

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NEW JERSEY DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
)
Petitioner,)
)
v.) No. 07-2271
)
U.S. NUCLEAR REGULATORY)
COMMISSION, et al.,)
)
Respondents.)

CONSENT MOTION FOR EXTENSION OF TIME

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, and Rule 27.3 of the Local Appellate Rules, the U.S. Nuclear Regulatory Commission hereby requests a 36-day extension to and including November 29, 2007, in which to file the Brief for the Federal Respondents in the above-captioned case. The undersigned has spoken with all counsel, including Eileen Kelly, Esq., and John Covino, Esq., counsel for Petitioner, the New Jersey Department of Environmental Protection – they have graciously consented to this request for extension of time.

~~1. Petitioner filed its brief on September 21, 2007. The Respondents' Brief~~
thus is currently due on October 24, 2007. Charles E. Mullins is the NRC attorney with principal responsibility for this case, but he also must manage a full docket of

administrative assignments, including the review of all subpoenas issued by the NRC, and any third-party subpoenas issued to the NRC.

2. This lawsuit raises an important question – whether the National Environmental Policy Act (“NEPA”) requires the NRC to consider terrorism in environmental impact statements – that another court of appeals addressed last year. *See San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), *cert. denied*, 127 S.Ct. 1124 (2007). The question requires careful attention and full research.

3. 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, particularly in a case like this one, involving a NEPA issue with government-wide ramifications.

3. Mr. Mullins recently filed lengthy briefs in two other court of appeals cases: (1) *State of New Jersey v. U.S. Nuclear Regulatory Commission*, Nos. 06-5140, 07-1559, and 07-1756 (3d Cir.) (Consolidated) (Brief filed August 27, 2007), and *Eastern Navajo Dine’ Against Uranium Mining v. U.S. Nuclear Regulatory Commission*, No. 07-9505 (10th Cir.) (Brief filed September 20,

2007). These complex briefs required him to cancel a previously-scheduled vacation, which he hopes to reschedule this fall.

5. In addition, the *Eastern Navajo* case is a “deferred appendix” case, requiring Mr. Mullins to prepare and file a final brief, under Rule 30(c) of the Federal Rules of Appellate Procedure, in October.

6. Mr Mullins is also assigned to negotiate a settlement agreement for attorney’s fees in *San Luis Obispo Mothers for Peace v. U.S. Nuclear Regulatory Commission*, No. 03-74628 (9th Cir.), with negotiations beginning on September 27, 2007, under the auspices of the Court Mediator for the Ninth Circuit.

7. 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 a small office, with only four litigating attorneys and a support staff of only two. The office currently has three cases with briefs due in the next 60 days, including one (*Massachusetts v. NRC*, Nos. 07-1482 and 07-1483 (1st Cir.) where the briefing deadline (as extended) is October 22, 2007. Preparing multiple briefs within a short period of time is extremely difficult for our office and requires flexibility in scheduling the filing of briefs.

8. 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

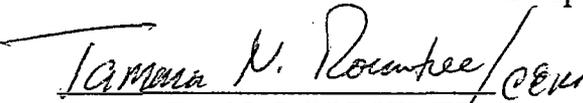
the United States. From time to time he is required to return to the Department of Justice to prepare oral arguments or supplemental pleadings in those cases. These absences also impact his ability to prepare for and brief this case. He is currently scheduled to present oral argument in one of those cases, *Filomena Notario Rivera v. Peter D. Keisler*, No. 05-70028 (9th Cir.), on October 17, 2007, in the U. S Court of Appeals for the Ninth Circuit in San Francisco, California.

9. Petitioners sought, and were granted, two extensions of time, which totaled 51 days to prepare and file their Opening Brief. We consented to the granting of those requests. At this point, we seek only 36 days to prepare and file our brief.

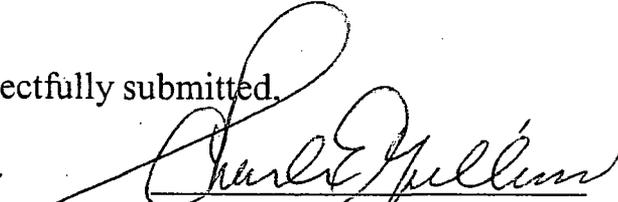
10. Petitioners have consented to our request for an extension of time. In addition, we understand that the private respondent, Amergen Energy Company, will seek an equivalent extension of time to file its answering brief.

For the foregoing reasons, this Court should grant Federal Respondents an extension of time of 36 days, to and including November 29, 2007, to file its answering brief.

Respectfully submitted,


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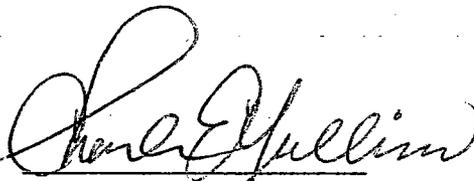
Dated: September 27, 2007

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that I filed the Federal Respondents's "Consent Motion for Extension of Time" in Case No. 07-2271 by placing the original and four copies in an overnight delivery service, postage prepaid, addressed to this Court and on the following counsel by placing thwo copies of the same in an overnight delivery service, postage prepaid:

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Dated: September 27, 2007