

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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.)	

FEDERAL RESPONDENTS' PROPOSED BRIEFING FORMAT

By order dated June 23, 2006, the Court requested that the parties within 30 days file proposed formats for the briefing of this consolidated case. On behalf of the U.S. Nuclear Regulatory Commission ("NRC") and the United States, we submit this filing in response to the Court's order.

As a preliminary matter, we note that in light of the Court's urging that the parties submit a joint proposal and in the interest of reaching agreement, NRC counsel circulated a proposal regarding briefing format and scheduling among all parties and *amici curiae*. In our proposal, we indicated that to accommodate a joint proposal to this Court we would agree to a modest expansion of the standard word allotment to 16,000 words for a joint petitioners' opening brief (there are two separate petitioners), with a like expansion of our respondents' brief, together with a modest enlargement of time for the filing of our brief. Counsel for petitioner the State of Utah rejected

our proposal, viewing it as so far apart from the word enlargement sought by Utah that further efforts to reach agreement would not be productive.¹

Utah had previously sought permission to file a 21,000 word brief, leaving petitioner Ohngo Gaudadeh Devia free to file a 14,000 word brief of its own. *See Motion of State of Utah to Exceed the Word Limits Imposed by Rules 28 and 32* (dated April 17, 2006). Under Utah's proposal, petitioners' two briefs potentially would total 35,000 words. We do not believe that this case warrants such special treatment with respect to briefing word allotments. Lengthy administrative hearings, large records, multiple parties, and complex technical issues are not out of the ordinary in proceedings before technical agencies like the NRC. Indeed, the technical complexity of this case is not greater than the complexity of many NRC cases.

We respectfully propose a briefing format that adheres to the guidance reflected in the Court's June 23rd order. We propose that the petitioners, as "aligned parties," file joint opening and reply briefs "with total words not to exceed the standard allotment for a single brief" under FRAP 28 and 32 -- *i.e.*,

¹Counsel for intervenors Private Fuel Storage, LLC, and the Skull Valley Band of Goshute Indians responded positively to our proposal on briefing format and timetables, with the clarification that a proportional word enlargement be allowed for the joint PFS/Band intervenor brief. Counsel for ("NEI") also responded favorably, and counsel for *amicus curiae* the State of Nevada noted approval of our proposed timetables without comment on briefing format. We received no response to our proposal from counsel for petitioner Ohngo Gaudadeh Devia.

an opening brief of 14,000 words and a reply brief of 7000 words.² We also propose that the standard word allotment under FRAP 28, 29, and 32 and D.C. Cir. Rule 32 be adhered to for the respondents' brief (14,000 words), a joint intervenors' brief (8750 words in a jointly filed brief), and the *amicus curiae* briefs (7000 words per side).

Although we do not believe that the substantive complexity of the issues in this case justifies an enlargement of the standard word allotment, we suggest that a modest enlargement of the usual briefing time frames would be appropriate given the existence of two separate petitioners, the size of the record, and the participation of *amicus curiae* on both sides. Specifically, we propose that the *amicus curiae* brief in support of petitioners be due 15 days after the filing of petitioners' brief, and that the respondents' brief be due 30 days after the due date for the *amicus curiae* brief. All other due dates would be extended in a like fashion: briefs for the intervenors and *amicus curiae* in support of respondent would be due 15 days after the due date for respondents' brief, and petitioners' reply brief would be due 15 days after the due date for intervenors/*amicus curiae* briefs.

Ultimately, the question of enlarging the length of the parties' briefs is a matter of judicial discretion, in the interest of case management. While we do

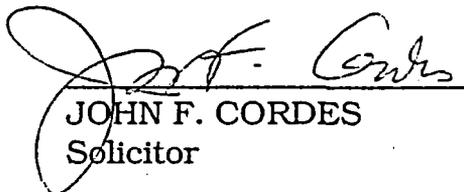
²We would be amenable to petitioners filing separate briefs as long as the total combined word allotment does not exceed the usual 14,000 word allotment for a single brief.

not believe that extra-long briefs are necessary here -- certainly nothing on the order of the 35,000 words that petitioner Utah apparently contemplates -- we do request that if the Court does allow an enlargement of petitioners' word limits, it also grant the government the same word allotment as the total combined word allotment it allows petitioners.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 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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