



OFFICE OF THE
GENERAL COUNSEL

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

May 11, 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 Federal Respondents' Reply to BREDL's Opposition to Our Motion for Judicial Notice and to File a Supplemental Addendum. This pleading was filed in the following docket: *Blue Ridge Environmental Defense League v. NRC*, No. 09-1112 (consolidated with 10-1058).

The document was electronically filed on May 11, 2011.

Thank you,

A handwritten signature in black ink, appearing to read "Jeremy M. Suttenger".

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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' REPLY TO BREDL'S OPPOSITION TO
OUR MOTION FOR JUDICIAL NOTICE AND TO FILE A
SUPPLEMENTAL ADDENDUM**

In this deferred-appendix case, we have filed a motion seeking this Court's leave to file a supplemental addendum containing three judicially noticeable adjudicatory documents that we cited in our brief. The supplemental addendum would assist the Court by making paper copies of the cited documents readily available and avoiding the Court's need to undertake an electronic search of the Nuclear Regulatory Commission's website. Petitioner, the Blue

Ridge Environmental Defense League (BREDL), opposes our motion. BREDL's opposition is unpersuasive.

1. BREDL devotes the bulk of its response to arguing what properly constitutes the administrative record. But BREDL's extensive discussion of the administrative-record issue misses the point of our motion. We do not believe, nor did we argue, that the three documents identified in our motion—which came into being after petitioners filed their two (now-consolidated) lawsuits—are part of the “administrative record.” Rather, they are judicially noticeable, public record documents cited in the briefs of all the parties. It is unclear why BREDL wishes, by opposing a supplemental addendum, to (in effect) construct a “cone of silence” around these documents.

2. Although not part of the administrative record, we cited these post-decision documents in our brief because they are relevant to our exhaustion and jurisdictional arguments. Such arguments, by their nature, may involve non-administrative record documents. So, by citing and reproducing these three documents for the Court, we are not enlarging the record that we presented to the Court for its merits review. Instead, we are merely helping the

Court decide whether merits review is within the Court's jurisdiction.

3. Further, BREDL's opening brief referenced (and in one case extensively quoted) two of the three documents we propose to reproduce in a supplemental addendum.¹ Unless BREDL withdraws the quotation, the Court will have before it a multi-paragraph quotation without the ability to easily check the context of that quote. Ease of judicial access to pertinent public record documents, not supplementing the administrative record, is the point of our motion.²

For the foregoing reasons, and for the reasons set out in our motion, this Court should grant our Motion for Judicial Notice and to File a Supplemental Addendum.

¹ See BREDL's Opening Brief at 8 (citing both the Licensing Board decision and the Commission decision); *see also id.* at 23-24 (quoting the Licensing Board decision).

² Should this Court deny our motion to file a supplemental addendum, we respectfully ask the Court to grant permission to replace the "SA" (Supplemental Addendum) references used in our initial brief with references in our final brief to electronic call-up numbers used on NRC's website.

Respectfully Submitted,

/S/
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CERTIFICATE OF SERVICE

I certify that on this date, May 11, 2011, I filed the foregoing reply 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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