



OFFICE OF THE  
GENERAL COUNSEL

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

November 14, 2008

Ms. Molly Dwyer, Clerk  
United States Court of Appeals  
for the Ninth Circuit  
United States Court House  
95 Seventh St.  
San Francisco, CA 94103

Attn: Fred Taylor, Deputy Clerk

Re: *Crane v. United States Nuclear Regulatory Commission*, No. 08-72973

Dear Ms. Dwyer,

Enclosed for filing please find an original and four copies of Respondents' Unopposed Motion for Leave to File Amended Certificate of Service or, in the Alternative, for Leave to File One Day Late.

This responds to the Notice, dated November 13, 2008, from Mr. Fred Taylor of your office regarding the late filing of our merits brief in the captioned case. A copy of this notice is appended to our Motion. I have also included 15 copies of the Corrected Certificate of Service to put in the briefs.

Kindly date stamp the enclosed extra copy of this letter and return to me in the enclosed self-addressed envelope. Thank you for your kind assistance.

Yours truly,

Robert M. Rader  
Senior Attorney  
Office of the General Counsel  
Nuclear Regulatory Commission  
(301) 415-1955 (voice)  
(301) 415-3200 (fax)  
[Robert.Rader@nrc.gov](mailto:Robert.Rader@nrc.gov) (e-mail)

cc: All Counsel

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

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<b>PETER G. CRANE,</b>	)	
	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>U.S. NUCLEAR REGULATORY COMMISSION</b>	)	<b>Docket No. 08- 72973</b>
	)	
<b>and</b>	)	<b>NRC No. PRM-35-18</b>
	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondents.</b>	)	

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**RESPONDENTS' UNOPPOSED MOTION FOR LEAVE TO FILE  
CORRECTED CERTIFICATE OF SERVICE OR, IN THE  
ALTERNATIVE, FOR LEAVE TO FILE ONE DAY LATE**

On November 3, 2008, respondents U.S. Nuclear Regulatory Commission and United States of America timely filed their merits brief in the captioned case by depositing same in the United States Mail. *See* Fed. R. App. Proc. 25(a)(2)(B). The Certificate of Service attached to the brief, however, did not state service upon the Clerk and incorrectly and inadvertently stated service upon opposing counsel as performed on November 4, 2008. The letter from the undersigned counsel for respondents

transmitting the brief, which did state service upon the Clerk, was correctly dated November 3, 2008. Please see the attached Declaration of Robert M. Rader. On November 13, 2008, the Clerk notified respondents' counsel of this deficiency in the Certificate of Service and suggested a motion for leave to file a late brief (memorandum attached).

Pursuant to Fed. R. App. P. 27 and 31, respondents request that this Court grant respondents leave to file the attached Corrected Certificate of Service, and that this Court accept respondents' merits brief as timely filed on that basis. Alternatively, respondents request permission to file one day out of time.

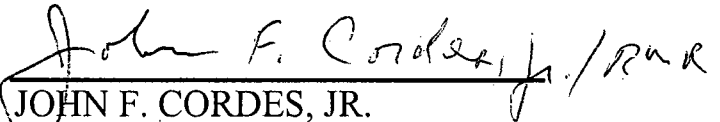
Respondents' undersigned counsel represent that opposing counsel does not oppose this motion, provided that the deadline set for the filing of petitioner's reply brief is at least 10 days after the Court's disposition of the instant motion. Respondents, in turn, agree to this schedule.

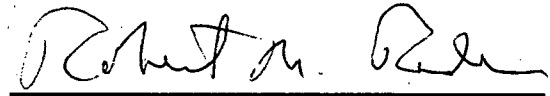
Respectfully submitted,

RONALD J. TENPAS  
Assistant Attorney General

KAREN D. CYR  
General Counsel

CHARLES R. SCOTT  
Attorney  
United States Department of  
Justice  
Environment & Natural Resources  
Div.  
P.O. Box 23795  
Washington, D.C. 20026-3795  
(202) 514-2813 (voice)  
(202) 514-8865 (fax)

  
JOHN F. CORDES, JR.  
Solicitor

  
ROBERT M. RADER  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory  
Commission  
(301) 415-1955 (voice)

Dated: November 14, 2008

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

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<b>PETER G. CRANE,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	
	)	
<b>U.S. NUCLEAR REGULATORY COMMISSION</b>	)	<b>Docket No. 08- 72973</b>
	)	
and	)	<b>NRC No. PRM-35-18</b>
	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondents.</b>	)	

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**DECLARATION OF ROBERT M. RADER**

Pursuant to 28 U.S.C. § 1746, I, Robert M. Rader, do declare:

1. I am a member in good standing of the Bar of the District of Columbia and admitted to this Court. I am a Senior Attorney, Office of the General Counsel, Nuclear Regulatory Commission, respondent in the captioned case, and I am the attorney principally responsible for the handling of this matter for respondents.

2. On October 9, 2008, I obtained from the Clerk's Office a two-week extension of time to November 3, 2008 for the filing of respondents' merits

brief. A copy of the letter confirming this extension with opposing counsel is appended to the merits brief on file with Clerk.

3. A filing date of November 4, 2008 was inadvertently and incorrectly placed at the end of the brief and the Certificate of Service attached thereto. I personally supervised the filing of this brief and attest that the package of the briefs, excerpts of record, and attachments to the brief was, in fact, deposited in the U.S. Mail and thereby mailed to the Clerk of the Court on November 3, 2008, contrary to the statement in the Certificate of Service. Opposing counsel was served by overnight service on November 3, 2008 and a copy of the merits brief was also electronically transmitted to counsel on that date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 14, 2008.

A handwritten signature in cursive script, appearing to read "Robert M. Rader", written in black ink. The signature is positioned above a horizontal line.

Robert M. Rader


## CORRECTED CERTIFICATE OF SERVICE

I certify that, on this date, I caused to be deposited in the U.S. Mail, postage prepaid, 15 copies of Federal Respondents' Brief and five copies of Federal Respondents' Excerpts of Record, upon the Clerk of the Court as follows:

Ms. Molly Dwyer, Clerk  
United States Court of Appeals  
for the Ninth Circuit  
United States Court House  
95 Seventh St.  
San Francisco, CA 94103

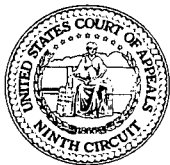
And further caused to be served two copies of Brief of Respondents and two volumes of Respondents' Excerpts of the Record, by overnight mail, upon counsel for the parties as follows:

Peter G. Crane  
6545 27<sup>th</sup> Avenue, NW  
Seattle, WA 98117



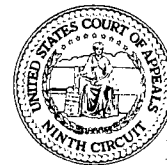
Robert M. Rader

Date: November 3, 2008



Molly C. Dwyer  
Clerk of Court

Office of the Clerk  
**United States Court of Appeals for the Ninth Circuit**  
95 Seventh Street  
Post Office Box 193939  
San Francisco, California 94119-3939



(415) 355-8000

November 13, 2008

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**To:** John F. Cordes, Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

**From:** Molly C. Dwyer, Clerk/Court Executive  
By: Fred Taylor, Deputy Clerk

**Re:** Notice of Deficient Briefs

USCA No. 08-72973      *Peter Crane v. United States Nuclear  
Regulato, et al*

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The Answering brief cannot be filed for the noted reason.

- *The brief was not served by the scheduled date. Within 14 days from the date of this notice, please submit a motion requesting leave to file the brief late. If such a motion is filed, the responding order will adjust the dates for filing any subsequent briefs.*

If appellee/respondent fails to correct the defect in the answering brief in a timely manner, appellee/respondent may be barred from participation at oral argument and may be subjected to sanctions. FRAP 31(c); 9th Cir. R. 31-2.3.

**Please return a copy of this notice to the court along with your response.**



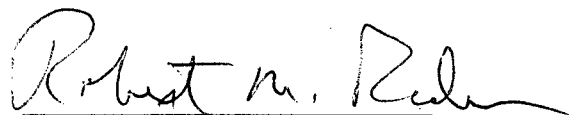
## CERTIFICATE OF SERVICE

I certify that, on this date, I caused to be deposited in the U.S. Mail, postage prepaid, the original and four copies of Respondents' Unopposed Motion for Leave to File Amended Certificate of Service or, in the Alternative, for Leave to File One Day Late upon the Clerk of the Court as follows:

Ms. Molly Dwyer, Clerk  
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for the Ninth Circuit  
United States Court House  
95 Seventh St.  
San Francisco, CA 94103

And further caused to be served a copy of said Motion upon counsel for the parties as follows:

Peter G. Crane  
6545 27<sup>th</sup> Avenue, NW  
Seattle, WA 98117



Robert M. Rader

Date: November 14, 2008