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

OFFICE OF THE
GENERAL COUNSEL

July 22, 2008

Mr. Stanley Bass
Court Attorney
United States Court of Appeals
for the Second Circuit
United States Court House
40 Foley Square
New York, New York 10007

BY FACSIMILE ONLY

Re: *Brodsky v. U.S. Nuclear Regulatory Commission*, No. 08-1454-ag

Dear Mr. Bass,

This responds to your telephone call to me inquiring about the status of the expedited briefing schedule the Court had asked the parties to agree upon. You noted that the Court issued this Order two weeks ago and asked why this has not been done.

The NRC is, and throughout the past two weeks has been, ready to agree upon a reasonable briefing schedule. The delay to this point has been occasioned by back and forth discussions and correspondence between Mr. Brodsky and myself over the content of the certified index of the record.

As discussed below, the filing of the certified index of the record is solely the responsibility of the NRC under FRAP 16(a), but we have nonetheless carefully considered, and done our best to accommodate, the petitioners' requests in this regard.

The NRC intends to certify an index of all documents the NRC considered in granting the exemption to Indian Point 3, whose issuance the petitioners have challenged on appeal. The petitioners take a far broader view of what constitutes the record below. I will leave it to Mr. Brodsky to describe petitioners' position rather than characterize it for him. We have nonetheless taken the extraordinary step of inquiring of the NRC staff whether any documents in Mr. Brodsky's recent request to the NRC under the Freedom of Information Act were also considered and, thus, should be part of the index of the record.

While we have tried to cooperate with petitioners, the bottom line is that the responsibility for filing the index of the record belongs to the respondent federal agency alone. Accordingly, the NRC intends to file the index this Friday, July 25th, and the briefing schedule can be keyed to that date.

With that in mind, we would suggest the following schedule:

Pet. Br.: September 3, 2008

Resp. Br.: October 8, 2008

Pet. Reply Br: October 27, 2008.

We are amenable to any reasonable modification proposed by petitioners.

Thank you for your kind assistance.

Yours truly,

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