _____

Date proceedings initiated in D.C.: _____

Date Notice of Appeal filed: _____

USCA No.: _____

COUNSEL ON APPEAL

Appellant(s):

Name of Counsel: Richard Webster and Julia LeMense

Name of Party(ies): NJ Env'tl. Fed'n., Sierra Club, NJPIRG, Nuclear Info. Res. Serv., GRAMMIES

Address: Eastern Environmental Law Center, 744 Broad Street - Suite 1525, Newark, NJ 07102

Telephone No.: (973) 424-1166

Fax No.: (973) 710-4653

E-mail: rwebster@easternenvironmental.org

For Appellee(s): *List only the names of parties and counsel who will oppose you on appeal

Name of Counsel: John Cordes, Jr.

Name of Party(ies): Nuclear Regulatory Commission

Address: Office of General Counsel, US Nuclear Regulatory Commission, Washington, DC 20555-0001

Telephone No.:

Fax No.:

E-mail:

Name of Counsel: Hon. Eric Holder, Attorney General

Name of Party(ies): Nuclear Regulatory Commission

Address: US Department of Justice, 10th & Constituion Avenue, Washington, DC 20530

Telephone No.:

Fax No.:

E-mail:

Is this a Cross-Appeal? Yes [] No

Appeals Docket No.: _____

Was there a previous appeal in case? Yes [] No

If yes, Short Title: _____

Appeals Docket No.: 09-2567

Citation, if reported: _____

To your knowledge is there any case now pending or about to be brought before this Court or any other court or administrative agency which:

a) Arises from substantially the same case or controversy as this appeal? Yes No

b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal?

Yes No

If you answered yes to either "a" or "b" please provide:

Case Name: _____

D.C. Docket No.: _____

Court or Agency: _____

Docket Number: _____

Citation, if reported: _____

NATURE OF SUIT
(Check as many as apply)

1. FEDERAL STATUTES

- ANTI-TRUST
- BANKRUPTCY
- BANKS & BANKING
- CIVIL RIGHTS
- COMMERCE, ROUTES, AND TARIFFS
- COMMODITIES
- COMMUNICATIONS
- CONSUMER PROTECTION
- COPYRIGHT
- PATENT
- TRADEMARK
- ELECTION
- ENERGY
- ENVIRONMENTAL
- FOIA FREEDOM OF INFORMATION
- IMMIGRATION
- LABOR
- OSHA
- SECURITIES
- SOCIAL SECURITY
- TAX
- EQUAL ACCESS TO JUSTICE
- OTHER Specify: _____

3. CONTRACTS

- ADMIRALTY/MARITIME
- ARBITRATION
- COMMERCIAL
- EMPLOYMENT
- INSURANCE
- NEGOTIABLE DISBURSEMENTS
- OTHER Specify: _____

4. PRISONER PETITIONS

- CIVIL RIGHTS
- VACATE SENTENCE 2255
- HABEAS CORPUS 2254
- HABEAS CORPUS 2241
- MANDAMUS/PROHIBITION
- OTHER Specify: _____

5. OTHER


- FORFEITURE
- CIVIL GRAND JURY
- TREATY Specify: _____
- OTHER Specify: _____

2. TORTS

- ADMIRALTY
- ASSAULT/DEFAMATION
- PRODUCT LIABILITY/WARRANTY
- DIVERSITY
- OTHER Specify: _____

This is to certify that this civil appeal information statement was mailed to the Clerk of the U.S. Court of Appeals for the Third Circuit and a copy hereof served to each party or their counsel of record

this 8th day of June, 2009.



(Signature of Counsel)

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CONCISE SUMMARY OF THE CASE

Short Caption: N.J. Env'tl. Fed. v. U.S. Nuclear Reg. Comm., 09-2576

Agency Docket No.: 50-219-LR, decided by the Nuclear Regulatory Commission

- 1) **Nature of the Action:** This is an action for review of the final decision of the Nuclear Regulatory Commission to renew the operating license of the oldest operating nuclear power plant in the nation, Oyster Creek Nuclear Generating Station ("Oyster Creek"). This renewal is allowing Oyster Creek to operate for twenty years beyond April 9, 2009, when its initial operating expired after forty years of operation.
- 2) **Parties:** Appellants are five public interest organizations: GRAMMES is a local group interested in energy safety, the New Jersey Environmental Federation and the New Jersey Public Interest Research Group are local affiliates of national environmental groups, Sierra Club is a national environmental group, and Nuclear Information and Resource Service is a national group concerned primarily with nuclear safety. Respondent is the Nuclear Regulatory Commission ("NRC"), which is an independent federal agency.
- 3) **Relief Requested:** Vacate the NRC's decision to renew the operating license and require the reactor to temporarily suspend operation pending the resolution of the identified problems with the NRC's review of the license renewal application.
- 4) **Decisions Under Review:** The decisions under review are:
 1. In the Matter of AmerGen Energy Co, LLC (License Renewal for Oyster Creek Nuclear Generating Station), CLI-09-07, Memorandum and Order, dated April 1, 2009 (the "Final Decision")
 2. In the Matter of AmerGen Energy Co, LLC (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-23, Memorandum and Order, dated October 6, 2008 (the "Supervision Decision")
 3. In the Matter of AmerGen Energy Co, LLC (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-28, Memorandum and Order, dated November 6, 2008 (the "Metal Fatigue Decision").

These decisions were attached to the petition for review submitted on May 29, 2009. The Final Decision and the Fatigue Decision were decided on appeals from matters initially decided by the Atomic Safety and Licensing Board ("ASLB" or "Board"). A list of the ASLB decisions in this proceeding which are referenced in the decisions under review is provided in Attachment 1, which also provides instructions on how to obtain copies of these decisions from the NRC document retrieval system, ADAMS.

- 5) **Substance of the Appeal:**

This appeal concerns the current and future safety of Oyster Creek, over the next twenty years. A primary claim is that the Commission did not have sufficient information to make the required finding that the aging of the plant during the twenty year period of extended operation would be adequately managed. This claim is supported by the facts underlying the decisions under review and by the form of the Final Decision. The bulk of the proceedings below dealt with a contention that the corroded steel drywell containment shell, which is over 100 feet tall and spherical in its lower portion, needed to be monitored more often. This shell is designed to prevent radioactive gases from escaping during an accident. Severe corrosion has eroded the

thickness of this shell so that the thinnest measured thickness is now close to half of the as-built thickness in the most corroded areas. In the Final Decision, instead of resolving all the issues raised, the Commission only conditionally approved the license, leaving critical issues for the NRC Staff to resolve outside of the hearing process. In addition, the Commission failed to require the applicant to show how little loss of thickness could lead to violations of the safety requirements for the plant, which was a necessary piece of information to enable the applicant to predict how often monitoring is needed. Moreover, because events after the hearing showed that much of the testimony that the Board had relied upon was "optimistic, at best," the Final Decision was based upon a record that the Commission knew to be unreliable and incomplete. Thus, the Final Decision violated both the Atomic Energy Act and the Commission's own regulations. It was also arbitrary and capricious.

Leaving the Staff to resolve outstanding issues post-licensing is outside the NRC's discretion because the Commission decided by rule that the issues that could be raised within relicensing hearings were those that may not be adequately dealt with by regulations about ongoing operations. The Commission has also repeatedly stated that all material issues within the scope of the relicensing proceedings needed to be resolved before the new license was issued. Finally, delaying resolution of key issues until after the relicensing decision severely curtails the public's statutory right to a meaningful hearing on issues they successfully raise through a demanding screening process that is "strict by design."

A second major claim is that the stringent approach taken to timing by the Board and the Commission made it impossible or unreasonably difficult for appellants to raise certain claims. For example, appellants tried to raise a claim about the number of measurements that would be required to be reasonably sure how much loss of thickness is allowable and whether additional corrosion is occurring. Although the Commission claims that this question should have been raised at the outset, the applicant initially proposed no thickness measurements at all. Because appellants could not have challenged a program that did not exist, the Commission's approach means that there was no time at which appellants could have successfully raised this claim. Therefore, the Commission violated the Atomic Energy Act by failing to allow appellants an opportunity for a hearing on an issue material to relicensing. Similarly, with regard to metal fatigue, the Board and the Commission held appellants to a very stringent standard, but allowed the other litigants to make it extremely difficult, if not impossible, for appellants to obtain the materials needed to meet that standard. This not only violated the Atomic Energy Act, it also violated the "cardinal rule of fairness" that the Commission has imposed upon the hearing process.

Other claims include:

- I) Despite the Commission's undertaking to the First Circuit Court of Appeals that it would ensure that the hearings provided to intervenors met the requirements of the Administrative Procedure Act, the hearing provided in this case did not meet those requirements. For example, appellants were not permitted to cross examine witnesses to the extent required for a full and true disclosure of the facts, even after subsequent events showed that that some of the critical testimony was "optimistic, at best."
- II) The Commission has prevented the public from obtaining a hearing on Staff performance issues, but has failed to ensure that the Staff review of the safety issues was adequate.

ATTACHMENT 1

In the Matter of AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station), CLI-09-07, Memorandum and Order, dated April 1, 2009 ("Final Decision").

1. Order. Unpublished (Aug. 21, 2008), ML082341051. (August 21 Order).
2. Memorandum (Addressing The Issue Referred By The Commission Regarding The Adequacy Of AmerGen's Proposed 3-D Finite Element Structural Analysis Studies), Unpublished (Oct. 29, 2008), ML083030436.
3. Memorandum and Order (Denying New Jersey's Request for Hearing and Petition to Intervene, and Granting NIRS's Request for Hearing and Petition to Intervene), LBP-06-7, 63 NRC 188 (Feb. 27, 2006), ML060580677.
4. Memorandum and Order (Denying NIRS's Motion for Leave to Add Contentions or Supplement the Basis of the Original Contention), LBP-06-11, 63 NRC 391 (Mar. 22, 2006), ML060810693.
5. Memorandum and Order. (Denying NIRS' Motion for Reconsideration) Unpublished (Apr. 27, 2006), ML061170170.
6. Memorandum and Order. CLI-06-24, 64 NRC 111 (Sept. 6, 2006), ML062490571.
7. Memorandum and Order (Denying NIRS' Motion to Apply Subpart G Procedures), Unpublished (Jun. 5, 2006), ML061560374. (Subpart G Decision).
8. Order (Granting NIRS's Motion for Leave to Submit a Supplement to its Petition), Unpublished (Jul. 5, 2006), ML061860568.
9. Memorandum and Order (Denying Citizens' Motion for Reconsideration), Unpublished (Nov. 20, 2006), ML063240454.
10. Memorandum and Order (Denying Citizens' Motion for Leave to Add Contentions and Motion to Add Contention), Unpublished (Feb. 9, 2007), ML070400573. (February 2007 Decision).
11. Memorandum and Order (Denying Citizens' Motion for Leave to Add a Contention and Motion to Add a Contention), Unpublished (Apr. 10, 2007), ML071000374. (April 2007 Decision).
12. Memorandum and Order (Denying AmerGen's Motion for Summary Disposition), Unpublished (June 19, 2007), ML071700768.
13. Memorandum and Order (Clarifying Memorandum and Order Denying AmerGen's Motion for Summary Disposition), Unpublished (July 11, 2007), ML071920333. (July 2007 Decision).
14. Memorandum and Order (Ruling on Motion to Conduct Cross-Examination and Motions in Limine), Unpublished (Sept. 12, 2007) ML072550311. (September 2007 Decision).
15. Order (Requesting Additional Briefs), CLI-08-10, 67 NRC 357 (May 28, 2008) ML081490308.
16. Order (Denying Citizens' Motion Seeking Clarification and Other Appropriate Relief), Unpublished (Nov. 25, 2008) ML083300381.
17. Memorandum and Order (Denying Citizens' Motion for Reconsideration), Unpublished (Nov. 20, 2006) ML063240454.
18. Memorandum and Order (Denying AmerGen's Motion for Summary Disposition), Unpublished (June 19, 2007) ML071700768).

In the Matter of AmerGen Energy Co, LLC (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-23, Memorandum and Order, dated October 6, 2008 ("Supervision Decision").

1. Order (Directing Parties to Submit Explanatory Pleading and Affidavits), Unpublished (May 21, 2008) ML081420442.

2. Memorandum and Order (Denying Citizen's Motion To Reopen The Record And To Add A New Contention), LBP-08-12 (July 24, 2008) ML082060639.

In the Matter of AmerGen Energy Co, LLC (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-28, Memorandum and Order, dated November 6, 2008 ("Metal Fatigue Decision").

1. Memorandum and Order. LBP-07-17, 66 NRC 327 (Dec. 18, 2007) ML073520402. (Initial Decision).

NOTE: Documents can be retrieved electronically, using the ML# at:

<http://adamswebsearch.nrc.gov/scripts/rwisapi.dll/@pip1.env?>

CO_SESSION_KEY=EDBWUBWJLXSV&CO_QUERY_HANDLE=126423&CQDC=133&CO_ADVANCED=YES

**Corporate Disclosure Statement and
Statement of Financial Interest**

No. 09-2567

New Jersey Environmental Federation

v.

U.S. Nuclear Regulatory Commission

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, New Jersey Environmental Federation makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations:

New Jersey Environmental Federation is a trading name used in New Jersey by Clean Water Action, Inc.


2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

NONE

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

Entergy Corporation and Exelon Corporation - Owners of many aging nuclear power plants that could be adversely affected by the outcome of this appeal.

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.



(Signature of Counsel or Party)

Dated: June 8, 2009

(Page 2 of 2)

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If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, Sierra Club makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations:
Sierra Club is the parent organization

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

NONE

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

Entergy Corporation and Exelon Corporation - owners of many aging nuclear power plants that could be adversely affected by the outcome of this appeal.

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If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, Nuclear Information and Resource Service makes the following disclosure:
(Name of Party)

1) For non-governmental corporate parties please list all parent corporations:

NONE

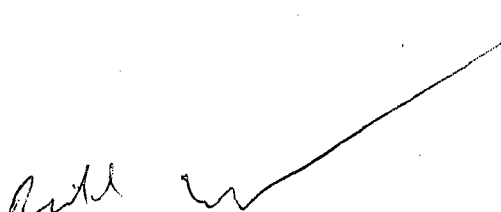
2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

NONE

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Pursuant to Rule 26.1 and Third Circuit LAR 26.1, N. J. Public Interest Research Group makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations:

NONE

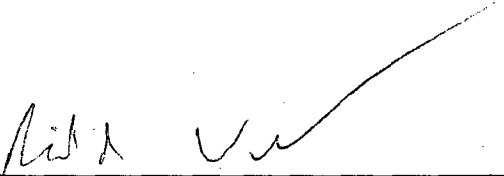
2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

NONE

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

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1) For non-governmental corporate parties please list all parent corporations:

NONE

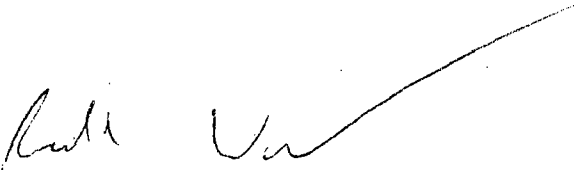
2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

NONE

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

Entergy Corporation and Exelon Corporation - owners of many aging nuclear power plants that could be adversely affected by the outcome of this appeal.

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.



(Signature of Counsel or Party)

Dated: June 8, 2009

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NEW JERSEY ENVIRONMENTAL)	
FEDERATION; SIERRA CLUB; NUCLEAR)	
INFORMATION AND RESOURCE SERVICE;)	
NEW JERSEY PUBLIC INTEREST RESEARCH)	
GROUP; GRANDMOTHERS, MOTHERS and)	No. 09-2567
MORE for ENERGY SAFETY)	
)	
Petitioners;)	
)	
v.)	
)	
UNITED STATES NUCLEAR REGULATORY)	
COMMISSION and the UNITED STATES)	
OF AMERICA,)	
)	
Respondents)	

CERTIFICATION OF SERVICE

I, KAREN HUGHES, being of full age, do hereby certify that:

1. I am a Paralegal at the Eastern Environmental Law Center, attorneys for New Jersey Environmental Foundation and New Jersey Chapter of the Sierra Club ("Petitioners") in the above-captioned matter.
2. I hereby certify that on June 8, 2009, I caused copies of the Civil Appeal Information Statement, Concise Statement of the Facts, Entry of Appearance and five corporate disclosure statements and this Certification of Service to be served by mail on the persons listed below:

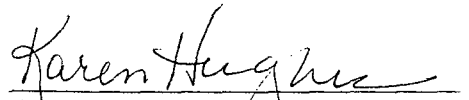
Hon. Eric Holder, Attorney General
U.S. Department of Justice
10th and Constitution Avenue
Washington, DC 20530

John Cordes, Jr.
Office of General Counsel
Nuclear Regulatory Commission
Washington, DC 20555-0001

Civil Process Clerk
United States Attorney's Office
970 Broad Street, Suite 700
Peter Rodino Federal Building
Newark, New Jersey 07102

J. Bradley Fewell
Exelon Corporation
200 Exelon Way, Suite 200
Kennett Square, PA 19348

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements is willfully false, I am subject to punishment.


Karen Hughes, Paralegal
Eastern Environmental Law Center

Dated: June 8, 2009