

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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|------------------------------------|---|------------------------|
| OHNGO GAUDADEH DEVIA, et al., |) | |
| |) | |
| Petitioners |) | |
| |) | |
| v. |) | Nos. 05-1419, 05-1420, |
| |) | 06-1087 (consolidated) |
| U.S. NUCLEAR REGULATORY COMMISSION |) | |
| and UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondents. |) | |
| |) | |

**THE U.S. NUCLEAR REGULATORY COMMISSION'S
OPPOSITION TO MOTION OF STATE OF UTAH
TO EXCEED THE WORD LIMITS IMPOSED BY RULES 28 AND 32**

By motion dated April 17, 2006, the State of Utah ("Utah") requested that the Court permit Utah's opening and reply briefs to exceed the word limit imposed by FRAP 28 and 32. On behalf of the United States Nuclear Regulatory Commission ("NRC"), we oppose Utah's motion as premature.

Pursuant to the Court's February 2, 2006 Order, this consolidated case is currently being held in abeyance and therefore is not on the Court's active case docket. On March 15, 2006, we filed an unopposed Motion to Govern Future Proceedings requesting that Case Nos. 05-1419 and 05-1420 be consolidated with Case No. 06-1087 (filed March 6, 2006), that the consolidated case be returned to active status, and that the Court issue a new scheduling order establishing deadlines in the consolidated case for various initial filings, including the statement of issues to be raised by petitioner Ohngo

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Gaudadeh Devia ("OGD") (in Case No. 05-1419) as well as by petitioner Utah (in Case Nos. 05-1420 and 06-1087). Our motion also contemplated that a new scheduling order would establish initial deadlines for the certificate of counsel, statement as to use of deferred appendix, procedural motions affecting the calendaring of the case, and dispositive motions. By Order dated March 17, 2006, the Court on its own motion consolidated Case No. 06-1087 with 05-1419 and 05-1420 and set a deadline of April 17 for Utah to file a docketing statement and statement of issues. However, as of the date of this filing, the Court has not acted on our motion.¹

Utah's motion to exceed the word limits does not mention OGD. While Utah has filed its statement of issues as required by the Court's March 17 Order, the other petitioner in this case, OGD, has not yet been directed by the Court to specify the issues it intends to brief (presumably because the case remains in abeyance). Given the current inactive status of this consolidated case, and the absence of OGD's statement of issues, it is premature for this Court to entertain Utah's motion to enlarge its briefs. Utah's motion, if entertained at this time, would essentially force a decision on brief length before the NRC or this Court even is aware of all issues at stake in the

¹Undersigned counsel confirmed with staff in the Clerk's office that the case remains in abeyance pending action by the Court on the NRC's motion.

litigation.²

Recognizing that the Court disfavors expanding normal word limits, we would generally be inclined to oppose enlargement of briefs by any party. Here, based on the statement of issues filed by Utah only, and without knowing what issues OGD intends to brief, we are not inclined to agree that an exception to the page limits is warranted. Indeed, we are particularly reluctant to consent to a petitioner's motion to exceed the normal word limits in a consolidated case such as this, where the normal application of FRAP 28 and 32 requires the respondent to file one 14,000 word brief in response to *two* separate full-length petitioner briefs of 14,000 words each.³ Given that there are two petitioners, intervenors, and an amicus curiae, it may prove helpful to the Court if the parties agree to a mutually acceptable briefing schedule and format. Utah's motion, if granted, would foreclose that opportunity.

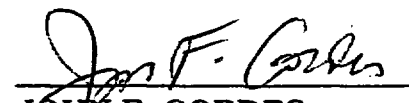
Under these circumstances, the NRC requests that the Court deny Utah's motion to exceed the word limits as premature. The NRC believes that the

²When consulted regarding the NRC's position on Utah's motion to expand the word limit, we made clear to counsel for Utah that we could not take a position on enlargement of briefs until we knew what issues *both* Utah and OGD intended to brief.

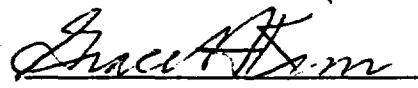
³In consolidated cases, the Court has indicated that it will, "where appropriate, require a joint brief of aligned parties with total words not to exceed the standard allotment for a single brief." See, e.g., *City of Los Angeles Dept. of Water and Power*, WL 2713120 (D.C. Cir. 2004) (unreported); *Blumenthal v. FERC*, WL 1946450 (D.C. Cir. 2004) (unreported).

necessity of expanding normal word limits is appropriately addressed only after the consolidated case has been returned to the active docket, the other petitioner in the case, OGD, has filed its statement of issues to be raised, and all parties have had an opportunity to discuss the possibility of agreeing to a briefing schedule and appropriate word limits.

Respectfully submitted,



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Dated: April 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2006, copies of the foregoing Motion of the U.S. Nuclear Regulatory Commission to Govern Future Proceedings were served by mail, postage prepaid, upon the following:

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