

ORAL ARGUMENT NOT SET

Nos. 14-1210, 14-1212, 14-1216,
14-1217
(consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF NEW YORK, et al.

Petitioners,

v.

NUCLEAR REGULATORY COMMISSION, and the
UNITED STATES OF AMERICA,

Respondents.

**MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ENERGY
RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
IN SUPPORT OF PETITIONERS STATE OF NEW YORK, ET AL.**

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CERTIFICATE AS TO PARTIES, RULINGS, AND OTHER CASES

Pursuant to D.C. Circuit Rules 28(a)(1)(A), the California State Energy Resources Conservation and Development Commission hereby submits this certificate as to parties.

A. Parties and Amici

Petitioners

The Petitioners are New York, Vermont, and Connecticut (Docket No. 14-1210); Prairie Island Indian Community (Docket No. 14-1212); Natural Resources Defense Council, Inc. (Docket No. 14-1217); and Beyond Nuclear, Inc.; Blue Ridge Environmental Defense League, Inc.; Missouri Coalition for the Environment, Inc.; New England Coalition, Inc.; Nuclear Information and Resource Service, Inc.; Riverkeeper, Inc.; San Luis Obispo Mothers for Peace, Inc.; Sustainable Energy and Economic Development Coalition, Inc.; and Southern Alliance for Clean Energy, Inc. (Docket No. 14-1216).

Respondents

The Respondents in this matter are the United States Nuclear Regulatory Commission and the United States of America.

Intervenors

The Court has permitted the Commonwealth of Massachusetts to intervene in support of Petitioners, and permitted intervention in support of NRC by Nuclear

Energy Institute, Inc., Northern States Power Company, and Entergy Nuclear Operations, Inc.

Amici

The Court has granted the Sierra Club's motion to participate as amicus curiae.

Dated: July 6, 2015

Respectfully Submitted,
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GLOSSARY OF ABBREVIATIONS

Pursuant to Circuit Rule 28(a)(3), the following is a glossary of acronyms and abbreviations used in this motion:

IEPR	Integrated Energy Policy Report
ISFSI	Independent Spent Fuel Storage Installation
PG&E	Pacific Gas & Electric
SONGS	San Onofre Nuclear Generating Station

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The California State Energy Resources Conservation and Development Commission (Energy Commission) respectfully moves for leave to file the amicus curiae brief in the captioned case. D.C. App. R. 29 (a). The brief supports the position of Petitioners New York, Connecticut, Vermont, and Massachusetts.

The Energy Commission has obtained the consent of all of the parties, including amici curiae, to file the amicus curiae brief, except respondents Nuclear Regulatory Commission and the United States of America, who have withheld consent.

INTEREST OF THE CALIFORNIA ENERGY COMMISSION

The Energy Commission is California's primary energy policy and planning agency. It was created by the California Legislature in 1974 by the Warren-Alquist State Energy Resources Conservation and Development Act ("Warren-Alquist Act") (Stats. 1974, ch. 276), codified at Cal. Pub. Res. Code § 25000 *et seq.*

The Energy Commission submits this motion and the amicus curiae brief as a state agency interested in and affected by the proposed action. Moreover, the amicus curiae brief reflects the Energy Commission's specific interest in aiding the Court's analysis of the important issues before it.

The Energy Commission is familiar with the captioned case and the issues briefed by Petitioners. And, in addition to the Energy Commission's Chair serving as California's Liaison Officer to the United States Nuclear Regulatory Commission, the Energy Commission has independently acquired considerable knowledge and developed a unique perspective regarding on-site storage of spent fuel at geologically, geographically, and seismically vulnerable nuclear plants in California.

In particular, the Energy Commission biennially publishes an integrated energy policy report (IEPR) that includes assessment of existing scientific studies to determine potential vulnerability of power plants (including nuclear facilities) generating 1,700 or more megawatts to a major disruption due to aging or a major seismic event. Cal. Pub. Res. Code §§ 25301, 25303, subds. (a)(8)(A), (C).

Section 25303, subdivision (c), of the California Public Resources Code provides, in pertinent part: "In the absence of a long-term nuclear waste storage facility, the commission shall assess the potential state and local costs and impacts associated with accumulating waste at California's nuclear powerplants." Emphasis added.

As recently as the 2013 IEPR, the Energy Commission evaluated California's seismic vulnerability for these plants and made corresponding recommendations for continuing assessment of such vulnerability relative to on-site spent fuel storage.

Further, in California, spent fuel is both generated and stored at the Diablo Canyon Power Plant, and stored at the San Onofre Nuclear Generating Station, the Humboldt Bay Power Plant, and the Rancho Seco Nuclear Generating Station. Until the United States, through its authorized agency, has approved a means for permanent and terminal disposition of high-level nuclear waste, spent fuel will continue to be stored in California indefinitely. Thus, California has a long-standing and continuing interest in actions of the Nuclear Regulatory Commission as they affect California nuclear plants and related Court decisions.

**THIS AMICUS BRIEF IS DESIRABLE AND THE MATTERS ASSERTED
ARE RELEVANT TO THE DISPOSITION OF THE CASE**

The Court is addressing matters of local, regional, statewide, and national significance. The Court's ruling has potential to allow safety and environmental impacts that could hinder states' abilities to fully understand and protect against an accident resulting from a foreseeable seismic (and related) event, and the subsequent effects on overcrowded spent nuclear fuel pools at plants or an Independent Spent Fuel Storage Installation (ISFSI)¹.

To assist the Court in evaluating the issues before it, the Energy Commission supplements and complements Petitioners' arguments by presenting a perspective grounded in the Energy Commission's extensive evaluation of the vulnerabilities

¹ An Independent Study Spent Fuel Storage Installation is a complex designed and constructed for the interim storage of spent nuclear fuel.

of three of its four nuclear power plants: Diablo Canyon Power Plant (Diablo Canyon), San Onofre Nuclear Generating Station (SONGS), and the Humbolt Bay Power Plant. Each of these plants stores spent nuclear fuel, and is sited on California's coast, within geologically and seismologically diverse areas, predisposed to seismic activity and vulnerability:

- Diablo Canyon is located along the western margin of the Pacific-North American transform plate boundary. While the majority of the plate motion occurs in direct proximity to the San Andreas Fault located approximately 47 miles east of the plant, some of the active transform faulting occurs close to Diablo Canyon. Recent information from Pacific Gas & Electric (the plant's operator) indicates that surrounding faults are longer, linked to one another, and more capable of producing larger earthquakes than was previously thought. PG&E recently submitted new information to the NRC analyzing the probabilistic risks of seismic activity, flooding, and tsunamis.²

² The referenced facts are from the California Coastal Commission March 24, 2011, The Tohoku Earthquake of March 11, 2011: A Preliminary Report of Implications for Coastal California, pp.7 -13 (http://www.coastal.ca.gov/energy/Tohoku_Earthquake_Report.pdf) and the referenced Coastal Commission reports: Coastal Commission SONGS ISFSI staff report: <http://www.coastal.ca.gov/energy/e-00-14rf.pdf>; Coastal Commission DCPD ISFSI staff report: <http://www.coastal.ca.gov/energy/W5a-1-2005.pdf>; Coastal Commission HBPP ISFSI staff report: <http://www.coastal.ca.gov/energy/Th6a-9-2005.pdf>.

- SONGS is located between Interstate 5 and the Pacific Ocean, within the boundary of the Camp Pendleton military reserve and in a populated region of California. This site is within a 130-mile wide zone of strike slip faulting associated with the North American-Pacific transform plate boundary. Seismicity affecting SONGS is derived from several well-known on-land strike slip faults located east of the power plant, and from several active offshore strike slip faults to the west of the plant. Recent studies have documented the continuity of some of these offshore faults that were previously mapped as separate segments, thereby increasing the maximum potential earthquake magnitude of these longer faults.
- Humboldt Bay Power Plant was decommissioned in June 1983. Spent nuclear fuel remains in dry storage at this ISFSI. It is situated near a tectonic triple junction where three crustal plates meet. Seismicity at Humboldt comes from strike slip faulting along the Mendocino Fracture Zone, internal deformation of the subducting Gorda Plate, and reverse faulting from crustal compression along the Cascadia Subduction Zone.

This Court has previously granted the Energy Commission leave to submit an amicus curiae brief in a matter such as the one presented, where the Court's decision could impact state energy policy. While the Energy Commission brief supports Petitioners' positions, it is not cumulative of Petitioners' arguments.

No party's counsel authored the attached brief in whole or in part. Nor did a party or party's counsel contribute money that was intended to fund preparing or submitting the brief. No person, other than the Energy Commission, contributed money that was intended to fund preparing or submitting the brief.

CONCLUSION

For the foregoing reasons, the Energy Commission respectfully requests that the Court grant the Motion for Leave to File Amicus Curiae Brief, and that it accept the amicus curiae brief in support of petitioners *State of New York, et al.*

Dated: July 6, 2015

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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