

ORAL ARGUMENT NOT YET SCHEDULED

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

In Re: State of Texas

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) No. 17-60191

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**FEDERAL RESPONDENTS' UNOPPOSED MOTION FOR EXTENSION
OF TIME TO FILE RESPONSE TO PETITION FOR MANDAMUS**

In this case, Petitioner State of Texas (“Texas”) seeks a writ of mandamus and other relief against multiple federal entities, chief among them the Nuclear Regulatory Commission (“NRC”),¹ the United States Department of Energy (“DOE”), and the United States Department of the Treasury (“Treasury”) (collectively, the “Federal Respondents”) with respect to certain alleged actions or inaction in processing DOE’s license application for the Yucca Mountain nuclear waste repository under the Nuclear Waste Policy Act, 42 U.S.C. § 10101 et seq. (the “Act”). On March 20, 2017, this Court ordered a response to Texas’ Mandamus Petition by April 19, 2017. Pursuant to Federal Rules of Appellate Procedure 26(b) and 27 and Circuit Rules 26.2 and 27.4, the Federal Respondents seek an extension of time until and including May 30, 2017, to file a response to the Mandamus Petition. As required by Circuit Rule 27.4, the Federal

¹ The NRC is an agency with independent litigating authority in the courts of appeals and is represented by its own attorneys. For the convenience of the Court, NRC joins the other Federal Respondents in this unopposed motion.

Respondents state that Texas and movant-for-intervention Nuclear Energy Institute do not oppose the relief sought in this motion.

In support of this motion and as good cause, the Federal Respondents state:

1. As a consequence of an initial mediation session on April 4, 2017, the parties have agreed to conduct a second mediation session on May 15, 2017 and to submit position statements to the Circuit Mediator by May 1, 2017. To the extent that the mediation potentially could result in eliminating, shaping, or narrowing some of the issues raised in the Mandamus Petition, it would be more efficient and could spare the Court's and the parties' resources for the Federal Respondents to file their response following the scheduled May 15, 2017, mediation session.² Additionally, absent an extension, the same counsel and program personnel in the Federal Respondent agencies, as well as Department of Justice counsel, responsible for preparing the Federal Respondents' response filing(s) simultaneously would have to expend time and effort drafting a mediation statement and preparing for and conducting the mediation session.

2. Furthermore, and irrespective of the competing time demands of the mediation session, the Mandamus Petition raises complex issues and involves multiple federal entities on matters with a long and substantial regulatory and

² We note the potential that the outcome of the second mediation session could suggest the advisability of seeking a further extension of the Federal Respondents' response deadline.

procedural background. Substantial coordination between the Federal Respondents will be required to prepare a response, and sufficient time is needed to accommodate the process for review and approval of any responsive filing(s) within the Federal Respondent agencies and (with the exception of NRC) between the Federal Respondent agencies and the Department of Justice. The Federal Respondents (not including NRC) note particularly that additional time is required in light of the ongoing transition to the Trump Administration in order to allow sufficient time for newly-appointed officials at DOJ, DOE, and Treasury to review and approve their response before it can be filed.

3. The Federal Respondents' request for this extension to accommodate the mediation process and allow for appropriate review and approval of any responsive filing(s) will not unreasonably delay these proceedings, is not opposed, and will not prejudice any party.

WHEREFORE, Federal Respondents ask this Court to extend until May 30, 2017, the deadline for all Federal Respondents to file a response to the Mandamus Petition.

Respectfully submitted,

**For Federal Respondents DOE,
Treasury, et al. (excluding NRC):**

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CERTIFICATE OF SERVICE

I hereby certify that on the date below a copy of the foregoing was filed electronically with the Clerk and served upon all counsel of record in the case and is available through the court's CM/ECF System.

Dated: April 10, 2017

/s/David S. Gualtieri
David S. Gualtieri
Counsel for Respondents