

No. 17-60191

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

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.*

Original Action under the Nuclear Waste Policy Act

**MOTION BY TEXAS AND THE
STATE OF NEVADA FOR EXTENSIONS OF TIME**

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Texas and the State of Nevada, by and through counsel, and pursuant to Federal Rule of Appellate Procedure 26(b) and Fifth Circuit Rule 26.2, move the Court for leave to file certain responses at different times. In support of this Motion, Texas and the State of Nevada hereby state as follows:

1. This case concerns an original “civil action” filed under the Nuclear Waste Policy Act (“NWPA”), 42 U.S.C. § 10139(a). By order of the Court, the State of Nevada intervened on May 19, 2017.

2. Texas filed its civil action on March 14, 2017. Pet. 41. The Court docketed the filing on March 20, 2017.

3. On May 30, 2017, the Court updated the deadline for the Federal Respondents to file their response to Texas's civil action to June 30, 2017, and it further updated the deadline for the State of Nevada to file its response to Texas's civil action to July 31, 2017.

4. In the interim, on June 12, 2017, the State of Nevada filed an "Opposed Countermotion to Dismiss" Texas's civil action, and simultaneously raised jurisdictional arguments in opposition to Texas's Motion for a Declaratory Judgment and a Preliminary Injunction Against the Department of Energy and the Secretary of Energy.

5. In that the responses of the Federal Defendants to Texas's civil action are not due until June 30, 2017, and it is anticipated that they may raise similar jurisdictional arguments, Texas and the State of Nevada agree that Texas may respond to the State of Nevada's Opposed Countermotion to Dismiss, and any other like motions or jurisdictional arguments that may be filed on or before June 30, 2017, on or before July 14, 2017. In other words, Texas and the State of Nevada propose the following:

- a. That Texas's current deadline to respond to the State of Nevada's Opposed Countermotion to Dismiss be moved from June 22, 2017 to July 14, 2017;
- b. That Texas's deadline to respond to like motions or jurisdictional arguments that may be filed on or before June 30, 2017 also be July 14, 2017;

c. That replies by the State of Nevada, and other like movants, be filed on or before July 28, 2017.

6. Moreover, under this proposed timeline, in that the Court may not dispose of any motions to dismiss by July 31, 2017, Texas and the State of Nevada also agree that the State of Nevada's deadline to respond to Texas's Original Petition be thirty days after the Court's disposition of Nevada's Countermotion to Dismiss and any other like motions or jurisdictional arguments.

7. Federal Rule of Appellate Procedure 26(b) permits the Court to order this change for "good cause." In addition to Texas and the State of Nevada's agreement sufficing as "good cause," Texas and the State of Nevada aver that the interests of judicial economy will be served by allowing the Court to address jurisdictional issues, if any, and allow the Court to consider a single response by Texas to any and all motions to dismiss. Moreover, Texas avers that there is no dedicated set of rules or timelines for original "civil action[s]" under the NWPA. Texas contends in its civil action, Pet. 3, its response to NEI's motion to intervene, Texas Resp. 3-5, and herein, that this is a unique case that does not fall neatly within any of the pre-established rules of the Court.

8. 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. NEI opposes the proposed schedule. The Federal Respondents, including NRC, oppose the proposed deadline extensions and intend to file an opposition; however, the Federal Respondents do not oppose a shorter extension of time up to June 29 for Texas' opposition to Nevada's motion.

CONCLUSION

For the foregoing reasons, Texas and the State of Nevada respectfully request that the Court grant the requests herein, that (1) Texas may respond to the State of Nevada's Opposed Countermotion to Dismiss, and any other like motions or jurisdictional arguments that may be filed on or before June 30, 2017, on or before July 14, 2017, (2) that the State of Nevada may reply in support of its Opposed Countermotion to Dismiss on or before July 28, 2017, and (3) that the State of Nevada's deadline to respond to Texas's Original Petition be thirty days after the Court's disposition of Nevada's Countermotion to Dismiss and any other like motions and jurisdictional arguments.

Respectfully submitted this 16th day of June, 2017.

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CERTIFICATE OF CONFERENCE

I certify that I contacted counsel for Respondents and Intervenors concerning the foregoing, in accordance with Fifth Circuit Rule 27.4. NEI opposes the proposal. The Federal Respondents, including NRC, oppose the proposed deadline extensions and intend to file an opposition; however, the Federal Respondents do not oppose a shorter extension of time, up to June 29, 2017, for Texas's opposition to the State of Nevada's Opposed Countermotion to Dismiss.

/s/ David J. Hacker
DAVID J. HACKER

CERTIFICATE OF SERVICE

On June 16, 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
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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 745 words; and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6), because it was prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word.

/s/ David Austin R. Nimocks
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