

ORAL ARGUMENT NOT YET SCHEDULED

No. 19-1198

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF MASSACHUSETTS
Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

On Petition for Review of Actions by the
Nuclear Regulatory Commission

**FEDERAL RESPONDENTS' OPPOSED
MOTION FOR EXTENSION OF TIME**

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The U.S. Nuclear Regulatory Commission and the United States of America (together, the Federal Respondents) request that the Court grant an extension of time until November 22, 2019 to file a joint combined submission (the Combined Submission) that (1) opposes Petitioner Commonwealth of Massachusetts's Motion for a Stay Pending Appellate Review, Doc. No. 1812979 (Oct. 28, 2019) (the Stay Motion), and (2) seeks dismissal of Massachusetts's petition for review. Under Circuit Rule 27(h)(2), counsel for Federal Respondents sought Massachusetts's consent to this extension, and counsel for Massachusetts stated that although it would not oppose a shorter extension to November 15, 2019, it opposed an extension of one more week. Counsel for Massachusetts also represented that it will file an opposition to this motion.

The putative Intervenors support the Federal Respondents' motion and request the same extension for a similar Combined Submission on behalf of the putative Intervenors, if the Court grants the putative Intervenors' pending Motion to Intervene, Doc. No.

1811165 (Oct. 16, 2019), or if that motion remains pending as of the due date for the Combined Submission.¹

This motion is timely filed under Circuit Rule 28(h)(1).

In support of this motion, Federal Respondents state as follows:

1. On September 25, 2019, Massachusetts filed a petition for review challenging seven actions by the Nuclear Regulatory Commission. Petition for Review, Doc. No. 1808410 (Sept. 25, 2019). Federal Respondents' position is that Massachusetts's petition is premature because none of the seven actions constitutes reviewable final agency action. Federal Respondents therefore intend to file a dispositive motion seeking dismissal of the petition, which under the Court's Scheduling Order would be due on November 12, 2019.

2. On October 28, 2019, more than 30 days after filing its petition for review and on the last day possible under the Court's Scheduling Order, Massachusetts filed the Stay Motion. Massachusetts did not request emergency relief. Moreover, Massachusetts has

¹ The putative Intervenor are Entergy Nuclear Operations, Inc., Holtec International, Holtec Decommissioning International, LLC, and Holtec Pilgrim, LLC (formerly known as Entergy Nuclear Generation Company, LLC).

requested that the Nuclear Regulatory Commission stay the effectiveness of the underlying regulatory decisions, and that request is still pending with the Commission.

3. Under Federal Rule of Appellate Procedure 27(a)(3)(A), Federal Respondents' opposition to the Stay Motion is due on November 7, 2019. Massachusetts indicated that it would not oppose an extension of time until November 15, 2019, for the Federal Respondents to file a combined response to the Stay Motion and a motion to dismiss the petition for review. But for the following reasons, Federal Respondents request an additional week—until November 22, 2019—to file their submission.

4. *First*, Massachusetts's Stay Motion raises multiple issues related to a complex, ongoing regulatory matter pending before the Nuclear Regulatory Commission. Illustrating this complexity, Massachusetts included 693 pages of materials in an Addendum to its Stay Motion, Doc. No. 1812979, and it seeks review of seven underlying agency actions, Doc. No. 1812924.

5. *Second*, to further the Court's interests in efficiency, under Circuit Rule 8(b), Federal Respondents plan to file a combined opposition to the Stay Motion and motion to dismiss the petition for review for lack of finality. Preparing a combined submission requires additional time, especially where Massachusetts challenges no less than seven agency actions.

6. *Third*, the Nuclear Regulatory Commission and the United States intend to file a single brief that represents their respective interests, which will require additional time for review and coordination between the Commission and the Department of Justice.

7. *Fourth*, undersigned counsel for the United States has other litigation matters that require immediate attention, including an over-length brief due on November 7, 2019. Similarly, undersigned counsel for the Nuclear Regulatory Commission has other pressing matters that require attention in the coming weeks.

8. For these four reasons, Federal Respondents request an additional week, until November 22, 2019, to file their joint submission.

Accordingly, Federal Respondents request that the Court grant an extension of time until November 22, 2019, to file a joint combined submission opposing the Stay Motion and seeking dismissal of the petition for review. If the Court grants intervention to the putative Intervenors, they request that the Court apply this same extension to their submissions.

Respectfully submitted,

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DJ Number 90-13-3-15867
November 1, 2019

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 27(D)**

I certify that this filing complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font.

I further certify that this filing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 702 words, excluding the parts of the filing exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Justin D. Heminger
JUSTIN D. HEMINGER

Counsel for Respondent United
States of America

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Justin D. Heminger
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