

12-1772

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

COMMONWEALTH OF
MASSACHUSETTS,

Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION and the UNITED STATES
OF AMERICA,

Respondents

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US COURT OF APPEALS
FOR THE FIRST CIRCUIT

**MEMORANDUM IN SUPPORT OF COMMONWEALTH OF
MASSACHUSETTS MOTION TO CONSOLIDATE ACTIONS
AND MODIFY SCHEDULE FOR FILING INITIAL BRIEF**

Petitioner, Commonwealth of Massachusetts (Commonwealth), submits this memorandum in support of its Motion to Consolidate Actions and Modify Schedule for Filing Initial Brief.

Consolidation

The Commonwealth respectfully requests, pursuant to F. R. App. P. 27(b) and 27.0(d) and Internal Operating Procedure V.C (Motion Procedures), that the Court consolidate the above-captioned action with a related action previously filed by the Commonwealth in this Court, Commonwealth of Massachusetts v. U.S. Nuclear Regulatory Commission, et al. Docket No. 12-1404.

On April 5, 2012, the Commonwealth filed a Petition for Review in this Court of a final order issued by the U.S. Nuclear Regulatory Commission (NRC) on March 8, 2012 which denied a petition by the Commonwealth of Massachusetts for a hearing and related relief concerning Entergy Nuclear Operations, Inc.'s ("Entergy") application for a 20-year extension of the license to operate the Pilgrim nuclear power plant in Plymouth, Massachusetts.

Pursuant to the Hobbs Act, the Commonwealth was required to file, and did file, a Petition for Review in this Court within sixty days of the NRC's Order. 28 U.S.C. § 2344; 2342(4). See also Commonwealth of Massachusetts v. U.S. Nuclear Regulatory Commission, et al. Docket No. 12-1404.

On May 25 and 29, 2012, and after the Commonwealth filed its initial Petition for Review, the NRC issued orders to grant the twenty year license extension for the Pilgrim plant. See Attachments 1 and 2 to the Commonwealth's second Petition for Review, filed herewith. Both Petitions for Review challenge the NRC's grant of a twenty year license extension for the Pilgrim nuclear power plant for failure first to comply with the National Environmental Policy Act and the Atomic Energy Act because the NRC did not consider the lessons learned from the radiological accident at Fukushima in Japan, and their relevance for the Pilgrim relicensing proceeding, as part of the Pilgrim relicensing decision-making process.

Consolidation is appropriate because the two Petitions involve common

questions of law and fact and arise from the same NRC relicensing decision. *Cf.* Fed. R. Civ. P. 42(a). Accordingly, the Commonwealth respectfully requests that the Court consolidate the above-captioned action with the initial action previously filed by the Commonwealth in this Court on April 5, 2012, Commonwealth of Massachusetts v. U.S. Nuclear Regulatory Commission, et al. Docket No. 12-1404.

Modification of Schedule to File Initial Brief

Pursuant to F.R.App.P. 17, the agency must file the record with the Court within forty days after being served a petition for review. The NRC thus is required to file the remaining administrative record for the Pilgrim relicensing proceeding within forty days of service of the Commonwealth's second Petition for Review, filed today. F.R.App.P. 17.¹

F.R.App.P. 31 further provides that the appellant shall file its initial brief within forty days after the record is filed. Therefore, consistent with F.R.App.P. 31, the Commonwealth requests that, if consolidation is allowed, the Court order that the time for filing the Commonwealth's initial brief in the consolidated actions shall be forty days after the NRC files the remaining administrative record as requested herein, which would modify the current deadline of July 2 for filing the

¹ The NRC already has filed a portion of the administrative record for the Pilgrim relicensing proceeding in Docket 12-1404. See Certified List of Record Documents (May 21, 2012), Docket 12-1404.

Commonwealth's initial brief, as specified in Petitioner's Briefing Notice from the Court in Docket No. 12-1404.

Respectfully submitted,

By its Attorneys,

MARTHA COAKLEY
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'MB', is written over a horizontal line.

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