

Independent Spent Fuel Storage Facility (“ISFSI”) at the Diablo Canyon nuclear power plant. Petitioners raised four challenges to the NRC’s decision, alleging that the NRC violated various provisions of the Atomic Energy Act (“AEA”) and associated NRC regulations, the Administrative Procedure Act (“APA”), and the National Environmental Policy Act (“NEPA”). This Court rejected three challenges, holding that the NRC did not violate the AEA, the NRC’s regulations, or the APA. But this Court held that the NRC violated NEPA by failing to consider the environmental impacts of a hypothetical terrorist attack on the ISFSI. The Court remanded the case to the NRC for further proceedings. 449 F.3d at 1035.

This case was briefed in the spring and summer of 2004, argued in October, 2005, and this Court issued a decision in June of 2006. PG&E filed a petition for certiorari. The Solicitor General filed a response on behalf of the Federal Respondents, arguing that the decision in this case was incorrect but did not create a “square” conflict with decisions in other circuits. The Supreme Court denied certiorari on January 16, 2007. This Motion followed.

II. ARGUMENT.

A. Summary.

1. Under EAJA, a “prevailing” organization whose net worth does not exceed \$7,000,000 may recover reasonable attorneys fees, expenses, and other litigation costs

in a civil action brought by or against the United States. 28 U.S.C. § 2412 (a)(1), (d)(2)(B). “EAJA renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity. Any such waiver must be strictly construed in favor of the United States.” *Ardestani v. INS*, 502 U.S. 129 (1991); *see also Mendenhall v. Nat'l Transp. Safety Bd.*, 213 F.3d 464, 468-69 (9th Cir. 2000). Once a party shows that it has “prevailed” in the action, the burden is on the government to establish that its position was “substantially justified.” 28 U.S.C. § 2412(d)(1)(A); *Ratnam v. INS*, 177 F.3d 742, 743 (9th Cir. 1999). If the government cannot meet this burden, the party is entitled to an award of attorney’s fees, with the only issue being the amount of the award.

To calculate an award, a court must multiply the number of hours it finds the party expended on the litigation by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The court must determine an hourly rate “according to the prevailing market rates in the relevant community.” *Blum v. Stevenson*, 465 U.S. 886, 895 (1984). This rate cannot exceed \$125 per hour “unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A)(ii). This Court’s website has posted the applicable statutory maximum rates for recent years. For work performed in 2004 and 2005, this Court has set the

maximum hourly rate (*i.e.*, the statutory cap adjusted for the cost of living) at \$151.65 per hour and \$156.79, respectively.

2. The Federal Respondents agree that petitioners are the “prevailing parties” in this case. We also agree that MFP would be eligible for an award of fees and costs in this case. We further find the costs and the number of hours submitted by MFP’s counsel in this case to be reasonable.

However, we do not agree that MFP is entitled to fees. First, the position of the NRC was “substantially justified.” Second, the participation of the Sierra Club, which is ineligible for an EAJA award, should either reduce amount of fees and costs awarded or eliminate it altogether. In addition, while MFP was a “prevailing party” on one issue, it failed to discount its request sufficiently to reflect its failure to prevail on all other issues it raised. Finally, MFP’s request for compensation at a rate in excess of the statutory maximum is not sustainable – MFP’s successful claim turned on a straight-forward NEPA question, not on arcane, specialized areas of law where there is a shortage of available attorneys.

B. The Commission’s Position Was “Substantially Justified.”

1. EAJA requires an award of attorneys fees unless the government shows, by a preponderance of the evidence, that its position was “substantially justified.” *See* 28 U.S.C. § 2412(d)(1)(A). “Substantial justification” in this context does not mean

“‘justified to a high degree,’ but rather ‘justified in substance or in the main’ - that is, justified to a degree that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988).

This Court has found the government was substantially justified when “the issues presented by the government were not ‘subject to resolution by clear, controlling precedent[,]’” *Minor v. U.S.*, 797 F.2d 738, 739 (9th Cir. 1986). This Court has also looked to whether “reasonable minds could differ” on the issue. *Gonzales v. Free Speech Coalition*, 408 F.3d 613, 621 (9th Cir. 2005) (reversing district court award of fees). *See also Edwards v. McMahon*, 834 F.2d 796, 802-03 (9th Cir. 1987) (holding that government was substantially justified in arguing on “a matter of first impression”).

2. As this Court has held, the government’s failure to prevail does not raise a presumption in favor of awarding fees. *Kali v. Bowen*, 854 F.2d 329, 334 (9th Cir. 1988).¹ Thus, a finding that the government was not substantially justified must mean something more than just “the government lost the case.” In its Motion, MFP argues that the United States was not substantially justified because “[t]he Court rejected as unreasonable each of the four rationales offered by the NRC” Motion at 8. But

¹ *See also Federal Election Comm. v. Rose*, 806 F.2d 1081, 1087 (D.C. Cir. 1986) (“a finding in the merits phase that the Government’s underlying action was “arbitrary and capricious” . . . does not compel an award of fees.”).

the mere fact that the NRC decision under review was found “not reasonable” does not mean that the NRC was not “substantially justified,” “else in this class of case the substantial justification issue would always simply merge with the decision on the merits.” *Louisiana ex rel Guste v. Lee*, 853 F.2d 1219, 1222 (5th Cir. 1988) quoting *Griffon v. U.S. Dept. of Health and Human Services*, 832 F.2d 51, 52 (5th Cir.1987).

3. In a series of cases filed shortly after the tragic events of September 11, 2001, the NRC confronted the question whether NEPA required the agency to prepare an EIS on the possible environmental effects of a hypothetical terrorist attack. The NRC historically had not done so. *See, e.g., Pacific Gas & Electric Company* (Diablo Canyon Power Plant, Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 447 (2002) (“LBP-02-23”). The NRC addressed the issue in a lead decision, *Private Fuel Storage, L.L.C.*, 56 NRC 340 (2002) (“PFS”), which it then applied in other cases, including the case below. *See Pacific Gas & Electric Company* (Diablo Canyon Power Plant, Independent Spent Fuel Storage Installation), CLI-03-01, 57 NRC 1, 6-7 (2003) (“CLI-03-01”).

The issue was a matter of first impression. No court had directly addressed the issue of whether NEPA required an analysis of the environmental effects of a hypothetical terrorist attack. The closest prior judicial precedent were two judicial decisions addressing whether NEPA required an analysis of the effects of terrorism

in the form of sabotage. Both decisions had upheld, as reasonable, an agency refusal to consider terrorism under NEPA. See 56 NRC at 349, citing *Limerick Ecology Action v. NRC*, 869 F.2d 719 (3d Cir. 1989), and *City of New York v. Department of Transportation*, 715 F.2d 732, 750 (2d Cir. 1982), *appeal dismissed and cert. denied*, 465 U.S. 1055 (1984). Thus, the NRC reasonably found “the only two directly pertinent court of appeals decisions . . . give us no reason to include terrorism within our NEPA review.” 56 NRC at 350.

The NRC also looked to a decision of this Court, *NO GWEN Alliance v. Aldridge*, 855 F.2d 380 (9th Cir. 1988). See 56 NRC at 349. In *NO GWEN*, the Air Force proposed to construct radio towers for sending messages to U.S. forces during and after a nuclear war. The petitioners argued that the towers would be a “priority target” in any war and asked the Air Force to issue an EIS analyzing the environmental impact of a nuclear war. This Court held that (1) claims of military attacks on the towers were “speculative,” 855 F.2d at 1386, (2) any claimed impacts were not “reasonably foreseeable,” *Id.* at n.1, and that the Air Force need not issue such an EIS. 855 F.2d at 1386.

The NRC reasonably analogized the holding in *NO GWEN* to attacks on NRC-licensed facilities like Diablo Canyon. If speculation that a foreign nation might target the Air Force’s radio towers in a nuclear war did not trigger a NEPA duty to

study the effects of such an attack, the NRC reasoned, then speculation that terrorists might target a nuclear facility should not trigger a NEPA duty either. *See* 56 NRC at 350, and n.37.

3. The NRC also maintained (56 NRC at 349-50) that licensing a facility could not be considered the “proximate cause” of a deliberate attack on the facility, as required by the Supreme Court’s decision in *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 760 (1983). In that case, the Supreme Court noted that “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation, will nonetheless not fall within [NEPA] because the causal chain is too attenuated.” *Id.* at 774. The Supreme Court then held that NEPA requires “a reasonably close causal relationship” between the environmental effect and the alleged cause. *Id.* The Supreme Court analogized this requirement to the “familiar doctrine of proximate cause from tort law.” *Id.* The NRC concluded that a terrorist attack would be an intervening event not contemplated by the licensing of the facility and would be “too attenuated” for consideration under NEPA.

After Respondents’ Brief was filed, the Supreme Court issued a new decision regarding NEPA and proximate cause, *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), which the NRC brought to this Court’s attention in a letter under FRAP 28(j). In that case, the Supreme Court explicitly reaffirmed

“proximate cause” as a NEPA requirement and restated that a “‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.” *Id.* at 767.

4. In addition, the Commission found that the risk of a terrorist attack could not be adequately determined. To proceed on that basis “would transform NEPA analysis into a form of guesswork . . .” 56 NRC at 351. Analogizing a terrorist attack to sabotage, the NRC then pointed to a previous judicial decision that had explicitly held that a petitioner like MFP “should have advanced some method or theory by which the NRC could have entered into a meaningful analysis of the risk of sabotage despite its asserted inability to quantify the risks.” *Limerick Ecology Action v. NRC*, 869 F.2d at 744. The NRC reasonably relied on the *Limerick* ruling in holding that a petitioner had the burden of showing “some method or theory” by which the NRC could analyze an event of “malice or insanity.” 56 NRC at 351.

5. Furthermore, the NRC relied on a decision from this Court that merely because an agency is required to prepare for a possible harm does not mean that the possible harm is “foreseeable.” The Department of the Interior’s regulations required it to analyze the possible trajectory of spilled oil in spill response plans when granting a permit for offshore oil drilling. But this Court held that the obligation to perform that analysis did not require the inclusion of that information in an EIS. *Edwardsen*

v. Department of the Interior, 268 F.3d 781, 785 (9th Cir. 2001). See Respondents' Brief at 40, 43.

In a Rule 28(j) letter, the NRC also referred this Court to its then-recent decision in *Ground Zero Center for Non-Violent Action v. U.S. Navy*, 383 F.3d 1082 (9th Cir. 2004). The *Ground Zero* decision held that simply because the Navy had taken steps to minimize the risk of an accidental missile explosion at a submarine base, the Navy did not have to address the environmental impacts of such an explosion. 383 F.3d at 1090. The NRC relied on *Ground Zero* for the proposition that simply taking steps to prevent terrorist attacks did not mean those attacks were "foreseeable" and NRC was required to analyze their possible effects.

In sum, this was not a case where prior judicial decisions or obvious principles of law dictated a precise result. The case presented a question of "first impression." *Edwards v. McMahon*, 834 F.2d at 802-03. The NRC reasonably relied on prior precedent, both from this Circuit and other circuits, as well as a reasonable interpretation of Supreme Court precedent, in adopting its position in this case. Thus, the NRC's position had "a reasonable basis in law and fact[.]" *Rueda-Menicucci v. INS*, 132 F.3d at 495, was one on which "reasonable minds could differ," *Gonzales v. Free Speech Coalition*, 408 F.3d at 621, and was "not 'subject to resolution by

clear, controlling precedent.” *Minor v. U.S.*, 797 F.2d at 739. Thus, the NRC’s legal position, although rejected by this Court, was “substantially justified.”

C. The Award Should Be Reduced To Account For the Participation Of A Party That Is Not Eligible For An Award Under EAJA.

1. The EAJA precludes an EAJA award if “special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). This Court has held that one “special circumstance” that could make an award unjust is the participation in the lawsuit of a “free rider,” *i.e.*, a party “who is ineligible for fees under the EAJA but ends up paying no fees because the eligible plaintiff pays them all through the court-awarded fees.” *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991).

2. In its Motion, MFP acknowledges that the Sierra Club was a party to the case and that the Sierra Club is not eligible for fees under EAJA, presumably because of the Sierra Club’s net worth. Motion at 10. But MFP argues the Sierra Club’s participation was “tangential to the lawsuit[,]” and that it merely “sought the Sierra Club’s participation ‘in order to make a strong showing of support for our cause before the NRC and the Court.’” Motion at 11.

The Federal Respondents have no way through discovery to test the affidavits submitted by MFP. Thus, it is difficult for us to determine the exact nature of the Sierra Club’s participation in the lawsuit. But the Sierra Club joined the petition to

intervene in the administrative proceeding before the agency and demonstrated standing by asserting that it had a named individual member who lived within 17 miles of the facility. *See* LBP-02-23, 56 NRC 413, 429 (2002). And while the Sierra Club was one of ten organizations (in addition to MFP) that participated in the administrative proceeding, 56 NRC at 419, 429-34, it was the *only* other group that participated in this Court. If the Sierra Club's legal and financial resources played a role in the successful suit, this Court should either deny the fee request altogether or, at a minimum, discount the fee award based on the Sierra Club's participation.

D. MFP's Fee Request Fails to Recognize That It Did Not Prevail In The Entire Case.

1. In *Hensley*, 461 U.S. 424, the Supreme Court explained that “[w]here [a party] has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee.” *Hensley*, 461 U.S. at 440. Where the claims are related, a court “should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation[,]” 461 U.S. at 435. But “[w]e emphasize that the inquiry does not end with a finding that the plaintiff obtained significant relief. A reduced fee award is

appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.” 461 U.S. at 439-440.

In this Court, whether claims are “related” under *Hensley* depends on “whether relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which the relief granted is premised.” *Schwarz v. Sec’y of Health & Human Servs.*, 73 F.3d 895, 903 (9th Cir. 1995) (citation and quotation marks omitted). Also relevant is whether “it is likely that some of the work performed in connection with the [unsuccessful claim] also aided the work done on the merits of the [successful claim].” *Id.* (citations and quotation marks omitted); *see also Cabrales v. County of Los Angeles*, 935 F.2d 1050, 1052 (9th Cir. 1991) (“[W]e read *Hensley* as establishing the general rule that plaintiffs are to be compensated for attorney's fees incurred for services that contribute to the ultimate victory in the lawsuit.”).

2. In its Opening Brief, MFP raised four claims. *See* Pet. Br. at 33-56. In sequence, MFP argued that: (1) the NRC violated the Atomic Energy Act by not admitting its NEPA contentions into the administrative proceeding, Pet. Br. at 33; (2) the NRC violated the Administrative Procedure Act by relying on a previous decision (the *PFS* decision) in this case, Pet. Br. at 37; (3) the NRC violated NEPA by failing to take a “hard look” at terrorism, Pet. Br. at 38; and (4) the NRC violated the AEA

in failing to grant MFP's request for a hearing on new security measures at the Diablo Canyon complex, Pet. Br. at 52.

MFP concedes that it did not prevail on Claim 4 and states that it therefore reduced its requested award by 10%, Motion at 13, but without explaining how it reached that number. MFP does not address its failure to prevail on both Claim 1 and Claim 2. Instead, MFP appears to argue that those claims were "related" to the main NEPA claim and that it should be compensated for "prevailing" on those claims, too.

But those claims are hardly "related" to the NEPA claim on which MFP prevailed. Instead, those claims were based on entirely separate statutes, the AEA and the APA, and research and preparation for these claims were separate and distinct from the preparation for the (ultimately successful) NEPA claim. Thus, the time spent on those claims would not have "aided the work done on the merits of the [successful claim][.]" *Schwarz v. Sec'y of Health & Human Servs., supra*, or "contribute to the ultimate victory in the lawsuit." *Cabrales v. County of Los Angeles, supra*.

Moreover, the relief obtained had this Court ruled for MFP on the first two claims would not have been the same as the relief obtained by this Court's ruling on the successful NEPA claim. In its first two claims, MFP argued that the NRC had violated the AEA and its own regulations by not holding a hearing on the merits of

their contentions (or claims) and that the NRC violated the APA by relying on a prior agency decision to dismiss those claims. *See* Pet. Br. at 33-38. Thus, had this Court granted MFP's first two claims, it presumably would have remanded MFP's contentions to the NRC to hold an administrative hearing. Instead, the Court simply remanded for an additional NEPA analysis, and said expressly that it was not "circumscribing the procedure that the NRC must employ." 449 F.3d at 1035. Clearly, MFP did not obtain any relief on its non-NEPA claims.

E. MFP Is Not Entitled To An Enhanced Award of Fees.

1. EAJA requires a court to award fees at the statutory rate of \$125 per hour "unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii). The Supreme Court has interpreted the phrase "limited availability of qualified attorneys" to

refer to attorneys having some distinctive knowledge or specialized skill needful for the litigation in question - as opposed to an extraordinary level of the general lawyerly knowledge and ability useful in all litigation. Examples of the former would be an identifiable practice specialty such as patent law, or knowledge of foreign law or language. Where such qualifications are necessary and can be obtained only at rates in excess of the [statutory] cap, reimbursement above that limit is allowed.

Underwood, 487 U.S. at 572. Thus, *Underwood* requires that three elements must be met before a court may apply an enhanced rate: (1) the claimed specialization in a particular field of law reflects some distinctive knowledge or specialized skill generally unavailable in the profession at large; (2) the specialization was “needful for the litigation in question,” *id.*; and (3) the specialization could only be obtained at market rates in excess of \$125 per hour. *Id.*; see also *Pirus v. Bowen*, 869 F.2d 536, 541-42 (9th Cir. 1989) (interpreting *Underwood* to require these factors). The burden is on the applicant to demonstrate that these elements are met. *Weakley v. Bowen*, 803 F.2d 575, 579 (10th Cir. 1986).

2. MFP seeks an enhanced rate for its attorney, Ms. Diane Curran. Motion at 15-17. While we respect Ms. Curran as a professional colleague and skilled advocate, MFP has not demonstrated that she is entitled to an enhanced rate for her services.

First, MFP claims that “environmental law” is recognized as a “specialty practice area” and that Ms. Curran has developed a specialty in the area of practice before the NRC. Motion at 15, citing *Love v. Reilly*, 924 F.2d 1492 (9th Cir. 1991). But most courts interpret *Underwood* to require something more than ordinary legal expertise in a particular area to show that an attorney has “distinctive knowledge” or “specialized skills” justifying an enhanced rate. See, e.g., *Truckers United for Safety v. Mead*, 329 F.3d 891, 895 (D.C. Cir. 2003) (“[S]tressing that nothing in EAJA or

its legislative history indicates that the Congress intended to entitle 'all lawyers practicing administrative law in technical fields' to a fee enhancement, we [have] refused to recognize 'expertise acquired through practice' as a special factor warranting an enhanced fee.") (citations and footnote omitted).²

Second, MFP cites Ms. Curran's representation of parties before the NRC and in judicial appeals of NRC decisions as proof of her expertise and claims that she "is familiar with" the relevant statutes and regulations. Motion at 15-16. But that can be said of any attorney who regularly practices before a Federal agency. *See, e.g., In re Sealed Case 00-5116*, 254 F.3d 233, 236 (D.C. Cir. 2001) ("Although federal election law involves a complex statutory and regulatory framework, the field is not beyond the grasp of a competent practicing attorney with access to a law library and the other accoutrements of modern legal practice."). Experience before the NRC or other agencies does not create a body of "distinct knowledge and skills[;]" instead, it creates, at most, "an extraordinary level of the general lawyerly knowledge and ability useful in all litigation," which the Supreme Court held does not justify an increase of fees above the statutory rate. *See Underwood*, 487 U.S. at 572. And

²*See also Estate of Cervin v. Comm'r*, 200 F.3d 351, 354 (5th Cir. 2001); *Raines v. Shalala*, 44 F.3d 1355, 1361 (7th Cir. 1995); *Stockton v. Shalala*, 36 F.3d 49, 50 (8th Cir. 1994); *Chynoweth v. Sullivan*, 920 F.2d 648, 650 (10th Cir. 1990).

while knowledge in environmental law or previous experience might improve a lawyer's advocacy, EAJA reimburses plaintiffs for competent representation, not for the best representation taxpayer money can buy. *See Underwood*, 487 U.S. at 573 (rejecting “work and ability of counsel” as a factor justifying enhancing a fee award).

3. MFP claims that Ms. Curran’s specialized knowledge and experience was necessary in this litigation, Motion at 16, and that “no attorneys on the West Coast had the degree of experience or specialization” needed for the case. *Id.* Thus, MFP claims that she should be reimbursed at rates prevailing in the District of Columbia. *Id.* at 16-17. But while MFP claims that it hired Ms. Curran for her experience, skill and knowledge of the NRC’s administrative practices, they did not prevail on their Atomic Energy Act claims. Instead, MFP prevailed only on their NEPA claim. Thus, Ms. Curran’s purported expertise in NRC cases does not support a request for an enhanced fee in a NEPA case.

Moreover, MFP fails to demonstrate that representation was not available in California for the statutory rate. Instead, MFP concentrates on Ms. Curran’s particular skills. *See, e.g.*, Declaration of Morgan Rafferty at 5. (“we are unaware of any other public interest attorneys, either in California or elsewhere,” with Ms. Curran’s skill and experience.); Declaration of Patrick Gallagher at 3 (“I am unaware of any private practitioners with Ms. Curran’s *specialized skills*, here on the West

Coast or elsewhere, who would be willing to take [this case]” for the statutory rate.”) (emphasis added). But as we noted above, Ms. Curran’s personal skills are not a factor under *Underwood*. There are many NEPA cases filed every year in the Ninth Circuit. Certainly, some of the attorneys prosecuting those cases are from California. And NEPA is not administered by one agency only. Instead, many agencies must comply with NEPA, creating a broad body of the practicing bar that should be available to represent parties in NEPA litigation. That undercuts MFP’s claim that only Ms. Curran would have litigated this case and that there were no attorneys on the West Coast who would have litigated the case for the statutory rate.

Furthermore, MFP claims that Ms. Curran’s expertise was necessary to establish the administrative record before the NRC. *See* Declaration of Martin G. Malsch at 3. But representation before the NRC does not qualify for reimbursement under EAJA. *See Ardestani v. INS*, 502 U.S. at 135 (denying fees for representation before the agency). In essence, this was a simple case of establishing a record in an administrative proceeding and then challenging the decision based on that record. MFP’s winning argument here – that NRC erred in categorically excluding terrorism from its NEPA reviews – requires no large record or specialized technical knowledge. NEPA, unlike, for example, patent, copyright, or securities law, is a general statute in common usage. All a party needs to do to trigger a NEPA claim is ask the agency

to "consider" a particular environmental impact. If the agency does not consider that impact, the party then files a judicial challenge to that decision. That is what happened here. The case required a lawyer merely capable in administrative law, not a specialist in legal arcana.

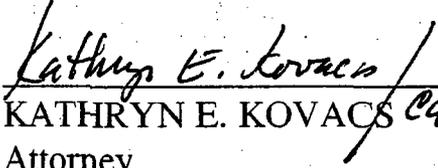
* * * * *

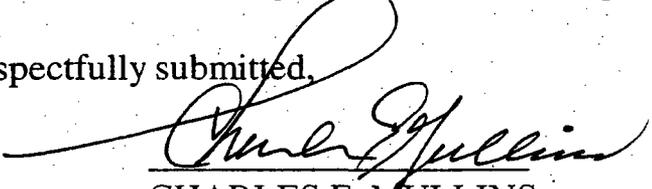
In summary, the NRC's position in this case was substantially justified. In addition, any award (1) should be either reduced or rejected based on the participation of the Sierra Club and (2) should also be reduced to reflect MFP's failure to prevail on the majority of its claims. Finally, MFP has failed to meet the standards set forth in *Underwood* justifying an enhanced award.

CONCLUSION

For the foregoing reasons, this Court should reject MFP's the fee request.

Respectfully submitted,


KATHRYN E. KOVACS *cew*
Attorney
Appellate Section
Environment and Natural
Resources Department
U.S. Department of Justice
P.O. Box 23795
Washington, D.C. 20026-3795
(202) 514-4010
Dated: April 16, 2007.


CHARLES E. MULLINS
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(301) 415-1606

CERTIFICATE OF SERVICE

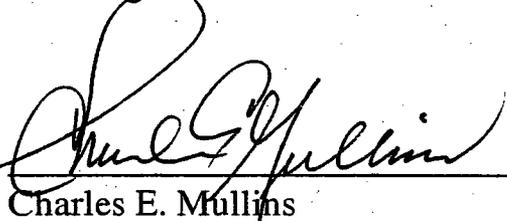
I hereby certify that on April 16, 2007, I filed copies of the "Federal Respondents' Response to Petitioners' Motion for Attorney's Fees and Costs" with this Court.

I further certify that I served the same by Federal Express or U.S. Mail on the following counsel:

Diane Curran, Esq. (via Federal Express)
Harman, Curran, Spielberg & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036

David A. Repka, Esq. (via U.S. Mail)
Winston & Strawn, L.L.P.
1400 L. Street, N.W.
Washington, D.C. 20005-3502

Kathryn Kovacs, Esq. (via U.S. Mail)
Appellate Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23795, L'Enfant Plaza Station
Washington, D.C. 20026



Charles E. Mullins
Senior Attorney
U.S. Nuclear Regulatory Commission
Counsel for Federal Respondents