

ARGUED MAY 2, 2012

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UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

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No. 11-1271

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*In re* AIKEN COUNTY, *et al.*

On Petition for Writ of Mandamus

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**NUCLEAR REGULATORY COMMISSION'S MOTION FOR AN  
EXTENSION OF TIME IN WHICH TO FILE STATUS REPORTS**

On August 3, 2012, this Court issued an order (1) holding this case in abeyance and (2) directing the parties to “file, by no later than December 14, 2012, updates on the status of Fiscal Year 2013 appropriations with respect to the issues presented [in this case].” Order in this docket (August 3, 2012). For the reasons stated below, the Nuclear Regulatory Commission (NRC) respectfully moves this Court for an extension of time to and including Friday, January 4, 2013, in which to file status reports. NRC has consulted with counsel for all the parties in this proceeding. Counsel for the State of Nevada stated that Nevada has no objections to the granting of this motion if all parties have until January 4, 2013, to file status reports. Lead counsel for petitioners, however, stated that petitioners oppose the

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motion and plan to file an opposition.

Initially, as a result of a medical emergency, lead counsel for NRC expects to undergo major cardiac surgery on December 6, 2012. As a result of this surgery, lead counsel will likely be absent for an extended period of time. Lead counsel has had the primary responsibility for litigating this case from its inception.

Additionally, as we noted in our earlier filing, “we presume that this Court deliberately chose [a] date with the prospect of legislative action in a late or ‘lame duck’ session of Congress in mind.” *See* Response by U.S. Nuclear Regulatory Commission to Petitioners’ Status Report Dated September 28, 2012 (Oct. 9, 2012) at 2 (footnote omitted) (“NRC Response”). And as we pointed out in our response, it is certainly possible that the ongoing negotiations between the Executive Branch and the Legislative Branch will address the underlying issue in this case, *i.e.*, whether to provide additional funding for both the NRC and the Department of Energy (“DOE”). *See* NRC Response at 2-5.

While the last scheduled legislative day is currently December 14, 2012—*see* <http://www.majorityleader.gov/Calendar> (House)—published reports indicate that negotiations between the Executive Branch and the Legislative Branch over Fiscal Year 2013 appropriations issues and other budgetary matters, *i.e.*, issues related to the so-called “Fiscal Cliff” and “sequestration cuts,” are likely to

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continue until the close of the calendar year. Presumably, Congress would remain in session to enact any agreement reached in those negotiations. Thus, we think it reasonable to suggest that this Court await the conclusion of the current legislative session, which may last until the end of the calendar year.

Accordingly, NRC respectfully requests an extension of time to and including Friday, January 4, 2013, in which to file status reports related to this case. Any report would address both developments at the NRC and any actions by Congress.

### **CONCLUSION**

For the foregoing reasons, this Court should grant NRC's request for an extension of time in which to file status reports.

Respectfully submitted,

ANDREW P. AVERBACH  
Solicitor

\_\_\_\_s/Jeremy M. Suttenger\_\_\_\_  
JEREMY M. SUTTENBERG  
Attorney

\_\_\_\_s/Charles E. Mullins\_\_\_\_  
CHARLES E. MULLINS  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
11555 Rockville, Maryland 20852  
(301) 415-1618

December 5, 2012

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### **CERTIFICATE OF SERVICE**

I certify that on December 5, 2012, I caused NRC's Motion for an Extension of Time in Which to File Status Reports to be served on all parties or their counsel of record by filing the same with the Court's CM/ECF system.

          s/Jeremy M. Suttенberg            
JEREMY M. SUTTENBERG  
Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, Maryland 20852  
(301) 415-2842  
[jeremy.suttенberg@nrc.gov](mailto:jeremy.suttенberg@nrc.gov)