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(EW)

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April 14, 2008

VIA UPS NEXT DAY AIR

Marcia M. Waldron, Clerk
United States Court of Appeals
for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

ATTENTION: DANA MOORE

Re: State of New Jersey v. U.S.N.R.C., et al.
DOCKET NOS. 06-5140, 07-1559, 07-1756 (consolidated)

Dear Ms. Waldron:

Please accept this letter, pursuant to F.R.A.P. 28(j), in response to the NRC's letter dated April 10, 2008. The decision in Commonwealth of Massachusetts v. U.S.N.R.C., _F.3d_, 2008 (1st Cir. April 8, 2008) is clearly distinguishable from the case at bar.

In Massachusetts, the Commonwealth appealed to the U.S. Court of Appeals the NRC's denial of a hearing. The Commonwealth's only contention for the hearing was challenging a 1996 rule that codified the Generic Environmental Impact Statement ("GEIS"). Slip op. at 7, 11.



The Massachusetts Court held that under NRC regulations, the GEIS cannot be challenged in individual licensing adjudications since the GEIS was incorporated into a rule. Id. at 25 (citing 10 C.F.R. § 2.335).

The Court found no final order because the Commission held that the Commonwealth could participate in the licensing proceeding as an interested state and the Commonwealth could file a petition for rulemaking. Id. at 34, 36.

In contrast to the Massachusetts case, New Jersey is properly seeking review of the LTC license and NUREG-1757. As discussed on pages 1-4 of the State's Reply Brief, providing the LTC license had the effect of a final order, and the Atomic Energy Act requires NRC to promulgate a rule or regulation when providing a license. Since a license application is required to contain such information as provided in a rule or regulation, and since the purpose of the programmatic Environmental Impact Statement is to give input on whether to make the LTC license available to the public, the time for the NRC to complete these procedures is before a LTC license application is submitted. The State timely filed its Petitions for Review within the 60-day requirement. Although the Commission held that the State can "challenge the application of the NUREG" in the administrative hearing, A328, the Commission does not permit any facial challenges. No further record is necessary

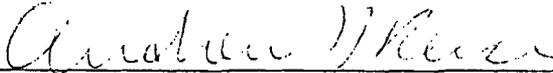
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since this case involves a facial challenge that raises purely legal questions, the decision to make the LTC license available is final, and the Court will be in no better position later to decide this case.

Respectfully submitted,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: 

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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STATE OF NEW JERSEY,) DOCKET NO. 06-5140
) 07-1559
Petitioner,) 07-1756
)
v.)
)
UNITED STATES NUCLEAR REGULATORY)
COMMISSION and UNITED STATES OF)
AMERICA,)
Respondents.)

CERTIFICATION OF SERVICE

I, Jamaal L. Muchison, hereby certify that on April 14, 2008, I caused a true copy of the response to the NRC's letter pursuant to F.R.A.P. 28(j) to be served by UPS Next Day Air upon the following counsel of record:

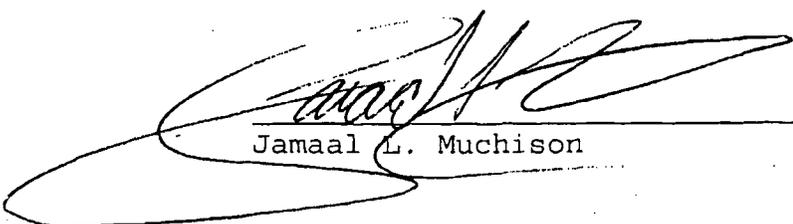
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I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



Jamaal L. Muchison

Dated: April 14, 2008