

## Bennett Brown, et al.

**V.**

U.S. Nuclear Regulatory Commission, et al.

No. 11-1441

The U.S Nuclear Regulatory Commission and the United States of America (collectively, “the Federal Respondents”) respond in support of Petitioners’ Motion for Revised Briefing Schedule, which was filed on Monday, March 7, 2011.

1. Petitioners challenge an administrative decision by the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) pursuant to the Administrative Orders Review Act, 28 U.S.C. 2341, *et seq.* See Motion at ¶ 3.

2. This Court has original jurisdiction of this matter without intervening district court review. *E.g.*, *Florida Power & Light Co. v. Lorion*, 470 U.S. 729 (1985). Thus, the administrative record of the proceedings is in the possession of

the NRC, the administrative agency, not the petitioners. *See* Motion at ¶ 4.

3. Under the Federal Rules of Appellate Procedure (“FRAP”), the NRC is required to file either the Administrative Record in the case or a Certified Index of the Record within 40 days of being served with the petition. *See* FRAP 17.

4. The Federal Respondents agree that the Petitioners cannot be expected to start preparing their brief until the NRC files either the Record or the Certified Index of the Record. *See* Motion at ¶ 5. Thus, the Federal Respondents support Petitioners’ request for a revised briefing schedule. *See* Motion at ¶ 7.

5. The Federal Respondents do not object to the NRC being required to file the Record or Certified Index by April 11, 2011. We suggest that: (1) Petitioners’ brief be due 30 days from the date the Court issues the notice of docket activity filing the Administrative Record or Certified Index; and (2) the filing of the Response Brief and Reply Brief remain as stated in the current scheduling order.

6. The Federal Respondents are considering filing a dispositive motion within the next 30 days, *i.e.*, a Motion to Dismiss the Petition for Review on jurisdictional grounds. Such a Motion would be filed prior to the current deadline for Petitioners’ merits brief. We respectfully request that the scheduling order provide that, in the event of the filing of a dispositive Motion, the schedule for the filing of merits briefs (but not the filing of the Record or Certified Index) be

suspending pending this Court's disposition of that Motion.

For the foregoing reasons, Petitioners' Motion for a Revised Briefing Schedule should be granted, and the Revised Scheduling Order also should suspend the briefing deadlines in the event the Federal Respondents file a Motion to Dismiss.

Respectfully submitted,

\_\_\_\_s/Lisa Jones/cem\_\_\_\_

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\_\_\_\_s/Charles E. Mullins\_\_\_\_

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