

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 07-71868

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

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, and
THE UNITED STATES OF AMERICA,
Respondents,
and

NUCLEAR ENERGY INSTITUTE,
Intervenor-Respondent.

No. 07-72555

THE STATE OF NEW YORK,
Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, and
THE UNITED STATES OF AMERICA,
Respondents.

**CONSENT MOTION OF PUBLIC CITIZEN, INC., AND
SAN LUIS OBISPO MOTHERS FOR PEACE FOR LEAVE TO FILE
REPLY BRIEF OUT OF TIME**

Petitioners Public Citizen, Inc., and San Luis Obispo Mothers for Peace
(Petitioners) move for leave to file their reply brief, which is not timely under
FRAP 25(a)(2)(B). The reply brief was sent to the Court on the due date, but not

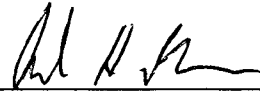
by one of the means permitted by FRAP 25(a)(2)(B). All other parties have consented to this motion.

Petitioners' reply brief was due March 3, 2008. On that day, Petitioners' counsel delivered the brief to the mail room in their office for filing. The mail room supervisor, whose custom is to send federal appellate briefs by first-class mail, was absent that day due to a death in his family, and the brief was mistakenly sent to the court by United Parcel Service (UPS) Ground, which does not guarantee delivery within three days, rather than by first-class mail or a commercial service that would have guaranteed delivery within three days as required by FRAP 25(a)(2)(B). The brief was delivered on March 10, 2008.

Absent the mistaken use of UPS Ground rather than ordinary first-class mail or an expedited UPS service, Petitioners' brief would have been timely filed. The other parties in this case will not be prejudiced if this motion is granted because Petitioners e-mailed them the brief on March 3, 2008, and sent them hard copies of the brief on March 3, 2008, which they received by March 5, 2008. The Court's consideration of the case will also not be impeded because the reply brief was likely received at least as soon as it would have been if it had been sent by first-class mail.

Petitioners apologize to the Court for the use of the incorrect means of delivery but respectfully request that the Court grant leave to file their reply brief out of time.

Respectfully submitted,



ADINA H. ROSENBAUM
SCOTT L. NELSON
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, D.C. 20009
(202) 588-1000

March 10, 2008

Counsel for Petitioners Public Citizen,
Inc., and San Luis Obispo Mothers for
Peace

CERTIFICATE OF SERVICE

I hereby certify that on this date I am causing a copy of the foregoing motion to be served by first-class mail, postage pre-paid, on counsel for the parties as follows:


Steven F. Crockett, Special Counsel
Office of the General Counsel
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

John J. Sipos
Environmental Protection Bureau
New York State Attorney General's Office
The Capitol
State Street
Albany, New York 12224

Michael A. Bauser
Nuclear Energy Institute
1776 'I' Street, N.W., Suite 400
Washington, D.C. 20006-3708

Ronald Spritzer
Appellate Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 23795 L'Enfant Plaza Station
Washington, DC 20026

March 10, 2008



Adina H. Rosenbaum