


UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

_____ )	
NUCLEAR INFORMATION AND )	
RESOURCE SERVICE et al., )	No. 04-71432
)	
Petitioners, )	<b>PETITIONERS'</b>
)	<b>MOTION TO</b>
v. )	<b>AMEND BRIEFING</b>
)	<b>SCHEDULE</b>
UNITED STATES NUCLEAR )	(Not Opposed)
REGULATORY COMMISSION and the )	
UNITED STATES OF AMERICA, )	
)	
Respondents )	
_____ )	

Pursuant to Circuit Rule 31-2.2, Petitioners respectfully request this Court to amend the briefing schedule set in the Court's April 13, 2005 Order so that Petitioners' opening brief is due on June 7, 2005, Respondents' answering brief is due on July 7, 2005, and Petitioners' optional reply brief is due 14 days after service of the answering brief. Respondents' counsel has consented to this amended briefing schedule. Amendment of the briefing schedule should be made for the reasons set out in the attached declaration of John H. Farrow, one of the attorneys for the Petitioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Farrow', written over a horizontal line.

JOHN H. FARROW

M. R. Wolfe & Associates

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San Francisco, CA 94104

Tel: 415 369-9400

Attorney for Petitioners

May 9, 2005

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

_____	)	
NUCLEAR INFORMATION AND	)	
RESOURCE SERVICE et al.,	)	No. 04-71432
	)	
Petitioners,	)	
	)	
v.	)	<b>DECLARATION OF</b>
	)	<b>JOHN H. FARROW</b>
	)	<b>IN SUPPORT OF</b>
UNITED STATES NUCLEAR	)	<b>PETITIONERS'</b>
REGULATORY COMMISSION and the	)	<b>MOTION TO</b>
UNITED STATES OF AMERICA,	)	<b>AMEND BRIEFING</b>
	)	<b>SCHEDULE</b>
Respondents	)	<b>(Not Opposed)</b>
_____	)	

In support of Petitioners' motion to amend the briefing schedule, I  
declare the following:

1. I am one of the attorneys representing Petitioners in the above captioned case.
2. Petitioners filed this action for review of rulemaking by the Nuclear Regulatory Commission ("NRC") on March 26, 2004. Under the March 26, 2004 initial Time Schedule Order, Petitioners' opening brief was initially due June 14, 2004, with Respondents' (herein also "NRC") answering brief due July 14, 2004, and Petitioners' optional reply brief due within 14 days of service of Respondents' brief.

3. The NRC rulemaking at issue in this action was conducted jointly with a rulemaking by the Department of Transportation Research and Special Projects Administration ("RSPA"). Petitioners filed an administrative appeal of the RSPA rulemaking on February 25, 2004, which was denied on August 19, 2004. On November 9, 2004, Petitioners and others filed an action in the United States District Court for the Northern District of California for review of RSPA's rulemaking.

4. Petitioners sought and were granted several stays of this action pending resolution of the administrative appeal to RSPA and in contemplation of Petitioners' eventual motion to transfer the NRC case to the District Court for consolidation with the RSPA case and for introduction of extra-record evidence applicable to both cases.

5. On November 10, 2004, Petitioners moved this Court to transfer this case to the District Court. This Court denied that motion on April 13, 2005 and ordered a briefing schedule under which Petitioners' opening brief is due May 16, 2005; Respondents answering brief is due June 15, 2005; and Petitioners optional reply brief is due within 14 days after service of the answering brief.

6. In light of this Court's April 13, 2005 Order placing this case on the active calendar, NRC filed a Certified Index of the Record on April 26, 2005, which Petitioners received on May 2, 2005.

7. Petitioners have asked NRC to supplement the April 26, 2005 Index with numerous additional documents and NRC has agreed to supplement the Index to add some of these documents. Petitioners and Respondents continue to discuss the remaining document issues.

8. Petitioners and NRC need additional time to reach agreement on the Index of the Record, and NRC needs additional time to prepare an agreed supplement to the Index. Petitioners need a completed Index of the Record in order to prepare their opening brief and to prepare excerpts of the Record to submit with the opening brief.

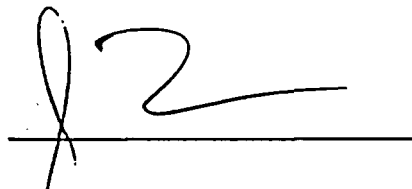
9. Having conferred regarding the time needed to finalize the Record, Petitioners and Respondents have agreed that NRC will prepare an agreed supplement to the Index by May 24, 2005. Petitioners have agreed that they will then be able to prepare excerpts of the Record and finalize their opening brief by June 7, 2005.

10. Petitioners have worked diligently to prepare their opening brief and excerpts of the Record. Petitioners have worked diligently to resolve their concerns with the designation of the Record by conferring and

corresponding with Respondent since receiving the Certified Index on May 2, 2005.

11. Counsel for Respondents has authorized me to represent that Respondents consent to a briefing schedule whereby Petitioners' opening brief is due on June 7, 2005, Respondents' answering brief is due on July 7, 2005, and Petitioners' optional reply brief is due 14 days after service of the answering brief.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'JH Farrow', is written over a horizontal line.

JOHN H. FARROW  
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140 Second Street, Sixth Floor  
San Francisco, CA 94104  
Tel: 415 369-9400  
Attorney for Petitioners

May 9, 2005


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing  
Petitioners' Motion to Amend Briefing Schedule (Not Opposed) was  
mailed to the Respondent indicated below via first class mail, postage  
prepaid this 9<sup>th</sup> day of May, 2005.

(1) Clerk  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

and

(2) Grace H. Kim, Esq.  
Office of the Solicitor  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

  
Melinda S. Hue