

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

STATE OF NEW MEXICO, ex rel.	)	
HECTOR H. BALDERAS, Attorney	)	
General and the NEW MEXICO	)	
ENVIRONMENT DEPARTMENT,	)	
Petitioners,	)	
v.	)	
	)	No. 21-9593
UNITED STATES NUCLEAR	)	
REGULATORY COMMISSION and	)	
UNITED STATES OF AMERICA,	)	
Respondents.	)	

**RESPONDENTS’ UNOPPOSED MOTION FOR  
EXTENSION OF TIME TO FILE MOTION TO DISMISS**

Respondents Nuclear Regulatory Commission (“NRC”) and the United States of America respectfully request an extension of 21 days, up to and including December 20, 2021, to file a motion to dismiss this Petition for Review for lack of subject-matter jurisdiction. Counsel for Respondents have conferred with counsel for Petitioners, and counsel for Petitioners do not object to this request.

In support of their motion, Respondents state:

1. This case concerns the issuance of a license by the United States Nuclear Regulatory Commission (NRC) to Interim Storage Partners, L.L.C., to construct and operate a “consolidated interim storage facility” for the storage of spent nuclear fuel. NRC issued the license on September 13, 2021.

2. Respondents believe that the Court lacks jurisdiction over the matter because Petitioners did not participate in the adjudicatory proceedings before the agency that preceded issuance of the license. They intend to file a motion to dismiss this Petition for Review on this basis if this case moves forward.

3. Circuit Rule 27.3(A)(3)(a) states that a motion to dismiss for lack of jurisdiction should be filed within 14 days of a notice of appeal (which we understand to include a Petition for Review). Given the Thanksgiving holiday and the time needed to draft a motion to dismiss and obtain approvals from personnel at two separate agencies concerning the filing, Respondents request an additional 21 days to file their motion.

Accordingly, Respondents respectfully request that this grant their unopposed request for an extension of 21 days, up to and including December 20, 2021, to file a motion to dismiss this Petition for Review for lack of subject-matter jurisdiction.

Respectfully submitted,

/s/ Justin D. Heminger

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November 23, 2021

/s/ Andrew P. Averbach

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**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 Times New Roman, 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 281 words, excluding the parts of the of the filing exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Andrew P. Averbach

Andrew P. Averbach

Counsel for Respondent

U.S. Nuclear Regulatory Commission

## CERTIFICATE OF SERVICE

I certify that on November 23, 2021, I served a copy of RESPONDENTS' UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE MOTION TO DISMISS upon counsel for the parties in this action by filing the document electronically through the CM/ECF system. This method of service is calculated to serve counsel at the following e-mail addresses:

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