

No. 21-60743

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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STATE OF TEXAS, GREG ABBOTT, Governor of Texas,  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,  
FASKEN LAND AND MINERALS, LIMITED, and  
PERMIAN BASIN LAND AND ROYALTY OWNERS,  
*Petitioners,*

v.

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

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On Petition for Review of Action  
by the Nuclear Regulatory Commission

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**UNOPPOSED JOINT MOTION FOR EXTENSION OF  
TIME FOR RESPONDENTS AND INTERVENOR  
TO FILE PETITIONS FOR REHEARING**

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Federal Respondents (the Nuclear Regulatory Commission and United States of America) and Intervenor Interim Storage Partners, LLC (ISP) request an extension of time of 14 days, to and including October 24, 2023, to file petitions for rehearing related to the panel decision dated August 25, 2023. Petitioners State of Texas, Governor Greg Abbott, and the Texas Commission on Environmental

Quality (the Texas Petitioners), and Petitioners Fasken Land and Minerals, Limited, and Permian Basin Land and Royalty Owners (Fasken Petitioners) do not oppose this request.

1. The panel issued a decision in this case on August 25, 2023, granting the Texas Petitioners' and the Fasken Petitioners' Petitions for Review and vacating a license issued to ISP. Because October 9, 2023 is a holiday, any petitions for rehearing of the panel decision are due on October 10, 2023.

2. Federal Respondents request additional time to consider whether to file a petition for rehearing and to prepare such a petition. This process requires consultation between the Nuclear Regulatory Commission and the Department of Justice, which represents the United States. The Department of Justice's process for considering en banc rehearing requires several levels of review for such matters, including approval by the Office of the Solicitor General. Federal Respondents also are consulting with other agencies affected by the panel's ruling.

3. So as to consolidate the Court's review of any petitions for rehearing, ISP requests that the Court set the due date for ISP's petition on the same day as any petition filed by Federal Respondents.

Thus, Federal Respondents and Intervenor ISP request that the Court extend the deadline to file petitions for rehearing by fourteen days, up to and including October 24, 2023.

Dated: September 27, 2023

Respectfully submitted,

/s/ Justin D. Heminger

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### **CERTIFICATE OF COMPLIANCE**

1. This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), it contains 319 words.
2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ Andrew P. Averbach

ANDREW P. AVERBACH

Counsel for Respondent  
U.S. Nuclear Regulatory Commission

### **CERTIFICATE OF SERVICE**

I certify that on September 27, 2023, I served a copy of the foregoing **UNOPPOSED JOINT MOTION FOR EXTENSION OF TIME FOR RESPONDENTS AND INTERVENOR TO FILE PETITIONS FOR REHEARING** 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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