

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1050

IN RE AIKEN COUNTY,
Petitioner

No. 10-1052

ROBERT L. FERGUSON, et al.,
Petitioners

v.

UNITED STATES DEPARTMENT OF ENERGY, et al.,
Respondents

No. 10-1069

STATE OF SOUTH CAROLINA,
Petitioner

v.

UNITED STATES DEPARTMENT OF ENERGY, et al.,

RESPONDENTS' MOTION TO SUSPEND DEADLINES
SET FORTH IN MARCH 3, 2010, SCHEDULING ORDER FOR CASE
NO.10-1052

Respondents hereby move to suspend the March 3, 2010, scheduling order for No. 10-1052, in particular the April 19, 2010, deadline for the filing of a administrative record certified index and filing of dispositive motions. The April

19, 2010, deadlines for these filings should be suspended for the following reasons.

On April 8, 2010, this Court entered an order (1) consolidating the above-captioned cases; (2) requiring responses and replies on Motions to Expedite filed in Nos. 10-1052 and 10-1069, to be filed on April 12 and 13, respectively; and (3) deferring consideration of the motions for stay and injunctive relief in No. 10-1069 pending further order of the Court, and suspending any response deadlines in No. 10-1069. The April 8, 2010, order did not, however, explicitly address the scheduling order for No. 10-1052 and therefore did not expressly suspend the April 19, 2010, deadlines for the filing of a certified index to administrative record or dispositive motions in that case. Petitioners' motions to expedite and respondents' response in opposition and motion to hold the cases in abeyance propose different approaches to the now consolidated cases that deviate from that contemplated by, and set forth in, the March 3, 2010, scheduling order in No. 10-1052. We thus anticipate that the Court's order deciding those motions will alter the March 3, 2010, scheduling order for No. 10-1052. However, in an abundance of caution we hereby request that the Court suspend the scheduling order in March 3, 2010, in particular the April 19, 2010, deadlines for the filing of the administrative record certified index and dispositive motions.

Indeed, suspending the March 3, 2010 scheduling order for No. 10-1052 (in particular the April 19, 2010, deadlines for the filing of the administrative record

certified index and dispositive motions) would serve the interests of judicial economy and aid in the orderly proceedings in the consolidated cases. For example, respondents have moved to hold the consolidated cases in abeyance for at least an initial 30-day period and have, in the alternative, proposed a schedule that would allow the filing of an administrative record certified index and dispensing with separate dispositive motions. Given that respondents' proposals for orderly proceedings in these consolidated cases are pending before the Court, suspending any otherwise extant deadlines in the March 3, 2010 scheduling order for No. 10-1052 while the Court considers those proposals makes sense and will help assist in orderly proceedings in the consolidated cases.

Finally, regardless of the Court's disposition of the pending motions to expedite and motion to hold the consolidated cases in abeyance, respondents need additional time beyond April 19, 2010, to file a certified index to the administrative record and a dispositive motion. The pending motions before this Court and a petition before the Nuclear Regulatory Commission, create uncertainty with respect to whether the Court's schedule for the consolidated cases will provide for the filing of an administrative record certified index or dispositive motions. Furthermore, due to work on other motions and responses filed in one or more of these cases and work related travel, government counsel has been unable to complete a draft of a dispositive motion. Once complete, any draft must be

reviewed within the Department of Justice, Department of Energy, and White House Counsel's Office. DOE also needs additional time to compile and to prepare a certified index to an administrative record.

For the foregoing reasons, respondents request that the Court suspend the March 3, 2010, scheduling order for No. 10-1052, thereby suspending the April 19, 2010, deadlines for the filing of an administrative record certified index and dispositive motions. We further request that any further order of the Court with respect to scheduling in these consolidated cases provide for the filing of the administrative record certified index or dispositive motions no earlier than April 30, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(c), D.C. Circuit Rule 25(c), I hereby certify that on April 13, 2010, I caused the foregoing to be filed upon the Court through the use of the D.C. Circuit CM/ECF electronic filing system, and thus also served counsel of record. The resulting service by e-mail is consistent with the preferences articulated by all counsel of record in the Service Preference Report. In addition, I caused four paper copies to be hand delivered to the Clerk's Office on April 13, 2010.

s/

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