

No. 17-60191

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**In the United States Court of Appeals  
for the Fifth Circuit**

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TEXAS, *Petitioner,*

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF ENERGY; JAMES RICHARD “RICK” PERRY, IN HIS OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF ENERGY; UNITED STATES NUCLEAR REGULATORY COMMISSION; KRISTINE L. SVINICKI, IN HER OFFICIAL CAPACITY AS CHAIRMAN OF THE UNITED STATES NUCLEAR REGULATORY COMMISSION; UNITED STATES NUCLEAR REGULATORY COMMISSION ATOMIC SAFETY AND LICENSING BOARD; THOMAS MOORE, PAUL RYERSON, AND RICHARD WARDWELL, IN THEIR OFFICIAL CAPACITIES AS UNITED STATES NUCLEAR REGULATORY COMMISSION ATOMIC SAFETY AND LICENSING BOARD JUDGES; UNITED STATES DEPARTMENT OF THE TREASURY; AND STEVEN T. MNUCHIN, IN HIS OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF THE TREASURY, *Respondents,*

and

NUCLEAR ENERGY INSTITUTE; ENERGY NORTHWEST; KANSAS GAS AND ELECTRIC COMPANY D/B/A WESTAR ENERGY; KANSAS CITY POWER & LIGHT COMPANY; KANSAS ELECTRIC POWER COOPERATIVE, INC.; WOLF CREEK NUCLEAR OPERATING CORPORATION; UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI; AND TENNESSEE VALLEY AUTHORITY, *Intervenor-Respondents,*

and

STATE OF NEVADA, *Intervenor-Respondent.*

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Original Action under the Nuclear Waste Policy Act

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**MOTION BY TEXAS FOR AN  
ENLARGEMENT OF WORD LIMITS**

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*(Counsel listed on next page)*

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY D. STARR  
Deputy First Assistant Attorney  
General

MICHAEL C. TOTH  
Special Counsel to the First Assistant  
Attorney General

DAVID AUSTIN R. NIMOCKS  
Associate Deputy Attorney General

ANDREW D. LEONIE  
Associate Deputy Attorney General

DAVID J. HACKER  
Senior Counsel

JOEL STONEDALE  
Counsel

Office of Special Litigation  
ATTORNEY GENERAL OF TEXAS  
P.O. Box 12548 (MC 009)  
Austin, Texas 78711-2548  
(512) 936-1414  
austin.nimocks@oag.texas.gov

ROBERT J. CYNKAR  
MCSWEENEY, CYNKAR &  
KACHOUROFF, PLLC  
10506 Milkweed Drive  
Great Falls, Virginia 22066  
(703) 621-3300

COUNSEL FOR PETITIONER

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Texas, by and through counsel, and pursuant to Federal Rule of Appellate Procedure 27(d)(2), moves the Court for leave to file a reply brief exceeding 2,600 words, but not exceeding 5,200 words, in support of its Motion for a Declaratory Judgment and a Preliminary Injunction (Prayers 1 & 2) Against the Department of Energy and the Secretary of Energy. In support of this Motion, Texas hereby states as follows:

1. This case concerns a unique original “civil action” filed under the Nuclear Waste Policy Act (“NWPA”), 42 U.S.C. § 10139(a). Texas filed its Original Petition under the NWPA on March 14, 2017. Pet. 41, ECF No. 00513917451. The Court docketed the filing on March 20, 2017.

2. On May 31, 2017, Texas filed a Motion for a Declaratory Judgment and a Preliminary Injunction (Prayers 1 & 2) Against the Department of Energy and the Secretary of Energy.

3. On June 12, 2017, the Federal Respondents filed two response briefs—one by Nuclear Regulatory Commission and associated respondents, and one by the Departments of Energy and Treasury and associated respondents. On the same day, the State of Nevada separately responded to the motion. The three responses total 11,190 words. To be sure, the State of Nevada’s response included a separate Opposed Countermotion to Dismiss, so the entirety of the State of Nevada’s 5,184 words were not fully dedicated to responding to Motion for a Declaratory Judgment and a Preliminary Injunction (Prayers 1 & 2) Against the Department of Energy and the Secretary of Energy.

4. Since the responses to Texas's motion exceed 5,200 words, Fed. R. App. P. 27(d)(2)(A), Texas respectfully requests more than 2,600 words, Fed. R. App. P. 27(d)(2)(C), for its reply. Specifically, Texas respectfully requests 5,200 words for its reply, believing that 5,200 words will give it an adequate opportunity to reply to the arguments of the Federal Respondents two briefs, and part of Nevada's brief. (By separate motion, Texas and Nevada will be seeking additional time for their respective response and reply to Nevada's countermotion.)

5. Federal Rule of Appellate Procedure 27(d)(2) permits the Court to authorize the requested enlargement. Moreover, Texas avers that the circumstances presented—replying to several different responses that raise jurisdictional issues not discussed in Texas's motion—establishes good cause for the enlargement of the word limits.

6. Texas also respectfully avers that good cause also exists because the State of Nevada takes no position on the motion, and NEI does not object to this motion. Pursuant to Fifth Circuit Rule 27.4, Texas conferred with counsel for all parties, as well as counsel for the intervenors, with respect to this Motion. The Federal Respondents do not oppose an expansion of 1,000 words, but oppose an expansion of 2,600 words as excessive.

## **CONCLUSION**

For the foregoing reasons, Texas respectfully requests that the Court permit it to reply with a brief not to exceed 5,200 words in support of its Motion for a Declaratory Judgment and a Preliminary Injunction (Prayers 1 & 2) Against the Department of Energy and the Secretary of Energy.

Respectfully submitted this 15th day of June, 2017.

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY D. STARR  
Deputy First Assistant  
Attorney General

MICHAEL C. TOTH  
Special Counsel to the  
First Assistant Attorney General

ANDREW D. LEONIE  
Associate Deputy Attorney General

/s/ David Austin R. Nimocks  
DAVID AUSTIN R. NIMOCKS  
Associate Deputy Attorney General  
austin.nimocks@oag.texas.gov

DAVID J. HACKER  
Senior Counsel

JOEL STONEDALE  
Counsel

Office of Special Litigation  
ATTORNEY GENERAL OF TEXAS  
P.O. Box 12548 (MC 009)  
Austin, Texas 78711-2548  
(512) 936-1414

ROBERT J. CYNKAR  
MCSWEENEY, CYNKAR &  
KACHOUROFF, PLLC  
10506 Milkweed Drive  
Great Falls, Virginia 22066  
(703) 621-3300

COUNSEL FOR PETITIONER

**CERTIFICATE OF CONFERENCE**

I certify that I contacted counsel for Respondents and Intervenors concerning the foregoing. In inquiring whether they will oppose the motion, in accordance with Fifth Circuit Rule 27.4, the State of Nevada takes no position and NEI does not oppose. The Federal Respondents do not oppose an expansion of 1,000 words, but oppose an expansion of 2,600 words as excessive.

/s/ David Austin R. Nimocks  
DAVID AUSTIN R. NIMOCKS

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A), because it contains 508 words; and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6), because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word.

/s/ David Austin R. Nimocks  
DAVID AUSTIN R. NIMOCKS

**CERTIFICATE OF SERVICE**

On June 15, 2017, this document was filed with the Clerk of Court via CM/ECF. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ David Austin R. Nimocks  
DAVID AUSTIN R. NIMOCKS

