

No. 20-70899

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PUBLIC WATCHDOGS,
Petitioner,

v.

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

On Petition for Review of an Order of
the U.S. Nuclear Regulatory Commission

**RESPONDENTS' REPLY TO PETITIONER'S OPPOSITION TO
RESPONDENT'S MOTION FOR EXTENSION OF TIME**

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As Respondents explained, an extension of 31 days to respond to Petitioner Public Watchdogs' Motion for Temporary Injunctive Relief is reasonably necessary given: (1) the merits arguments raised by Public Watchdogs and the volume of materials it has submitted (over 2,700 pages); (2) the time necessary for the U.S. Nuclear Regulatory Commission (NRC) and the Department of Justice (on behalf of Respondent United States of America) to coordinate drafting, review, and approval of their anticipated joint filing; and (3) the disruptions and challenges for counsel at the NRC and DOJ caused by the coronavirus (COVID-19) pandemic. Opposed Motion for 31-Day Extension of Time 2, Docket No. 4 (Apr. 2, 2020).

Public Watchdogs' opposition postulates that imminent irreparable harm will occur if temporary relief is not granted immediately. Petitioner's Opposition to Respondent's Motion 2-5, Docket No. 7 (Apr. 3, 2020) (Opposition). While there are known risks associated with the storage of spent nuclear fuel, this does not mean that every allegation of an emergency, founded on a naked accusation that the agency has "abdicated" its statutory authority, compels immediate judicial consideration.

We do not endeavor to litigate the merits of the Petition for Review in connection with a modest request for an extension. However, we note two key points. First, Public Watchdogs in no way contests our argument, Motion for Extension 3 ¶ 5, that the asserted defects in the SONGS decommissioning plan (the

gravamen, apparently, of Public Watchdogs' Petition for Review) do not create a public health and safety issue, let alone one that warrants denying Respondents' reasonable extension request. Second, Public Watchdogs has not meaningfully explained why an additional month of spent fuel transfer at SONGS poses any additional risks that the agency has not already considered and addressed through its licensing, oversight, and enforcement processes.

Although Public Watchdogs asserts that the SONGS spent fuel pools will be demolished at some point after spent fuel transfer is complete, it concedes in its Motion for Temporary Injunctive Relief that fuel transfer will be continuing until "July or August" of this year. Temporary Injunction Motion 12. While Respondents recognize that Public Watchdogs is interested in obtaining a court ruling on its request for injunctive relief while the SONGS spent fuel pools are in place, Public Watchdogs has not explained why the Respondents must respond to their injunction motion no later than mid-April to permit that.

In short, the need for urgent action here is artificial (as Public Watchdogs' concession that a shorter extension may be warranted demonstrates). Respondents should have a reasonable period of time within which to prepare an adequate response so that the Court can fully consider the issues raised by Public Watchdogs.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 27(d) AND CIRCUIT RULE 27-1.(1)(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 Times New Roman, a proportionally spaced font.

I certify that this filing complies with the length limit of Fed. R. App. P. 27(d)(2)(C) because it contains 444 words, according to the word count of Microsoft Word. I further certify that this filing complies with the page limitation of Circuit Rule 27-1.1(d) because it does not exceed 10 pages, excluding the parts of the filing exempted under Fed. R. App. P. 27(a)(2)(B) and 32(f).

/s/ Andrew P. Averbach
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