

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.)	Nos. 11-1168
)	and 11-1177
UNITED STATES NUCLEAR)	(Consolidated)
REGULATORY COMMISSION, and)	
the UNITED STATES OF AMERICA)	
)	
Respondents.)	
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**JOINT MOTION FOR RECONSIDERATION AND REQUEST FOR
EXTENSION OF THE BRIEFING SCHEDULE**

Pursuant to Local Rule 27(e)(2), Petitioners and Federal Respondents (the U.S. Nuclear Regulatory Commission and the United States) hereby move for reconsideration and request an extension of the briefing schedule set forth in the Court's November 23, 2011 Order.

On November 22, 2011, Federal Respondents filed an unopposed motion for a 30-day extension of the briefing schedule in the above-captioned cases (with some exceptions). That motion requested specific revised dates that would fit each party's complex

work and travel schedules and ensure that the Court had well-considered briefs before it in these cases.

The Court's November 23 Order granted Federal Respondents' unopposed motion in part, and extended the remaining briefing deadlines by approximately two weeks. Petitioners and Federal Respondents now jointly seek reconsideration of that Order and ask the Court to grant short additional extensions of approximately two weeks for the following reasons:

1. As outlined in Federal Respondents' November 22 motion, the NRC and United States typically join in a single brief in Hobbs Act cases. This collaboration requires extensive coordination, including in this case consultations with other interested federal agencies regarding Clean Water Act issues that are of first impression and have not previously been litigated. A full extension is necessary to allow Federal Respondents to complete internal consultations and to develop a coherent and well-considered government position.

2. Under the Court's November 23 Order, Federal Respondents' brief is now due January 6, 2012. However, the Justice Department

lawyer with principal responsibility for representing the United States in these cases, John E. Arbab, will be out of the office from January 1 through January 6, 2012 on long-scheduled, non-refundable travel. Moreover, during the first two weeks of January, the NRC's small litigation staff will be simultaneously preparing and finalizing their brief (due January 11) for this Court's expedited review in *In re Aiken County*, No. 11-1271. Therefore, it would be very difficult, if not impossible, for Federal Respondents to meet the January 6 deadline.

3. Similarly, the November 23 Order set a new February 6, 2012 due date for Petitioners' Reply Brief and a February 13, 2012 due date for filing of the Deferred Appendix. But two of Petitioners' counsel, who have principal responsibility for the Reply Brief and the Deferred Appendix, have long-established travel plans related to a combination of business and pleasure, that will take them out of State from the end of day on February 3 through February 13. Thus, the schedule set in the latest Order also places Petitioners in an untenable position.

4. As a result, we request that the Court extend the scheduled briefing deadlines for an additional short period of time, such that the final schedule would be as follows:

- Federal 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 19, 2012

5. This proposed schedule, by compressing the times for the Deferred Appendix and the Final Briefs, leaves the case ready for oral argument just two weeks later than the schedule imposed in this Court's November 23 Order. (Federal Respondents' original motion would have added another week to the process.)

6. Counsel for Intervenor-Respondent, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. is currently out of the country and unavailable to join this motion, but we note that he consented to the schedule requested in the Respondents' November 22 motion, which featured the same date for the Intervenor-Respondent's brief as set forth above.

Conclusion

For the foregoing reasons, this Court should grant this motion to reconsider and extend the briefing schedules set forth in the Court's November 23 Order.

Respectfully submitted,

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Dated: November 29, 2011

CERTIFICATE OF SERVICE

I hereby certify that, on November 29, 2011, a copy of foregoing “JOINT MOTION FOR RECONSIDERATION AND REQUEST FOR EXTENSION OF 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 29, 2011.

/s/
SEAN D. CROSTON