

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
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P.O. Box 093
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By: Ellen Barney Balint
Deputy Attorney General
(609) 984-5065

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 07-2271

NEW JERSEY DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
)
Petitioner,)
)
v.)
)
UNITED STATES NUCLEAR)
REGULATORY COMMISSION,)
UNITED STATES OF AMERICA,)
& AMERGEN ENERGY COMPANY,)
L.L.C.,)
)
Respondents.)

NOTICE OF MOTION ON CONSENT
FOR SECOND EXTENSION OF TIME
TO FILE PETITIONER'S BRIEF &
APPENDIX

TO: MARCIA M. WALDRON, Clerk
U.S Court of Appeals
Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19601-1790
Attn: Shannon L. Craven
Case Manager

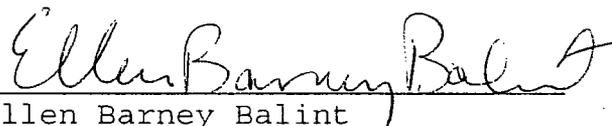
Charles E. Mullins, Sr. Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738

Brad Fagg, Esquire
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue
Washington, DC 20004

Petitioner, New Jersey Department of Environmental Protection, hereby moves this Court for a 30-day extension, to and including September 21, 2007, of the time in which to file its brief and appendix in the above-reference matter. Petitioner will rely on the attached certification of Deputy Attorney General Ellen Barney Balint.

Respectfully submitted,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner

By: 
Ellen Barney Balint
Deputy Attorney General

Dated: August 16, 2007

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner
R.J. Hughes Justice Complex
P.O. Box 112
25 Market Street
Trenton, New Jersey 08625-0112

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CERTIFICATION OF ELLEN
BARNEY BALINT IN SUPPORT OF
MOTION ON CONSENT FOR
SECOND EXTENSION OF TIME TO
FILE PETITIONER'S BRIEF &
APPENDIX

Ellen Barney Balint, of full age, certifies as true under
penalty of perjury:

1. I am a Deputy Attorney General for the New Jersey
Division of Law and am duly admitted to practice law before this
Court. I am assigned to the Environmental Permitting and
Counseling Section, which represents Petitioner, New Jersey

Department of Environmental Protection. This Certification is submitted in support of Petitioner's request for a thirty-day extension of time in which to file their brief.

2. I have discussed the circumstances necessitating Petitioner's current request for a 30-day extension of time with counsel for both Respondents. Senior Attorney Charles E. Mullins consented to Petitioner's current request on behalf of Respondent U.S. Nuclear Regulatory Commission and the U.S. Department of Justice. Likewise, Brad Fagg, Esquire, of Morgan, Lewis & Bockius, L.L.P., provided his consent on behalf of Respondent AmerGen Energy Company, L.L.C.

3. Petitioner's Petition for Review was filed on or about April 24, 2007.

4. This Court docketed this appeal on June 22, 2007.

5. On June 22, 2007, the Clerk of the Court entered a Briefing and Scheduling Order requiring Petitioner's to file their brief on or before August 1, 2007.

6. The two attorneys in this office who are primarily responsible for handling this matter are Senior Deputy Attorney General (SDAG) John A. Covino, and Deputy Attorney General (DAG) Valerie Anne Gray. SDAG Covino and DAG Gray have been jointly responsible this matter from its earliest stages and are intimately familiar with the facts and legal issues involved.

7. On July 24, 2007, SDAG Covino moved for a 21-day extension of time to file Petitioner's Brief and Appendix. This first request for an extension was based on: (a) the complex and important policy issues involved; (b) the limited availability of SDAG Covino due to his supervisory responsibilities and of DAG Gray due to her recent return from extended disability leave; and (c) anticipated time required to conduct "internal review at levels above the normal supervisory review of draft briefs conducted within the Division of Law". (See July 24, 2007 Certification of John A. Covino, par. 2, 3 and 4).

8. On August 8, 2007, the Clerk of this Court entered an Order extending Petitioner's time to file its brief to August 22, 2007.

9. In anticipation of previously scheduled vacations which both began on August 11, 2007, SDAG Covino and DAG Gray worked long hours to prepare for internal review a draft of Petitioner's Brief by August 10, 2007. SDAG Covino is not scheduled to return to the office until after the August 22, 2007 due date, and DAG Gray is not scheduled to return from vacation until August 21, 2007. The anticipation was that the minor revisions normally involved in internal review could be handled by another attorney with nominal knowledge of the case. DAG Gray would then have been able to finalize the brief and supervise its service upon her return.

10. Due to the significance of the nuclear safety issues involved to public policy, the level of supervisory/review participation in this matter is greater than anticipated. As indicated previously in the July 24, 2007, Certification of DAG Covino, Petitioner's brief in this matter must undergo high-level review prior to this office having authority to file it.

11. Unfortunately, as the draft brief has gone through the anticipated review process, there are more revisions requested than originally anticipated.

12. Given that both SDAG Covino and DAG Gray are on vacation during almost all of the remaining time before the current deadline for submitting of the brief, and due to the amount of time which will be necessary to properly incorporate the supervisory revisions into the brief, it will not be possible to complete the brief, and receive authorization to file within the current deadline.

13. The above-described events were not foreseen at the time that Petitioner's first request for an extension was filed.


Ellen Barney Balint
Deputy Attorney General

Dated: Trenton, New Jersey
August 16, 2007

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CERTIFICATION OF SERVICE

I, Krystal Johnson, hereby certify:

1. I am a secretary in the Environmental Permitting and Counseling Section of the Division of Law, part of the New Jersey Department of Law and Public Safety.

2. On August 16, 2007, at the direction of Ellen Barney Balint, Deputy Attorney General, I caused to be placed a copy of

the Notice of Motion on Consent for Second Extension of Time to File Petitioner's Brief and Appendix, with supporting certification, to be served by overnight delivery service upon the following parties:

Charles E. Mullins, Sr. Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738

Brad Fagg, Esquire
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue
Washington, DC 20004

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Krystal Johnson

Dated: August 16, 2007

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 07-2271

NJ Dept. of Env. Protection vs. NRC, et al.

The Clerk will enter my appearance as Counsel of Record for (please list names of all parties represented, using additional sheet(s) if needed):

New Jersey Department of Environmental Protection

who IN THIS COURT is (please check only one):

Petitioner(s) Appellant(s) Intervenor (s)
Respondent(s) Appellee(s) Amicus Curiae

(Type or Print) Name Ellen Barney Balint

Mr. Ms. Mrs. Miss

Firm Anne Milgram, New Jersey Attorney General

Address Hughes Justice Complex, P.O. Box 093, 25 Market Street

City & State Trenton, NJ

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Phone (609) 984-5065

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PLEASE TYPE E-Mail Address ellen.balint@dol.lps.state.nj.us

SIGNATURE OF COUNSEL: Ellen Barney Balint

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE AND ONLY THAT ATTORNEY WILL BE THE ONE NOTIFIED OF THE COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH COUNSEL OF RECORD.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE COURT OF APPEALS FOR THE THIRD CIRCUIT OR WHO HAVE SUBMITTED A PROPERLY COMPLETED APPLICATION FOR ADMISSION TO THIS COURT'S BAR MAY FILE AN APPEARANCE FORM. (BAR ADMISSION IS WAIVED FOR FEDERAL ATTORNEYS.)

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED AND THAT COUNSEL SIGN THE FORM IN THE APPROPRIATE AREA.