

08-3903-ag(L)

08-4833-ag(CON) and 08-5571-ag (CON)

IN THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THE STATE OF NEW YORK; RICHARD BLUMENTHAL, ATTORNEY GENERAL OF
CONNECTICUT; AND THE COMMONWEALTH OF MASSACHUSETTS

Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION;
AND THE UNITED STATES OF AMERICA,

Respondents,

and

ENTERGY NUCLEAR OPERATIONS, INC.; ENTERGY NUCLEAR VERMONT YANKEE,
LLC; ENTERGY NUCLEAR GENERATION COMPANY; ENTERGY NUCLEAR INDIAN
POINT 2, LLC; ENTERGY NUCLEAR INDIAN POINT 3, LLC; AND ENTERGY NUCLEAR
FITZPATRICK, LLC,

Intervenor-Respondents.

On Petition for Review of Final Action
of the United States Nuclear Regulatory Commission

**BRIEF FOR AMICUS CURIAE
NUCLEAR ENERGY INSTITUTE, INC. IN SUPPORT OF FEDERAL RESPONDENTS,
INTERVENOR-RESPONDENTS, AND AFFIRMANCE**

Ellen C. Ginsberg, Esq.
Michael A. Bauser, Esq.
Anne W. Cottingham, Esq.
Jerry Bonanno, Esq.*
*Counsel for Amicus Nuclear Energy
Institute, Inc.*

**Counsel of Record*

Nuclear Energy Institute, Inc.
1776 I Street, N.W., Suite 400
Washington, D.C. 20006-3708
(202) 739-8000

Dated: August 12, 2009

CORPORATE DISCLOSURE STATEMENT

The Nuclear Energy Institute, Inc. (NEI) is a nonprofit corporation exempt from taxation pursuant to Section 501(c)(6) of the Internal Revenue Code. NEI functions as a trade association representing the nuclear energy industry. Its objective 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. NEI has no parent companies, and no publicly held company has a 10% or greater ownership interest in NEI.

Respectfully submitted,

Jerry Bonanno, Esq.
Nuclear Energy Institute, Inc.
1776 I Street, N.W., Suite 400
Washington, D.C. 20006-3708
(202) 739-8144
Counsel for Amicus
Nuclear Energy Institute, Inc.

Dated: August 12, 2009

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
INTEREST OF THE AMICUS CURIAE	1
STATEMENT OF THE ISSUE	5
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
I. NRC PROPERLY DENIED THE PETITIONS FOR RULEMAKING	6
A. Standard of Review	6
B. NRC’s Denial of the Rulemaking Petitions was Rational and Addressed All Information Presented by Petitioners	7
C. NRC Has Performed a Meaningful Evaluation of the Environmental Impacts of Spent Fuel Storage	14
D. NRC’s Environmental Review Process Provides Ample Opportunity for Supplementation and Updating of Generic Environmental Findings Based on New and Significant Information	18
II. THE NRC DID NOT VIOLATE NEPA WITH RESPECT TO CONSIDERATION OF THE POTENTIAL ENVIRONMENTAL IMPACTS OF A HYPOTHETICAL TERRORIST ATTACK	22
A. The NRC Considered Terrorism in its Denial of the Rulemaking Petition and in its License Renewal Rule	22

B. Under the Supreme Court’s “Reasonably Close Causal Relationship” Test the NRC Has No Obligation to Consider Hypothetical Terrorist Attacks in a NEPA Analysis 23

CONCLUSION 29

TABLE OF AUTHORITIES

Federal Cases

<i>Baltimore Gas and Electric Co. v. NRDC</i> , 462 U.S. 87 (1983)	12, 15
<i>County of Rockland v. NRC</i> , 709 F.2d 766 (2d Cir. 1983)	6
<i>Cross-Sound Ferry Services, Inc. v. United States</i> , 573 F.2d 725 (2d Cir. 1978).....	6
<i>Dept. of Transp. v. Public Citizen</i> , 541 U.S. 752 (2004)	25, 26, 27, 28
<i>DiGiovanni v. FAA</i> , 249 Fed.Appx. 842 (2d Cir. 2007).....	6
<i>Ecology Action v. AEC</i> , 492 F.2d 998 (2d Cir. 1974)	15
<i>Environmental Law & Policy Ctr. v. NRC</i> , 470 F.3d 676 (7th Cir. 2006).....	1
<i>Fund for Animals v. Kempthorne</i> , 538 F.3d 124 (2d Cir. 2008)	12
<i>Hudson River Sloop Clearwater, Inc. v. Dept. of Navy</i> , 891 F.2d 414 (2d Cir. 1989)	9
<i>Marsh v. Oregon Natural Resources Council</i> , 490 U.S. 360 (1989)	19, 20
<i>Metro. Edison Co. v. People Against Nuclear Energy</i> , 460 U.S. 766 (1983)....	23, 24, 26
<i>Nat’l Black Media Coalition v. FCC</i> , 791 F.2d 1016 (2d Cir. 1986)	8
<i>New Jersey Dept. of Env. Prot. v. NRC</i> , 561 F.3d 132 (3d Cir. 2009).....	23, 25, 26, 27
<i>Public Citizen v. NRC</i> , 2009 WL 2195331 (9th Cir. 2009).....	11, 12, 13, 14
<i>Riverkeeper v. Collins</i> , 359 F.3d 156 (2d Cir. 2004)	12

<i>San Luis Obispo Mothers for Peace v. NRC</i> , 449 F.3d 1016 (9th Cir. 2006), <i>cert. denied</i> , 127 S. Ct. 1124 (2007)	3, 4, 22 27, 28
<i>Union of Concerned Scientists v. NRC</i> , 824 F.2d 108 (D.C.Cir.1987).....	11, 12
<i>Vermont Yankee Nuclear Power Corp. v. NRDC</i> , 435 U.S. 519 (1978).....	15
<i>Weinberger v. Catholic Action of Hawaii</i> , 454 U.S. 139 (1981)	9

Administrative Decisions

<i>Pacific Gas & Elec. Co.</i> (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-07-11, 65 N.R.C. 148 (2007)	4
<i>Pacific Gas & Elec. Co.</i> (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-01, 67 NRC 1 (2008)	4
<i>Pacific Gas & Elec. Co.</i> (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 2008 WL 4682677 (2008)	4

Federal Statutes

5 U.S.C. § 553(b)(3) and (c)	8
5 U.S.C. § 553(e)	8

Rules & Regulations

10 C.F.R. § 2.802	21
10 C.F.R. § 2.802(e).....	9
10 C.F.R. § 51.23.....	17
10 C.F.R. § 51.23(a)(2009)	18
10 C.F.R. § 51.92(a)(2009)	19
40 C.F.R. § 1502.9(c)(1)(2008)	19

Fed. R. App. P. 29(a)	1
-----------------------------	---

Federal Register Notices

49 Fed. Reg. 34,658 (Aug. 31, 1984)	17
55 Fed. Reg. 38,472 (Sept. 18, 1990)	17
64 Fed. Reg. 68,005 (Dec. 6, 1999)	17
72 Fed. Reg. 12,705 (March 19, 2007)	13, 14
73 Fed. Reg. 59,547 (Oct. 9, 2008)	17, 18, 21
74 Fed. Reg. 38,117 (July 31, 2009)	21
74 Fed. Reg. 38,239 (July 31, 2009)	21

Other Authorities

“Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (NUREG-1437)(May 1996).....	15, 16, 20
Intergovernmental Panel on Climate Change, “Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, 2007”	2
NEI, “Status & Outlook for Nuclear Energy in the United States,” (2009)	2
NEI, “Resources & Stats”	2
SECY-09-0090, “Final Update of the Commission’s Waste Confidence Decision” (June 15, 2009)	18

INTEREST OF THE AMICUS CURIAE

The Nuclear Energy Institute (NEI) represents the commercial nuclear energy industry in regulatory and other matters.¹ NEI's members include every entity licensed by the Nuclear Regulatory Commission (NRC) to generate electricity at a commercial nuclear power plant or to store used commercial nuclear fuel in the United States. Members also include nuclear plant designers, architect-engineer firms, nuclear fuel fabricators, and other organizations and individuals involved in the nuclear energy industry. The instant appeals raise issues having the potential to significantly affect the use of nuclear energy in the United States.

Commercial nuclear power plants are extremely important in providing base load generation² of electricity and in maintaining the reliability of the electric power supply in the United States. Currently there are 104 operating units at more than 60 nuclear plant sites in 31 states throughout the country. These plants generate approximately 20% of the Nation's electricity. Along with coal and

¹ Pursuant to Fed. R. App. P. 29(a), this brief is permitted because all parties have consented to its filing.

²“Base load” plants are those designed to produce electricity continuously at or near full capacity, with high availability. *Environmental Law & Policy Ctr. v. NRC*, 470 F.3d 676, 679 (7th Cir. 2006).

natural gas, nuclear energy provides an integral part of the Nation's power supply, providing cost stability and output reliability.³

Nuclear power is also a crucial component of any long-term strategy to meet the Nation's energy needs in ways that are affordable and environmentally sound. The Intergovernmental Panel on Climate Change has listed nuclear energy as a "key" technology for mitigating greenhouse gas emissions.⁴ To continue to meet the Nation's current and future need for nuclear power, the NRC's license renewal process should continue under the safe, efficient regulatory framework that the Commission now employs.

License renewal is a well-established NRC licensing process. The NRC has now issued renewed operating licenses for 54 of the 104 currently operating nuclear plants in the United States. Further, the agency is currently reviewing license renewal applications covering an additional 18 units, and an additional 24 units have expressed intent to renew their operating licenses.⁵

³ See NEI, "Status and Outlook for Nuclear Energy in the United States (2009)," at 2-3 available at <http://www.nei.org/resourcesandstats/documentlibrary/reliableandaffordableenergy/reports/statusreportoutlook/>.

⁴ See Intergovernmental Panel on Climate Change, "Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, 2007," Summary for Policymakers at 10, available at http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_wg3_report_mitigation_of_climate_change.htm.

⁵ NEI, "Resources & Stats," http://www.nei.org/resourcesandstats/nuclear_statistics/licenser renewal.

The Petitioners' demand that NRC broaden the license renewal process to include an additional, site-specific NEPA analysis would unavoidably increase the time, expense, and effort involved in preparing and reviewing applications for renewed operating licenses. This additional burden on the NRC and applicants is unjustified because, as a legal matter, the NRC properly rejected the petitions for rulemaking. In addition, as a practical matter, the consequence of reversing the Commission's decision would almost certainly be a delay of the pending license renewal proceedings to allow for additional, plant-specific evaluation of the potential environmental impacts of spent fuel storage, including the environmental impacts of a hypothetical terrorist attack.

The NRC's licensing proceeding for the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI), which was the subject of the Ninth Circuit's ruling in *San Luis Obispo Mothers for Peace v. NRC*, illustrates the delays that this unnecessary, additional review may cause. 449 F.3d 1016 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 1124 (2007)(*SLOMFP*). The *SLOMFP* decision required a NEPA analysis of the impacts of hypothetical terrorist attacks. The resulting remand, appeals, preparation of additional NEPA analyses, and opportunity for hearing have literally added years to the original schedule.⁶ Delays of this

⁶ In December 2001, PG&E applied for a site-specific license to construct and operate the Diablo Canyon ISFSI. After an administrative hearing in which it resolved several factual contentions and rejected legal contentions involving NEPA

magnitude also could occur in other NRC proceedings, including license renewal and new nuclear plant licensing matters, if the NRC is forced to speculate about the potential consequences of terrorist attacks. While the extent of such a “ripple effect” is not known, the potential for disruption, open-ended licensing delays, and higher costs in NRC licensing proceedings is clear.

In sum, by seeking to erect an unnecessary procedural hurdle to the license renewal process, the Petitioners would inject delay and uncertainty without improving the process and without contributing to the continued safe operation of

and terrorism, the NRC issued a license to PG&E in March 2004. Following an appeal, in June 2006, the Ninth Circuit reversed the NRC and remanded the case to the agency for further proceedings. *SLOMFP*, 449 F.3d at 1035. In February 2007, the Commission directed the NRC Staff to prepare a Supplemental Environmental Assessment (EA) to address both the likelihood and the consequences of a terrorist attack on the ISFSI and set out a schedule for an administrative hearing process. *Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-07-11, 65 N.R.C. 148, 149 (2007). In January 2008, the NRC granted a request to hold further administrative proceedings on the NRC Staff’s treatment of terrorism risks in the Supplemental EA. *Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-01, 67 NRC 1 (2008). In October 2008, the Commission issued a final decision in the administrative proceeding, rejecting SLOMFP’s factual contentions on the merits and finding that an EIS was not required. *Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 2008 WL 4682677 (2008). Subsequently, in December of 2008, SLOMFP appealed the NRC’s decision to the Ninth Circuit Court of Appeals, where the case is still pending. *See San Luis Obispo Mothers for Peace v. U.S. NRC*, Court of Appeals Docket #: 08-75058. Thus, the case is ongoing — *more than seven years after the application was submitted, more than five years since the license was issued to PG&E, and three years after the Ninth Circuit’s remand.* This has created considerable uncertainty with respect to an ISFSI that is necessary to keep the Diablo Canyon units operational.

existing plants. NEI and its members have an interest in ensuring that the generation of nuclear energy is appropriately regulated so that it is available to provide safe and reliable energy to meet the nation's electricity needs. The NRC's license renewal process, including the environmental reviews at issue here, directly affects the ability of NEI's members to continue generating electricity after the original license period.

STATEMENT OF THE ISSUE

The issues presented in this case for review are set forth in the "Issues Presented" section of the Brief for the Federal Respondents (NRC Br.) and the "Statement of the Issues Presented for Review" section of the Brief for Intervenor-Respondents (Entergy Br.).⁷

SUMMARY OF THE ARGUMENT

The NRC properly denied these petitions on substantive grounds because: (1) the NRC thoroughly evaluated the information submitted by California and Massachusetts (the States)⁸, and articulated a robust, rational basis for concluding that the States had not submitted "new and significant" information warranting a

⁷ Throughout this brief we will refer to the NRC and Entergy collectively as the "Respondents."

⁸ Throughout this brief the "States" will be used to reference Massachusetts and California, the authors of the underlying petitions for rulemaking at issue in this case. The "Petitioners" will be used throughout this brief to refer to Massachusetts, New York, and Connecticut, the Petitioners in this appeal.

change to the Commission's Generic Environmental Impact Statement (GEIS) or any other regulation; (2) the NRC has thoroughly considered the environmental impacts of spent fuel storage during license renewal; and (3) the NRC's environmental review process provides ample opportunity for supplementation of its GEIS if new and significant information comes to light. In addition, the denial was appropriate because the National Environmental Policy Act (NEPA) does not require an analysis of the environmental effects of a hypothetical terrorist attack and, in any event, NRC adequately addressed the risk of terrorism in both the rulemaking denial and the GEIS.

ARGUMENT

I. NRC PROPERLY DENIED THE PETITIONS FOR RULEMAKING

A. Standard of Review

NEI agrees with the Respondents' discussion of the standard of review. This Court has aptly described the essence of the applicable "arbitrary and capricious" standard as "primarily one of rationality." *County of Rockland v. NRC*, 709 F.2d 766, 776 (2d Cir. 1983)(citing *Cross-Sound Ferry Services, Inc. v. United States*, 573 F.2d 725, 730 (2d Cir. 1978)). In applying this standard of review to the denial of a petition for rulemaking, this Court has stated that a "rulemaking will be judicially ordered only in the rarest and most compelling of circumstances." *DiGiovanni v. FAA*, 249 Fed. Appx. 842, 843 (2d Cir. 2007).

B. NRC's Denial of the Rulemaking Petitions was Rational and Addressed All Information Presented by Petitioners

The Commission's conclusion that the information submitted by the States was not "new and significant" information warranting a change to the GEIS was amply supported. *See* JA 1754-60. The Commission's denial of the rulemaking petition was neither arbitrary nor capricious and violated no procedural statute. The decision is entitled to substantial deference and should be upheld.

First, the Commission thoroughly discussed the robust nature of spent fuel pools, the rigorous physical security requirements and mitigation measures that the NRC has imposed on all of its reactor licensees, and 30 years of studies that have consistently shown that the probability of an accident causing a spent fuel pool fire is lower than that for severe reactor accidents. JA 1754-56.

Next, the Commission addressed each alleged piece of "new and significant" information and explained in detail why it disagreed with the States' claims regarding the likelihood of zirconium fires. This explanation included detailed discussions of heat transfer mechanisms, partial drain-down of spent fuel pools, recent licensing actions that enhanced spent fuel heat removal capability systems, the conservative assumptions underlying NUREG-1738, the probability of a severe reactor accident causing a spent fuel pool zirconium fire, and the likelihood of a successful terrorist attack. JA 1756-60.

Both Petitioners and amicus curiae California⁹ emphasize that some of the studies relied upon by the NRC in denying the petition for rulemaking – i.e., the Sandia studies – were not publicly available. Petr.’s Br. 42-43; Cal. Br. 14. Petitioners cite to *Nat’l Black Media Coalition v. FCC*, 791 F.2d 1016 (2d Cir. 1986) for the proposition that the NRC cannot rely on the Sandia studies absent an opportunity for the states to review and comment on them. Petr.’s Br. 42. But *Nat’l Black Medial Coalition* is inapposite because that case addressed the Federal Communications Commission’s compliance with 5 U.S.C. §§ 553(b)(3) and (c), which prescribe the notice and comment requirements applicable to an agency rulemaking proceeding. *See Nat’l Black Media Coalition*, 791 F.2d at 1018. Unlike *Nat’l Black Media Coalition*, this case involves the adequacy of a denial of a petition for rulemaking – i.e., the NRC’s decision *not to undertake* a notice and comment rulemaking proceeding. Thus, 5 U.S.C. §§ 553(b)(3) and (c), which this Court properly applied in *Nat’l Black Media*, are inapplicable here. Rather, petitions for rulemaking are addressed in 5 U.S.C. § 553(e), which simply requires that “each agency shall give an interested person the right to petition for the

⁹ This brief directly addresses many of the arguments made by California in its amicus curiae brief. While not a party here, California authored one of the petitions for rulemaking at issue in this case and, as explained *infra*, its brief contains several substantial mischaracterizations and inaccuracies. Since the Respondents rightfully focus most of their attention on addressing the arguments put forward by the Petitioners, NEI focused more on the arguments put forward by California.

issuance, amendment, or repeal of a rule.” This difference in treatment under the Administrative Procedure Act (APA) is logical. Specifically, an agency’s denial of a petition for rulemaking differs substantially from engaging in a notice and comment rulemaking that will consume substantial agency resources and produce requirements carrying the force and effect of law.

While the Commission’s procedural rules provide for solicitation of public comments on rulemaking petitions (see 10 C.F.R. § 2.802(e)), and the Commission properly solicited and considered public comments here, the APA places no such requirement on the agency. Simply put, neither the APA nor the Commission’s procedural rules gives the Petitioners a legal right to view and comment on the un-redacted version of the Sandia studies.

California also objects to the fact that the Sandia studies were not made public in their entirety, yet California cites to no legal obligation requiring NRC to make the un-redacted studies public. As the NRC points out, the proper avenue for requesting access to the studies is a Freedom of Information Act (FOIA) request.¹⁰ NRC Br. 50. Instead, California appears to cite then-Commissioner (now

¹⁰ As the Supreme Court has made clear, disclosure of information under NEPA is governed by FOIA. See *Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139 (1981); *Accord Hudson River Sloop Clearwater, Inc. v. Dept. of Navy*, 891 F.2d 414 (2d Cir. 1989). Indeed, in *Weinberger* the Supreme Court expressly recognized that there may be situations where an agency would need to include environmental considerations in its NEPA decision-making process, yet withhold disclosure of NEPA documents under the authority of a FOIA exemption. *Weinberger*, 454 U.S. at 143.

Chairman) Jaczko’s dissent as support for the proposition that, instead of relying on the Sandia studies, “the NRC should have considered the information supplied by the petitioners and used the information as part of its analysis.” Cal. Br. 14. But this argument is unpersuasive because, as the record reveals, the Commission extensively considered the information submitted by the States.¹¹ The agency simply reached a different conclusion than the one desired by the States and Petitioners.

California also asserts that the NRC’s reliance on the work of other Federal agencies and its own Design Basis Threat (DBT) rule is unreasonable.

Cal. Br. 11-14. With respect to the NRC’s reliance on the anti-terrorism work of other Federal agencies, California states:

[I]t is unreasonable, given the nation’s experiences in this century, for the NRC to base such a serious regulatory decision on the belief that federal agencies, their best efforts notwithstanding, will be able to detect and prevent *each and every* potential terrorist attack from the air on specific targets – in this case, nuclear facilities and sites – both now and into the future.

¹¹ In his dissenting view, Chairman Jaczko reasoned that the Commission should have partially granted the petition for rulemaking because the information submitted by the Petitioners would be considered when the NRC staff undertakes its next rulemaking to update the GEIS. JA 1760. Neither the dissenting view nor the Commission’s response addressed the availability of the Sandia studies. JA 1760-61. Further, the characterization of the Commission’s final action as a “denial,” as opposed to a “partial grant” of the request, is not otherwise directly an issue here.

Cal. Br. 11 (emphasis in original). This argument incorrectly assumes that for the NRC to legitimately rely on the anti-terrorism work of other Federal agencies *as one factor* in its assessment of the likelihood of a successful terrorist attack, the NRC must have concluded that the Federal government will be able to detect and prevent *each and every* potential terrorist attack from the air for all time.

But there is no basis in fact or law for the proposition that reasonable, well-documented Federal initiatives undertaken after September 11, 2001, cannot be credited in the assessment. These measures, like the measures required of NRC licensees, are a very real part of the physical protection of nuclear plants and are germane to the qualitative assessment of potential threats.¹²

¹² This is precisely the view taken by the Ninth Circuit in its recent decision upholding the NRC's DBT rule:

Adequate protection may be given content through case-by-case application of the Commission's technical judgment, including its knowledge of actions that other Federal agencies have taken since 2001 and its active coordination with many of those agencies.

Public Citizen v. NRC, 2009 WL 2195331 at *8 (9th Cir. 2009)(citing *Union of Concerned Scientists v. NRC*, 880 F.2d 552, 558 (D.C.Cir.1989)). The dissent in *Public Citizen v. NRC* took issue with the NRC's conclusions on the likelihood of an aircraft attack, stating that they "contradict[ed] the unanimous findings of the studies available in the administrative record." *Id.* at *12. But four of the six studies cited by the dissent predate September 11, 2001, and one of the six describes the protection of German, as opposed to U.S. nuclear power plants. *See id.* at *12 n.1- n.5. As the majority points out, the NRC's judgment on the question of adequate protection was informed, in part, by post-September 11 actions taken by both the NRC itself and other Federal agencies in the United States. *Id.* at *8. While admittedly in a different context, this Court also has held that the NRC's

Moreover, contrary to California’s characterization, the NRC does not conclude in its denial that Federal agencies will detect and prevent every threat. As this Court has recognized, the AEA’s “adequate protection” standard does not require “absolute protection.” *Riverkeeper*, 359 F.3d at 168 (citing *Union of Concerned Scientists v. NRC*, 824 F.2d 108, 114 (D.C.Cir.1987)).¹³ Likewise, even if an analysis of hypothetical terrorist attacks is required by NEPA – a proposition that NEI disputes – no such absolute conclusions are required under that statute. *See, e.g., Fund for Animals v. Kempthorne*, 538 F.3d 124, 137 (2d Cir. 2008)(where there is uncertainty regarding the potential effects of an agency action, an agency need not undertake “endless hypothesizing as to remote possibilities.”); *Baltimore Gas and Electric Co. v. NRDC*, 462 U.S. 87, 104 (1983)(upholding NRC’s environmental review despite uncertainties associated

conclusion that airborne threats are adequately addressed by other government agencies is not the equivalent of ignoring the risk of an attack or an abdication of NRC’s statutory duty under the Atomic Energy Act (AEA). *Riverkeeper, Inc. v. Collins*, 359 F.3d 156, 170 (2d Cir. 2004).

¹³ The Ninth Circuit disposed of a similar argument made by California in its *Public Citizen v. NRC* decision, stating:

[t]he adequate protection standard does not need to prevent “each and every” potential attack, as advocated by amicus State of California, because the standard “permits the acceptance of some level of risk” and does not require “absolute protection.”

Public Citizen v. NRC, 2009 WL 2195331 at *9 (citing *Union of Concerned Scientists v. U.S. Nuclear Regulatory Comm’n*, 824 F.2d 108, 114, 118 (D.C.Cir.1987)).

with its “zero-release assumption,” where the uncertainties were squarely addressed and discussed).

With respect to the Commission’s DBT, California asserts that in promulgating its DBT rule (72 Fed. Reg. 12,705 (March 19, 2007)) the NRC ignored the Energy Policy Act of 2005, which required it to *consider* 12 factors (including the threat of aircraft attacks) in revising the DBT rule. Cal. Br. 12-13. To the contrary, as the preamble to the final DBT rule makes clear, the NRC did consider the threat of airborne attacks, but – after an adequate explanation and in a proper exercise of its discretion – declined to specifically include airborne threats in its DBT. 72 Fed. Reg. 12,710. California mistakenly assumes that in directing the Commission to *consider* airborne threats in revising the DBT, Congress was *requiring the NRC to include* airborne threats in its final rule.¹⁴

Finally, California incorrectly implies that the NRC’s decision not to specifically include airborne threats as part of the DBT was based on a “policy judgment . . . that it is unreasonable to require a private plant to take any steps to impede air-based threats,” rather than on factual information that ensures adequate protection. *See* Cal. Br. 12-13. But, as the Ninth Circuit recently recognized, the NRC did in fact make a finding of adequate protection based on (1) active

¹⁴ The Ninth Circuit also addressed this issue in its *Public Citizen v. NRC* decision, explaining that Congress’ direction to “consider” the 12 non-exclusive factors – including airborne threats – did not necessitate including any specific factor in the final rule. *Public Citizen v. NRC*, 2009 WL2195331 at *10.

protection against airborne threats by other Federal agencies, and (2) the ability of mitigative measures to limit the effects of an aircraft strike. *Public Citizen v. NRC*, 2009 WL 2195331 at *8 (citing 72 Fed. Reg. 12,705, 12,711).

C. NRC Has Performed a Meaningful Evaluation of the Environmental Impacts of Spent Fuel Storage

California describes the NRC's denial of its petition for rulemaking as a decision by the agency to:

[Continue] to . . . presume that a relicensed nuclear power plant can safely store its nuclear waste in the existing [spent fuel pools] SFPs, with no possibility of any impact on the human environment, for at least the next thirty years . . . [T]he NRC denied the States' petitions to change regulations that not only do not require an analysis of the effects on the human environment of allowing this extended SFP storage, they actually *forbid* a site-specific analysis. The regulations presume that no environmental impacts are possible. The NRC's rule effectively authorizes licensees to add spent nuclear fuel to existing pools for years and decades into the future, totally without environmental analysis, because no environmental harm can ever be considered.

Cal. Br. 3 (emphasis in original). This argument completely mischaracterizes the NRC's regulations governing environmental reviews in license renewal.

California's statements that the NRC's existing rules "do not require an analysis of the effects on the human environment," "presume that no environmental impacts are possible," and allow for spent fuel storage "totally without environmental analysis" are blatantly inaccurate. Cal. Br. 3. As explained in the denial, the Commission's regulations explicitly identify the renewal of a

nuclear power plant operating license as a “major federal action significantly affecting the quality of the human environment.” JA 1754. Thus, in accord with NEPA, the Commission’s regulations require preparation of an Environmental Impact Statement (EIS) as part of the license renewal process. *Id.*

To fulfill its responsibility to prepare an EIS, the Commission reasonably decided to prepare a generic assessment of the various environmental impacts associated with operation of nuclear power plants for an additional 20 years. JA 1754. The Commission’s generic impacts assessment is contained in NUREG-1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (NUREG-1437)(May 1996). It is well-settled that federal agencies may evaluate environmental impacts generically and that such generic analyses promote administrative efficiency and consistency by avoiding “needless repetition of . . . litigation in individual proceedings.” *See Baltimore Gas and Electric Co.*, 462 U.S. at 101(citing *Vermont Yankee*, 435 U.S. 519, 535 n.13 (1978); *Ecology Action v. AEC*, 492 F.2d 998, 1002 n.5 (2d Cir 1974)).¹⁵

NUREG-1437, which spans over 1,200 pages, provides an extensive analysis of how major plant systems and features, as well as refurbishment activities and modifications to plant procedures, can affect the environment. Based

¹⁵ As the Respondents convincingly argue, the Petitioners’ claims that the NRC impermissibly relied on site-specific mitigation in resolving issues generically are without merit. NRC Br. 40-49; Entergy Br. 42-46.

on this comprehensive analysis, the significance of environmental impacts on specific environmental resources is categorized as “small,” “moderate,” or “large.” *See* NUREG-1437, Vol. 1 at xxxiii-xxxvi. After considering the environmental impacts of spent fuel storage during the license renewal term, the Commission concluded that the radiological and non-radiological impacts of such storage would be “small.” *Id.* at 6-85 – 6-86.

In addition to categorizing the significance of the environmental impacts of license renewal, NUREG-1437 also includes a determination of whether the environmental impacts for a given resource are generic – i.e., the same for all plants – or whether the impacts must be assessed on a plant-specific basis. After considering the environmental impacts of spent fuel storage during the license renewal term, the Commission concluded that on-site spent fuel storage is a generic or “Category 1” issue. *Id.* at 6-86.

On the other hand, issues that are categorized as “Category 2” require additional, plant-specific review in each individual license renewal proceeding. Category 2 issues must be analyzed by each applicant for license renewal in its Environmental Report (ER). Further, for each license renewal application the NRC will prepare a Supplemental EIS (SEIS) to analyze plant-specific Category 2 issues.

The applicant's ER and the NRC's SEIS also must consider any "new and significant" information relating to Category 1 issues, as well as any unidentified issues. JA 1754. Thus, in the case of license renewal, the NRC complies with the NEPA requirement to prepare an EIS prior to undertaking a "major federal action significantly affecting the quality of the human environment" by relying on its GEIS (embodied in NUREG-1437), as supplemented by the SEIS prepared for each individual license renewal application.

In addition to NUREG-1437 and the SEIS for each license renewal application, over the past 25 years the NRC has also extensively considered the environmental impacts of continued spent fuel storage during the period following plant operation. *See* 49 Fed. Reg. 34,658 (Aug. 31, 1984); 55 Fed. Reg. 38,472 (Sept. 18, 1990); 64 Fed. Reg. 68,005 (Dec. 6, 1999); 73 Fed. Reg. 59,547 (Oct. 9, 2008). These analyses are embodied in the NRC's Waste Confidence Decision, which supports the Commission's Waste Confidence Rule (10 C.F.R. § 51.23). Far from authorizing licensees to store waste "totally without environmental analysis," (see Cal. Br. 3) the Waste Confidence Decision provides a comprehensive generic analysis of technical and policy issues relevant to assessing the post-operation storage of spent fuel. Based on this analysis, the Commission reached the generic conclusion that, if necessary, spent fuel can be safely stored without significant environmental impacts for at least 30 years beyond the licensed

life for operation, which may include the term of revised or renewed license.¹⁶

10 C.F.R. § 51.23(a)(2009). Contrary to California's characterization, this finding is not a "presum[ption] that no environmental impacts are possible." Cal. Br. 3.

Rather, it represents a well-reasoned conclusion based on a thorough review of the technical and policy issues affecting the duration, safety, and environmental soundness of post-operation spent fuel storage.

D. NRC's Environmental Review Process Provides Ample Opportunity for Supplementation and Updating of Generic Environmental Findings Based on New and Significant Information

California asserts that under NRC rules licensees may store spent fuel for decades without any environmental review because "no environmental harm can ever be considered." Cal. Br. 3. Later in its brief, California amplifies this extreme argument:

¹⁶ The Commission is currently in the process of updating its Waste Confidence Decision and Rule. *See* 73 Fed. Reg. 59,547. After publishing a proposed rule and considering public comments, the NRC staff submitted a draft final rule to the Commission for approval. SECY-09-0090, "Final Update of the Commission's Waste Confidence Decision" (June 15, 2009), available at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2009/secy2009-0090/2009-0090scy.pdf>. As a result of its review, the NRC staff has recommended updating the Waste Confidence Decision and Rule to reflect confidence that spent fuel can be safely stored without significant environmental impacts for at least 60 years beyond licensed life for operation, which may include the term of a renewed license. The proposed revisions are currently pending before the Commission.

Under NRC's rule, *no* change in circumstance, and *no* new information, can *ever* trigger the NEPA duty to supplement the environmental analysis of the long-term storage of nuclear waste. . . .

Under the current rule, no supplemental EIS could ever be required – indeed, it would be effectively forbidden – even if a major new fault with a high capability for seismic movement were discovered near a plant with long-term storage, even if actual leaks from a spent fuel pool were detected that might reach groundwater, or if other serious new circumstances that substantially changed the environmental picture arose.

Cal. Br. 19 (emphasis in original). These statements are a gross distortion and California cites to no authority to support them.

As explained *supra*, NRC's license renewal regulations require preparation of an SEIS when "[t]here are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 10 C.F.R. § 51.92(a)(2009). Section 51.92(a) is essentially identical to the Council on Environmental Quality's (CEQ) regulation on the same subject, which states in part that supplements to either a draft or final EIS must be prepared if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(2008). NRC's regulations are also consistent with the Supreme Court case law on supplementation. *See Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 372-373 (1989)(CEQ regulations are entitled to substantial deference).

The NRC has defined “new and significant” information more precisely in Supplement 1 to Regulatory Guide 4.2, “Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses.” JA 1756. As the Supreme Court has recognized, “an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision-making intractable, always awaiting updated information only to find the new information outdated by the time a decision is made.” *Marsh*, 490 U.S. at 373. Instead, agencies are to apply the “rule of reason” in evaluating EIS supplements and, in turn, application of the “rule of reason” hinges on the value of the new information to the decision-making process. *See id.* at 374.

Here, the Commission explained that none of the information submitted by the States qualified as “new and significant” because the risk of spent fuel pool accidents was already extensively considered in Section 6.4.6.1 and 6.4.6.3 of NUREG-1437. And, while “new,” any information not considered in NUREG-1437 was not “significant” because it would not lead to an impact different from that codified in 10 C.F.R. Part 51. JA 1756. Contrary to California’s claims, this does not mean that “*no* change in circumstance, and *no* new information, can *ever* trigger the NEPA duty to supplement the environmental analysis.” Cal. Br. 19.

Rather, it simply means that the States failed to present “new and significant information” triggering such a duty *in this case*.

In addition to providing for the presentation of “new and significant” information at any time by stakeholders via petitions for rulemaking, see 10 C.F.R. § 2.802, the Commission also periodically updates its generic environmental findings. As explained *supra*, the Commission is currently engaged in notice and comment rulemaking to update its Waste Confidence Decision and Rule. See 73 Fed. Reg. 59,547 (proposed update of Waste Confidence Decision and Rule). The Commission is also currently undertaking a notice and comment rulemaking to update its generic environmental findings on license renewal. See 74 Fed. Reg. 38,117 (July 31, 2009)(proposed revisions to 10 C.F.R. Part 51); 74 Fed. Reg. 38,239 (July 31, 2009)(proposed revisions to NUREG-1437). The Commission’s notice and comment rulemaking efforts to update two of its most important rules explaining the generic environmental impacts of spent fuel storage also belies California’s assertion that “*no* change in circumstance, and *no* new information, can *ever* trigger the NEPA duty to supplement the environmental analysis.” Cal. Br. 19.

II. THE NRC DID NOT VIOLATE NEPA WITH RESPECT TO CONSIDERATION OF THE POTENTIAL ENVIRONMENTAL IMPACTS OF A HYPOTHETICAL TERRORIST ATTACK

A. The NRC Considered Terrorism in its Denial of the Rulemaking Petitions and in its License Renewal Rule

Petitioners argue that the NRC's denial of the rulemaking petitions violates NEPA because the NRC "refus[ed] to consider the possibility of terrorist attacks on spent-fuel pools." Petr.'s Br. at 43. California argues that the controlling standard for the scope of impacts to be considered under NEPA is the standard applied by the Ninth Circuit Court of Appeals in *SLOMFP*, 449 F.3d 1016. Cal. Br. 20-28. But neither of these arguments effectively addresses the fact that NRC has already considered the issue of terrorist attacks, both in its denial and in its GEIS. And, as the NRC points out, agencies are afforded a high degree of discretion when answering the substantive question of whether a particular action will significantly affect the environment. NRC Br. 65.

The record clearly shows that in denying the petition for rulemaking the NRC considered both the general issue of intentional terrorist attacks on spent fuel storage, and the specific information offered by the Petitioners. JA 1755-59. Based on its review, the NRC concluded that the probability of a terrorist attack being successful to the point of causing a spent fuel pool fire is very low. JA 1756, 1759. Moreover, the NRC specifically considered intentional acts of sabotage in the GEIS for license renewal. As the Third Circuit Court of Appeals found in *New*

Jersey Dept. of Env. Prot. v. NRC, the GEIS addressed the risk associated with a terrorist attack and characterized such risk as “small.” 561 F.3d 132, 143 (3d Cir. 2009)(*NJDEP*).

While the Petitioners may disagree with the NRC’s conclusions, their argument that the NRC has not squarely addressed the issue is incorrect. After considering all of the information before it and appropriately relying on the reasonable opinions of its own qualified experts, the NRC concluded that “the probability of a successful terrorist attack (i.e., one that causes an SFP zirconium fire, which results in the release of a large amount of radioactive material into the environment) is very low and therefore, within the category of remote and speculative matters.” JA 1759. The agency made this finding based on the record before it, and cannot be said to have ignored the issue or abused its discretion.

B. Under the Supreme Court’s “Reasonably Close Causal Relationship” Test the NRC Has No Obligation to Consider Hypothetical Terrorist Attacks in a NEPA Analysis

Putting aside the fact the NRC has considered intentional acts of terrorism and sabotage, the agency is in any event under no obligation to address environmental impacts that are not proximately caused by the federal action at issue. The Supreme Court articulated the “causal nexus” test for determining whether NEPA requires consideration of particular environmental impacts in *Metro. Edison Co. v. People Against Nuclear Energy*. 460 U.S. 766 (1983)(*Metro.*

Edison). In *Metro. Edison*, the Supreme Court reasoned that NEPA must “be read to include a requirement of a reasonably close causal relationship between a change in the physical environment and the effect at issue.” *Id.* at 774. The Court analogized this relationship to the doctrine of proximate causation in tort law, explaining that NEPA does not require agencies to examine the entire universe of effects caused by a change in the physical environment. *Id.* Rather, some effects or impacts that would not have occurred “but for” the major federal action, may nonetheless fall outside the scope of NEPA because the causal chain is too attenuated. *Id.* at 773-774.

The Court applied the “reasonably close causal relationship” test to the facts of the case before it, and rejected the claim that NEPA required the NRC to consider the potential psychological health effects of allowing the renewed operation of the Three Mile Island Unit 1 nuclear power reactor (TMI-1). *See id.* at 768-772. Specifically, the Court reasoned that:

[R]isk of an accident is not an effect on the physical environment. A risk is, by definition, unrealized in the physical world. In a causal chain from renewed operation of TMI-1 to psychological health damage, the element of risk and its perception by PANE’s members are necessary middle links. We believe that the element of risk lengthens the causal chain beyond the reach of NEPA.

Id. at 775 (footnotes omitted).

The Supreme Court applied the “reasonably close causal relationship” test to a different set of facts in *Dept. of Transp. v. Public Citizen*, 541 U.S. 752 (2004)(*Public Citizen*). *Public Citizen* involved a claim that the Federal Motor Carrier Safety Administration (FMCSA) was required to evaluate the environmental effects of increased cross-border truck traffic, which allegedly flowed from the agency’s promulgation of certain regulations. *See id.* at 756. Examining the underlying policies behind NEPA, and informed by the “rule of reason,” the Court rejected this claim, concluding “that the causal connection between FMCSA’s issuance of the proposed regulations and the entry of the Mexican trucks is insufficient to make FMCSA responsible under NEPA to consider the environmental effects of the entry.” *Id.* at 768. The Court reasoned that because FMCSA had no legal authority to categorically prevent the increase in cross-border truck traffic, the dual purposes of NEPA would not be furthered by a consideration of the environmental impacts of cross-border operations. *Id.* at 768-769.

The Supreme Court’s test was most recently applied by the Third Circuit Court of Appeals in *NJDEP*, which involved the same question at issue here – i.e., whether the NRC must examine the environmental impacts of a hypothetical terrorist attack on a nuclear power plant when reviewing a license renewal application. *NJDEP*, 561 F.3d at 133. The Court rejected NJDEP’s arguments that

Metro. Edison and *Public Citizen* were inapposite, and concluded that the Supreme Court has directed reviewing courts to “draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.” *Id.* at 139 (citing *Public Citizen*, 541 U.S. at 767; *Metro. Edison*, 460 U.S. at 774 n. 7). In *NJDEP*, the Third Circuit properly applied the “reasonably close causal relationship” test developed by the Supreme Court to a different set of facts than presented in either *Metro. Edison* or *Public Citizen*. The Court of Appeals found that the NRC’s licensing action would not be the proximate cause of the hypothetical environmental consequences because:

an aircraft attack on Oyster Creek requires at least two intervening events: (1) the act of a third-party criminal; and (2) the failure of government agencies specifically charged with preventing terrorist attacks. We conclude that this causation claim is too attenuated to require NEPA review.

NJDEP, 561 F.2d at 140. While the Petitioners and California challenge the Court’s statements regarding NRC’s ability to control the airspace over nuclear plants and its analogy to traditional tort law, they fail to rebut either the Supreme Court’s causation standard or the two specific considerations relied upon by the Third Circuit to conclude that the causal nexus is too attenuated in the case of terrorist attacks.

Petitioners and California urge this Court to part with the Supreme Court precedent in this area and, instead, to apply the legal framework created by the

Ninth Circuit in *SLOMFP*, 449 F.3d 1016. Petr.’s Br. 44-50; Cal. Br. 20-28. In *SLOMFP*, the Ninth Circuit considered whether the NRC was required to evaluate the impacts of a hypothetical terrorist attack in its NEPA review accompanying the licensing of an ISFSI. The Court declined to apply the causation test prescribed by the Supreme Court and instead decided that the only appropriate inquiry was to determine whether hypothetical terrorist attacks are “remote and highly speculative.” *Id.* at 1029-1030. The Ninth Circuit posited that the events at issue both in *SLOMFP* and *Metro. Edison* formed a “chain of three events: (1) a major federal action; (2) a change in the physical environment; and (3) an effect.” *Id.* at 1029. The Court stated that *Metro. Edison* dealt with the relationship between events 2 (i.e., increased risk of an accident) and 3 (i.e., psychological effects), to which the “reasonably close causal relationship” test applied. In contrast, the Ninth Circuit reasoned that in *SLOMFP* it was dealing with the relationship between events 1 (i.e., licensing of an ISFSI) and 2 (i.e., a terrorist attack), to which the “remote and highly speculative” test applied. *Id.* 1029-1030. But, as the Third Circuit pointed out in *NJDEP*, the Ninth Circuit made no mention of *Public Citizen* in the *SLOMFP* decision. *NJDEP*, 561 F.3d at 143 n.10.

Upon closer examination, Ninth Circuit’s approach in the *SLOMFP* decision cannot be squared with the Supreme Court’s analysis in *Public Citizen*. Specifically, in *Public Citizen* the Supreme Court was primarily concerned with

the relationship between issuance of FMCSA's rules (i.e., the major federal action) and the increase in cross-border truck traffic (i.e., the change in the environment). *Public Citizen*, 541 U.S. at 763-764. Under the Ninth Circuit's reasoning in *SLOMFP*, this would equate to an examination of the relationship between events 1 and 2, which – if the Ninth Circuit's reading of the Supreme Court precedent is correct – should have triggered application of the “remote and highly speculative” test. But, as explained above, the Supreme Court applied no such test and recognized no such distinction, opting instead to simply follow its precedent articulated in *Metro. Edison*. Thus, the Ninth Circuit's analysis in *SLOMFP* is inconsistent with the Supreme Court precedent established by *Metro. Edison* and *Public Citizen*, and should not be adopted by this Court.

CONCLUSION

For the foregoing reasons and those presented in the Respondents' briefs, the petitions for review should be denied.

Respectfully submitted,

ELLEN C. GINSBERG
MICHAEL A. BAUSER
ANNE W. COTTINGHAM
JERRY BONANNO*
Nuclear Energy Institute, Inc.
1776 I Street, N.W., Suite 400
Washington, D.C. 20006-3708
(202) 739-8000

*Counsel for Amicus
Nuclear Energy Institute, Inc.*

**Counsel of Record*

Dated: August 12, 2009

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance with Type-Volume Limitation,
Typeface Requirements and Type Style Requirements

1. The foregoing “**Brief for Amicus Curiae Nuclear Energy Institute, Inc. in Support of Federal Respondents, Intervenor-Respondents, and Affirmance**” (Brief) complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains **6,826** words, excluding the parts of the brief exempted by Fed. R. App. P.32(a)(7)(B)(iii). In preparing this certification, I relied on the word processing system used to prepare the foregoing Brief: Microsoft Office Word 2007.

2. The foregoing Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14 point Times New Roman font.

Jerry Bonanno

Dated: August 12, 2009

CERTIFICATION OF IDENTICAL TEXT

I hereby certify that the .pdf file submitted electronically to the Court and parties contains an identical text as that included in the hard copies of the “**Brief for Amicus Curiae Nuclear Energy Institute, Inc. in Support of Federal Respondents, Intervenor-Respondents, and Affirmance.**”

Jerry Bonanno

Dated: August 12, 2009

CERTIFICATE OF SERVICE

I hereby certify that on **August 12, 2009**, two hard copies of the foregoing **“Brief for Amicus Curiae Nuclear Energy Institute, Inc. in Support of Federal Respondents, Intervenor-Respondents, and Affirmance”** were served by Federal Express overnight delivery on the following:

Petitioners’ Attorneys of Record:

Connecticut:

Robert Snook, Esq.
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106
Robert.Snook@po.state.ct.us

Massachusetts:

Matthew Brock, Esq.
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
matthew.brock@state.ma.us

New York:

John J. Sipos, Esq.
Assistant Attorney General
Office of the Attorney General for the State of New York
The Capitol
Albany, NY 12224
John.Sipos@oag.state.ny.us

Respondents' Attorneys of Record:

U.S. NRC: James Adler, Esq.
Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop O15-D21
Rockville, MD 20852
James.Adler@nrc.gov

U.S. DOJ: John E. Arbab, Esq.
U.S. Department of Justice
Environment & Natural Resources Division,
Appellate Section
Patrick Henry Building, Room 2121
601 D Street, N.W.
Washington, DC 20004
John.Arbab@usdoj.gov

Intervenor-Respondents' Attorneys of Record:

David R. Lewis, Esq.
Partner
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, NW
Washington, DC 20037-1122
david.lewis@pillsburylaw.com

Catherine E. Stetson, Esq.
Partner
Hogan & Hartson, LLP
555 Thirteenth Street, NW
Washington, DC 20004
CEStetson@HHLAW.com

Amicus Curiae Attorneys of Record:

California: Brian W. Hembacher, Esq.
Deputy Attorney General
Attorney General's Office State of California
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Brian.Hembacher@doj.ca.gov

Vermont: Rebecca Mary Ellis, Esq.
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
REllis@atg.state.vt.us

In addition, electronic copies were served on the same day on the Court and the above-listed parties.

Jerry Bonanno