

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 08-3903-ag(L); 08-4833-ag(CON); 08-5571-ag

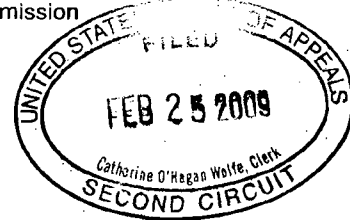
Caption [use short title]

Motion for: extension of briefing schedule

The State of New York v. United States Nuclear
Regulatory Commission

Set forth below precise, complete statement of relief sought:

Petitioners the State of New York, Commonwealth of
Massachusetts, and the Attorney General of the State of
Connecticut seek a revised briefing schedule: (1) petitioners'
briefs due May 5, 2009; (2) respondents' briefs due August 3,
2009; (3) petitioners' reply briefs due August 25, 2009



MOVING PARTY: The State of New York

Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: U.S. Nuclear Regulatory Comm'n

MOVING ATTORNEY: John J. Sipos
[name of attorney, with firm, address, phone number, and e-mail]
Office of the Attorney General
The Capitol
Albany, NY 12224
(518) 402-2251
john.sipos@oag.state.ny.us

OPPOSING ATTORNEY:
[name of attorney, with firm, address, phone number, and e-mail]
See certificate of service.

Court/Judge/Agency appealed from: U.S. Nuclear Regulatory Commission

Please check appropriate boxes:

Has consent of opposing counsel:
A. been sought? Yes No
B. been obtained? Yes No

Is oral argument requested? Yes No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set: Yes No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request relief been made below? Yes No

Has this relief been previously sought
in this Court? Yes No

Requested return date and explanation of emergency:

Signature of Moving Attorney:

John J. Sipos (mw) Date: 2-25-09

Has service been effected? Yes No
[Attach proof of service]

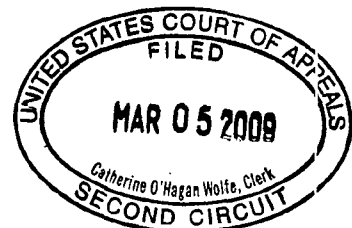
ORDER

Before: Hon. Ralph K. Winter, Circuit Judge

IT IS HEREBY ORDERED that the motion for an extension of time is GRANTED: The Petitioner's brief and appendix shall be filed on or before **May 5, 2009**; the Respondent's brief shall be filed on or before **August 3, 2009**; the Petitioner may file a Reply by on or before **August 25, 2009**; the petition shall be heard no earlier than the week of **October 12, 2009**. Counsel for all parties should understand that no party will be granted any further extensions.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
by Judy Pisanont
Judy Pisanont, Motions Staff Attorney

3/5/09
Date



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Caption [use short title]

The State of New York v. United States Nuclear
Regulatory Commission

Motion for: extension of briefing schedule

Set forth below precise, complete statement of relief sought:

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MOVING PARTY: The State of New York

Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: U.S. Nuclear Regulatory Comm'n

MOVING ATTORNEY: John J. Sipos
[name of attorney, with firm, address, phone number, and e-mail]
Office of the Attorney General
The Capitol
Albany, NY 12224
(518) 402-2251
john.sipos@oag.state.ny.us

OPPOSING ATTORNEY:
[name of attorney, with firm, address, phone number, and e-mail]
See certificate of service.

Court-Judge/Agency appealed from: U.S. Nuclear Regulatory Commission

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in this Court? Yes No

Requested return date and explanation of emergency:

Signature of Moving Attorney:

John J. Sipos (mw)

Date: 2-25-09

Has service been effected? Yes No
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk

Date: _____

By: _____

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE 2ND CIRCUIT
supplementing
Federal Rules of Appellate Procedure

INSTRUCTIONS

LOCAL RULE 27.

(a) Form of Motion and Supporting Papers for Motion and Opposition Statement.

1. Form of Motion. A motion must be in writing, unless the court otherwise directs, and must conform to paragraphs (A) through (C) below.
 - (A) The front page of the motion must follow the form of the Motion Information Statement approved by the Court (T-1080 revised 12/12/01) [printed on the reverse side] and contain all information required by the form.
 - (B) The body of the motion, following the Motion Information Statement, must set forth the information and legal argument necessary to support the motion, and, if emergency relief is sought, an explanation of the emergency.
 - (C) Formal requirements.
 - (i) 8-1/2 x 11 inch paper;
 - (ii) Text double spaced, except for quotations, headings and footnotes;
 - (iii) Margins of one inch on all sides;
 - (iv) Pages sequentially numbered (page numbers may be placed in the margins);
 - (v) Bound or stapled in a secure manner that does not obscure text;
 - (vi) Length: no more than 20 pages, not including attachments and the Motion Information Statement;
 - (vii) Number of copies: original plus four copies;
 - (viii) Required attachments to motion:
 - a. An affidavit (containing only statements of fact, not legal argument);
 - b. If the motion seeks substantive relief, a copy of lower court opinion or agency decision;
 - c. Any exhibits necessary to determine the motion;
 - d. Affidavit of service.
2. Non-Compliance Sanctions. If the moving party has not complied with this rule, the motion may be dismissed by the clerk without prejudice to renew upon proper papers. If application is promptly made, the action of the clerk may be reviewed by a single judge. The court may impose costs and an appropriate fine against either party for failure to comply with this rule.

MOTION INFORMATION FORM

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The State of New York v. United States Nuclear Regulatory
Commission

DOCKET NO. 08-3903-ag(L); 08-4833-ag(CON); etc.

, Assistant Solicitor General
New York State Office of the Attorney General
120 Broadway, 25th Floor
New York, NY 10271
Attorney(s) for

John J. Sipos, Assistant Attorney General
New York State Office of the Attorney General
State Capitol
Albany, NY 12224
Attorney(s) for State of New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE STATE OF NEW YORK;
RICHARD BLUMENTHAL, ATTORNEY
GENERAL OF THE STATE OF
CONNECTICUT; and
THE COMMONWEALTH OF
MASSACHUSETTS,

Petitioners,

v.

Nos. 08-3903-ag(L);
08-4833-ag(CON);
08-5571-ag(CON)

UNITED STATES NUCLEAR
REGULATORY COMMISSION;
UNITED STATES OF AMERICA,

Respondents,

ENERGY NUCLEAR OPERATIONS, INC.

Intervenor-Respondent.

MEMORANDUM IN SUPPORT OF
JOINT MOTION TO EXTEND BRIEFING SCHEDULE

The Petitioners the States of New York, the Commonwealth of Massachusetts, and the Attorney General for the State of Connecticut submit this motion to modify the briefing schedule in this combined proceeding. The Federal Respondents, the U.S. Nuclear Regulatory

Commission and the United States of America, agree to and join in the proposed modified schedule as does Intervenor-Respondent Entergy Nuclear Operations, Inc.

As described in more detail in the accompanying declaration, given the press of work, the petitioner States seek a sixty-day extension of time for petitioners to file their briefs, which are currently due on March 6, 2009. The motion also seeks an extension of time for the federal respondents and Entergy to file their response briefs and a short extension of time for the states to file their reply briefs.

These combined proceedings challenge an August 8, 2008 decision by the respondent U.S. Nuclear Regulatory Commission not to require review during proceedings examining the renewal of a reactor's operating license of the environmental impacts of the continued storage of spent nuclear fuel at power reactor sites pursuant to the National Environmental Policy Act and other applicable laws and regulations. Preparation of briefs will require additional coordination and review by the States.

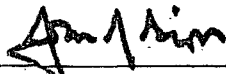
Accordingly, the Petitioner States, Federal Respondents, and Intervenor-Respondent Entergy respectfully request that the Court

grant the motion and amend the briefing schedule as follows:

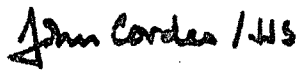
- (1) petitioners to file their opening briefs on May 5, 2009;
- (2) respondents to file their responsive briefs on August 3, 2009; and
- (3) petitioners to file their reply briefs on August 25, 2009.

February 24, 2009

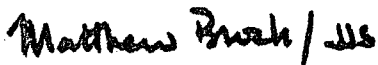
Respectfully submitted,



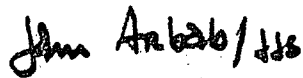
JOHN J. SIPOS
JANICE A. DEAN
Assistant Attorneys General
State of New York
The Capitol
Albany, NY 12224
(518) 402-2251



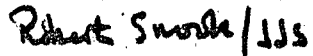
JOHN CORDES, Solicitor
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
(301) 415-1656



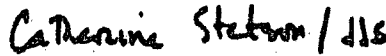
MATTHEW BROCK
Assistant Attorney General
The Commonwealth of Massachusetts
Office of the Attorney General
McCormack Building
One Ashburton Place
Boston, MA 02108-1598
(617) 727-2200 x 2425



JOHN E. ARBAB
Environment and Natural Resources
Division - Appellate Section
U.S. Department of Justice
PO Box 23795
L'Enfant Plaza Station
Washington, DC 20026-3795
(202) 514-4046



ROBERT D. SNOOK
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
(860) 808-5020



CATHERINE STETSON
JESSICA ELLSWORTH
Hogan & Hartson LLP
Columbia Square
555 13th Street, NW
Washington, DC 20004
(202) 637-5600 main

Counsel for Entergy

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE STATE OF NEW YORK;
RICHARD BLUMENTHAL, ATTORNEY
GENERAL OF THE STATE OF
CONNECTICUT; and
THE COMMONWEALTH OF
MASSACHUSETTS,

Petitioners,

v.

DECLARATION IN
SUPPORT OF JOINT
MOTION FOR
EXTENSION OF TIME

Nos. 08-3903-ag(L);
08-4833-ag(CON);
08-5571-ag(CON)

UNITED STATES NUCLEAR
REGULATORY COMMISSION;
UNITED STATES OF AMERICA,

Respondents,

ENTERGY NUCLEAR OPERATIONS, INC.

Intervenor-Respondent.

John J. Sipos declares as follows pursuant to 28 U.S.C. § 1746:

1. I am an Assistant Attorney General in the Office of Andrew M. Cuomo, Attorney General of the State of New York, and represent petitioner State of New York in this review proceeding. I submit this declaration in support of a joint motion to extend the briefing schedule. The motion requests that the briefing schedule be modified as

follows:

- (1) petitioners to file their opening briefs on May 5, 2009;
- (2) respondents to file their responsive briefs on August 3, 2009; and
- (3) petitioners to file their reply briefs on August 25, 2009.

The motion requests a sixty-day extension of time for petitioners to file their briefs, which are currently due on March 6, 2009. The motion also seeks to extend the time for the filing of the respondents' response briefs and the petitioners' reply briefs.

2. These combined petitions seek judicial review of the Nuclear Regulatory Commission's August 2008 decision not to review or revise the Commission's 1996 determination that the storage of spent nuclear reactor fuel in cooling pools located at nuclear power plants does not have significant environmental impacts and, as a result, operating licenses that allow such storage do not require any additional environmental review under the National Environmental Policy Act in connection with any proceeding examining the extension of the licenses. In August 2006, the Attorney General of Massachusetts filed a petition for rulemaking that requested that NRC: (1) revoke its regulations codifying that

determination and precluding any consideration of the environmental impacts of spent fuel storage in future licensing actions; and (2) require that Environmental Impact Statements (EISs) be issued in future licensing actions involving such storage. In March 2007, the Attorney General of California filed a petition seeking similar administrative action. The Attorney General of New York submitted comments in support of the two petitions. The States of Connecticut and Vermont also supported Massachusetts' rulemaking petition. In August 2008, NRC denied both petitions. 73 Fed. Reg. 46204 (Aug. 8, 2008). New York, Massachusetts, and Connecticut¹ have filed petitions for judicial review of that determination, which have been consolidated in this Court.² The petitions for review implicate the National Environmental Policy Act, the Administrative Procedure Act, the Atomic Energy Act, and other applicable laws and regulations.

¹The State of Vermont and the State of Vermont Department of Public Service filed a motion to intervene in *Blumenthal v. U.S. Nuclear Regulatory Com'n*, No. 08-4833-ag, pursuant to Fed. R. App. P. 15. The Court denied the motion without prejudice to renew and also indicated that Vermont could participate as an amicus.

² On January 29, 2009, this Court denied a motion to transfer the venue of the proceedings to the First Circuit.

3. The State of New York seeks a sixty-day extension of time due to the press of other work, including recent efforts to prepare the State of New York's filing in *Brodsky v. Nuclear Regulatory Commission*, Second Circuit No. 08-1454-AG (filed February 3, 2009), comments in an ongoing NRC rulemaking proceeding, *In re-Waste Confidence Decision Update*, NRC Docket 2008-0482 (filed February 6, 2009), as well as discovery and review and preparation of contentions and comments in the ongoing license renewal proceeding for Indian Point Unit 2 and Unit 3 before a NRC Atomic Safety and Licensing Board, ASLBP No. 07-858-03-LR-BD01 (including February 27, March 11, March 18, and March 30 filing dates).

4. In addition, Connecticut Assistant Attorney General Robert Snook, Counsel for the petitioner Richard Blumenthal, has been and will be occupied with various litigation matters including *Connecticut Commissioner of Environmental Protection v. Federal Energy Regulatory Commission*, Second Circuit No. 08-5087-AG (brief due March 6, 2009) and *County of Rockland (New York) v. Federal Aviation Administration*, D.C. Circuit No. 07-1363 (brief due March 6, 2009). Petitioner Commonwealth of Massachusetts also joins in the request to modify the briefing schedule.

5. The requested extension will assist the petitioner States in this proceeding to consult with each other during the preparation of their submissions to the Court. Accordingly, petitioners request that petitioners' time to file their brief be extended by sixty days to May 5, 2009.

6. I have discussed the proposed request with John Cordes, the Solicitor for the respondent U.S. Nuclear Regulatory Commission. NRC and the United States agree to the proposed schedule so long as the federal respondents receive additional time to submit their response brief. To accommodate the time needed to consult with the U.S. Department of Justice concerning the preparation of the federal respondents' submission to the Court as well as the birth of a child to the NRC's lead attorney assigned to this proceeding, NRC requests that it be permitted to file its response brief 90 days following petitioners' filings.

7. I have also discussed the request with Catherine Stetson of Hogan and Hartson, counsel for intervenor-respondent Entergy Nuclear Operations, Inc. Entergy agrees to and joins in the motion.

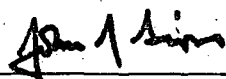
8. In view of the foregoing, the state petitioners, the federal respondents, and intervenor -respondent Entergy jointly request that the

briefing schedule be modified as follows:

- (1) petitioners to file their opening briefs on May 5, 2009;
- (2) respondents to file their responsive briefs on August 3, 2009; and
- (3) petitioners to file their reply briefs on August 25, 2009.

WHEREFORE, for the foregoing reasons, it is respectfully requested that this motion, on consent, to extend the brief schedule be granted.

Dated: New York, New York
February 24, 2009

By: 

John J. Sipos
Assistant Attorney General
(518) 402-2251