

Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Tel: 202.739.3000  
Fax: 202.739.3001  
www.morganlewis.com

**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

**Brad Fagg**  
202-739-5191  
bfagg@morganlewis.com

**Martin J. O'Neill**  
202-739-5733  
martin.o'neill@morganlewis.com

November 7, 2007

**VIA FEDERAL EXPRESS**

Marcia M. Waldron, Clerk  
Office of the Clerk  
United States Court of Appeals  
For the Third Circuit  
21400 United States Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

ATTENTION: Shannon L. Craven, Case Manager

Re: New Jersey Department of Environmental Protection v. U.S. Nuclear Regulatory  
Commission, et al., Docket No. 07-2271 (3d Cir.)

Dear Ms. Waldron:

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, enclosed for filing please find the original and four copies of "Private and Federal Respondents' Consent Motion for Extension of Time to File Briefs" and the Certificate of Service. Please date-stamp a copy of the Motion to indicate the date of filing and return it to me in the enclosed stamped, self-addressed envelope. Please contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

*Brad Fagg M. J. O.*

Brad Fagg  
Counsel for AmerGen Energy Company, LLC

cc: Eileen P. Kelly, Esq.  
John A. Covino, Esq.  
Charles E. Mullins, Esq,

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 & AMERGEN ENERGY )  
COMPANY, LLC, )

Respondents. )

**PRIVATE AND FEDERAL RESPONDENTS' CONSENT  
MOTION FOR EXTENSION OF TIME TO FILE BRIEFS**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 27.3 of the Local Appellate Rules, Private Respondent AmerGen Energy Company, LLC ("AmerGen") hereby moves the Court for a 15-day extension to and including December 14, 2007, to file the answering brief for the Private Respondent in the above-captioned case. Additionally, Private Respondent, under the express authorization of counsel for the Federal Respondent, the U.S. Nuclear Regulatory Commission, represents that the Federal Respondent joins in this request and hereby moves the Court for a 15-day extension to and including December 14, 2007, to file the Federal Respondent's answering brief in this case. John Cordes, Solicitor of the U.S. Nuclear Regulatory Commission, and Charles E. Mullins, counsel of record for the Federal Respondent, have authorized counsel for

AmerGen to make the above representation and execute this motion on behalf of the Federal Respondent. In support, the Respondents respectfully state as follows:

1. Petitioner filed its opening brief and appendix on September 21, 2007, after this Court granted the Petitioner two extensions of time. Under the Court's current briefing schedule, the Federal and Private Respondents' answering briefs are due on November 29, 2007.

2. This is the second enlargement request of both Respondents. On September 27, 2007, Federal Respondent sought a 36-day enlargement. Federal Respondent cited several considerations in support of its first request, including Mr. Mullins' concurrent and extensive involvement in several other federal appellate proceedings. On October 3, 2007, the Private Respondent sought an equivalent (36-day) enlargement. That first request was made in light of the Federal Respondent's prior request for a 36-day enlargement in order to maintain a coordinated briefing schedule and common due dates for the responsive briefs of the Private and Federal Respondents. The Court granted the Federal and Private Respondents' initial requests for a 36-day enlargement on October 10, 2007.

3. Brad Fagg, counsel of record for AmerGen, is lead counsel for the plaintiffs in a previously-scheduled trial commencing on November 5, 2007, and scheduled to run through November 20, 2007, in *Carolina Power and Light Company et al. v. United States*, No. 04-37 (Fed. Cl.). Pretrial proceedings and the

Private and the Federal Respondents due on the same day makes obvious sense. It allows the Respondents to consult prior to filing their briefs and thus minimizes unnecessary duplication and confusion. And it establishes a clear deadline for Petitioner's reply brief.

6. Counsel for Respondents have communicated with John Covino, counsel of record for the Petitioner, the New Jersey Department of Environmental Protection. Counsel for Private Respondent certifies that Mr. Covino has consented to both Private and Federal Respondents' requests for a 15-day extension of time.

WHEREFORE, Private Respondent AmerGen Energy Company, LLC, and Federal Respondent, the U.S. Nuclear Regulatory Commission, respectfully request a 15-day extension of time to and including December 14, 2007, to file their answering briefs.

Respectfully submitted,

*Brad Fagg M.J.O.*  
Brad Fagg, Esq.,  
Counsel for AmerGen  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Tel: (202) 739-5191  
Fax: (202) 739-3001  
[bfagg@morganlewis.com](mailto:bfagg@morganlewis.com)

Dated: November 7, 2007

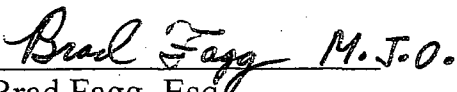
## CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that I served, on behalf of Private Respondent AmerGen Energy Company, LLC, "Private and Federal Respondents' Consent Motion for Extension of Time to File Briefs" 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 two copies of the same in an overnight delivery service, postage prepaid:

Eileen P. Kelly, Esq.  
Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Division of Law  
25 Market Street  
P.O. Box 093  
Trenton, New Jersey 08625-0093  
(609) 984-5612

John A. Covino, Esq.  
Sr. Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Division of Law  
25 Market Street  
P.O. Box 093  
Trenton, New Jersey 08625-0093  
(609) 984-5612

Charles E. Mullins  
Senior Attorney  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852-2738  
(301) 415-1618

  
Brad Fagg, Esq.

Dated: November 7, 2007