



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 14, 2005

OFFICE OF THE  
GENERAL COUNSEL

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 a Joint Motion to Continue Holding Case in Abeyance. Please date stamp the enclosed copy of this letter to indicate date of receipt, and return the copy to me in the enclosed envelope, postage pre-paid, at your convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jared K. Heck", written over a horizontal line.

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

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

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**JOINT MOTION TO CONTINUE HOLDING CASE IN ABEYANCE**

This motion responds to the Court's September 17, 2004, order. That order held this case in abeyance and required the parties to file motions to govern future proceedings. The parties now move the Court to continue this case in abeyance pending further proceedings at the Nuclear Regulatory Commission (NRC).

The Court held this case in abeyance based on the representation of counsel for the NRC that the NRC would commence a rulemaking proceeding dealing with the design-basis threat, the regulatory standard at issue in this lawsuit. That rulemaking effort is now underway. The NRC

staff is currently completing the technical and regulatory analyses necessary to support a proposed rule and is scheduled to submit its proposed rule to the Commission in June 2005. The Commission must approve the NRC staff's proposed rule before it can be published in the Federal Register for public comment.

Reactivating this case now to reach a decision on the merits—even if that decision would require the NRC to undertake a rulemaking dealing with the design-basis threat—is not likely to result in any significant change to the NRC's current rulemaking schedule. The current schedule has already been accelerated and existing rulemaking resources at the NRC are limited.

Petitioners Public Citizen and San Luis Obispo Mothers for Peace join in this motion with some reluctance.<sup>1</sup> Petitioners do not agree with the pace at which the NRC is proceeding on this matter and believe the agency staff should be able to present a proposed rule on the subject to the Commission before June 2005 (which will be well over two years after the

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<sup>1</sup> As is evident from its contents, this paragraph states the views of the petitioners only, and not those of the Commission.

Commission issued the rule that is the subject of this challenge).

Nonetheless, petitioners do not believe that it is likely that restoring this case to active consideration at this time would significantly advance the date when the Commission would issue a rulemaking notice. Accordingly, petitioners join in the Commission's request that the Court continue to hold this case in abeyance and that it require the Commission to report on the status of its rulemaking process no later than June 30, 2005. Unless the Commission reports at that time that a notice of proposed rulemaking has been published or that its publication is imminent, petitioners do not expect that they would agree that the case should continue to be held in abeyance after June 30, 2005.

For the reasons stated above, the Court should continue to hold this case in abeyance. Unless the Court directs otherwise, the NRC will next report on the status of its rulemaking efforts no later than June 30, 2005.

Respectfully submitted,

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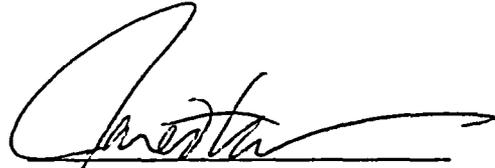
*Counsel for Respondents*

January 14, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2005, copies of the foregoing Joint Motion to Continue Holding Case in Abeyance were served by mail, postage prepaid, upon the following:

Scott L. Nelson  
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Jared K. Heck  
Counsel for Respondents