



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 21, 2008

Richard Cushing Donovan, Clerk
U.S. Court of Appeals for the First Circuit
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

VIA FEDERAL EXPRESS

RE: *Commonwealth of Massachusetts v. United States Nuclear Regulatory
Commission and United States of America*, Nos. 07-1482, 07-1483
(consolidated)

Dear Mr. Donovan:

Enclosed you will find for filing an original plus 3 copies of the Federal Respondents' Motion for Leave to File a Reply to the Commonwealth's Supplemental Brief in the above-captioned matter. Also enclosed are nine copies of the Federal Respondents' Reply to the Commonwealth's Supplemental Brief and a copy of the Brief on a compact disc in Word Perfect format. Please date stamp the enclosed copy of this letter to indicate date of receipt, and return the copy to me in the enclosed envelope, postage pre-paid, at your convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven C. Hamrick".

Steven C. Hamrick
Office of the General Counsel
(301) 415-4106
sch1@nrc.gov

cc: service list

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

<u>COMMONWEALTH OF MASSACHUSETTS</u>)	
Petitioner,)	
v.)	Nos. 07-1482 and
)	07-1483
U.S. NUCLEAR REGULATORY COMMISSION)	(consolidated)
and the UNITED STATES OF AMERICA,)	
Respondents, and)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.,)	
ENTERGY NUCLEAR VERMONT YANKEE)	
LLC, AND ENTERGY NUCLEAR)	
<u>GENERATION COMPANY</u>)	
Intervenors.)	
)	

**FEDERAL RESPONDENTS' MOTION FOR LEAVE TO FILE A
REPLY TO THE COMMONWEALTH'S SUPPLEMENTAL BRIEF**

The Nuclear Regulatory Commission and the United States ("Federal Respondents") move for leave to file a short (6-page) reply to the Commonwealth's Supplemental Brief. Fed. R. App. P. 27. We have tendered with this motion copies of our reply. This Court should grant leave to file the reply for the following reasons:

1. The Commonwealth's supplemental brief suggests (incorrectly) that it was "new demands by the NRC for concessions by the Commonwealth on its substantive case" that derailed settlement negotiations that this Court suggested (at oral argument). *See* Pet. Sup. Br. at 12, n.19. A reply is appropriate to allow

federal respondents to point to First Circuit Rule 33(c). That rule “prohibit[s]” counsel “from disclosing any substantive information emanating from the [settlement] conference to anyone other than their clients or co-counsel.”

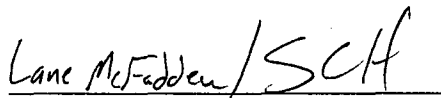
2. The Commonwealth’s supplemental brief argues that a remark in NRC’s “Statement of Considerations” accompanying a 2004 NRC regulation – a remark not cited in the Commonwealth’s principal briefs – contradicts NRC’s legal position that the Commonwealth can invoke “interested state” status to participate in NRC proceedings and ultimately seek judicial review. *See* Pet. Sup. Br. at 6-7.

A reply is appropriate to allow federal respondents to explain that, read in context, the 2004 statement shows no contradiction.

3. Federal respondents are hesitant to burden this Court with additional pleadings, but the two particular points raised above may cause confusion and thus warrant a reply. We have kept our reply short (6 pages).

For the foregoing reasons, this Court should grant federal respondents' motion to file a reply to the Commonwealth's supplemental brief and direct the Clerk's Office to file our tendered reply brief.

Respectfully submitted,

Handwritten signature of Lane M. McFadden in black ink, written over a horizontal line.

Lane M. McFadden

Attorney

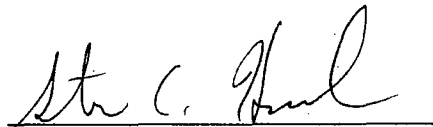
Appellate Section

Environment and Natural

Resources Division

U.S. Department of Justice

202-353-9022

Handwritten signature of Steven C. Hamrick in black ink, written over a horizontal line.

Steven C. Hamrick

Attorney

Office of the General Counsel

U.S. Nuclear Regulatory Commission

(301) 415-4106

February 21, 2008

CERTIFICATE OF SERVICE

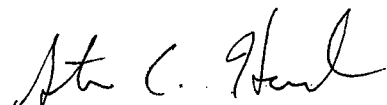
I, Steven Hamrick, hereby certify that on February 21, 2008, I served copies of the Federal Respondents Motion for Leave to File a Reply to the Commonwealth's Supplemental Brief on the following parties by way of first class mail:

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