

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

STATE OF NEW JERSEY,)	
Petitioner,)	
)	
v.)	Nos. 06-5140, 07-1559,
)	and 07-1756
)	(Consolidated)
U.S. NUCLEAR REGULATORY)	
COMMISSION and the UNITED STATES)	
OF AMERICA,)	
Respondents,)	
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**UNOPPOSED MOTION FOR EXTENSION OF TIME
TO FILE RESPONDENTS' BRIEF**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, the U.S. Nuclear Regulatory Commission ("NRC") and the United States of America (jointly, "the Federal Respondents") respectfully request an extension of time to file the Federal Respondents' Brief in this case. Petitioners filed their Opening Brief on July 3, 2007; thus, the Federal Respondents' Brief is currently due on August 6, 2007. The Federal Respondents respectfully request a 21-day extension of time to and including August 27, 2007, in which to file their brief. This is the Federal Respondents' first motion for an extension of time. Counsel for all parties in this case have graciously consented to the granting of this request.

1. The Petitioner's Brief raises extensive and complex technical issues that have not been resolved by the Commission. In fact, Petitioner's Opening Brief

chiefly raises technical, not legal, issues. Preparing the Respondent's Brief will require extensive consultation with the NRC's technical staff in order for the agency's legal team to become familiar with the technical issues involved in this case. The NRC attorney assigned to this case, Mr. Charles E. Mullins, must become familiar with the technical issues in this case and develop a response to the Petitioners' arguments within the briefing period.

2. While the NRC has independent litigating authority to respond to challenges to NRC Orders and licenses, the United States is a statutory party to the case. *See* 28 U.S.C. § 2348. Thus, the NRC's Brief must be coordinated with the U.S. Department of Justice ("DOJ"), a process that necessarily takes extra time. In addition, the DOJ attorney assigned to this case, Kathryn Kovacs, who has entered an appearance in this case, has a previously scheduled vacation for the period of July 7-25, 2007. Her absence will significantly impair the DOJ's ability to review the NRC's brief and for the NRC to obtain DOJ concurrence on the brief in time to meet the current filing deadline.

3. Mr. Mullins is also lead counsel for the NRC in two additional cases being briefed this summer, *Eastern Navajo Dine' Against Uranium Mining v. NRC*, No. 07-9505 (10th Cir.), with Respondents' Brief currently due August 6, 2007 (the same date as the Respondents' Brief is due in this case); and *New Jersey*

Department of Environmental Protection v. U.S. Nuclear Regulatory Commission, No. 07-1721 (3d Cir.), with Respondent's Brief currently due August 31, 2007. In both cases, Mr. Mullins is the only attorney assigned to the case in this Office, under the supervision of the NRC Solicitor. In addition, Mr. Mullins has a previously scheduled vacation planned for July 20-25.

4. The Legal Counsel Division within the NRC's Office of the General Counsel (which contains the Solicitor and litigates on behalf of the agency) is an extremely small office, with only four litigating attorneys and a support staff of only two. The office currently has seven cases with briefs or substantive motions due this summer. Preparation of multiple briefs within this short period of time will be extremely difficult and requires flexibility in scheduling the filing of briefs.

5. Mr. Mullins recently returned from a detail at the U.S. Department of Justice, Civil Division, Appellate Staff, where he filed several briefs on behalf of the United States (including *Tirtakusumah v. Attorney General*, No. 05-5573, (3d Cir., Dec. 21, 2006). From time to time he is required to return to the Department of Justice to prepare oral arguments or supplemental pleadings in those cases.

These absences also impact his ability to prepare for and brief this case.

6. Petitioners sought, and were granted, an extension of time of 15 days to file their Opening Brief. The Federal Respondents consented to the granting of

that request (and advised counsel for Petitioner that we would agree to a request of 21 days). We seek only a reasonable and equitable amount of time to prepare and file Respondents' brief.

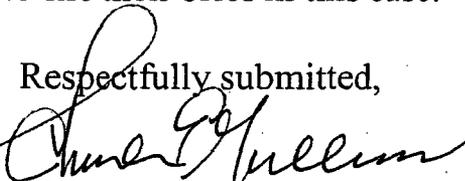
7. Respondents have just received a Motion for Leave to Supplement the Record, filed by Gloucester County, an intervenor in this case, on July 3, 2007. This pleading was not expected and raises significant issues not previously addressed in this case. The Respondents will need additional time to research these issues and determine whether to file an Opposition to the Motion to Supplement the Record and a possible Motion to Strike the Intervenor's Brief.

8. All parties have consented to our request for a 21-day extension of time.

CONCLUSION

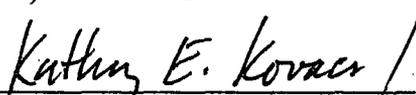
For the foregoing reasons, the Federal Respondents respectfully request that this Court grant an extension of time of 21 days, from August 6, 2007, to and including August 27, 2007, in which to file their brief in this case.

Respectfully submitted,



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Dated: July 10, 2007.

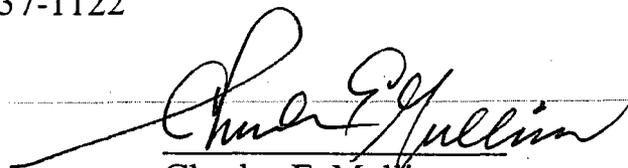
CERTIFICATE OF SERVICE

I declare under penalty of perjury that I filed the "Unopposed Motion for Extension of Time to File Respondents' Brief" in consolidated Case Nos. 06-5140, 07-1559, and 07-1756 by placing it in an overnight delivery service, postage prepaid, addressed to this Court and served the same on the following counsel by placing it in an overnight delivery service, postage prepaid:

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Dated: July 10, 2007