ORAL ARGUMENT SCHEDULED FOR MAY 9, 2012

Nos. 11-1168 & 11-1177, consolidated

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

VERMONT DEPARTMENT OF PUBLIC SERVICE, et al.,

Petitioners,

v.

U.S. NUCLEAR REGULATORY COMMISSION, et al.,

Respondents.

On Petition for Review of a Final Order of
The United States Nuclear Regulatory Commission

BRIEF FOR *AMICUS CURIAE* ENERGY FUTURE COALITION IN SUPPORT OF RESPONDENTS

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January 27, 2012

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and *Amici*

The Vermont Department of Public Service is the petitioner in Case No. 11-1168, and the New England Coalition is the petitioner in Case No. 11-1177. The Nuclear Regulatory Commission and the United States of America are the respondents. Entergy Nuclear Operations, Inc. and Entergy Nuclear Vermont Yankee, LLC are Intervenors in both cases, which have been consolidated. Riverkeeper, Inc., Scenic Hudson, Inc. and New York State are *amici* on the side of petitioners, while the Energy Future Coalition is an *amicus* on the side of respondents.

B. Rulings Under Review

Petitioners seek review of the NRC's final order granting Renewed Operating Facility License No. DPR-28 for the Vermont Yankee Nuclear Power Station on March 21, 2011. *See* 76 Fed. Reg. 17,162 (Mar. 28, 2011).

C. Related Cases

Counsel for *amicus* is aware of no related cases.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, I certify that *amicus* Energy Future Coalition ("EFC") is an unincorporated initiative of the United Nations Foundation ("UN Foundation"), which is in turn a non-profit charitable and educational foundation incorporated in a manner consistent with Section 501(c)(3) of the Internal Revenue Code. No "parent company" or publicly-held company has a 10% or greater ownership interest in EFC or the UN Foundation. The UN Foundation is separate from and independent of the United Nations Organization.

EFC's general nature and purpose is to identify pragmatic solutions to energy and environmental policy challenges that can achieve broad-based bipartisan support in the public interest. The UN Foundation's purpose is to develop charitable programs in support of solutions to global problems consistent with the work of the United Nations, including the energy and environmental problems that require policy responses from the United States as well as other nations. Neither EFC nor the UN Foundation takes a position on the specific merits of the energy project or application at issue in this case; rather, EFC is participating as *amicus* out of concern that a decision

in this proceeding not establish a precedent negatively affecting the efficient and effective federal regulation of natural gas infrastructure projects.

Respectfully submitted,

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* ***Starred entries are authorities on which this brief principally relies.***

REGULATORY MATERIALS

MISCELLANEOUS

GLOSSARY

Section 401	Section 401 of the Clean Water Act, 33 U.S.C. § 1341

STATUTES AND REGULATIONS

All applicable statutes, etc., are contained in the Brief for Petitioners and the Brief for Respondents.

STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE

Amicus Energy Future Coalition ("EFC") is an unincorporated initiative of the United Nations Foundation ("UN Foundation"). Its general nature and purpose is to identify pragmatic solutions to energy and environmental policy challenges that can achieve broad-based bipartisan support in the public interest. The UN Foundation is separate from and independent of the United Nations Organization; its purpose is to develop charitable programs in support of solutions to global problems consistent with the work of the United Nations, including the energy and environmental problems that require policy responses from the United States as well as other nations.

Neither EFC nor the UN Foundation takes a position on the specific merits of the energy project or application at issue in this case; rather, EFC is participating as *amicus* out of concern that a decision in this proceeding not establish a precedent negatively affecting the efficient and effective federal regulation of natural gas infrastructure projects.

Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 29(b), all parties have consented to the filing of this brief.

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTION

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person (other than *amicus*'s counsel) contributed money that was intended to fund preparing or submitting this brief.

INTRODUCTION

Petitioners argue that the Nuclear Regulatory Commission ("NRC") violated Section 401 of the Clean Water Act (33 U.S.C. § 1341) by issuing a nuclear relicensing order to a project that had not yet received a new Section 401 state water quality certification. *Amicus* Energy Future Coalition ("EFC") takes no position on that narrow issue,[1] but instead files this brief out of an abundance of caution, to respectfully advise the Court against adopting Petitioners' broad characterization of the requirements of Section 401 with respect to federal agencies' review of domestic energy infrastructure proposals.

Petitioners assert that the NRC and other agencies must "assure that a § 401 Certification is in hand" before issuing licenses. Petitioners Br. at 23. And in "the absence of a § 401 Certification," Petitioners argue, Section 401 "obligated NRC to refrain from granting the new license." *Id.* at 25. That characterization of Section 401 is dangerously overbroad, and if taken literally could contradict federal agencies' well-established practice of issuing "conditional" or "provisional" licenses pending completion of a state's Section 401 proceedings.

[1] Indeed, EFC takes no position on any of the issues before the Court other than the points specifically urged in this brief, or on the merits of the Vermont Yankee nuclear facility generally.

Federal licensing agencies, such as the NRC here, often must comply with both their own substantive licensing statutes (*e.g.*, the Atomic Energy Act) and Section 401 of the Clean Water Act when reviewing an application for a federal license for particular project. Section 401, in turn, empowers states to review the license applicant's project separately, to ensure compliance with the states' federally approved water quality standards.

Absent coordination between the federal and state proceedings, there is great risk of uncertainty and delay; state Section 401 proceedings are often lengthy and costly, an unwelcome prospect for a project applicant that does not yet know whether it will at least receive the necessary federal approval.

To minimize the burdens of this uncertainty, and coordinate the federal and state proceedings while complying with both the substantive federal licensing statute and Section 401, several federal agencies have developed the practice of issuing "conditional" or "provisional" licenses. These preliminary approvals conclude the federal agency's review under its own statute (*e.g.*, the Natural Gas Act, 15 U.S.C. §§ 717 *et seq.*) yet do not go into *final* effect until the applicant demonstrates full compliance with Section 401. In issuing such a preliminary license or permit, the federal agency does not violate Section 401 even though it does not yet have the state's Section 401

certification "in hand," because the federal agency has not yet actually granted a "license or permit" within the meaning of Section 401; the final license or permit grant does not occur until the applicant satisfies the requirements of Section 401. 33 U.S.C. § 1341(a)(1).

The distinction between unconditional and conditional orders is not of merely theoretical concern. Litigants in other cases have argued that Section 401 and similar statutes[2] prohibit the use of unconditional orders by the Federal Energy Regulatory Commission ("FERC"). *See Del. Dep't of Nat. Res. and Envtl. Control v. FERC*, 558 F.3d 575, 576-77 (D.C. Cir. 2009); *State of Or. v. FERC*, 636 F.3d 1203, 1205-06 (9th Cir. 2011). The stakes in those cases were high: as FERC has explained repeatedly, to interpret Section 401 as prohibiting conditional orders would impose sometimes impossible burdens on interstate pipeline projects and harm the public interest. *See infra* pp. 11-14. Fortunately, those litigants' arguments were not endorsed by the courts, which dismissed their petitions on standing or mootness grounds. *Del. Dep't of Nat. Res.*, 558 F.3d at 577-79 (standing); *State of Or.*, 636 F.3d at 1206 (mootness).

In this case, of course, the NRC's relicensing order is *final*—it is not conditioned upon future compliance with Section 401. In that respect, it is

[2] Namely, the Coastal Zone Management Act, 16 U.S.C. §§ 1451 *et seq.*, and the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*

not a "conditional" or "provisional" order. Nevertheless, Petitioners' aforementioned characterization of Section 401's requirements, if taken literally by this Court, could implicate other agencies' practice of issuing conditional orders: when an agency issues a provisional licensing order conditioned upon future compliance with Section 401, by definition it does not have the state's Section 401 certification "in hand." Petitioners Br. at 23.

Accordingly, if this Court reaches the merits of Petitioners' Section 401 arguments in this case, *amicus* EFC respectfully requests that the Court take care to limit its holding to final, unconditional orders exemplified by the NRC's relicensing order. To phrase its holding in terms that go beyond the matters directly at issue in this case, and inadvertently cast doubt on the FERC's ability to continue to use conditional orders, could hamper natural gas infrastructure development at a critical moment.

ARGUMENT

I. Federal Agencies Employ Conditional Permits To Efficiently and Efficaciously Comply With Section 401

As the Supreme Court noted years ago, the Clean Water Act is "a program of cooperative federalism," *New York v. United States*, 505 U.S. 144, 167 (1992), anticipating "a partnership between the States and the Federal Government, animated by a shared objective," *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992). And that "partnership" is exemplified by Section 401 of the

Clean Water Act, which strikes a balance between federal and state responsibility in administering federal licensing statutes and promoting state protection of the environment. *See* 33 U.S.C. § 1341.

Section 401 operates as follows: a federal agency considering an application for a federal approval or license—*e.g.*, the FERC, under the Natural Gas Act—must respect the states' statutory right to review activities that "may result in any discharge into the navigable waters." *Id.* § 1341(a)(1). If the state grants the applicant a water quality "certification," then the federal agency may issue the project its federal license. *Id.* If the state denies the applicant a water quality certification, then the federal agency cannot issue a license. *Id.*[3]

By creating a state review parallel to the federal license proceedings, Section 401 created a two-track process for federal license applicants whose projects trigger Section 401. The applicants still must satisfy the overarching federal licensing standards, under the Atomic Energy Act,

[3] And there are at least two other possibilities: If the state grants the water quality certification but with conditions, then the federal agency must incorporate those conditions into its own license. *Id.* § 1341(d). If the state "fails or refuses to act" on the applicant's request for a water quality certification "within a reasonable period of time (which shall not exceed one year)," then the requirements of Section 401 are "waived." *Id.* § 1341(a)(1).

Natural Gas Act, or other statute. But they also must satisfy the state's own federally approved Clean Water Act standards under Section 401.

And that state process can be extremely lengthy and costly, encompassing not merely the state regulators' initial review, but then administrative or judicial appeal (sometimes even in federal court). *See*, *e.g.*, *Weaver's Cove Energy, LLC v. R.I. Dep't of Envtl. Mgmt.*, 524 F.3d 1330, 1333 (D.C. Cir. 2008) (nothing that administrative appeals were pending for one state's issuance of a certification, and for another state's denial). And the result on appeal may well be to return the entire matter to the state agency, to start the entire process over again. *See Islander E. Pipeline Co., LLC v. McCarthy*, 525 F.3d 141, 148-50 (2d Cir. 2008) (describing project's initial receipt of a state certification, which was appealed to the Second Circuit and remanded to the state, which then denied the certification).

Indeed, the project and the state may find themselves litigating the very question of when the statutory "clock" governing the state's certification proceedings has begun to tick. *See Weaver's Cove Energy*, 524 F.3d at 1331-32.

In short, this two-track process, giving overlapping jurisdiction to federal and state regulators, presents stark agency-coordination problems. To borrow the terminology used by two administrative law scholars in a forthcoming law review article on overlapping agency mandates, Section 401

requires the federal and state agencies to "share regulatory space," which creates a risk "of inconsistency, waste, confusion, and systemic failure to deliver on the putative statutory goals." Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, at p. 50 (Jan. 4, 2012) (forthcoming, 125 Harvard Law Review (2012)).[4]

To avoid precisely those risks in the Section 401 context, several federal agencies have developed the practice of issuing "conditional" or "provisional" approvals: once the federal agency determines that the license applicant satisfies the requirements of the substantive licensing statute, such as the Natural Gas Act, it issues the applicant a "conditional" or "provisional" approval that does not go into effect until the applicant satisfies its parallel obligations under Section 401 of the Clean Water Act.

The issuance of a "conditional" or "provisional" federal approval before the state completes its own water quality certification review does not violate Section 401, because the federal agency's provisional approval does not actually "grant" the applicant a "license or permit" within the meaning of Section 401. 33 U.S.C. § 1341(a)(1). Instead, as the EPA explains in its current guidance, a federal agency's "provisional authorization never becomes valid"

[4] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1778363

if the applicant fails to secure a state's approval or waiver under Section 401. EPA, *Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes* 31 (2010) (interim).[5]

In its guidance, the EPA offers one example for this type of "conditional' or "provisional" approval: the U.S. Army Corps of Engineers's Savannah District issues "provisional" dredge-and-fill permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) that go into effect only after the applicant receives its state water quality certification under Section 401. *See id.* at 12. And there are still other examples. The larger U.S. Army Corps of Engineers endorses the use of provisional permits to complete the review of Section 404 dredge-and-fill applications while the state's Section 401 certification review remains pending. 62 Fed. Reg. 31,492, 31,495 (June 9, 1997).[6] So does the Coast Guard in licensing deepwater ports under its own statute. *See* 33 C.F.R. § 148.105(i)(1).

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[5] http://water.epa.gov/lawsregs/guidance/cwa/upload/CWA_401_Handbook_2010_Interim.pdf

[6] The Army Corps "regulatory guidance letter," endorsing the use of "provisional permits" for federal dredge-and-fill permits, had a nominal expiration date of December 31, 1998, but it remains in effect because regulatory guidance letters "generally remain[] valid after the expiration date" until "superseded by specific provisions of subsequently issued regulations or [regulatory guidance letters]." *Id.* at 31,492.

But the best example, and the focus of the remainder of this brief, is the FERC, which has established a deep body of precedent justifying its use of conditional certifications as both lawful and prudent.

II. The FERC's Conditional-Certification Framework Avoids The Often "Impossible" Task Of Delaying Federal Review Of Projects Until The State's Section 401 Review Has Completed

The FERC is responsible for regulating much of the nation's most important energy infrastructure development. First and foremost this involves the nation's interstate natural gas pipelines, for which the FERC issues certificates of public convenience and necessity under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f. But the FERC's responsibilities also include the approval or disapproval of liquefied natural gas import or export facilities under Section 3 of the Natural Gas Act, 15 U.S.C. § 717b; the licensing of traditional hydropower projects and new offshore wave power projects under the Federal Power Act, 16 U.S.C. §§ 791a *et seq.*; and the issuance of construction permits for interstate transmission lines in "national interest electric corridors," 16 U.S.C. § 824p(b).

Each of those types of FERC-regulated energy infrastructure projects could trigger state review authority under Section 401 of the Clean Water Act. *See*, *e.g.*, *Finavera Renewables Ocean Energy, Ltd.*, 122 FERC ¶ 61,248, at P 4 (2008) (offshore wave pilot project). But the most common

context in which the FERC must comply with Section 401, and thus the context in which it most often issues "conditional" approvals, is its approval of new interstate natural gas pipelines and liquefied natural gas facilities.

For example, when the FERC approved the East Tennessee Natural Gas Company's proposal to expand and extend its mainline facilities in Tennessee, Virginia, and North Carolina in 2002–2003, it expressly conditioned its approval on East Tennessee's eventual receipt of a Section 401 water quality certification from Virginia. *See E. Tenn. Nat. Gas Co.*, 102 FERC ¶ 61,225, at PP 55, 64 (2003) (order on reh'g, aff'g 101 FERC ¶ 61,188 (2002)). When the FERC reviewed the pipeline's Natural Gas Act application, the pipeline had applied to Virginia for the Section 401 certification, but the state proceedings were still being disputed. *See id.* at PP 55-56.

Rather than hold its own proceedings in abeyance indefinitely, the FERC completed its proceedings by conditionally approving the pipeline, subject to (among other things) its ultimate compliance with Section 401. *See id.* at P 63. "This approach is founded on practical grounds," the FERC explained; for in "spite of the best efforts of those involved, it is often impossible for an applicant to obtain all approvals necessary to construct and operate a project in advance of the Commission's issuance of a certificate." *Id.* And in fact the pipeline would ultimately satisfy Section 401, several months

after the FERC issued its original conditional certificate. *See E. Tenn. Nat. Gas Co.*, 105 FERC ¶ 61,139, at P 28 (2003).

The FERC was even more emphatic in justifying its use of conditional orders in another case, involving both a liquefied natural gas import facility and the related pipeline. *Broadwater Energy LLC*, 124 FERC ¶ 61,225 (2008). Against arguments that its conditional approval would violate Section 401's prohibition against "grant[ing]" a "license or permit" absent the state's Section 401 certification, the FERC explained that conditional approvals are "a practical response to the reality that, in spite of the best efforts of those involved, it may be impossible for an applicant to obtain all approvals necessary to construct and operate a project in advance of the Commission's issuance of its certificate without unduly delaying the project." *Id.* at P 59. And in that respect, the FERC's "practical" response was rooted in its judgment of the costs and burdens that would be imposed on both the applicant and the public at large if the FERC did not issue conditional approvals:

> To rule otherwise, would either place the Commission's administrative process indefinitely on hold until states with delegated federal authority choose to act or require the Commission to deny applications where all federal permits [*i.e.*, states' Section 401 certification and other delegated federal powers] have not issued prior to the Commission['s] completion of its review under the [Natural Gas Act]. Either of these approaches would likely delay the in-service date of

> major infrastructure projects *to the detriment of consumers and the public in general*.

Id. at P 59 n.60 (emphasis added).

These are not isolated examples of the FERC's use of conditional orders; rather, the FERC "routinely issues certificates for natural gas pipeline projects subject to the federal permitting requirements of" Section 401 of the Clean Water Act and other similar federal statutes. *Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at P 115 (2003). This practice is so commonplace that "virtually every certificate" approving an interstate natural gas pipeline "is conditioned upon meeting the federal permitting requirements of" Section 401 and other statutes, *Ga. Strait Crossing Pipeline LP*, 108 FERC ¶ 61,053, at P 15 (2004), and the FERC has defended this practice against myriad rehearing requests.[7]

In each case, the conditional order "is an incipient authorization without current force and effect, since it does not yet allow [the project] to begin the activity it proposes." *Crown Landing LLC*, 117 FERC ¶ 61,209, at P 21 (2006). In that respect, it reflects this Court's own conclusion that the

[7] In addition to the other FERC cases cited in this discussion, *see*, *e.g.*, *Gulfstream Nat. Gas Sys., L.L.C.*, 94 FERC ¶ 61,185, at 61,641 (2001); *Fla. Gas. Trans. Sys.*, 90 FERC ¶ 61,212, at 61,697 (2000); *cf. Crown Landing LLC*, 117 FERC ¶ 61,209, at PP 13-29 (2006) (conditioning approval on compliance with the Coastal Zone Management Act and Clean Air Act).

FERC's issuance of a conditional order, "subject to a further compliance filing," is "without binding effect" for purposes of the standing doctrine's injury-in-fact requirement. *N.M. Att'y Gen. v. FERC*, 466 F.3d 120, 120 (D.C. Cir. 2006), *quoted in Crown Landing*, 117 FERC at P 21 n.27. Accordingly, such a non-binding order "grant[s]" no actual license or permit to the applicant, 33 U.S.C. § 1341(a)(1), and therefore does not run afoul of Section 401's requirements.[8]

In sum, the FERC's experience in complying with Section 401 of the Clean Water Act demonstrates that Petitioners overstate matters by asserting that federal agencies must have the state's Section 401 certification "in hand" before issuing a licensing order. Petitioners Br. at 23. So long as the federal agency's order is *conditional* or *provisional*, lacking full effect until the applicant complies with Section 401, the agency may lawfully issue the order without a water quality certification "in hand."

[8] The FERC also regularly justifies its conditional-approval policy by citing *City of Grapevine, Tex. v. Dep't of Transportation*, 17 F.3d 1502 (D.C. Cir. 1994), a case involving the National Historic Preservation Act's prohibition against an agency's "approval" of federal funding for certain projects without first giving the Advisory Council on Historic Preservation the opportunity to comment, *see* 16 U.S.C. § 470f. In that case, the Court held that an agency's conditional approval was not an "approval" for purposes of that Act. 17 F.3d at 1508-09.

III. Petitioners' Overbroad Characterization Of Section 401, If Accepted By The Court, Could Substantially Burden Natural Gas Infrastructure Development Just When It Is Needed Most

As stressed above, the Court's resolution of this case need not implicate the FERC's and other agencies' practice of issuing "conditional" or "provisional" orders, because the NRC order under review is neither conditional nor provisional with respect to Section 401. *See supra* pp. 5-6. But if the Court were to inadvertently adopt Petitioners' overbroad description of Section 401—requiring the agency to have the state certificate "in hand" before issuing a licensing order—without limiting its holding to truly final orders such as the NRC order at issue in this case, then the Court's opinion could needlessly and severely impede the nation's development of its abundant clean energy resources.

According to the early release of the Energy Information Administration's 2012 *Annual Energy Outlook*, domestic natural gas production is poised to increase by nearly 30% in just twenty-five years, largely due to abundant "shale gas" reserves. *See* EIA, *Annual Energy Outlook 2012 Early Release Overview* 12 (2012).[9] If those new gas reserves can be accessed safely and cleanly—a task that will require strong commitments by both industry and the

[9] http://www.eia.gov/forecasts/aeo/er/pdf/0383er(2012).pdf

government to public health, safety, and transparency—then they will prove to be an economic boon to the U.S. *See* Sen. Timothy E. Wirth, Energy Future Coalition, *Leadership on Natural Gas and Cleaner Fuels* (May 8, 2011).[10]

But to utilize those new reserves will also require the development of pipeline infrastructure to bring the gas to market—perhaps as much as 16,000 miles of new transmission mainlines by 2020, and 35,000 miles by 2035, according to one industry-sponsored study. *See* ICF International, *North American Midstream Infrastructure Through 2035—A Secure Energy Future* 45 (2011).[11] Given the nation's opportunity to increase its reliance on natural gas and other clean energy supplies—including FERC-regulated hydropower and the electricity transmitted along new transmission lines sited by FERC, under the statutes noted above—the public can ill afford to eliminate FERC's use of conditional orders, "delay[ing] the in-service date of major infrastructure projects to the detriment of consumers and the public in general." *Broadwater Energy LLC*, 124 FERC at P 59 n.60.

[10] http://www.energyfuturecoalition.org/editorsblog/Leadership-Natural-Gas-and-Cleaner-Fuels

[11] http://www.ingaa.org/File.aspx?id=14900

CONCLUSION

Again, *amicus* EFC does not mean to suggest that the NRC is defending its relicensing order in this case as a conditional order; the NRC's brief makes clear that it is *unconditional*. *See* NRC Br. at 13-17. Accordingly, resolution of this case does not require the Court to decide whether the use of "conditional" or "provisional" licenses or permits violates Section 401 of the Clean Water Act.

But if the Court does reach the merits of Petitioners' substantive claims, *amicus* EFC respectfully requests that the Court take care to resolve the case narrowly, and thus leave undisturbed the FERC's and other agency's well-established practice. Section 401 does not require a federal permitting agency to have a state water quality certification "in hand" before conditionally or provisionally approving an energy infrastructure project.

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January 27, 2012

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of FED. R. APP. P. 29(d) because it contains 3,708 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

This brief complies with typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Calisto MT font.

/s/ Adam J. White
January 27, 2012 Adam J. White

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served today with a copy of this document via the Court's CM/ECF. All parties in this case are represented by counsel consenting to electronic service.

/s/ Adam J. White
January 27, 2012 Adam J. White