



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RICHARD L. BRODSKY
Assemblyman 92ND District

Westchester County

CHAIRMAN
Committee on
Corporations, Authorities
and Commissions

April 9, 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

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

Dear Clerks:

On behalf of Petitioners in the above referenced matter, enclosed please find a fully executed Notice of Hearing Date.

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.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Dennis Jacobs
CHIEF JUDGE

Catherine O'Hagan Wolfe
CLERK OF COURT

APR 06 2009

Date: 4/2/09 Docket 08-1454-ag
Short Title: Brodsky v. U.S. Nuclear Regulatory Commission
Agency Number: 50-247-AN Agency: Nuclear Regulatory Commission

NOTICE OF HEARING DATE

Date of Hearing: Monday May 11 2009
Time Allotted for Oral Argument: Richard Brodsky (10 minutes)
New York State (5 minutes) U.S. Nuclear Reg. Commission (10 minutes)
Energy Nuclear Operations (5 minutes)

The above referenced appeal is scheduled for oral argument on the day indicated in the **Ceremonial Courtroom (9th Floor)**, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Manhattan, New York City.

Court convenes promptly at 10:00 a.m. Counsel and non-incarcerated pro se litigants must be present for argument unless earlier excused. Motions to adjourn argument must be promptly made and will be granted for grave reason only.

Counsel and non-incarcerated pro se litigants presenting oral argument must register with the courtroom deputy no later than 9:30 a.m.. Please be advised that, due to the technical difficulties, we are unable to provide offsite Video Argument until further notice. It is hoped that we will again be able to offer this convenience in the future.

Counsel and non-incarcerated pro se litigants may seek the Court's permission to waive oral argument by submitting a letter request to the Office of Clerk (attention Calendar Deputy) not later than five days before the hearing week.

Report all settlements to the Calendar Deputy as soon as effected. Ordinarily, and subject to the ruling of the presiding judge, motions or stipulations to withdraw with prejudice will be granted without appearance by counsel, but motions or stipulations to withdraw without prejudice filed within three business days of the argument will be considered at the time of argument, with counsel present and prepared to argue the merits.

CATHERINE O'HAGAN WOLFE, Clerk

Complete Items below and return copy of entire form to the Clerk's Office

Name of the Attorney/Pro Se Presenting argument: Richard L. Brodsky, Esq.

Firm Name (IF APPLICABLE):

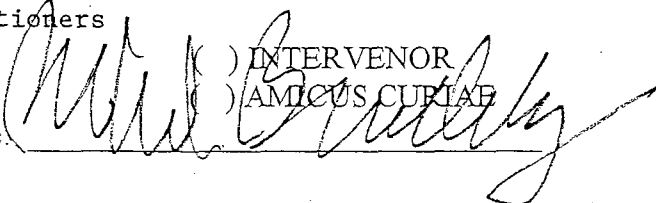
Current Telephone Number: 518-455-5753

The above named Attorney Represents: Petitioners

() APPELLANT-PETITIONER

() APPELLEE-RESPONDENT

Date: 4/7/09

Signature: 

() INTERVENOR

() AMICUS CURIAE



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

OFFICE OF THE
SECRETARY

April 13, 2009

Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals
for the Second Circuit
United States Court House
40 Foley Square
New York, New York 10007

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

Dear Ms. Wolfe,

Pursuant to Rule 28(j), we bring to the attention of the Court the recent decision of the Supreme Court in *Entergy Corp. v. Riverkeeper, Inc.*, 2009 WL 838242 (April 1, 2009).

That decision is relevant to federal respondents' reliance upon *Chevron* at pages 18 and 30 of our brief, asserting that the agency's longstanding interpretation of Section 189 of the Atomic Energy Act – not requiring a hearing on NRC exemptions – is entitled to judicial deference. The Supreme Court stated in *Riverkeeper* that, where an agency administers a statute, the agency's interpretation "governs if it is a reasonable interpretation of the statute – not necessarily the only possible interpretation, nor even the interpretation deemed *most* reasonable by the courts." *Id.* at *5 (emphasis in original).

The Court further stated: "While not conclusive, it surely tends to show that the [agency's] current practice is a reasonable and hence legitimate exercise of its discretion . . . that the agency has been proceeding in essentially this fashion for over 30 years." *Id.* at *9.

These two passages of the Court's decision not only apply to NRC's consistent interpretation of Section 189 to disallow hearings on post-licensing exemptions, but also apply to the NRC's longstanding interpretation of the Atomic Energy Act to allow regulatory exemptions (akin to the variances in *Riverkeeper*) in the first place, as discussed at pages 40-41 of our brief.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert M. Rader".

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 (e-mail)

cc: All Counsel

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Dennis Jacobs
CHIEF JUDGE

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CATHERINE O'HAGAN WOLFE, Clerk

Complete Items below and return copy of entire form to the Clerk's Office

Name of the Attorney/Pro Se Presenting argument:

Robert M. Rader

Firm Name (IF APPLICABLE):

Current Telephone Number: 301-415-1955

The above named Attorney Represents:

() APPELLANT-PETITIONER

() INTERVENOR

(X) APPELLEE-RESPONDENT

() AMICUS CURIAE

Date: April 13, 2009

Signature:

Robert M. Rader