

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THE STATE OF VERMONT)
DEPARTMENT OF PUBLIC SERVICE,)
and the NEW ENGLAND COALITION)
))
Petitioners,)
))
v.)
))
UNITED STATES NUCLEAR)
REGULATORY COMMISSION, and)
the UNITED STATES OF AMERICA)
))
Respondents.)
_____)

Nos. 11-1168
and 11-1177
(Consolidated)

**FEDERAL RESPONDENTS’ UNOPPOSED MOTION FOR A 30-DAY
EXTENSION OF TIME TO FILE THEIR BRIEF AND FOR
ADJUSTMENTS IN THE BRIEFING SCHEDULE**

Pursuant to Local Rule 28(e), the federal Respondents — the Nuclear Regulatory Commission (NRC) and the United States — hereby move for a 30-day extension of time to file their merits brief in the above-captioned cases and for a corresponding adjustment in the other parties’ briefing deadlines. We seek this extension of time for the following reasons:

1. In accordance with the Court’s previous scheduling order, our response to Petitioners’ brief, filed on November 14, 2011, is currently due on December 21, 2011. See Clerk’s Order, November

21, 2011. As outlined below, we need additional time to draft our response, and in the interest of fairness and efficiency, we seek a corresponding extension for all other parties' filings.

2. In Hobbs Act cases like this one, the NRC and the United States typically join in a single response. The Department of Justice represents the United States. Collaborating on a single response requires consultation and coordination between NRC and the Justice Department, including supervisory reviews at the Department. In addition, we are involved in ongoing consultations with other interested government agencies on Clean Water Act issues raised in this case that have not previously been litigated. An extension is necessary to allow us to develop a coherent and well-considered government position.

3. In addition, we require additional time to consider not-yet-filed *amicus* briefs in support of petitioners, given that the *amici* have obtained permission to file them on a delayed basis.

4. In December, the Justice Department lawyer with principal responsibility for this case, John E. Arbab, will be submitting a separate merits brief for a case in the U.S. Court of Appeals for the

Tenth Circuit [*WildEarth Guardians v. National Park Service*, No. 11-1192, government's brief due December 21, 2011 (on a 30-day extension)] and delivering a previously-scheduled oral argument in the U.S. Court of Appeals for the D.C. Circuit [*Noble Energy v. Salazar*, No. 11-5114, oral argument scheduled for December 9, 2011]. [Mr. Arbab will also need to devote considerable time to an ongoing mediation in the D.C. Circuit involving a request for \$1.35 million in attorney's fees and costs against the United States under the Equal Access to Justice Act (*United States v. Old Dominion Boat Club*, No. 09-5363).] Therefore, he will be of limited availability to help prepare our response during the normal time period.

5. During this same time period, the NRC lawyer with chief responsibility for this case, Sean D. Croston, is heavily involved in NRC's responses to an abnormally large quantity of Congressional and FOIA requests seeking information regarding the recent emergency and ongoing situation at Fukushima, Japan. The NRC faces strict time limits for responding to many of these inquiries, which include a Congressional subpoena.

6. Moreover, our briefing schedule necessarily overlaps with the holiday season, and some of the attorneys involved in the case, including NRC's Solicitor, who supervises all NRC litigation, have long-planned family commitments during this time period.

7. As a result, we request that the Court extend the scheduled deadline for Respondents brief by 30 days, to and including January 20, 2012, and correspondingly adjust all other parties' filing deadlines by 30 days, with the exception of Petitioners' reply brief, for which we request extra time (30 days rather than 14 days after the intervenor-respondent and any amicus briefs supporting respondents are filed) to accommodate previously-scheduled travel by Petitioners' counsel. The deferred appendix would then be due one week later and the final briefs due two weeks after that, such that the final schedule is as follows:

- Respondents' Brief January 20, 2012
- Intervenor-Respondent's Brief February 3, 2012
- Petitioners' Reply Brief March 5, 2012
- Deferred Appendix March 12, 2012
- Final Briefs March 26, 2012

8. Counsel for Petitioners Vermont Department of Public Service and New England Coalition have notified us that they do not oppose the proposed extension of time. Counsel for intervenor Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. has also indicated that he does not oppose the proposed extension of time.

Conclusion

For the foregoing reasons, this Court should grant this motion to extend the deadline for filing Respondents brief by 30 days, to and including January 20, 2012, and correspondingly adjust all other parties' filing deadlines by 30 days, with the exception of Petitioners' reply brief, which deadline should be extended 30 days after the intervernor-respondent's brief and any amicus briefs supporting respondents are filed.

Respectfully submitted,

_____/s/_____
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Dated: November 22, 2011

CERTIFICATE OF SERVICE

I hereby certify that, on November 22, 2011, a copy of foregoing "FEDERAL RESPONDENTS' UNOPPOSED MOTION FOR A 30-DAY EXTENSION OF TIME TO FILE THEIR BRIEF AND FOR ADJUSTMENTS IN THE BRIEFING SCHEDULE" was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system, and parties may access the filing through that system. In addition, copies of the foregoing were also served by electronic mail to all parties on November 22, 2011.

/s/
SEAN D. CROSTON