



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

November 14, 2008

Molly C. Dwyer, Clerk of Court  
U. S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
Post Office Box 193939  
San Francisco, CA 94119-3939

RE: James Salsman v. U.S. Nuclear Regulatory Commission, No.  
08-74043

Dear Ms. Dwyer:

Enclosed please find, for the case referenced above, Federal Respondents' Reply to Petitioner's Response to Federal Respondent's Motion to Extend Time and Response to Petitioner's Motion to Extend Time. 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 "Maxwell C. Smith", is written over a horizontal line.

Maxwell C. Smith  
Attorney  
Office of the General Counsel

Enclosure: As stated



OFFICE OF THE  
GENERAL COUNSEL

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

November 14, 2008

James Salsman  
1910 Mt. Vernon Ct. #3  
Mountain View, CA 94040

RE: James Salsman v. U.S. NRC, No. 08-74043

Dear Mr. Salsman,

Enclosed please find a copy of the Federal Respondents' Reply to  
Petitioner's Response to Federal Respondent's Motion to Extend Time and  
Response to Petitioner's Motion to Extend Time. I have previously  
forwarded you a copy of this document via e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Max Smith", with a long horizontal flourish extending to the right.

Maxwell C. Smith  
Attorney  
Office of the General Counsel

Enclosure: As stated

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JAMES SALSMAN,

Petitioner,

v.

NUCLEAR REGULATORY COMMISSION )  
and THE UNITED STATES OF AMERICA, )

Respondents. )  
\_\_\_\_\_ )

Docket No. 04-71432  
NRC No. PRM 20-26

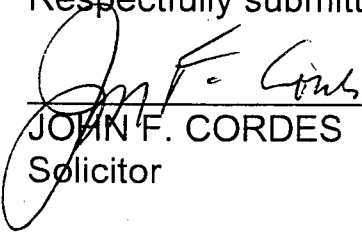
**FEDERAL RESPONDENTS' REPLY TO PETITIONER'S RESPONSE TO  
FEDERAL RESPONDENT'S MOTION TO EXTEND TIME  
AND RESPONSE TO PETITIONER'S MOTION TO EXTEND TIME**

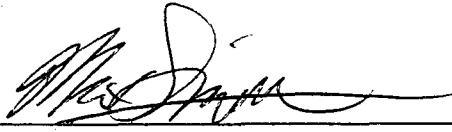
On behalf of the federal respondents, the United States of America and the United States Nuclear Regulatory Commission (NRC), we recently filed a motion to extend the deadline for our answering brief by three weeks from December 1, 2008, to December 22, 2008. Petitioner then filed his own Motion to Extend Time and Response to Respondent's Motion to Extend Time (Petitioner's Response). Petitioner "oppose[d] Respondents' motion to extend time by three weeks, and move[d] to seek relief by extending Respondents' time to file their reply brief and all subsequently consequential deadlines in this case by three months." Petitioner's Response at 5.

Petitioner has presented no reason or argument in opposition to our straightforward motion, supported by a declaration, for an additional three weeks to file an answering brief. Rather, he appears to request an additional three months to file his own reply brief. We have already indicated that we will not oppose a request from Petitioner for a reasonable extension of time to file a reply brief. But the sole reason his current motion gives for a three-month extension – his desire to examine a 2004 scientific study that he recently “came across” (Petitioner’s Response at 1, 4-5) – is insufficient. That document was not before the NRC and is not in the administrative record. Absent extraordinary circumstances, “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973).

The Court should grant our request for a three-week extension of time to file our answering brief and deny Petitioner’s request for a three-month extension of time to file his reply brief (without prejudice to his filing a properly supported motion to extend his reply brief time).

Respectfully submitted,

  
JOHN F. CORDES  
Solicitor

A handwritten signature in black ink, appearing to read 'Max Smith', is positioned above a horizontal line.

MAXWELL C. SMITH

Attorney

Office of the General Counsel

U.S. Nuclear Regulatory

Commission

Washington, D.C. 20555

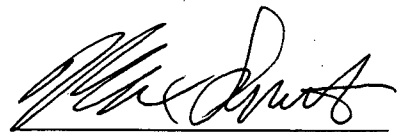
301-415-1246

November 14, 2008

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 14, 2008, a copy of the enclosed Federal Respondents' Reply to Petitioner's Response to Federal Respondent's Motion to Extend Time and Response to Petitioner's Motion to Extend Time was served by mail, postage prepaid, upon the following:

James Salsman  
1910 Mt. Vernon Ct. #3  
Mountain View, CA 94040

  
Maxwell C. Smith