

No. 19-1198

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

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COMMONWEALTH OF MASSACHUSETTS,

*Petitioner,*

v.

U.S. NUCLEAR REGULATORY COMMISSION and UNITED STATES OF AMERICA,

*Respondents,*

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC, *et al.*,

*Intervenors.*

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**MOTION FOR LEAVE TO FILE A MEMORANDUM OF LAW FOR THE  
STATES OF NEW YORK, CONNECTICUT, ILLINOIS, IOWA,  
MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY,  
NEW MEXICO, OREGON, PENNSYLVANIA, AND VERMONT AS  
AMICI CURIAE IN SUPPORT OF PETITIONER AND IN  
OPPOSITION TO THE MOTIONS TO DISMISS**

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On Petition for Review of Actions by the  
U.S. Nuclear Regulatory Commission

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Dated: January 17, 2020

Pursuant to Federal Rule of Appellate Procedure 29 and D.C. Circuit Rule 18, the States of New York, Connecticut, Illinois, Iowa, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Pennsylvania, and Vermont, respectfully move for leave to file a memorandum of law of 3,799 words as amici curiae in support of the Commonwealth of Massachusetts's opposition to the motions to dismiss pending in this action.<sup>1</sup>

As set forth in the accompanying brief, amici States have important interests in the compliance of the United States Nuclear Regulatory Commission (NRC) with federal laws permitting States to participate in NRC decisions concerning the licensing of nuclear power plants, including decisions that directly affect the decommissioning of plants within or near our borders. Many of amici States contain nuclear facilities that, like Pilgrim Nuclear Energy Facility, are or will soon be undergoing decommissioning. And amici States share many of the Commonwealth's concerns regarding Holtec's ability to oversee

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<sup>1</sup> Although States may ordinarily file amicus briefs as of right, *see* Fed. R. App. P. 29(a)(2), out of an abundance of caution amici States seek leave of the Court given the procedural posture of this case.

decommissioning—a long-term, costly, and unpredictable process that poses substantial public health and environmental risks for our States and residents.

In addition to offering amici States' perspective on NRC's failure to comply with applicable federal laws governing State participation in NRC proceedings, the proposed amicus brief addresses the unique harms faced by States from the decommissioning of nuclear power plants and the storage of spent nuclear fuel—harms that are exacerbated by NRC's failure to include States in the decision making process.

No party will be prejudiced by the filing of this amicus brief, which, in accordance with Federal Rule of Appellate Procedure 29(a)(6), is filed seven days after the Commonwealth's opposition to the motion to dismiss, and almost two weeks before the current, January 29, 2020, deadline for the federal respondents and intervenors to file their reply briefs in support of the motions to dismiss.<sup>2</sup>

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<sup>2</sup> Intervenors are Holtec International, Holtec Decommissioning International, LLC, Holtec Pilgrim, LLC, and Entergy Nuclear Operations, Inc.

The federal respondents have consented to the filing of the brief. Intervenorors have also consented on the condition that (a) the brief be limited to no more than 3,900 words, (b) the brief be limited to issues raised by the motions to dismiss, (c) amici state in this motion for leave that intervenors will be filing a motion for an extension of time until February 5, 2020, to file their reply brief in support of intervenors' motion to dismiss, and (d) that amici States do not oppose intervenors' extension motion. The Commonwealth has authorized amici States to represent that it will consent to intervenors' extension.

For the foregoing reasons, the motion for leave to file the accompanying proposed amicus brief should be granted.

Dated: January 17, 2020

Respectfully submitted,

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## **CERTIFICATE AS TO PARTIES, RULING, AND RELATED CASES**

Pursuant to D.C. Circuit Rules 18 and 28, amici curiae—the States of New York, Connecticut, Illinois, Iowa, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Pennsylvania, and Vermont, certify that:

### **A. Parties and Amici**

Except for the above-listed amici curiae, all parties and intervenors appearing before this Court are listed in the Commonwealth of Massachusetts's Motion for a Stay Pending Appellate Review (Doc. No. 1812979). Amici are not aware of other amici intending to file.

### **B. Ruling Under Review**

Reference to the rulings under review in this proceeding appear in the Commonwealth of Massachusetts's Motion for a Stay Pending Appellate Review (Doc. No. 1812979).

### **C. Related Cases**

The final agency actions at issue in this proceeding have not been previously reviewed by this or any other court. Counsel for amici curiae are not aware of any related case within the meaning of D.C. Circuit Rule 28(a)(1)(C).

Dated: January 17, 2020

Respectfully submitted,

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*State of New York*

By: /s/ Caroline A. Olsen

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Court's CM/ECF system on January 17, 2020. I certify that all parties and counsel of record in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: January 17, 2020  
New York, NY

/s/ Caroline A. Olsen