IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BENNETT BROWN, ROBERT SCHULTES, M.D., PAMELA MACKEY TAYLOR, and IOWA PHYSICIANS FOR SOCIAL RESPONSIBILITY,	)	No. 11-1441
Petitioners,	)	
vs.	)	RESPONSE TO MOTION TO DISMISS
NUCLEAR REGULATORY COMMISSION and UNITED STATES OF AMERICA,	)	
Respondents.	)	

Come now the Petitioners and in support of this Response to the Respondents' Motion to Dismiss and the Intervenors' Response in Support of the Motion to Dismiss, state to the Court as follows:

PROCEDURAL HISTORY

FPL Energy Duane Arnold, now NextEra Energy Duane Arnold, filed an application for renewal of the license to operate the Duane Arnold Energy Center in Palo, Iowa. Notice of the filing of this application was published in the Federal Register on November 17, 2008. This notice is Document 2 in the administrative record.

On February 17, 2009, notice was published in the Federal Register that the application for license renewal was accepted by the NRC and that interested persons may file a request for hearing and petition to intervene. That

notice is Document 3 in the administrative record. That notice specifically states in pertinent part:

> Within 60 days of this notice, any person(s) whose interest may be affected may file a request for hearing/petition to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.
>
> Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or the expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one

> contention will not be permitted to participate as a party.
>
> The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.
>
> Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

The notice also states that an environmental impact statement would be prepared at a later date.

On March 24, 2009, a notice of intent to prepare an environmental impact statement and conduct a scoping process was published in the Federal Register. This notice is Document 4 in the administrative record. That notice states in pertinent part:

> The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) related to the license renewal application and to provide the public with an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.
>
> **********
>
> Participation in the scoping process by members of the public and local, State, Tribal, and Federal Government agencies is encouraged.
>
> **********
>
> The NRC invites the following entities to participate in scoping:

a. The applicant, FPL Energy Duane Arnold, LLC.
b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.
c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.
d. Any affected Indian Tribe.
e. Any person who requests or has requested an opportunity to participate in the scoping process.
f. Any person who has petitioned or intends to petition for leave to intervene.

Pursuant to the above notice, a scoping meeting was held on April 22, 2009. At that meeting Petitioner, Bennett Brown, spoke and made comments. A transcript of his comments is Document 5 in the administrative record.

Then, on February 10, 2010, notice was published in the Federal Register of the availability of the draft environmental impact statement for the Duane Arnold license renewal. That notice is Document 7 in the administrative record and states in pertinent part:

> Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by April 19, 2010 . . . .
>
> **********
>
> The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. . . . There will be two sessions to accommodate interested parties.

Pursuant to that notice, Petitioners, Robert Schultes and Pamela Mackey Taylor, submitted written comments. The United States Environmental Protection Agency also submitted written comments. Those comments are Documents 9, 10 and 11 in the administrative record.

Finally, on December 29, 2011, notice was published in the Federal Register that the Duane Arnold license was renewed and that this notice was also the record of decision on the final environmental impact statement. That notice is Document 16 in the administrative record.

TIMELINESS OF THE PETITION FOR REVIEW

Respondents contend that the Petition for Review herein was not timely filed. They contend that the Duane Arnold license renewal was issued on December 16 and that the Petitioners had 60 days from that date, pursuant to 28 U.S.C. § 2344, to file their Petition.

Section 2344 states that a petition for review must be filed within 60 days after the "entry" of the final agency order sought to be reviewed. The Respondents' argument is that December 16, 2010, was the date of the entry of the final agency order. Section 2344 also states that "[o]n entry of a final order . . . the agency shall promptly give notice thereof by service or publication in accordance with its rules." (emphasis added). Finally, § 2344 requires that

a petitioner seeking judicial review must attach to the petition copies of the "order, report, or decision of the agency," assuming the petitioner has received copies thereof pursuant to the earlier requirement in the statute that the agency must promptly serve copies thereof.

For participants in the agency proceedings who were parties in a formal adjudicatory hearing proceeding before the agency, it may be reasonable to say that the date the order is signed is the date of entry, because the statute requires that the parties be served with notice promptly. But when a party participates by making comments, that party does not receive notice until the order is published in the Federal Register.

The discussion in Mesa Airlines v. United States, 951 F.2d 1186 (10th Cir. 1991), is instructive. Although the facts in Mesa are distinguishable from this case, the court did consider when an agency order is entered. The Mesa court said that in a case where there is not an official docket, entry of the order is effected when the order is made public, citing Chem-Haulers, Inc. v. United States, 536 F.2d 610 (5th Cir. 1976)(an order of the ICC was entered only when it was "final, complete, and a matter of public record."), and City of Gallup v. FERC, 702 F.2d 1116 (D.C. Cir. 1983)(A decision becomes a final decision when it is

both complete and passes out of the control of the authority by being released to the interested parties or to the public in decisional form without any immediate intention of recall or reconsideration.).

In Chem-Haulers, a case relied upon by the Respondents and referred to in Mesa, the Interstate Commerce Commission "decision was not served on Chem-Haulers, or the public generally, until February 18, 1975, at which time a formal final order was released." Chem-Haulers, 536 F.2d at 613. The court, in attempting to interpret the meaning of "entry" in § 2344, found that the legislative history of the statute was ambiguous. So, without firm guidance in the statute or legislative history clarifying when an order is entered, the Chem-Haulers court looked to various cases interpreting agency actions.

The court quoted from the case of Statler Distributors v. Alexander, 148 F.2d 74 (1st Cir. 1945):

> Without undertaking to give a comprehensive interpretation of the statutory phrase, "entry of such order," it suffices for this case to hold that the order of denial has at least been entered, . . . , when it has been signed and placed in [the agency's] files as a completed act, and a copy of the order, forwarded to the applicant by registered mail pursuant to § 4(f), has actually been received by the applicant. (emphasis added).

Chem-Haulers at 616.

The Chem-Haulers court then noted that Federal Communications Commission orders are final when public notice is given of the orders. This has been interpreted to mean publication in the Federal Register. Although this interpretation is based on a specific FCC rule that says the order is entered when published in the Federal Register, it certainly demonstrates that fixing the Federal Register publication as the date of entry is reasonable and appropriate.

The Chem-Haulers court then concluded that the time period for petitioning for review of an agency order pursuant to § 2344 "should run from the time when the order appealed from is final, complete, and a matter of public record." Chem-Haulers, 536 F.2d at 616. In supporting that conclusion, the court said:

> Before the appealing party has access to the Commission's order (assuming it has learned of the contents of the minute record reflecting the bare Commission decision) it has not the means to assess the legal basis for appeal. Title 28, U.S.C., Section 2344, requires the party petitioning for review to state the "grounds on which relief is sought" as well as to attach a copy of the "order, report, or decision" of the agency to the petition for review.

Id.

In this case, the petitioners did not receive notice of, nor a copy of, the final order of the NRC regarding the record of decision on the final supplemental environmental

impact statement, nor did they receive a copy of the final EIS. See affidavits of Bennett Brown, Robert Schultes, and Pamela Mackey Taylor, hereto attached. They had no way of knowing the contents of the final order until it appeared in the Federal Register on December 29, 2010. It is significant that the NRC's failure to provide the commenters with a copy of the final EIS, which might have put them on notice that a final order was imminent, violated Council on Environmental Quality regulations, 40 C.F.R. § 1502.19, and the NRC's own regulations, 10 C.F.R. § 51.93, which require an agency to distribute a copy of the final EIS to each commenter on the draft EIS. Although there was apparently a press release and subsequent news articles, neither the press release nor the news articles gave the complete substance of the order, especially in terms of the record of decision on the final supplemental environmental impact statement. There is a web page regarding the Duane Arnold relicensing, but even now if you go to that web page, www.nrc.gov/reactors/operating/licensing.renewal/applications/duane-arnold-energy-center.html, you cannot access the documents contained in Exhibit 1 attached to the Respondents' Motion to Dismiss. Thus, the final order in this case was not "final, complete, and a matter of public

record," see Chem-Haulers, supra, until it was published in the Federal Register on December 29, 2010.

The Respondents also claim that a response by undersigned counsel to a news reporter shows that Petitioners had actual notice of the decision. But counsel had not seen the order and simply commented that at the appropriate time, legal action might be undertaken. Counsel only indicated that he had seen the comments submitted by the Environmental Protection Agency, but he had not seen the order or even the press release. The fact is that it was only upon being told by a news reporter that the license had been renewed and then accessing the final EIS from the Internet, that counsel was able to even know that EPA had commented. Also, as noted previously, counsel could not even go to the Duane Arnold relicensing web site and find the order. This is not the type of notice referred to in the cases cited above that would constitute entry of the order.

The Respondents rely heavily on the decision in Energy Probe v. NRC, 872 F.2d 436 (D.C. Cir. 1989). But that case is factually distinguishable from the case here. In Energy Probe, the petitioners were participants in a formal agency adjudicatory proceeding. The agency denied the petitioners' request to suspend a nuclear power plant's operating

license. At that time, an agency officer informed the petitioners that the ruling would become final 25 days after the date of issuance, unless the agency granted discretionary review. The agency denied further review and that decision was served on the petitioners. One of the petitioners did not receive the decision until 13 days after it was served because the petitioner had relocated its office and had not notified the agency of its new address. So, as in some of the cases cited previously, this was a situation where notice of the contents of the agency decision was specifically served promptly on the parties. When, as in this case, the parties are not served with such notice, and in fact, have no way to obtain the agency decision until it is published in the Federal Register, the order is "final, complete, and a matter of public record" when published in the Federal Register.

The Intervenors contend that § 2344 is clear and unambiguous that it is the entry of the order that triggers the 60-day filing period. But that begs the question as to when the order is entered. And as stated by the court in Chem-Haulers, supra, the meaning of the term "entry" is not clear and unambiguous. As shown by the above-cited cases, entry occurs when the order is complete and made a matter of public record.

The Intervenors also argue that even if the date of the Federal Register publication of the NRC order is the date that triggers the 60-day notice, the Petitioners still had 47 days to file a petition for judicial review before the date the Respondents and Intervenors claim was the deadline. The argument is based on language in Energy Probe, 872 F.2d at 438, that is essentially dicta, noting that even though notice of the order was promptly served, the delay in one of the parties receiving it did not significantly prejudice that party because there were still 47 days to file a petition for review after the notice was served. But the facts of that case were that the petitioners were parties in a formal adjudicative proceeding, the final order was directly and promptly served on them, one petitioner received timely notice, the only reason one petitioner did not receive timely notice was because it had changed addresses, and in any event both petitioners were represented by the same attorney. So the language seized upon by the Intervenors was based on the specific facts in the Energy Probe case and was essentially dicta. Most significantly, § 2344 clearly establishes a 60-day time period, not a 47-day time period. The Intervenors are improperly attempting to amend the statute.

The common thread running though all of the above-cited cases is that an agency order is entered when interested parties are served with notice and have knowledge of the contents of the order. In a case where the parties participate in the agency proceeding by commenting, the only notice and knowledge of the contents of the order they receive is publication of the order in the Federal Register. That is the date when the order is entered.

Respondents admit that the Petition for Review herein was filed within 60 days of that date. Therefore, the Petition for Review was timely filed.

PETITIONERS ARE PARTIES ENTITLTED TO BRING THIS ACTION

The Respondents' second argument is that the Petitioners are not "parties" as contemplated in 28 U.S.C. § 2344. The Respondents claim that because the Petitioners did not intervene or seek a hearing pursuant to the notice issued on February 17, 2009 (Admin. Rec. Doc. 3), they are not parties. But that alone does not define who is a party in this context.

A party, for purposes of 28 U.S.C. § 2344, is someone who has participated in the agency proceedings. ACLU v. FEC, 774 F.2d 24 (1st Cir. 1985); Reytblatt v. NRC, 105 F.3d 715 (D.C. Cir. 1997). Participation can include comments if that avenue is available for participation. Id. Although

these were not NEPA cases, the point is that if interested persons can participate by comment, they are parties for purposes of § 2344. It is clear from the administrative record in this case that participation by comment was available concerning the NRC's NEPA obligations with respect to the Duane Arnold relicensing. In fact, such participation was invited.

In the March 24, 2009, notice of the scoping meeting (Admin. Rec. Doc. 4), it was clearly stated that the purpose of the notice was to "provide the public with an opportunity to participate" in the process, and that "[p]articipation in the scoping process by members of the public . . . is encouraged," and that "[t]he NRC invites the following entities to participate in scoping: . . . (e) Any person who requests or has requested an opportunity to participate in the scoping process." (emphasis added). So members of the public were invited to participate in the scoping process, an integral part of the NEPA process. And Petitioner, Bennett Brown, did participate in the scoping process. By doing so, he became a party within the context of 28 U.S.C. § 2344.

Likewise, the notice on February 19, 2010, regarding the availability of the draft environmental impact statement (Admin. Rec. Doc. 7), invited comments from

"[a]ny interested party" and that two public meetings would be held to accommodate "interested parties." (emphasis added). So the NRC could not have made it more clear that persons who comment on the draft EIS are interested parties. And this is in line with the holdings in ACLU and Reytblatt, supra. Thus, Petitioners, Robert Schultes and Pamela Mackey Taylor, by commenting on the draft EIS, became parties to the proceedings.

In fact, the Intervenors admit that "[i]n addition to, and separate from, the NEPA scoping process and public commenting period, the NRC also provides an opportunity for a hearing on the license renewal applications." (Int. Response p. 4). So it is clear that a formal hearing is not the only way to raise a NEPA issue and participate in the relicensing proceeding regarding NEPA claims.

The Intervenors also contend that the Petitioners should be required to have requested a formal hearing, alleging that that procedure would have made a better record for review (Int. Response p. 9-10). But there is no reason that this case is any different than any other NEPA case, where the record is made by the agency compiling all the information it had available in making its decision, including public comments. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 91 S.Ct. 814 (1971);

Voyageurs Nat'l. Park Ass'n. v. Norton, 381 F.3d 759 (8th Cir. 2004). So there is no basis for saying that an adequate record can only be made in a formal hearing procedure, especially when, as here, the Petitioners bring only a NEPA claim.

Faced with the fact that the law and the facts are against them, the Respondents have engaged in an effort to reframe the issue and drag the Petitioners and the Court into a discussion of exhaustion of administrative remedies. The issue is whether the Petitioners are parties within the meaning of 28 U.S.C. § 2344, not whether they have exhausted their administrative remedies. The Court should note that the Respondents' argument on this issue (Motion to Dismiss p. 9) does not begin with a discussion of who is a party. It immediately, and incorrectly, frames the issue as exhaustion of administrative remedies. The argument then makes the unjustified and unsupported leap to the assertion that the exhaustion requirement is directly tied to the Hobbs Act requirement that only parties can file a petition for review.

But it seems obvious that a person could be a party and not have exhausted administrative remedies. In fact, the case of Woodford v. Ngo, 548 U.S. 81, 126 S.Ct. 2378 (2006), relied upon heavily but incorrectly by the

Respondents, is a good example. Woodford involved a prisoner who sued prison officials pursuant to the Prison Litigaton Reform Act (PLRA). That act specifically said that in order for a prisoner to sue prison officials, the prisoner had to have exhausted all available administrative remedies. The Supreme Court held that Mr. Ngo had not exhausted all administrative remedies through the prison system and so he could not bring his court action. But there should be no question that he was a party, even though he had not exhausted his administrative remedies.

So, after reframing the issue and making the unsupported leap from exhaustion of remedies to the question of who is a party, the Respondents then mischaracterize the only NRC case cited to support this argument, Massachusetts v. United States, 522 F.3d 115 (1st Cir. 2008). In Massachusetts the state was concerned about the treatment of spent fuel rods at two nuclear reactors. The state wanted to participate directly in the relicensing proceedings as a party in a formal adjudicatory proceeding. The state had also filed a separate rulemaking petition. The NRC denied the state's request to intervene and request a formal hearing. The NRC argued that the state should not be a formal party in the licensing proceedings, but instead should participate as an interested governmental entity.

The court decided that the state could participate as an interested governmental entity.

In the course of making that decision the court discussed the NEPA procedure with respect to nuclear relicensing proceedings. First, the court said:

> In such a situation, the regulations provide channels through which the agency's staff may receive new and significant information, namely from a license renewal applicant's Environmental report or from public comments on the draft SEIS, ... (emphasis added).

Id. at 127. So, commenting on a draft SEIS is a recognized way to participate in the NEPA process in a nuclear relicensing proceeding.

The Massachusetts court then went on to discuss who is a party:

> "Party" can both be defined in one context as a term of art, e.g., as one who has demonstrated standing and whose contention has been admitted for hearing in a licensing adjudication, see 10 C.F.R. § 2.309(a), and deployed in its more general sense of one who participates in a proceeding or transaction, ... The NRC has not defined the term "party" uniformly throughout its regulations.

Id. at 129. The court then addressed the heart of the issue presented in the Respondents' Motion to Dismiss:

> This court applies a functional test to determine whether one is a "party aggrieved" for Hobbs Act purposes. That test asks whether the would-be petitioner "directly and actually participated in the administrative proceedings." . . . Because "we do not equate the regulatory definition of a 'party' in an [agency] proceeding with the participatory party status required for judicial review," . . . it matters

> not here whether NRC regulations label the Commonwealth as a "party" or an "interested governmental entity."

Id. at 131.

The Massachusetts court made it clear, therefore, that the agency's interpretation of who is a party is not controlling on the court in determining party status for purposes of § 2344. So the statement in the NRC scoping regulation, 10 C.F.R. § 51.28, that says participation in the scoping process does not entitle the participant to become a party, has no force and effect in this Court's determination of who is a party under § 2344. Furthermore, there is no similar restriction in the NRC regulations on persons who comment on the draft EIS. And the Intervenors admit that "[p]etitioners therefore need not necessarily be considered a "party" to an NRC hearing under 10 C.F.R. § 2.309(a) to invoke the Hobbs Act jurisdiction as a 'party aggrieved'," citing Massachusetts. (Int. Response p. 11). So the Respondents have absolutely no basis for contending that the agency has precluded commenters on the draft EIS from being parties.

One final comment needs to be made about the Massachsetts case. The Respondents have seized upon the discussion of exhaustion of administrative remedies in an attempt to make the case fit their narrative of the issue.

But the discussion of exhaustion of administrative remedies in that case was separate from the determination of who is a party. The only reason the exhaustion issue came into play in that case was because the court having decided that the state could be a party by entering as an interested governmental entity or by rulemaking, and those proceedings were not yet final, the state had not exhausted its administrative remedies. In the case before this Court, there is no question that the agency order is final and that the Petitioner's have no further administrative remedies.

The Intervenors also conflate the question of who is a party with exhaustion of administrative remedies. They argue that exhaustion is implicit in the question of who is a party, citing Gage v. AEC, 479 F.2d 1214 (D.C. Cir. 1973). But the holding in Gage is based on its specific facts. The petitioners in that case did not participate in the agency proceedings at all, so they clearly did not exhaust their administrative remedies and were not parties. Also, the phrase in the Gage opinion stating that exhaustion is implicit in party status is dicta contained in a recitation of the petitioners' argument. It is not the holding of the court.

The Intervenors then cite two cases from this Court. In First National Bank of St. Charles v. Bd. of Governors, 509 F.2d 1004 (8th Cir. 1975), in interpreting a statute other than § 2344, the court did not equate party status with exhaustion of remedies, but rather addressed them as separate issues. And the petitioners in that case, as in Gage, apparently did not participate in agency proceedings at all. In North American Sav. Ass'n. v. Fed. Home Loan Bank Bd., 755 F.2d 122 (8th Cir. 1985), the petitioners did not participate in the agency proceedings at all because they had no opportunity at all to do so.

So the cases cited by the Intervenors are inapplicable to the facts of this case. In the cited cases, the petitioners did not participate in the agency proceedings at all. In this case, they did.

The foregoing cases make clear the following conclusions: a petitioner can be a party for purposes of § 2344 by submitting comments if that opportunity is available during the agency proceeding; it is the court, not the agency, that determines who is a party in the context of § 2344; and in NRC proceedings, the court applies a functional test to determine whether the petitioner actually and directly participated in the agency proceedings. Based on those conclusions, there is no

question that the Petitioners in this case participated in the NEPA aspect of the relicensing proceedings by making comments at the invitation of the agency and that they are therefore "part[ies] aggrieved" within the scope of 28 U.S.C. § 2344.

Finally, Respondents cite some cases where NEPA claims in nuclear licensing cases have been made through the formal adjudicatory hearing process (Motion to Dismiss p. 5, n. 2 and 3). Those cases merely demonstrate what the court said in Massachusetts v. NRC, that there is more than one way to participate in the NEPA process in nuclear licensing cases. Reference to those cases does absolutely nothing to support the Respondents' argument.

Based on the foregoing, the Petitioners in this case are parties entitled to bring this case pursuant to 28 U.S.C. § 2344.

CONCLUSION

Although brought in the context of a license renewal proceeding, Petitioners' claims are challenges to the environmental impact statement pursuant to NEPA. "'NEPA's public participation procedures are at the heart of the NEPA review process' and reflect 'the paramount Congressional desire to internalize opposing viewpoints into the decision making process to ensure that an agency

is cognizant of all the environmental trade-offs that are implicit in a decision.'" Half Moon Bay Fishermans' Marketing Assn. v. Carlucci, 857 F.2d 505, 506 (9th Cir. 1988), quoting California v. Block, 690 F.2d 753, 770-71 (9th Cir. 1982). And the NRC's own regulations require the agency to seek and encourage public participation. See, 10 C.F.R. §§ 51.28 (scoping) and 51.73 (draft EIS).

The Respondents cannot now attempt to pull the rug out from under the Petitioners and say they are not participants, when they were invited and encouraged to participate. Furthermore, that participation would be essentially meaningless if there were no right to judicial review. As the court said in Massachusetts v. EPA, 522 F.3d at 130, "[W]hat fetters the agency's decision-making process and ensures ultimate compliance with NEPA is judicial review." The Respondents are attempting to prevent judicial review of the agency's actions. Their Motion to Dismiss should be denied.

/s/ *Wallace L. Taylor*

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ *Wallace L. Taylor*
WALLACE L. TAYLOR AT0007714

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BENNETT BROWN, ROBERT SCHULTES, M.D., PAMELA MACKEY TAYLOR, and IOWA PHYSICIANS FOR SOCIAL RESPONSIBILITY,	)	No. 11-1441
Petitioners,	)	
vs.	)	
NUCLEAR REGULATORY COMMISSION and UNITED STATES OF AMERICA,	)	AFFIDAVIT OF BENNETT BROWN
Respondents.	)	

The undersigned, Bennett Brown, states as follows:

1. I am one of the Petitioners in this action and I was a participant in the environmental review process for the relicensing of the Duane Arnold Energy Center. My participation in that process was making comments at the scoping meeting on April 22, 2009.

2. After April 22, 2009, I did not receive any notice or correspondence from the Nuclear Regulatory Commission about the final supplemental environmental impact statement, which I now understand contained the Commission's response to my scoping hearing comments.

3. I did not receive personal notice of nor a copy of the Commission's decision to renew the Duane Arnold license and to approve the environmental impact statement.

4. I am a member of Iowa Physicians for Social Responsibility.

5. I hereby certify under penalty of perjury that the foregoing is true and correct.

Bennett Brown

BENNETT BROWN

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BENNETT BROWN, ROBERT SCHULTES, M.D., PAMELA MACKEY TAYLOR, and IOWA PHYSICIANS FOR SOCIAL RESPONSIBILITY,	)	No. 11-1441
Petitioners,	)	
vs.	)	
NUCLEAR REGULATORY COMMISSION and UNITED STATES OF AMERICA,	)	AFFIDAVIT OF ROBERT SCHULTES, M.D.
Respondents.	)	

The undersigned, Robert Schultes, states as follows:

1. I am one of the Petitioners in this action and I was a participant in the environmental review process for the relicensing of the Duane Arnold Energy Center. My participation in that process was submitting written comments on the draft supplemental environmental impact statement. I submitted those comments in April of 2010.

2. After submitting those comments, I did not receive any notice or correspondence from the Nuclear Regulatory Commission about the subsequent activities in the environmental review process. I did not receive notice of nor a copy of the final supplemental environmental impact statement, which I now understand contained the Commission's response to my comments.

3. I did not receive personal notice of nor a copy of the Commission's decision to renew the Duane Arnold license and to approve the environmental impact statement.

4. I am a member of Iowa Physicians for Social Responsibility.

4. I hereby certify under penalty of perjury that the foregoing is true and correct.

ROBERT SCHULTES, M.D.

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BENNETT BROWN, ROBERT SCHULTES, M.D., PAMELA MACKEY TAYLOR, and IOWA PHYSICIANS FOR SOCIAL RESPONSIBILITY,	)	No. 11-1441
Petitioners,	)	
vs.	)	
NUCLEAR REGULATORY COMMISSION and UNITED STATES OF AMERICA,	)	AFFIDAVIT OF PAMELA MACKEY TAYLOR
Respondents.	)	

The undersigned, Pamela Mackey Taylor, states as follows:

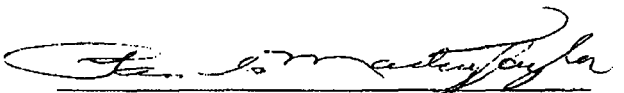
1. I am one of the Petitioners in this action and I was a participant in the environmental review process for the relicensing of the Duane Arnold Energy Center. My participation in that process was submitting written comments on the draft supplemental environmental impact statement on behalf of the Iowa Chapter of the Sierra Club. I submitted those comments on April 17, 2010.

2. After April 17, 2010, I did not receive any notice or correspondence from the Nuclear Regulatory Commission about the subsequent activities in the environmental review process. I did not receive notice of nor a copy of the final supplemental environmental impact statement, which I

now understand contained the Commission's response to my comments.

3. I did not receive personal notice of nor a copy of the Commission's decision to renew the Duane Arnold license and to approve the environmental impact statement.

4. I hereby certify under penalty of perjury that the foregoing is true and correct.



PAMELA MACKEY TAYLOR