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

OFFICE OF THE
GENERAL COUNSEL

June 12, 2008

Andrew I. Port, Esq.
Emard, Danoff, Port, Tamulski & Paetzold
49 Stevenson Street
San Francisco, California 94105

VIA FACSIMILE AND U.S. MAIL.

RE: *Dick Friend v. Baker Hughes Oilfield Operations*, Case No. CGC-07-274482, San Francisco County (Ca.) Superior Court; Recordtrak #546679; NRC File No. TR-08-01.

Counselor;

The U.S. Nuclear Regulatory Commission ("NRC") has received a subpoena authorized by you in the above-captioned matter. Your subpoena is a "demand for information," and is covered by the NRC regulations at 10 C.F.R. § 9.200, *et seq.* Pursuant to 10 C.F.R. § 9.201, the subpoena has been forwarded to the Office of the General Counsel for processing. This Office has assigned the processing number "TR-08-01" to your request; please refer to that number in any future correspondence regarding this matter.

Your subpoena does not comply with the applicable NRC regulations in that you have not provided the General Counsel with the information necessary to determine whether to grant the request. *See* 10 C.F.R. § 9.202. Therefore, by return mail, please provide a "statement or affidavit" explaining, in detail, (1) the nature of the information you are seeking; (2) the nature of the issues in the above-captioned case; the relevance of the material you are seeking to the issues in the case; and (4) why this information is not available elsewhere. The NRC will treat this information as confidential under Exemption 4 of the Freedom of Information Act.

In addition, your response should explain how your request complies with the requirements of the Privacy Act, 5 U.S.C. § 552a. Under OPM regulations, as well as the Privacy Act, we may release personnel records in response to a subpoena signed by a judge, but not in response to a general discovery subpoena signed by a clerk. *See, e.g., Doe v. DiGenova*, 779 F.2d 74, 77-85 (D.C. Cir. 1985), *on remand*, 642 F.Supp. 624 (D.C.C. 1986), *aff'd in part and reversed in part*, 851 F.2d 1457 (D.C. Cir. 1988). *See also* 5 C.F.R. § 297.402.

Failure to comply with the NRC's regulations is grounds for denial of the request. *United States ex rel. Touhy v. Regan*, 340 U.S. 462 (1951); *Davis Enterprises v. U.S. E.P.A.*, 877 F.2d 1181 (3d Cir. 1989).

Please send your response to:

Karen D. Cyr; General Counsel
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

ATTENTION: Charles E. Mullins, Senior Attorney

You may fax an advance copy of your response to me at 301-415-3200. The Office of the General Counsel will hold your request in abeyance pending your compliance.

We also note that you have filed a request for the same information under the Freedom of Information Act ("FOIA"). You do not need to submit a justification for your request – as you do in the case of a subpoena -- in order to pursue your FOIA remedies.

Finally, we note that you have served the NRC with a state court subpoena. The NRC is not subject to state court subpoenas. *See Boron Oil Co. v. Downie*, 873 F.2d 67 (4th Cir. 1989). However, if you can demonstrate that the NRC is the only source of relevant, competent or material evidence in a proceeding, the General Counsel will attempt to provide this material to the parties in the manner least burdensome to the NRC.

I am unavailable after today until June 25. In my absence, please direct any questions on this matter to Mr. John Cordes, the NRC Solicitor, at 301-415-1600. After my return, you may reach me at 301-415-1618 or at charles.mullins@nrc.gov on the internet.

Sincerely,

Charles E. Mullins
Senior Attorney
Office of the General Counsel

cc: RecordTrak
100 Webster Street
Suite 201
Oakland, California 94607