



OFFICE OF THE
GENERAL COUNSEL

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

April 26, 2011

Clerk of Court
United States Court of Appeals for the D.C. Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue NW
Washington, DC 20001-2866

Pursuant to Circuit Rule 27(b), enclosed are four paper copies of Respondents' Motion for Judicial Notice and to File a Supplemental Addendum in *Blue Ridge Environmental Defense League v. NRC*, No. 09-1112 (consolidated with 10-1058).

The document was electronically filed on April 26, 2011.

Thank you,

A handwritten signature in black ink, appearing to read "Jeremy Suttenger", is written over a horizontal line.

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NOT YET SCHEDULED FOR ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BLUE RIDGE ENVIRONMENTAL DEFENSE)	
LEAGUE,)	
)	
Petitioner)	
)	
v.)	No. 09-1112,
)	<i>consolidated with</i>
)	No. 10-1058
U.S. NUCLEAR REGULATORY COMMISSION)	
and UNITED STATES OF AMERICA,)	
)	
Respondents)	
)	
TENNESSEE VALLEY AUTHORITY,)	
)	
Intervenor.)	

**FEDERAL RESPONDENTS' MOTION FOR JUDICIAL NOTICE AND
TO FILE A SUPPLEMENTAL ADDENDUM**

The Federal Respondents move this Court for leave to file a separately bound supplemental addendum consisting of three public-record, judicially noticeable documents. The supplemental addendum would be in addition to the addendum attached to our brief. We also request leave to substitute citations to this addendum in our final brief (this is a deferred-appendix case) in place of the blank "JA" (Joint Appendix) citations used in our

opening brief, as initially filed. We seek this relief for the following reasons.

1. The three documents that we wish to place in the supplemental addendum are all adjudicatory in nature. The first document is an NRC Licensing Board's decision rejecting "contentions" raised by petitioner Blue Ridge Environmental Defense League (BREDL) before the NRC. The second document is BREDL's administrative appeal of the Board decision, and the third document is the Commission's ruling on that appeal. As public-record documents, all three are judicially noticeable. See *Conecuh-Monroe Cmty. Action Agency v. Bowen*, 852 F.2d 581, 583 (D.C. Cir. 1988) (taking judicial notice of an HHS administrative ruling issued after the lawsuit was filed).

2. Although judicially noticeable, the adjudicatory documents are not yet published in NRC's reporter system and thus are not easily accessible. To save the Court the unnecessary burden of navigating the NRC's public website, we propose reproducing hard copies of these three documents in the supplemental addendum.

3. The need for the supplemental addendum arose from BREDL's own doing. In its opening brief, BREDL argued that the

NRC had unlawfully constrained the scope of its hearing opportunity before the NRC's Licensing Board. To support this argument, BREDL quoted, at length, the Licensing Board's decision rejecting its contentions. See BREDL's Opening Brief at 24.

Naturally, our response to BREDL also included citations to the Licensing Board decision. We further argued that the good-cause issue was not even properly before this Court because BREDL failed to exhaust its administrative remedies. To support this argument, we cited BREDL's brief appealing the Board's ruling and the Commission's ruling on BREDL's appeal.

4. Based on earlier communications, and on citations in BREDL's own brief, we had expected BREDL to include these three public-record documents in the deferred Joint Appendix, for the convenience of the Court. Indeed, to effectuate this, we had e-mailed copies of the three documents to BREDL's counsel nearly two weeks before the deadline for filing the Joint Appendix. But yesterday (April 25) — the same day the Joint Appendix was due — BREDL's counsel for the first time informed NRC counsel, by telephone, that he opposed providing the documents to the Court, in the Joint Appendix or otherwise.

5. Once we create the supplement addendum, we plan to make the appropriate substitutions (from “JA” to “SA”) in various citations in our opening brief.

CONCLUSION

For the foregoing reasons, this Court should grant the Federal Respondents’ Motion for Judicial Notice and to File a Supplemental Addendum.

Respectfully Submitted,

/S/
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CERTIFICATE OF SERVICE

I certify that on this date, April 26, 2011, I filed the foregoing motion with the Court through the use of the D.C. Circuit CM/ECF electronic filing system. This also served opposing counsel of record.

As required by local rule 27(b), I have also caused an original and four paper copies of this brief to be filed with the Court.

/S/ _____
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