

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE,)
SIERRA CLUB, and PEG PINARD,)
Petitioners,)

v.)

No. 03-74628

UNITED STATES NUCLEAR REGULATORY)
COMMISSION and the UNITED STATES OF)
AMERICA,)

Respondents, and)

PACIFIC GAS & ELECTRIC CO.,)
Intervenor-Respondent.)

FEDERAL RESPONDENTS' OPPOSITION TO
PETITIONERS' MOTION FOR LEAVE TO FILE VOLUME OF EXHIBITS

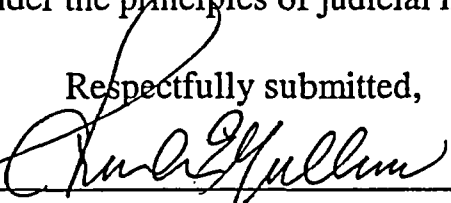
The U.S. Nuclear Regulatory Commission ("NRC") and the United States of America (collectively "Federal Respondents"), oppose the Petitioners' Motion to File Volume of Exhibits tendered in this case to the extent that the Exhibits include documents that were not submitted on the record by the parties to the administrative proceeding before the NRC that is the basis of this action. The material submitted by the parties to the agency as a part of the decision-making process constitutes the administrative record. *E.g., James Madison Limited v. Ludwig*, 82 F.3d 1085, 1095-96 (D.C. Cir 1996); *Center for Auto Safety v. Federal Highway Administration*, 956 F.2d 309, 314 (D.C. Cir. 1992). *See generally* Rule

16(a), Federal Rules of Appellate Procedure. Specifically, the record consists of “the pleadings, evidence, and other parts of the proceedings before the agency.” FRAP 16(a)(3)(emphasis added). If the documents were not before the NRC during the decision-making process, they were not considered by the agency and are not a part of the record of decision.

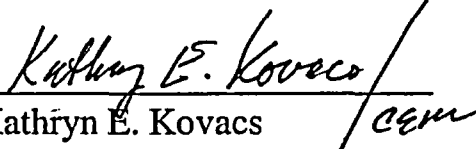
For this Court’s review of the NRC’s decision to be meaningful, that review “must be based on the full administrative record that was before” the agency at the time of its decision. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). Those documents not before the agency were not a part of the record and are not a proper basis for this Court’s review of the agency decision. The Federal Respondents will address this issue further in their merits brief.

The Federal Respondents do not oppose the citation to or use of officially reported Commission decisions or other NRC records that this Court may consider under the principles of judicial notice.

Respectfully submitted,



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Dated: March 26, 2004