

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 (“NRC”), and the United States (collectively, “the Federal Respondents”) hereby request a 34-day extension to and including January 17, 2008, in which to file the Brief for the Federal Respondents in the above-captioned case. The undersigned has spoken with all counsel, and they have graciously consented to this request for extension of time.

1. The Federal Respondents’ Brief is currently due on December 14, 2007, as extended. 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. On November 23, 2007, Mr. Mullins suffered a near-heart attack and underwent an emergency cardiac procedure that, while successful, has left him extremely fatigued. In addition, either during his hospital stay or shortly thereafter he contracted a significant infection in his leg which has hampered his recovery and may require his re-admission to the hospital. As a result, he has missed a significant amount of work and will not resume a regular schedule until late in the week of December 3, 2007.

3. Mr. Mullins had recently completed submission of the final brief in *Eastern Navajo Dine' Against Uranium Mining v. U.S. Nuclear Regulatory Commission*, No. 07-9505 (10th Cir.), which was a "deferred appendix" case. Mr. Mullins filed the final brief, under Rule 30(c) of the Federal Rules of Appellate Procedure, on November 19, 2007. He had then turned his attention to this case full-time, but due to his unexpected illness he has not made enough progress to complete the NRC's brief before the December 14 deadline.

4. In addition, Mr. John Cordes, the NRC Solicitor, who reviews and supervises all NRC Court of Appeals briefs, has a family emergency – his mother's lung cancer surgery – and has been out of the office assisting her. His

mother is hospitalized in New Jersey. Mr. Cordes will be unavailable for substantial periods of time from now through December 15, 2007.

5. The Legal Counsel Division within the NRC's Office of the General Counsel (which contains the Office of 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 another case with a brief due December 20, 2007, as extended: *Public Citizen and San Luis Obispo Mothers for Peace v. NRC*, No. 07-71868, and *New York v. NRC*, No. 07-72555 (9th Cir.) (consolidated). Preparing multiple briefs within a short period of time is extremely difficult for our office and requires flexibility in scheduling the filing of briefs.

6. The lawsuit before this Court 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.

7. Mr. Mullins is uniquely qualified to prepare the NRC's Brief in this case because he prepared and presented the NRC's argument in the *Mothers for Peace* case cited above. Moreover, the other members of the Legal Counsel Division

each have assignments that would prevent them from taking over this case in the near term.

7. 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.

8. The DOJ attorney assigned to this case, Ms. Tamara Rountree, must present oral argument on December 6, 2007, in *Charpied/NPCA v. BLM*, Nos. 05-56814, 05-56815, 05-56832, 05-56843, 05-56908 (9th Cir.) (consolidated), in Pasadena, California. This case involves a cross-appeal with multiple parties. Preparation for this argument prevents her from working on this case until after December 6, 2007.

9. Moreover, during the first part of the week of December 10, 2007, Ms. Rountree will be finalizing a settlement agreement in *Roth v. United States*, No. 04-35296 (9th Cir.), to which she was assigned long before the instant case was calendered. *Roth* is a multifaceted settlement in which she must prepare final versions of five settlement documents. This will require consultation and

coordination between individuals in the Department of Justice and the client government agency.

10. Furthermore, Ms. Rountree has a previously scheduled family vacation in an attempt to exhaust "use or lose" leave. She is scheduled to start vacation on December 12, 2007, and return to her office on January 7, 2008. Furthermore, coordination of the NRC Brief with the DOJ during the period from December 17 through January 7, 2007, will be extremely difficult due to previously scheduled leave for other relevant DOJ personnel, in addition to Ms. Rountree's absence.

11. Filing a brief during the late-December holiday season would be very difficult for the NRC because of limited printing and paralegal resources and previously scheduled vacations by support personnel.

12. The requested January 17th deadline allows enough time to finish drafting the brief and coordination with the DOJ, whose lead attorney does not return to the office until January 7, 2008. The Federal Respondents plan to seek no further extensions.

13. Mr. John Covino, co-counsel for Petitioners, has graciously consented to our request for an extension of time. In addition, we understand that the private respondent, Amergen Energy Company, consents to the extension of time for the

Federal Respondents and 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 34 days, to and including January 17, 2008, to file its answering brief.

Respectfully submitted,


TAMARA N. ROUNTREE

Attorney
Appellate Section
Environment & Natural
Resources Division
P.O. Box 23795
L'Enfant Plaza Station
Washington D.C. 20026
(202) 514-1174


CHARLES E. MULLINS

Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20832
(301) 415-1618

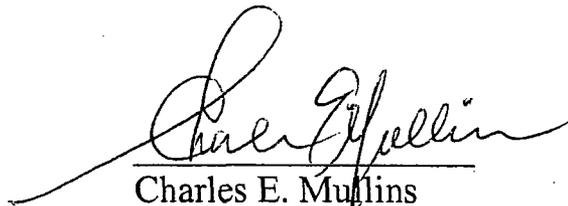
Dated: December 3, 2007.

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 of the same 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 Kelly, Esq.
John Covino, Esq.
Department of Law and Public Safety
Division of Law
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093
(609) 984-5612

Brad Fagg, Esq.
Martin O'Neill, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue
Washington, DC 20004
(202) 739-5191



Charles E. Mullins
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission

Dated: December 3, 2007.