



OFFICE OF THE
GENERAL COUNSEL

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

June 7, 2006

Cathy A. Catterson, Clerk
U.S. Court of Appeals for the
Ninth Circuit
PO Box 193939
95 Seventh Street
San Francisco, CA 94119-3939

RE: Docket Nos. 05-70718 and 05-70725 (consolidated), *Robert L. Farmer v. U.S. Nuclear Regulatory Commission et. al*

Dear Ms. Catterson:

Enclosed you will find an original and 4 copies of the Respondents' Motion to Dismiss for Failure to Prosecute. 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.

Respectfully submitted,

Jared K. Heck
Counsel for Respondent U.S.
Nuclear Regulatory Commission

Enclosure: As stated

cc: service list

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT L. FARMER,)
)
 Petitioner,)
)
v.)
)
U.S. NUCLEAR REGULATORY)
COMMISSION,)
)
 Respondent,)
)
and)
)
ELAINE CHAO, Secretary of)
Labor, U.S. DEPARTMENT)
OF LABOR,)
 Respondent,)
)
and)
)
STATE OF ALASKA,)
)
 Intervenor.)

Nos. 05-70718 and 05-70725
(consolidated)

RESPONDENTS' MOTION TO DISMISS FOR
FAILURE TO PROSECUTE

In an Order dated March 14, 2006, this Court set an April 13, 2006, deadline for Mr. Farmer to file his opening brief. That deadline elapsed nearly two months ago without a filing of any sort from Mr. Farmer. Mr. Farmer has not met his obligation to prosecute his cases against the

Government. Therefore, these consolidated cases should be dismissed, pursuant to Fed. R. App. P. 31(c), 9th Cir. R. 31-2.3 and 42-1.


This Court has extended the briefing schedule several times since the petitions for review were filed in February 2005. Early extensions accommodated the parties' extensive mediation efforts, which culminated in a round of face-to-face talks in Anchorage, Alaska in July 2005. After mediation failed and Mr. Farmer's counsel withdrew from the case, this Court entered an Order on December 20, 2005, granting Mr. Farmer another extension of time to file a brief.

This Court's December 20, 2005, Order set Mr. Farmer's new briefing deadline for February 6, 2006. This Court made clear that "further requests for extensions of time will be disfavored." Mr. Farmer did not file a brief on February 6. Instead, he requested this Court stay these cases for an additional eight months. The Nuclear Regulatory Commission opposed Mr. Farmer's request; this Court denied Mr. Farmer's motion for a stay and reset his briefing deadline for April 13, 2006.


Mr. Farmer failed to file his brief on April 13 and has offered no explanation of his failure to file. The Respondents request that Mr.

Farmer's case be dismissed for failure to prosecute.

Respectfully submitted,


LANE MCFADDEN *by JKH*
Counsel for Respondent
United States of America


JARED K. HECK
Counsel for Respondent U.S.
Nuclear Regulatory Commission

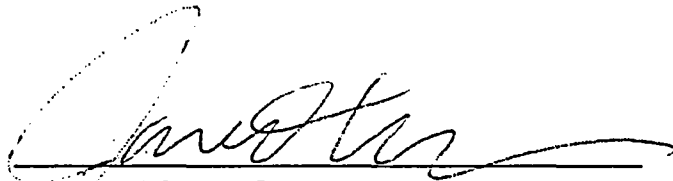

MARY J. RIESER *by JKH*
Counsel for Respondent
U.S. Department of Labor

CERTIFICATE OF SERVICE

I hereby certify that the Respondents' Motion to Dismiss was served by first class mail this 7th day of June, 2006, upon the following:

Robert L. Farmer
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Gary W. Gantz
Assistant Attorney General
State of Alaska
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JARED K. HECK
Counsel for Respondent U.S. Nuclear
Regulatory Commission