

July 31, 2003

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

RE: **Connecticut Coalition Against Millstone v. NRC**, No. 03-4372 (2d Cir.,
decided June 11, 2003)

Dear Chairman:

This lawsuit challenged a Commission adjudicatory decision, CLI-02-22, 56 NRC 213 (2002), rejecting a hearing contention based on Millstone's "loss" of spent fuel rods some years ago. Petitioner had urged the NRC to deny a license amendment expanding Millstone's spent fuel pools. We moved to dismiss the petition for review on the jurisdictional ground that the petition failed to name the Commission's final adjudicatory order, as required by the Federal Rules of Appellate Procedure and the Administrative Orders Review Act.

After oral argument, the court of appeals (Miner & Cabranes, JJ.) agreed with our position, and in a summary order dismissed the case.

Sincerely,

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John F. Cordes, Jr.
Solicitor

cc: Representative Rick Boucher

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RE: ***Ohngo Gaudadeh Devia v. NRC***, No. 02-9583 (10th Cir., decided June 2, 2003)

Dear Chairman:

In this case, a group of dissident Goshute Indians challenged a Commission adjudicatory decision, CLI-02-20, 56 NRC 147 (2002), rejecting their "environmental justice" challenge to the Private Fuel Storage license application. We argued that the lawsuit was premature, given that the Commission had not yet made a final decision on whether to license the PFS facility. The license applicant, PFS, made the same argument. Petitioners claimed that the environmental justice decision was in fact final and had immediate consequences.

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RE: ***Northern California Power Agency v. NRC***, No. 03-1184 (D. C. Cir., filed July 1, 2003)

Dear Chairman:

This lawsuit challenges the NRC's antitrust determinations in the Diablo Canyon license transfer proceeding. Petitioner had previously filed a lawsuit in the District of Columbia Circuit (No. 03-1038) that attacked a Commission adjudicatory decision not to carry over Diablo Canyon's antitrust license conditions to the new entity being created as part of the license transfer. This new lawsuit is a follow-up; it challenges the NRC staff's actual license transfer order, which implements the Commission's antitrust directive.

It is not clear that the staff transfer order is separately reviewable, independent of the Commission adjudicatory decision. But both this lawsuit and its companion suit are likely to be held in abeyance because of a proposed bankruptcy settlement between Diablo Canyon's current owner, Pacific Gas & Electric Company, and the California Public Utility Commission. If the bankruptcy settlement is implemented, no license transfer will take place, and petitioners' lawsuits will become moot.

The court has not yet acted on pending motions to hold this case and its companion in abeyance.

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RE: ***Public Citizen, Inc. v. NRC***, No. 03-1181 (D.C. Cir., filed June 30, 2003)

Dear Chairman:

This lawsuit, filed by two citizen groups (Public Citizen and San Luis Obispo Mothers for Peace), claims that the NRC's recent "design basis threat" security orders amount to new regulations issued (unlawfully) without notice and comment. The court of appeals has not yet set briefing or oral argument dates. We are considering whether to seek dismissal of the lawsuit based on petitioners' failure to seek relief at the NRC first.

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