



March 4, 2013

Mark J. Langer, Clerk  
U.S. Court of Appeals for the District of Columbia  
333 Constitution Avenue N.W.  
Washington, D.C. 20001

SUBJECT: *Blue Ridge Environmental Defense League v. NRC*, No. 12-1106 (consolidated with No. 12-1151; oral argument held Nov. 19, 2012 before Circuit Judge Brown and Senior Circuit Judges Edwards and Silberman)

Dear Mr. Langer:

We are writing to respond to the NRC's February 27, 2013 letter regarding the First Circuit's decision in *Massachusetts v. NRC*, Nos. 12-1404, 12-1772 (Feb. 25, 2013). The letter overstates the significance of that decision to this case.

Contrary to the NRC's representation, Petitioners' key claim in this case is not "virtually identical" to the claim decided in *Massachusetts*. The Commonwealth argued that the Fukushima accident itself constituted new and significant information and that the Task Force Report supported its claim. Slip op. at 17. The First Circuit reviewed this factual argument with a high degree of deference. *Id.* at 20. In contrast, Petitioners claim the NRC's adoption of the Task Force Report recommendations establishes, as a matter of law, that the Commission considers the Report to be new and significant. Pet. Br. 36-43. Therefore NEPA required the NRC to discuss the Report's environmental implications for Vogtle, using the best available information. Pet. Br. 38-39; Reply Br. 9-10. The NRC is owed no deference regarding this legal issue. Pet. Br. 35.

The NRC also claims that by rejecting the Commonwealth's contention for "merely citing the Task Force Report," *Massachusetts* supports a ruling against Petitioners. But Petitioners did not just cite the Task Force Report; they explained in detail why its conclusions are relevant to the Vogtle reactors. *See* Pet. Br. 50-52; Reply Br. 14-23. And the NRC effectively conceded that the contention was admissible by holding a hearing on the very issue the contention raised, but excluding Petitioners. Pet. Br. 47-49.



Finally, the NRC cites *Massachusetts*' conclusion that the Task Force Report is a safety document that does not contain "the type of information used in a NEPA analysis." Slip op. 33. Petitioners respectfully submit that this conclusion is erroneous. NEPA encompasses the safety issues governed by the Atomic Energy Act; therefore a changed NRC perception of public health and safety risk constitutes a changed perception of environmental risk. *See* Pet. Br. 5; Reply Br. 7-9.

Furthermore, no rulemaking was at issue in *Massachusetts*.

For all these reasons, the relevance of *Massachusetts* to this case should not be overstated.

Sincerely,

/s/Diane Curran

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## **CERTIFICATE OF SERVICE**

I certify that on March 4, 2013, I served the foregoing letter to the Court Clerk on the following individuals by electronic service:

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