



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

November 17, 2004

Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94110-3939

RE: Nuclear Information and Resource Service, et al. v. Nuclear Regulatory Commission, No. 04-71432

Dear Sir/Madam:

Enclosed you will find an original and four copies of the Respondent's Consent Motion to Extend Deadline to Respond to Motion to Transfer in the above-referenced case. Please date stamp the enclosed copy of this letter to indicate date of receipt, and return the copy to me in the enclosed envelope, postage pre-paid, at your convenience.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Grace H. Kim".

Grace H. Kim
Senior Attorney
Office of the General Counsel

Enclosures: As stated

cc: service list

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NUCLEAR INFORMATION AND
RESOURCE SERVICE, et al.

Petitioners,

v.

NUCLEAR REGULATORY COMMISSION
and THE UNITED STATES OF AMERICA,

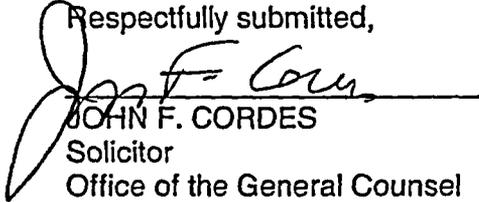
Respondents.

No. 04-71432

CONSENT MOTION TO EXTEND DEADLINE TO RESPOND TO MOTION TO TRANSFER

On behalf of respondents, the Nuclear Regulatory Commission (NRC) respectfully requests a 14-day extension of time, to and including December 10, 2004, to file a response to "Petitioners' Motion to Transfer Proceedings to District Court." Petitioners' counsel has consented to the grant of this extension of time. The extension should be granted for the reasons set out in the attached declaration of Grace H. Kim, the NRC attorney with principal responsibility for handling this case.

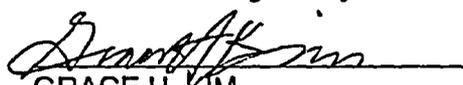
Respectfully submitted,


JOHN F. CORDES

Solicitor

Office of the General Counsel

U.S. Nuclear Regulatory Commission


GRACE H. KIM

Attorney

Office of the General Counsel

U.S. Nuclear Regulatory Commission

Washington, D.C. 20555

301-415-3605

November 17, 2004

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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| _____ |) | |
| NUCLEAR INFORMATION AND |) | |
| RESOURCE SERVICE, et al. |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | No. 04-71432 |
| |) | |
| NUCLEAR REGULATORY COMMISSION |) | |
| and THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

DECLARATION OF GRACE H. KIM

In support of our extension-of-time motion, I declare the following:

1. I am an attorney in the Office of the General Counsel, United States Nuclear Regulatory Commission (NRC). I have principal responsibility for handling the above-captioned case for the NRC.

2. This lawsuit challenges an NRC regulation. Petitioners filed it directly in this Court pursuant to the Hobbs Act (28 U.S.C. § 2341 *et seq.*) earlier this year. At petitioners' request this Court subsequently held the case in abeyance..

3. On November 10, 2004, petitioners submitted to this Court (and served by mail) a "Motion to Transfer Proceedings to District Court." We did not receive the motion until November 16, nearly a week later.

4. Pursuant to Federal Rules of Appellate Procedure 26 and 27, our response to the petitioners' transfer motion would be due on November 26, 2004, unless the deadline were extended, as we request. We intend to oppose the transfer motion.

5. I am preparing for an oral argument in the District of Columbia Circuit scheduled for this Friday, November 19 (*Northern California Power Authority v. NRC*, No. 03-1038 (D.C. Cir.)). That oral argument requires most of my attention for the rest of this week, and precludes

my preparing an adequate response to petitioners' motion to transfer in the present. Also, next week includes the Thanksgiving national holiday, which further compresses the time for preparing a response.

6. Petitioners' motion raises unusual arguments for moving a case under this Court's "exclusive" Hobbs Act jurisdiction (28 U.S.C. § 2342) from a court of appeals to a federal trial court. An adequate response requires us to examine pertinent case law under the Hobbs Act.

7. In Hobbs Act cases we ordinarily collaborate with Department of Justice attorneys on court filings. The Department of Justice is not currently familiar with this case, and needs sufficient time to study the case and to examine petitioners' motion.

8. One reason petitioners give for transferring the present case is a recently-filed complaint in federal district court (*Nuclear Information and Resource Service v. United States Department of Transportation*, No. C-04-4740 (N.D. Cal.)) that, according to petitioners, raises issues related to ours. To answer petitioners' transfer motion, we must examine the complaint filed in that case and consult with the government lawyers defending it.

9. Fourteen additional days will allow the government to file a well-considered and fully researched response to petitioners' motion to transfer.

10. I have spoken by telephone to counsel for petitioners, and he has authorized me to represent that petitioners consent to a 14-day extension of time.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 17, 2004.



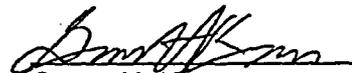
Grace H. Kim
Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2004, a copy of the foregoing Consent Motion to Extend Deadline to Respond to Motion to Transfer was served by mail, postage prepaid, upon the following counsel:

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