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BY FEDERAL EXPRESS

Cathy A. Catterson, Clerk
United States Court of Appeals
95 Seventh Street
San Francisco, CA 94103-1526

Subject: *San Luis Obispo Mothers for Peace v. NRC,*
No. 03-74628

Dear Ms. Catterson,

I am writing to respond to a November 17, 2003, letter from Charles Mullins, counsel for the U.S. Nuclear Regulatory Commission ("NRC"), in which he informs the Court of "the Commission's decision" on a security-related rulemaking petition that was filed by Petitioners in 2003. Petitioners wish to make two points in response to Mr. Mullins' letter.

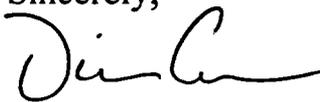
First, in fact, the NRC made a "decision" on only one portion of Petitioners' rulemaking petition, relating to the interaction between safety and security systems at nuclear plants. 70 Fed. Reg. 69,690 (November 17, 2005). With regard to the other issue raised by the rulemaking petition, protection of nuclear facilities against airborne attack, the NRC announced that it was "deferring resolution" of the issue until such unspecified time as the NRC "responds to comments on its proposed Design Basis Threat Rule." *Id.* Moreover, the Federal Register notice gives no indication of whether the NRC actually intends to promulgate a regulation that would address the security threat posed by airborne attacks, or whether it intends merely to reject the petition for rulemaking. Given that the NRC issued a license for the Diablo Canyon spent fuel storage facility over a year and a half ago, Petitioners' concerns about the adequacy of security at that facility are not addressed by a promise to take unspecified action at some indefinite time in the future.

Second, the Federal Register notice referred to in Mr. Mullins' letter does not address the National Environmental Policy Act ("NEPA") in any respect. It relates only to the regulation of security under the Atomic Energy Act.

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Thus, it has no bearing on the central question raised by Petitioners on this appeal, of whether the NRC should have granted Petitioners a hearing on whether NEPA requires the NRC to prepare an Environmental Impact Statement to address the environmental impacts of acts of malice or insanity against the Diablo Canyon spent fuel storage facility.

Sincerely,



Diane Curran

cc: Service list



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