

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**ENERGY NUCLEAR FITZPATRICK, LLC,  
ENERGY NUCLEAR INDIAN POINT 3, LLC,  
AND ENERGY NUCLEAR OPERATIONS, INC.,**  
*Plaintiffs-Respondents,*

v.

**UNITED STATES,**  
*Defendant-Petitioner.*

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Miscellaneous Docket No. 108

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On Petition for Permission to Appeal pursuant to 28 U.S.C. § 1292(d)(2) from the United States Court of Federal Claims in case no. 03-CV-2627, Judge Edward J. Damich.

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**ON PETITION FOR PERMISSION TO APPEAL**

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Before NEWMAN, LINN, and REYNA, *Circuit Judges.*  
LINN, *Circuit Judge.*

**O R D E R**

The United States petitions for permission to appeal the United States Court of Federal Claims's November 3, 2011 interlocutory order. Entergy Nuclear Fitz-

patrick, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. (“Respondents”) oppose the petition on the grounds that the appeal should be expedited and heard en banc.

Under 28 U.S.C. § 1292(d)(2), a judge of the Court of Federal Claims may certify for appeal an otherwise unappealable order when he includes “in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(d)(2). Whether to accept an interlocutory appeal is a decision solely within our discretion. *See In re Convertible Rowing Exerciser Patent Litigation*, 903 F.2d 822 (Fed. Cir. 1990).

Based on the arguments in the motions papers, we determine that the United States has met the criteria for an interlocutory appeal.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition is granted.

FOR THE COURT

JAN 12 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Alexander D. Tomaszczuk, Esq.

Andrew P. Averbach, Esq.

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**FILED**  
**U.S. COURT OF APPEALS FOR**  
**THE FEDERAL CIRCUIT**

JAN 12 2012

**JAN HORBALY**  
**CLERK**