



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RICHARD L. BRODSKY
Assemblyman 92ND District
Westchester County

CHAIRMAN
Committee on
Corporations, Authorities
and Commissions

January 13, 2009

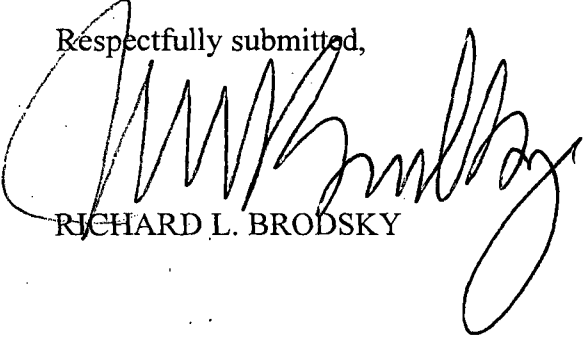
Clerk's Office
United States Court of Appeals
for the Second Circuit
United States Court House
500 Pearl Street
New York, New York 10007

Dear Clerks:

Enclosed please find the original and four copies of Petitioners' Motion for Withdrawal of the Motion to Proceed on the Original Record and for an Extension, the Motion Information Statement, the Anti-virus Certification, and affidavit of service.

Thank you for your assistance in this matter.

Respectfully submitted,



RICHARD L. BRODSKY

CC: Robert Rader, Esq. U.S.
Michael Wallace, Esq.
John Sipos, Esq.
Ellen Durkee, Esq.

MOTION INFORMATION STATEMENT

Docket Number(s): 08-1454-ag

Motion for: Extension of the Briefing Schedule

Set forth below precise, complete statement of relief sought:

MOVING PARTY: Richard L. Brodsky, et.all

☐ Plaintiff ☐ Defendant
☒ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Richard L. Brodsky, Esq.

[name of attorney, with firm, address, phone number and e-mail]

Office of Assemblyman Richard Brodsky

L.O.B. Room 422

Albany, New York 12248

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Caption [use short title]

Richard L. Brodsky, et. al.,

Petitioners,

v.

U.S. Nuclear Regulatory Commission,

Respondents

Entergy Nuclear Operations, Inc.,

Intervenor.

OPPOSING PARTY: U.S. Nuclear Reg. Com'n

OPPOSING ATTORNEY [Name]: Robert Rader, Esq.

[name of attorney, with firm, address, phone number and e-mail]

Office of General Counsel

U.S. Nuclear Regulatory Commission

11555 Rockville Pike

Rockville, MD 20852

301-415-1955

Robert.Rader@nrc.gov

Court-Judge/Agency appealed from: U.S. Nuclear Regulatory Commission

Please check appropriate boxes:

Has consent of opposing counsel:

A. been sought? ☒ Yes ☐ No
B. been obtained? ☐ Yes ☒ No

Is oral argument requested? ☐ Yes ☒ No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☒ No
If yes, enter date

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought
in this Court? ☐ Yes ☒ No

Requested return date and explanation of emergency:

Signature of Moving Attorney:

Date: 1/13/09

Has service been effected? ☒ Yes ☐ No
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____

By: _____

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RICHARD L. BRODSKY, NEW YORK
STATE ASSEMBLYMAN, FROM THE 92ND
ASSEMBLY DISTRICT IN HIS OFFICIAL
AND INDIVIDUAL CAPACITIES,
WESTCHESTER CITIZEN'S AWARENESS
NETWORK (WESTCAN), ROCKLAND
COUNTY CONSERVATION ASSOCIATION,
INC. (RCCA), PUBLIC HEALTH AND
SUSTAINABLE ENERGY (PHASE), AND
SIERRA CLUB - ATLANTIC CHAPTER
(SIERRA CLUB),

Petitioners,

-against-

U.S. NUCLEAR REGULATORY
COMMISSION,

Respondent.

**DECLARATION IN
SUPPORT OF
PETITIONERS MOTION
FOR WITHDRAWAL OF
PETITIONERS MOTION TO
PROCEED ON THE
ORIGINAL RECORD
AND FOR AN EXTENSION**

Docket No. 08-1454-AG

1. Petitioners New York State Assemblyman Richard Brodsky, Westchester
Citizen's Awareness Network (WestCAN), Rockland County Conservation
Association (RCCA), Promoting Public Health and Sustainable Energy (PHASE),
Sierra Club – Atlantic Chapter, (hereinafter "Petitioners") herein respectfully
request permission to withdraw its Motion to Proceed on the Original Record and
for an additional fifteen (15) days to file Petitioners' brief and Joint Appendix.

2. On March 27, 2008 Petitioners filed a Petition for Review challenging the decision of the United States Nuclear Regulatory Commission (“NRC”) dated January 30, 2008 denying Petitioners’ request for relief with respect to an exemption granted by the NRC to Entergy. Petitioners maintain the exemption was granted in violation of applicable law and regulations.

3. On or about May 2, 2008 the NRC Respondent moved to dismiss the Petition for Review. On July 7, 2008, the Court ordered that the motion be referred to the merits panel.

4. The NRC Respondent filed a Certified Index on or about July 25, 2008. The NRC Respondents provided a hard copy of the majority of the documents listed in the Certified Index labeling the documents or including page numbers.

5. On or about July 30, 2008 the Petitioners submitted a motion to supplement the record on appeal. On or about December 15, 2008, the Court ordered that the motion be referred to the merits panel. The Court further ordered that “the appeal will proceed on the certified record.”

6. On December 24, 2008, the Court issued a Scheduling Order under which Petitioners’ brief and the Joint Appendix is to be filed on or before January 27, 2009, NRC Respondent’s brief to be filed on or before March 3, 2009, Petitioners’ reply brief to be filed on or before March 13, 2009, and argument of the appeal,

subject to approval by the Presiding Judge, is ordered for the week of March 30, 2009.

7. On December 31, 2008, Petitioners filed a Motion to Proceed on the Original Record. The NRC Respondent responded on or about January 7, 2009. The NRC Respondent did not mail the original and copies to the Court, instead sending them to Petitioners.

8. After reviewing the courtesy hard copies of the documents listed in the Certified Index, several documents are inaccessible or unavailable or not provided by the NRC Respondent, and are not available to Petitioners or the Court.¹

9. Petitioners have contacted the NRC Respondent and will be provided hard copies of these documents on or about January 14, 2009.

10. The NRC did not file a copy of the documents listed in the Certified Index with the Court.

11. In view of this confusion, Petitioners have offered to submit a Joint Appendix. The NRC Respondent has indicated a willingness to file a joint appendix.

¹ In the Certified Index, the NRC Respondent listed an "Accession No." for 30 of the 31 documents. The documents are supposedly retrievable through a NRC search system known as ADAMS by typing in an Accession No. Document 31, as listed on the Certified Index, does not have an Accession No. and therefore is not retrievable. Documents 22 and 23, as listed on the Certified Index, stated incorrect Accession No. and were not available through the NRC search website ADAMS. Document 22 was not included in the courtesy hard copy sent to Petitioners. Document 23 was missing pages. Finally, documents 24-28, as listed on the Certified Index, state an Accession No. which begins with "LL", rather than "ML".

12. Given this confusion, assembling the Joint Appendix will take more time than originally anticipated. Therefore, in order to allow time for preparation of the Joint Appendix, merits brief, Petitioners therefore respectfully request the Court's permission to withdraw its Motion to Proceed on the Original Record and for an extension of fifteen (15) days to file their Brief and the Joint Appendix.

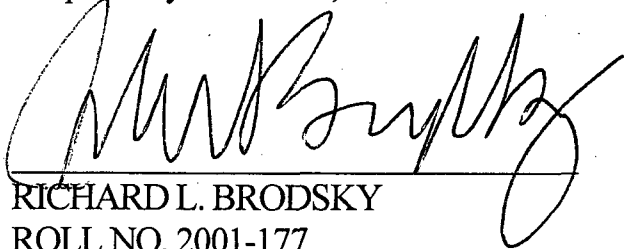
13. The NRC Respondents do not oppose Petitioners' request for an extension.

14. No oral argument is requested.

WHEREFORE, Petitioners for the reasons above stated respectfully request the Court's permission to withdraw its' Motion to Proceed on the Original Record and for an additional fifteen (15) days to file Petitioners' brief and Joint Appendix.

Dated: January 13, 2009
Albany, New York

Respectfully Submitted,



RICHARD L. BRODSKY
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cc:

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Assistant Attorney General
New York State Department of Law
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The Capitol
Albany, New York 12224

ANTI-VIRUS CERTIFICATION FORM

See Second Circuit Interim Local Rule 25(a)6.

CASE NAME: Brodsky et. al. v. U.S. Nuclear Reg. Com'n

DOCKET NUMBER: 08-1454-ag

I, (please print your name) Richard L. Brodsky, certify that

I have scanned for viruses the PDF version of the attached document that was submitted in this case as

an email attachment to ☒ <agencycases@ca2.uscourts.gov>.

☐ <criminalcases@ca2.uscourts.gov>.

☐ <civilcases@ca2.uscourts.gov>.

☐ <newcases@ca2.uscourts.gov>.

☐ <prosecases@ca2.uscourts.gov>.

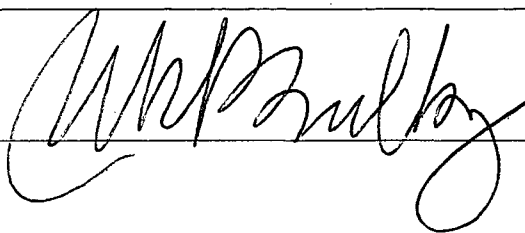
and that no viruses were detected.

Please print the **name** and the **version** of the anti-virus detector that you used _____

Symantec 7.5

If you know, please print the version of revision and/or the anti-virus signature files _____

(Your Signature) _____



Date: 1/13/09

STATE OF NEW YORK)
)
COUNTY OF ALBANY)

ss.: **AFFIDAVIT OF SERVICE
BY U.S. FIRST CLASS MAIL**

I, REBECCA M. WILSON, being duly sworn, depose and say that deponent is not a party to the action, is over 19 years of age and resides in Albany, New York, County of Albany.

On January 13, 2009, deponent served the within Petitioners' Motion for Withdrawal of Petitioners Motion to Proceed on the Original Record and for an Extension and upon the following:


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U.S. Nuclear Regulatory Commission
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MAIL STOP 0-15D21
Rockville, Maryland 20852-2738

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Assistant Attorney General
N.Y. S. Dept. of Law
Environmental Protection Bureau
The Capitol
Albany, N.Y. 12224

Ellen Durkee, Esq.
Appellate Section & Environmental
and Natural Resources Division
U.S. Department of Justice
P.O. Box 23795
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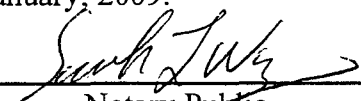
Michael Wallace, Esq.
Wise Carter Child & Caraway, P.C.
P.O. Box 651
Jackson, Mississippi 39205

The address(es) designated below by said attorney(s) for that purpose by depositing a true copy(ies) of the Motion for an Extension, enclosed in a postpaid properly addressed envelope under the exclusive custody and care of the United States Postal Service, within the State of New York.



REBECCA M. WILSON

Sworn to before me this 13th day of
January, 2009.



Notary Public

SARAH L. WAGNER
Notary Public, State of New York
No. 02WA6133401
Qualified in Albany County
Commission Expires Sept. 19, 20 09