

No. 23-60377

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FASKEN LAND AND MINERALS, LTD., and
PERMIAN BASIN LAND AND ROYALTY OWNERS,

Petitioners,

v.

NUCLEAR REGULATORY COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

On Petition for Review of Action by the
Nuclear Regulatory Commission

**JOINT UNOPPOSED MOTION TO EXTEND TIMES TO
RESPOND AND REPLY TO FEDERAL RESPONDENTS'
MOTION TO DISMISS OR TRANSFER**

Pursuant to Federal Rule of Appellate Procedure 26(b) and Fifth Circuit Rule 26.2, Petitioners Fasken Land and Minerals, Ltd., and Permian Basin Land and Royalty Owners (collectively “Fasken”); Respondents United States of America and U.S. Nuclear Regulatory Commission (“NRC”) (collectively “Federal Respondents”); and Proposed Respondent-Intervenor Holtec International (“Holtec”) jointly and respectfully move for extensions of time to file responses and a reply in support of Respondents’ motion to dismiss or transfer this Petition for Review. Responses to the motion are currently due on August 7, 2023, and Federal Respondents’ reply is due seven days later. But for the reasons explained below, good cause exists for an extension of seven days both for the filing of both responses to the motion and a reply thereto.

1. This case concerns a challenge to a license issued by the NRC to Holtec. Fasken filed the Petition for Review on July 7, 2023.
2. On July 28, 2023, Federal Respondents moved to dismiss the Petition or, in the alternative, to transfer the case to the United States Court of Appeals for the District of Columbia Circuit. The motion raises a dispositive question about the Court’s jurisdiction over the petition.
3. Responses to the motion are due on August 7, 2023, and a reply in support of the motion would be due within seven days of the filing of any responses.

4. Petitioners join in this motion to ensure a uniform briefing schedule for the parties. In the interest of presenting robust and thorough briefing that is helpful for the Court on the number of issues raised in Federal Respondents' motion, Petitioners respectfully request an extension of 7 days for time to file a response.

5. To ensure all of the parties' briefing deadlines are aligned, Holtec is not opposed to the requested extension and thus requests that any extension to Fasken's deadline also apply to Holtec.

6. Preparation of Federal Respondents' reply requires close coordination between counsel for the NRC and the Department of Justice, as well as internal reviews within each agency. Thus, Federal Respondents respectfully request that the time for filing a reply in support of the motion be extended from 7 days to 14 days.

7. These extensions are sought in the interest of justice and not for delay. Granting these extension will allow undersigned counsel to prepare thorough responses to, and a reply supporting, Federal Respondents' motion.

CONCLUSION

For these reasons, the parties jointly and respectfully request that the Court extend the time to file responses to Federal Respondents' motion to dismiss by

seven days (until August 14, 2023), and extend the time for a reply to these responses by seven days (until August 28, 2023).

Respectfully submitted,

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August 2, 2023

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

/s/ Andrew P. Averbach

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Counsel for Respondent
U.S. Nuclear Regulatory Commission

CERTIFICATE OF SERVICE

I certify that on August 2, 2023, I served a copy of the foregoing **JOINT UNOPPOSED MOTION TO EXTEND TIMES TO RESPOND AND REPLY TO FEDERAL RESPONDENTS' MOTION TO DISMISS OR TRANSFER** upon counsel for the parties in this action by filing the document electronically through the CM/ECF system.

/s/ Andrew P. Averbach

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