

January 7, 2004

Mark J. Langer, Clerk  
U. S. Court of Appeals for the  
District of Columbia Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Ave., N.W.  
Washington, D.C. 20001

RE: Public Citizen, Inc., and San Luis Obispo Mothers For Peace v. NRC,  
No. 03-1181

Dear Mr. Langer:

Enclosed you will find an original and four copies of "Unopposed Motion for Extension of Time to File Certified Index of the Record." Please date stamp the enclosed copy of this letter to indicate date of receipt, and return it to me in the enclosed envelope, postage pre-paid, at your convenience.

Sincerely,

**/RA/**

Jared K. Heck  
Attorney  
Office of the General Counsel

Enclosures: As stated

cc: service list

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

_____	)	
PUBLIC CITIZEN, INC. and	)	
SAN LUIS OBISPO MOTHERS FOR	)	
PEACE,	)	
	)	
Petitioners,	)	No. 03-1181
	)	
v.	)	
	)	
U.S. NUCLEAR REGULATORY	)	
COMMISSION and the UNITED	)	
STATES OF AMERICA,	)	
	)	
Respondents.	)	
_____	)	

**UNOPPOSED MOTION FOR EXTENSION OF TIME  
TO FILE CERTIFIED INDEX OF THE RECORD**

By Order dated August 19, 2003, the Court granted respondents' unopposed motion to postpone filing the certified index of the record until 21 days after the date of any order denying or referring to a merits panel the respondents' August 15, 2003, motion to dismiss for lack of jurisdiction. On December 19, 2003, the Court referred respondents' motion to dismiss to the merits panel, thus making the certified index of the record due to be filed on January 9, 2004.

The respondents now move the Court to postpone this filing deadline until January 23, 2004, for the following reasons:

1. Lead counsel for respondent Nuclear Regulatory Commission, Jared K. Heck, was out of the office on holiday vacation to Iowa from December 18, 2003, to December 30, 2003. Mr. Heck did not receive the Court's Order referring the respondents' motion to dismiss to the merits panel until December 30, substantially reducing the amount of time previously planned for compiling and filing the certified index of the record.

2. Since his return from holiday travel, Mr. Heck has been preparing for a January 9, 2004, oral argument in the United States Court of Appeals for the Second Circuit. Mr. Heck has thus been largely unavailable to prepare the certified index of the record by the January 9, 2004, filing deadline.

3. Respondents are pursuing a possible stipulation with petitioners in this case regarding the proper scope of the administrative record which, as noted in our August 15, 2003, motion to postpone filing of the certified index, may contain material that is either classified as national security

information or is designated “safeguards information” under section 147 of the Atomic Energy Act, 42 U.S.C. § 2167. However, petitioners’ lead counsel has been out of the office in recent weeks due to a severe illness, making contacts more difficult.

4. Further consultation is needed within the Nuclear Regulatory Commission and with the Department of Justice regarding the appropriate scope of the administrative record in this case.

5. The NRC’s Solicitor and Special Counsel to the Solicitor cannot turn attention to this matter because they are involved in preparations for two oral arguments before this Court next week (*Nevada v. NRC*, No. 02-1116, and *Bullcreek v. NRC*, No. 03-1018).

6. Counsel for petitioners does not oppose the grant of this motion.

For the foregoing reasons, we respectfully ask this Court to grant this motion to postpone the filing of the certified index to record until January 23, 2004.

Respectfully submitted,

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/RA/  
KATHRYN E. KOVACS  
U.S. Department of Justice  
Environment and Natural  
Resources Division  
P.O. Box 23795  
Washington, D.C. 20026  
Tel: 202-514-4010

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/RA/  
JOHN F. CORDES  
Solicitor  
Office of the General Counsel  
U.S. Nuclear Regulatory  
Commission

January 7, 2004

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/RA/  
JARED K. HECK  
Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
Tel. (301) 415-1623

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 7, 2004, copies of the foregoing  
Unopposed Motion to Postpone Filing of Certified Index to Record were  
served by mail, postage prepaid, upon the following counsel:

Scott L. Nelson  
Amanda Frost  
Public Citizen Litigation Group  
1600 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20009

\_\_\_\_\_/RA/\_\_\_\_\_  
Jared K. Heck