

FILED

OCT 02 2007

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

PUBLIC CITIZEN; et al.,

Petitioners,

v.

NUCLEAR REGULATORY
COMMISSION,

Respondent.

No. 07-71868, 07-72555

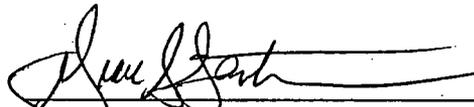
NRC No. 10CFR

ORDER

The joint motion for an extension of time to file the briefs is granted. The briefing schedule is amended as follows: the opening briefs are due October 24, 2007; the answering brief is due December 14, 2007; the intervenor's brief is due January 9, 2008; and the optional reply briefs are due January 30, 2008.

For the Court:

CATHY A. CATTERSON
Clerk of the Court



Grace S. Santos

Deputy Clerk

Ninth Circuit Rule 27-7/Advisory Note to Rule 27
and Ninth Circuit 27-10



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

September 26, 2007

Cathy Catterson
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, California 94103

Re: *Public Citizen v. NRC*, No. 07-71868
New York v. NRC, No. 07-72555

Dear Ms. Catterson:

Enclosed please find a joint motion to extend the briefing schedule by two weeks in the above combined cases.

Respectfully submitted,

A handwritten signature in black ink that reads "John Sipos". The signature is stylized with a large, sweeping initial "J" and "S".

John Sipos
Assistant Attorney General
Telephone: 518-402-2251

cc: service list

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 07-71868

PUBLIC CITIZEN, INC., and SAN LUIS OBISPO MOTHERS FOR PEACE,
Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, and
THE UNITED STATES OF AMERICA,
Respondents,

and

NUCLEAR ENERGY INSTITUTE,
Intervenor-Respondent.

No. 07-72555

THE STATE OF NEW YORK,
Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, and
THE UNITED STATES OF AMERICA,
Respondents.

**JOINT MOTION TO
MODIFY BRIEFING SCHEDULE**

Petitioners in the two captioned cases (Nos. 07-71868 and 07-72555) respectfully move for a brief, two-week extension of the combined briefing schedule and that a new briefing schedule be established as follows:

Petitioners' Briefs and Excerpt of Record	October 24, 2007
Respondents' Brief	December 14, 2007
Intervenor's Brief	January 9, 2008
Petitioners' Reply Briefs	January 30, 2008.

The reasons for this motion are as follows:

1. Background. The two petitions for review filed by Public Citizen, Inc., and San Luis Obispo Mothers for Peace (collectively "Public Citizen") and the State of New York ("New York State" or "the State") each challenge the same regulation issued by the United States Nuclear Regulatory Commission ("NRC") – specifically, the final rule, published at 72 Federal Register 12705 on March 19, 2007, revising the "design basis threat" regulation, 10 C.F.R. § 73.1.

The Public Citizen petition in No. 07-71868 was filed in this Court on May 11, 2007. The New York State petition in No. 07-72555 was filed in the United States Court of Appeals for the Second Circuit on May 14, 2007 (where it was assigned the docket number 07-2052). On or about June 18, 2007, the second petition was transferred by the Second Circuit to this Court pursuant to a stipulated order and 28 U.S.C. § 2112(a).

On or about July 10, 2007, the parties submitted a joint motion to consolidate the cases, substitute a combined caption, and establish a joint briefing schedule.

On or about July 17, 2007, this Court granted the joint motion. Under the July 17, 2007 Order, the current briefing schedule is as follows: petitioners' opening brief are to be filed on October 10, 2007, the respondent Nuclear Regulatory Commission brief is to be filed on November 30, 2007, the intervenor-respondent Nuclear Energy Institute's brief is to be filed on December 21, 2007, and the petitioners' reply briefs are to be filed on January 16, 2008.

2. Modification of Briefing Schedule. All the parties to both cases jointly request that the Court modify the briefing schedule as proposed in the first paragraph of this motion. Counsel have worked together to develop a schedule that accommodates the schedules of the attorneys for all of the several parties to the petitions, and they are in agreement that the requested schedule is appropriate and satisfies the criteria of Circuit Rule 31-2.2(b). The reasons

for this request, as set forth below, are supported by the accompanying declaration filed pursuant to Circuit Rule 31-2.2(b).

a. The extension of time for petitioners is needed to allow New York State an adequate opportunity to prepare and file a Joint Excerpt of Record on behalf of the petitioners in both cases.

The State anticipates preparing and filing a single Joint Excerpt for itself in No. 07-72555 and petitioners in No. 07-71868. The State believes that its preparation of a single Excerpt will avoid needless duplication of submissions and divergent record citations. By providing a common pagination format, the Joint Excerpt will facilitate the preparation of the briefs by the parties and may assist in the Court's review. The preparation of the Joint Excerpt has required and will require somewhat more time than contemplated when the initial briefing schedule was arranged.

Additionally, the State anticipates that the Joint Excerpt may include documents not presently contained in the Certified Index of the Record. In July 2007, the State downloaded and organized the documents and public comments identified in respondent NRC's Certified Index of the Record. Upon review of the documents contained in the index, the State's identified additional documents, reports, and studies referenced in the public comments and the initiating petition for rulemaking that were not included in the Certified Index. At present, the State anticipates that its opening brief will cite to several of the additional documents and that the State will include portions of such additional documents in the Excerpt of the Record.

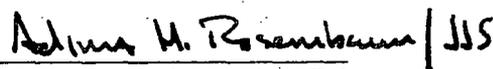
The State has recently completed the acquisition, organization, and cataloging of the additional documents referenced in the public comments and the rulemaking petition. The State has compiled a list of additional documents and has forwarded the list to respondent NRC for its review and possible inclusion within the Certified Index. The State is optimistic that the NRC and the State will be able to reach an understanding on the content of the Certified Index and/or

the Joint Excerpt of the Record before the State files its opening brief. The requested two week extension of the briefing schedule is expected to facilitate this process.

b. In addition, attorneys involved in the review of the New York State's brief have had to attend to previously unscheduled litigation, investigative, and administrative matters in August and September 2007. These matters -- combined with the record and index issues previously described -- have delayed completion of the State's opening brief. The two week extension would permit an adequate opportunity for completion and review of the State's brief.

c. The requested proposed extension will extend the submission of the final submissions to the Court -- i.e., petitioners' reply briefs -- by only two weeks. Counsel for all the parties believe that the schedule proposed in this motion will not unduly delay resolution of these cases, will not prejudice any party, and does not reflect a lack of diligence on the part of attorneys for any party.

Respectfully submitted,

 | JS

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Counsel for Petitioners in No. 07-71868



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Steven F. Crockett / JSS

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Michael A. Bauser / JSS

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Counsel for Intervenor in No. 07-71868

Dated: September 26, 2007

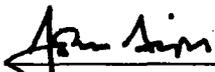
CERTIFICATE OF SERVICE

I hereby certify that, this 26th day of September, 2007, I caused a copy of the foregoing Motion, and the accompanying declaration, to be served by first-class mail, postage prepaid, on:

Steven F. Crockett, Esq.
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John J. Sipos

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 07-71868

PUBLIC CITIZEN, INC., and SAN LUIS OBISPO MOTHERS FOR PEACE,
Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, and
THE UNITED STATES OF AMERICA,
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No. 07-72555

THE STATE OF NEW YORK,
Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, and
THE UNITED STATES OF AMERICA,
Respondents.

**DECLARATION IN SUPPORT OF MOTION
TO MODIFY BRIEFING SCHEDULE**

Pursuant to 28 U.S.C. § 1746, John Sipos submits the following declaration:

1. I am a member of the bar of this Court and am one of the attorneys representing the petitioner the State of New York in proceeding number 07-72555. Pursuant to Circuit Rule 31-2.2(b), I am submitting this declaration in support of the motion by the parties for a brief, two-week extension of the briefing schedule in this case. The facts set forth in this declaration

are based on my personal knowledge as well as discussions with all affected counsel for the parties in these two consolidated cases.

2. The current briefing schedule calls for petitioners' opening briefs to be served on October 10, 2007, respondent brief to be served on November 30, 2007, intervenor respondent's brief to be served on December 21, 2007, and petitioners' reply briefs to be served on January 16, 2008.

3. Petitioners, respondents, and intervenor in the two captioned cases (Nos. 07-71868 and 07-72555) jointly move for a brief, two-week extension of the combined briefing schedule and that a new briefing schedule be established as follows:

Petitioners' Briefs and Excerpt of Record	October 24, 2007
Respondents' Brief	December 14, 2007
Intervenor's Brief	January 9, 2008
Petitioners' Reply Briefs	January 30, 2008.

This proposed schedule represents a two-week extension over the current schedule.

Background

4. The two petitions for review filed by Public Citizen, Inc., and San Luis Obispo Mothers for Peace (collectively "Public Citizen") and the State of New York (or "the State"), each challenge the same regulation issued by the United States Nuclear Regulatory Commission ("NRC") – specifically, the final rule, published at 72 Federal Register 12705 on March 19, 2007, revising the "design basis threat" regulation, 10 C.F.R. § 73.1.

5. The Public Citizen petition in No. 07-71868 was filed in this Court on May 11, 2007. The New York State petition in No. 07-72555 was filed in the United States Court of Appeals for the Second Circuit on May 14, 2007 (where it was assigned the docket number 07-2052). On or about June 18, 2007, the second petition was transferred by the Second Circuit to this Court pursuant to a stipulated order and 28 U.S.C. § 2112(a).

6. On or about July 10, 2007, the parties submitted a joint motion to consolidate the cases, substitute a combined caption, and establish a joint briefing schedule in the consolidated cases.

7. On or about July 17, 2007, this Court granted the joint motion. The current briefing schedule is set forth in paragraph 2, above.

Modification of Briefing Schedule

8. All the parties to both cases jointly request that the Court modify the briefing schedule as proposed in the first paragraph of the motion. Counsel have worked together to develop a schedule that accommodates the schedules of the attorneys for all of the several parties to the petitions, and they are in agreement that the requested schedule is appropriate and satisfies the criteria of Circuit Rule 31-2.2(b).

9. With respect to Circuit Rule 31-2.2(b), the State of New York has exercised diligence both in reviewing the Certified Index of the Record, obtaining copies of the documents identified in the index, obtaining additional documents referenced in the public comments, and identifying documents for inclusion with the Excerpt of Record as required by Local Rules 17-1, and 30-1, and in drafting the opening brief. The State notes that underlying administrative process continued over several years and generated numerous comments. This motion is being submitted two weeks in advance of the date that the State's opening brief is to be filed under the current briefing schedule.

10. The extension of time for petitioners is needed to allow the State of New York an adequate opportunity to prepare and file a Joint Excerpt of Record on behalf of the petitioners in both cases.

The State anticipates preparing and filing a single Joint Excerpt for itself and petitioners in No. 07-71868. The State believes that its preparation of a single Excerpt will avoid needless duplication of submissions and divergent record citations. By providing a common pagination

format, the Joint Excerpt will facilitate the preparation of the briefs by the parties and may assist in the Court's review. The preparation of the Joint Excerpt has required and will require somewhat more time than contemplated when the initial briefing schedule was arranged.

Additionally, the State anticipates that the Joint Excerpt likely will include additional documents not contained in the Certified Index of the Record. In July 2007, the State downloaded and organized the documents and public comments identified in respondent NRC's Certified Index of the Record. Upon review of the documents contained in the index, the State identified additional documents, reports, and studies referenced in the public comments and the initiating petition for rulemaking that were not included in the Certified Index of the Record. At present, the State anticipates that its opening brief will cite to several of the additional documents and that the State will include portions of such additional documents in the Excerpt of the Record.

The State recently completed acquiring, organizing, and cataloging the additional documents referenced in the public comments and the rulemaking petition. The State has compiled a list of additional documents and has forwarded the list to respondent NRC for its review and possible inclusion within the Certified Index and supplemental submission to the Court. The State is optimistic that the NRC and the State will be able to reach an understanding on the content of the Certified Index and/or the Joint Excerpt of the Record before the State files its opening brief. The requested two-week extension of the briefing schedule is necessary to facilitate this process.

11. In addition, attorneys involved in the review of the State's brief have had to attend to previously unscheduled litigation, investigative, and administrative matters in August and September 2007, including, but not limited to, the review of corporate disclosure statements and a regional environmental initiative. These matters -- combined with the record and index issues previously described -- have delayed completion of the State's opening brief. The two

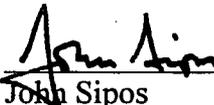
week extension would permit an adequate opportunity for completion and review of the State's brief.

Conclusion

12. The requested proposed extension will extend the submission of the final submissions to the Court -- i.e., petitioners' reply briefs -- by only two weeks. Counsel for all the parties believe that the schedule proposed in this motion will not unduly delay resolution of these cases, will not prejudice any party, and does not reflect a lack of diligence on the part of attorneys for any party.

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

Executed on: September 26, 2007.



John Sipos
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The Capitol
State Street
Albany, New York 12224

Counsel for Petitioner in No. 07-72555