

May 4, 2005

By Facsimile and U.S. Mail

Grace Kim
Office of the General Counsel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

**Re: Nuclear Information and Resource Service et al. v. Nuclear Regulatory
Commission, No. 04-71432**

Dear Ms. Kim:

Petitioners have considered and propose to accept your suggestion that we stipulate to extend the briefing schedule in light of the problems that have surfaced in preparing the record in this action. Because the Index of the Record is not complete, we believe that we will not be able to prepare and file an opening brief by May 16, 2005 as currently scheduled.

NRC's April 27, 2005 Certified Index of the Record, which we received on May 2, omits a number of documents that are part of the record of the rulemaking at issue here, which was jointly conducted by NRC and the Department of Transportation – Research and Special Projects Administration (“RSPA”). For example, the Index omits all documents prior to 2002, including documents from an NRC website related to the rulemaking, such as meeting transcripts, public comments, comment summaries, an issues paper, and RSPA's final rule.¹ The Index also omits other key documents which were contained on RSPA's website, such as RSPA's rulemaking notices, additional public comments, the Memorandum of Understanding between NRC and the Department of Transportation, IAEA technical documents purporting to evaluate issues in the rulemaking, and transcripts of public meetings held jointly by NRC and RSPA.²

Attached is a preliminary list of documents from the NRC and RSPA web sites that should be included in the Certified Index of the Record. We would appreciate it if

¹ NRC maintains a web site that containing “rulemaking texts and other documents” for this rule at http://ruleforum.llnl.gov/cgi-bin/rulemake?source=PART71_PRULE&st=final. This web site is distinct from the Adams web site referenced in the Index.

² RSPA's docket is still available at <http://dms.dot.gov/search/searchFormSimple.cfm?CFID=9435376&CFTOKEN=77677678>, docket number 6283.

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you would arrange to have these documents added to the Index. As long as the documents are included in the Index and remain available on *some* NRC or DOT website, it is not necessary to place them on the Adams web site.

I gather from our conversation today that the Index may have been prepared without reviewing NRC's rulemaking website. Accordingly, you may need independently to ensure that all of the documents on that website are included in the Index.

Because the record was not filed within 40 days of the Petition under FRAP 17 due to the various stays, and because the Index of the Record is not complete, Petitioners face a logistic hurdle in timely filing their opening brief, currently due on May 16, 2004. Petitioners have not had an opportunity to review a number of the documents listed in NRC's Certified Index, and we believe we must do so before finalizing a brief. Furthermore, under Circuit Rules 17-1.2, 17-1.4(a), 17-1.6, and 30-1.6, Petitioners are required to file chronologically organized, consecutively paginated excerpts from the record with their opening brief. We cannot do so without agreement on what is in the record. Thus, we now believe that we will be unable to prepare our brief and to assemble excerpts of the record by May 16.

We appreciate your offer to extend the time for filing our opening brief. We propose to stipulate to an extension that will provide NRC the necessary time to revise the Index to include the documents listed in the attachment and that will give Petitioners time to ensure that they have had an opportunity to review the documents included in the Index.

Let's discuss a stipulation tomorrow.

Yours sincerely,

M. R. WOLFE & ASSOCIATES

A handwritten signature in black ink, appearing to read "John H. Farrow", with a stylized flourish at the end.

John H. Farrow

JHF: mh

Attachment – documents to be added to the Index of the Record

The following documents included in NRC's web site for the rulemaking should be included in NRC Certified Index of the Record in Nuclear Information and Resource Service, et al. v. Nuclear Regulatory Commission, No. 04-71432. NRC's web site is available at http://ruleforum.llnl.gov/cgi-bin/rulemake?source=PART71_PRULE&st=final:

- o Meeting transcripts for meetings of Aug. 10, 2000; Sept. 20, 2000; Sept. 26, 2000, June 4, 2002 (afternoon and evening sessions); June 24, 2002, dated 8/31/00, 10/04/00, 10/06/00, 5/9/02, 6/20/02, 6/20/02, and 8/14/02..
- o Summary of public meeting comments for 6/04/02 and 6/24/02 meetings, dated 9/30/02.
- o NUREG/CR-6712 - Summary and Categorization of Public Comments, dated 5/7/02.
- o Issues paper, dated 5/9/02.
- o DOT Final Rule – dated 5/14/04
- o Any written comments not included in the Certified Index

The following documents included in DOT-RSPA's docket should be included in the NRC Certified Index of the Record in Nuclear Information and Resource Service, et al. v. Nuclear Regulatory Commission, No. 04-71432. DOT-RSPA's docket is available at <http://dms.dot.gov/search/searchFormSimple.cfm?CFID=9435370&CFTOKEN=77677678>, docket number 6283, which is organized by document numbers in the format "RSPA-1999-6283-XXX:"

- o RSPA-1999-6283-1, DOT Advanced Notice of Proposed Rulemaking
- o RSPA-1999-6283-38, DOE comments
- o RSPA-1999-6283-55, DOE comments
- o RSPA-1999-6283-68, request for extension
- o RSPA-1999-6283-69, Blue Ridges EDF, request for extension
- o RSPA-1999-6283-72, request to NRC for extension of time
- o RSPA-1999-6283-79, NRC/DOT MOU
- o RSPA-1999-6283-81, DOT Notice of Proposed Rulemaking
- o RSPA-1999-6283-89, Francois et al – technical analysis
- o RSPA-1999-6283-90, Carey et al – technical analysis
- o RSPA-1999-6283-91, Commission of the European Communities, Principles and Methods for Establishing ... Exemption Values
- o RSPA-1999-6283-93, BSS 115
- o RSPA-1999-6283-96 – transcript of public meeting
- o RSPA-1999-6283-97 – transcript of public meeting
- o RSPA-1999-6283-98 – transcript of public meeting
- o RSPA-1999-6283-109, Nevada Agency for Nuclear Projects, request for extension of time
- o RSPA-1999-6283-114, Public Citizen comments

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- RSPA-1999-6283-121, Kerr-McGee comments
- RSPA-1999-6283-142, Rober Rutkowski comments (note: these comments are dated 7/28/05 and addressed to DOT and NRC, therefore they are not apparently the same Rutkowski letter identified in the Certified Index as comments 13, dated 7/25/02)
- RSPA-1999-6283-151, comments by NECNP and ECNP (note: it is not clear if these undated comments are the same as identified in the Certified Index as comments 109, which purports to be dated 7/12/02)
- RSPA-1999-6283-200, DOT Final Rule
- RSPA-1999-6283-203, NIRS appeal to DOT
- RSPA-1999-6283-204, DOT denial of NIRS appeal