

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS; GREG ABBOTT,)
GOVERNOR OF TEXAS;)
TEXAS COMMISSION ON)
ENVIRONMENTAL QUALITY;)
FASKEN LAND AND MINERALS, LTD.;)
and PERMIAN BASIN LAND)
AND ROYATY OWNERS,)
Petitioners,)
v.)
UNITED STATES NUCLEAR)
REGULATORY COMMISSION and)
the UNITED STATES OF AMERICA,)
Respondents,)
and)
INTERIM STORAGE PARTNERS, LLC,)
Respondent-Intervenor.)

No. 21-60743

**RESPONDENTS' JOINT UNOPPOSED MOTION FOR LEAVE
TO FILE SINGLE BRIEFS IN RESPONSE TO OPENING
BRIEFS OF PETITIONERS AND FOR EXTENSION OF TIME**

Respondents United States Nuclear Regulatory Commission (“NRC”) and the United States of America (together, “Federal Respondents”), and Respondent-Intervenor Interim Storage Partners LLC (“ISP”), jointly move in response to the two opening briefs filed by the two sets of Petitioners (a) for leave for Federal Respondents to file a single consolidated brief with a word limit of 22,000 words; (b) for leave for ISP to file a single consolidated brief with a word limit of 13,000

words; and (c) to extend the time for the filing of these briefs by 40 days. Counsel for both sets of Petitioners have stated that they consent to these requests.

In support of their motion, Federal Respondents and Respondent-Intervenor state as follows:

BACKGROUND

1. This is a complex case concerning the NRC’s issuance of a license to ISP for the storage of spent nuclear fuel in Andrews County, Texas. The license has been challenged in this Court by both the State of Texas (and affiliated parties) and private entities, including Fasken Land and Minerals, Ltd. (“Fasken”), and the Court has consolidated the two Petitions under Case No. 21-60743. Judicial challenges pertaining to the license have been raised in four separate courts—this Court, the United States Courts of Appeals for the D.C. and Tenth Circuits, and the United States District Court for the District of New Mexico.

2. Federal Respondents, supported by ISP, have moved to dismiss the State of Texas’s Petition based on the Texas Petitioners’ failure to exhaust their administrative remedies and thus to become “parties aggrieved” within the meaning of the Hobbs Act. Federal Respondents have also moved to dismiss or transfer Fasken’s Petition on the ground that the license itself is not independently appealable and that Fasken’s arguments should be considered by the D.C. Circuit, where Fasken has petitioned for review of the NRC’s decision denying Fasken

party status in the adjudicatory proceedings before the agency related to the license. The Court has determined that each of these motions should be carried with the case.

3. By order dated December 20, 2021 (Document No. 00516138267), the Court granted Petitioners' unopposed motion to extend the time for Petitioners to file opening briefs by 40 days.

4. The Texas and Fasken Petitioners both filed briefs of nearly 13,000 words on February 7, 2022, raising arguments arising under the Atomic Energy Act, the Nuclear Waste Policy Act, the National Environmental Policy Act, and the Administrative Procedure Act. Federal Respondents' response is currently due on March 9, 2022, and ISP's response is currently due on March 16, 2022.

CONSOLIDATED BRIEFS AND WORD LIMITS

5. Federal Respondents seek the Court's leave to file a single brief responding to both petitions for review. Respondent-Intervenor ISP likewise seeks this Court's leave to file a single brief responding to both petitions for review. This approach would assist the Court by avoiding duplicative briefing of the factual and legal issues raised in the briefs of the two sets of Petitioners, which are related and in some cases overlapping.

6. For their single consolidated brief, Federal Respondents request a word limit of 22,000 words to respond to Petitioners' two opening briefs of nearly

26,000 total words. ISP proposes to be bound by a 13,000 word limit for its single consolidated brief.

EXTENSION OF TIME

7. Federal Respondents and Respondent-Intervenor ISP also seek additional time to file their responsive briefs. The two briefs to which Federal Respondents and Respondent-Intervenor must respond raise complex legal issues and factual issues that are technical in nature. The complexity of the issues, combined with the need for coordination between the Department of Justice and the NRC (including the need to obtain to obtain approval for filing within both agencies), make it exceedingly difficult for Respondents and Respondent-Intervenor to finalize submissions within the time 30-day period typically afforded to file a response to an opening brief.

8. An extension of 40 days would enable Federal Respondents to coordinate and obtain necessary approvals within each agency and would permit Federal Respondents and Respondent-Intervenor to respond fully and most helpfully for the Court to the arguments that Petitioners have raised. It would result in Federal Respondents' brief being due on April 18, 2022, and ISP's brief being due on April 25, 2022.

CONCLUSION

Accordingly, Federal Respondents and ISP request that the Court enter an order that (a) permits Federal Respondents to file a single brief responding to both petitions, not to exceed 22,000 words, on or before April 18, 2022; and (b) permits Respondent-Intervenor to file a single brief responding to both petitions, not to exceed 13,000 words, on or before April 25, 2022.

Respectfully Submitted,

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February 15, 2022

**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 765 words, excluding the parts of the 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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U.S. Nuclear Regulatory Commission

CERTIFICATE OF SERVICE

I certify that on February 15, 2022, I served a copy of **RESPONDENTS' JOINT UNOPPOSED MOTION FOR LEAVE TO FILE SINGLE BRIEFS IN RESPONSE TO OPENING BRIEFS OF PETITIONERS AND FOR EXTENSION OF TIME** upon counsel for the parties in this action by filing the document electronically through the CM/ECF system. This method of service is calculated to serve counsel at the following e-mail addresses:

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