



OFFICE OF THE
GENERAL COUNSEL

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

August 31, 2005

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 "Joint Motion to Continue Holding Case in Abeyance." 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,

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

PUBLIC CITIZEN, INC., and
SAN LUIS OBISPO MOTHERS
FOR PEACE,

Petitioners,

v.

U.S. NUCLEAR REGULATORY
COMMISSION and the UNITED
STATES OF AMERICA,

Respondents.

No. 03-1181

JOINT MOTION TO CONTINUE HOLDING CASE IN ABEYANCE

On July 20, 2005, the Court ordered this case held in abeyance pending the commencement of a rulemaking proceeding by the Nuclear Regulatory Commission dealing with its design basis threat regulations. The Court further directed the parties to file motions to govern future proceedings within 30 days after a rulemaking proceeding had commenced, but no later than September 1, 2005. Pursuant to the Court's order, the parties now submit this joint motion to continue holding the case in abeyance.

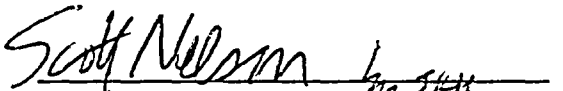
All Commissioners have voted to approve publication of a proposed design basis threat rule. The Commissioners' votes are being reconciled and their comments incorporated into the proposed rule package, which will then be published in the *Federal Register* for public comment. Under section 651(a) of the recently-enacted Energy Policy Act of 2005, the Commission must publish the proposed rule no later than November 7, 2005, and complete its rulemaking proceeding within 18 months of that date.

In the Commission's view, these administrative and legislative developments render this case moot. Public Citizen's position is that until the challenged design basis threat order has been replaced by a lawfully promulgated rule, there will remain a live controversy. However, rather than consume time and resources arguing mootness, the parties have agreed to ask the Court to continue to hold this case in abeyance until the NRC publishes its final design basis threat rule. The NRC expects the final rule would be published no later than May 7, 2007, in accordance with the statutory deadlines described above.

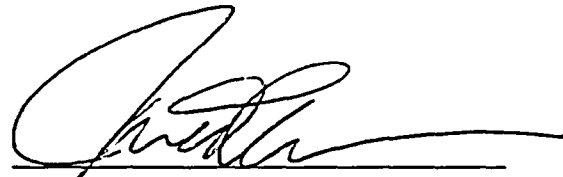
Accordingly, the parties move the Court to continue holding this case

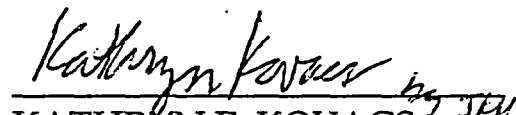
in abeyance until the completion of the NRC's design basis threat rulemaking or until May 7, 2007, whichever is sooner.

Respectfully submitted,


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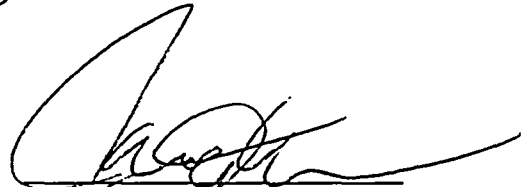
Counsel for Respondents

August 31, 2005

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2005, copies of the foregoing motion to continue holding the case in abeyance were served by mail, postage prepaid, upon the following:

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, D.C. 20009

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

Jared K. Heck
Counsel for Respondents