



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 28, 2007

Cathy A. Catterson, Clerk  
U.S. Court of Appeals for the Ninth Circuit  
James R. Browning United States Courthouse  
P.O. Box 193939  
95 Seventh Street  
San Francisco, California 94119-3939

RE: *Public Citizen and San Luis Obispo Mothers for Peace v. USNRC*, No. 07-71868;  
and *State of New York v. USNRC*, No. 07-72555

Dear Ms. Catterson:

Enclosed you will find the original and four copies of the Federal Respondents' Unopposed Motion to Extend Time to File Their Answering Brief in the above-captioned cases. Please date stamp the enclosed copy of this letter to indicate date of receipt, and return the copy to me in the enclosed envelope, postage pre-paid, at your convenience.

Respectfully submitted,

Steven F. Crockett  
Special Counsel  
Office of the General Counsel

Enclosures: As stated

cc: service list

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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

Petitioners,

v.

U.S. NUCLEAR REGULATORY COMMISSION  
and THE UNITED STATES OF AMERICA,

Respondents,

and

THE NUCLEAR ENERGY INSTITUTE,

Intervenor.

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THE STATE OF NEW YORK,

Petitioner,

v.

U. S. NUCLEAR REGULATORY COMMISSION  
and THE UNITED STATES OF AMERICA,

Respondents.

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No. 07-71868

No. 07-72555

**FEDERAL RESPONDENTS' UNOPPOSED MOTION TO  
EXTEND TIME TO FILE THEIR ANSWERING BRIEF**

Pursuant to FRAP 26(b) and Circuit Rule 31-2.2(b), the federal respondents in the above-captioned consolidated cases respectfully request a six-day extension of time, to and including December 20, 2007, to file their answering brief.

The respondents also request that, if a six-day extension is granted to them, the intervenor-respondent also be given a six-day extension to and including January 15, 2008, to file its brief, and that the petitioners also be given a six-day extension to and including February 5, 2008, to file their reply briefs.

Petitioners' counsel have consented to this motion. The motion should be granted for the reasons set out in the attached declaration of the NRC's Solicitor, John F. Cordes.

Respectfully submitted,

  
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301-415-2871

November 28, 2007

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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

Petitioners,

v.

No. 07-71868

U.S. NUCLEAR REGULATORY COMMISSION  
and THE UNITED STATES OF AMERICA,

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THE STATE OF NEW YORK,

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U. S. NUCLEAR REGULATORY COMMISSION  
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DECLARATION OF JOHN F. CORDES

In support of the federal respondents' motion for extension of time, I declare the following:

1. I am Solicitor in the Office of the General Counsel, United States Nuclear Regulatory Commission (NRC). I supervise all NRC court litigation.

2. These petitions for review challenge a final NRC rule that regulates the security of nuclear power plants. Two of the petitioners filed their suit directly in the Ninth Circuit, and one petitioner filed soon after in the Second Circuit; both suits are pursuant to the Hobbs Act (28 U.S.C. § 2341 *et seq.*); the Second Circuit case was transferred to the Ninth Circuit under 28 U.S.C. § 2112(a). Under the Hobbs Act, the NRC and the United States are separate respondents, separately represented by their own counsel. *See* 28 U.S.C. § 2348. But the NRC's practice in Hobbs Act cases is not to burden the Court with separate briefs, but instead to collaborate with the Department of Justice on a single federal respondents' brief.

3. Petitioners filed their opening briefs on October 24, 2007. The federal respondents' answering brief is currently due on December 14, 2007. Respondents seek a six-day extension of time, to and including December 20, 2007, to file their single brief.

4. Respondents also ask that, if they are granted this six-day extension, six-day extensions also be given to the other parties in this litigation, so that the brief for the intervenor-respondent, the Nuclear Energy Institute, would be due on January 15, 2008, and petitioners' reply briefs on February 5, 2008.

5. The original briefing schedule in these consolidated cases was set by order of this Court on July 17, 2007. The order granted the parties' joint motion to consolidate the cases and to set a briefing schedule in which the opening briefs were due on October 10, 2007; the answering brief on November 30, 2007; the intervenor-respondent's brief on December 21, 2007; and the optional reply briefs on January 16, 2008. The current revised briefing schedule was set by order of this Court on October 2, 2007, in response to the parties' joint motion to extend the original schedule by two weeks, in part so that the parties could reach as much agreement as possible on the contents of the Joint Excerpts of Record.

5. Petitioners have filed two opening briefs, but the federal respondents -- the NRC and the United States -- intend to file a single brief in answer and so must coordinate closely. Under current briefing schedules, federal respondents' brief in this case is due the same day that they must file an answering brief in

another case, *New Jersey Dept. of Environmental Protection v. NRC*, No. 07-2271 (3d Cir.). Extending the briefing deadline in the present case for six days would give the NRC, which has a small legal staff available for court litigation, adequate time to coordinate the government's litigating positions in the two cases with the Department of Justice (representing the United States). The six-day extension would also permit the NRC's printing and binding services, a small operation that must meet most of the publishing needs of the whole agency, to work on a more reasonable schedule.

6. The NRC's small litigating staff will be further reduced over the next week by my own absence to help care for my mother, who is undergoing major surgery in New Jersey this week. My mother's condition will necessitate my absence from the office periodically over the next few weeks.

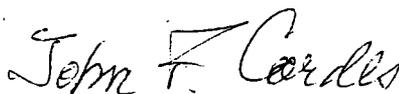
7. I have assigned an experienced NRC attorney, Steven Crockett, principal responsibility for drafting the federal respondents' answering brief. Mr. Crockett, assisted by Special Counsel in our office and by a new NRC attorney, has worked diligently on the NRC brief.

8. Mr. Crockett has consulted by email with other counsel in this litigation, and they have authorized the NRC to represent that they consent to

the six-day extension sought by the NRC. The six days is a modest extension of the seven weeks the current schedule gives respondents for the writing of their brief, the same seven weeks that Circuit Rule 28-4 allows parties who must answer multiple opening briefs. Also, all parties in this litigation will receive the same six-day extension.

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

Executed on November 28, 2007.



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John F. Cordes  
Solicitor  
Office of the General Counsel  
U.S. Nuclear Regulatory  
Commission

## CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2007, a copy of Federal Respondents' Unopposed Motion to Extend Time to File Their Answering Brief in Nos. 07-71868 and 07-72555 was served by mail, postage prepaid, upon the following counsel:

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