

No. 19-72670

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: PUBLIC WATCHDOGS

PUBLIC WATCHDOGS
Petitioner,

v.

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

On Petition for Writ of Mandamus to
the U.S. Nuclear Regulatory Commission

**RESPONDENT U.S. NUCLEAR REGULATORY COMMISSION'S OPPOSED
MOTION FOR ONE WEEK EXTENSION OF TIME TO RESPOND TO
MANDAMUS PETITION**

ANDREW P. AVERBACH
Solicitor
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
andrew.averbach@nrc.gov
(301) 415-1956

The U.S. Nuclear Regulatory Commission (NRC) requests that the Court grant a one-week extension of time until December 9, 2019 to respond to Public Watchdogs' petition for a writ of mandamus concerning a citizen petition it filed with the NRC over activities at the San Onofre Nuclear Generating Station (SONGS). Yesterday, the Court ordered the NRC to respond to the petition within 10 days of the order, but the NRC needs an additional week to respond. Counsel for the NRC sought Public Watchdogs's consent to this extension, and counsel for Public Watchdogs stated that it opposes the extension unless the NRC and the Southern California Edison Company agree to halt the movement and burial of spent nuclear fuel at SONGS during the pendency of the mandamus petition in this Court.

In support of this motion, the NRC states as follows:

1. Public Watchdogs filed its mandamus petition on October 21, 2019.
2. Yesterday (November 21), the Court issued an order stating that the petition "raises issues that warrant an answer" and ordering that "within 10 days after the date of this order, respondent shall file an answer." Order, Dkt. No. 11 (Nov. 21, 2019).
3. A one-week extension of the deadline is necessary for three reasons. *First*, counsel will be out of the office attending a hearing on November 25, 2019, in the U.S. District Court for the Southern District of California on a motion for

preliminary injunction and motions to dismiss in another case filed by Public Watchdogs that seeks relief at the SONGS facility similar to the relief that Public Watchdogs seeks from the NRC in this mandamus petition. *See Order, Public Watchdogs v. Southern California Edison Company, et al.*, No. 3:19-cv-01635-JLS-MSB (S.D. Cal. Nov. 1, 2019). Declaration of Andrew Averbach ¶ 2.

4. *Second*, counsel for the NRC will be out of the office for a personal matter on Tuesday, November 26, 2019 and for the Thanksgiving holiday on Thursday, November 28, 2019. Likewise, other NRC employees will be out of the office next week due to the holiday, making preparation of the NRC's response more difficult. Declaration of Andrew Averbach ¶ 3.

5. *Third*, under the Hobbs Act, 28 U.S.C. § 2344, an action challenging a final order by the NRC "shall be against the United States." *See also* Fed. R. App. P. 15(a)(2)(B) ("even though not named in the petition, the United States is a respondent if required by statute"). Although Public Watchdogs's mandamus petition does not challenge a final order by the NRC, the U.S. Department of Justice intends to represent the interests of the United States in this matter. Counsel for the Commission and the Department of Justice will require time for review and coordination between the agencies and for the Department of Justice's management to review and approve any filing on behalf of the United States. Declaration of Andrew Averbach ¶ 4.

Accordingly, the NRC respectfully requests that the Court grant a one-week extension of time until December 9, 2019, to respond to the mandamus petition.

Respectfully submitted,

/s/ Andrew P. Averbach

ANDREW P. AVERBACH

Solicitor

Office of the General Counsel

U.S. Nuclear Regulatory Commission

andrew.averbach@nrc.gov

(301) 415-1956

November 22, 2019

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s) 19-72670

I am the attorney or self-represented party.

This brief contains 504 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

☒ [X] complies with the word limit of Cir. R. 32-1.

☐ [] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

☐ [] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

☐ [] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

☐ [] complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

☐ [] it is a joint brief submitted by separately represented parties;

☐ [] a party or parties are filing a single brief in response to multiple briefs; or

☐ [] a party or parties are filing a single brief in response to a longer joint brief.

☐ [] complies with the length limit designated by court order dated _____.

☐ [] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature /s/ Andrew P. Averbach

Date **Error! Reference source not found.**

No. 19-72670

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: PUBLIC WATCHDOGS

PUBLIC WATCHDOGS
Petitioner,

v.

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

On Petition for Writ of Mandamus to
the U.S. Nuclear Regulatory Commission

**DECLARATION OF ANDREW P. AVERBACH IN SUPPORT OF THE U.S.
NUCLEAR REGULATORY COMMISSION'S
MOTION FOR EXTENSION OF TIME**

ANDREW P. AVERBACH
Solicitor
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
andrew.averbach@nrc.gov
(301) 415-1956

DECLARATION OF ANDREW P. AVERBACH

I, Andrew P. Averbach, declare as follows:

1. I am the Solicitor for the U.S. Nuclear Regulatory Commission (NRC).
2. A one-week extension of the deadline for the NRC to respond to Public Watchdogs' mandamus petition is necessary for three reasons. *First*, I will be out of the office attending a hearing on November 25, 2019, in the U.S. District Court for the Southern District of California on a motion for preliminary injunction and motions to dismiss in another case filed by Public Watchdogs that seeks relief at the SONGS facility similar to the relief that Public Watchdogs seeks from the NRC in this mandamus petition. *See Order, Public Watchdogs v. Southern California Edison Company, et al.*, No. 3:19-cv-01635-JLS-MSB (S.D. Cal. Nov. 1, 2019).
3. *Second*, I will be out of the office for an important personal matter on Tuesday, November 26, 2019 and for the Thanksgiving holiday on Thursday, November 28, 2019. Likewise, other NRC employees will be out of the office next week due to the holiday, making preparation of the NRC's response more difficult.
4. *Third*, under the Hobbs Act, 28 U.S.C. § 2344, an action challenging the NRC's final order "shall be against the United States." *See also* Fed. R. App. P. 15(a)(2)(B) ("even though not named in the petition, the United States is a

respondent if required by statute”). Although Public Watchdogs’ mandamus petition does not appear to challenge a final order by the NRC, I understand that the U.S. Department of Justice intends to represent the interests of the United States in this matter. Counsel for the Commission and the Department of Justice will require time for review and coordination between the agencies and for the Department of Justice’s management to review and approve any filing on behalf of the United States.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 22, 2019.

/s/ Andrew P. Averbach
Andrew P. Averbach