

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK,
Petitioner,

v.

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

No. 07-2052-cv

**JOINT STIPULATION THAT PROCEEDING
SHOULD BE TRANSFERRED TO THE NINTH CIRCUIT**

The State of New York, petitioner in the case captioned above, and the U.S. Nuclear Regulatory Commission (NRC), a respondent in the same case, submit this Joint Stipulation that, under 28 U.S.C. 2112(a), the case should be transferred to the U.S. Court of Appeals for the Ninth Circuit.

The State of New York is challenging a final rule that the NRC promulgated on March 19, 2007 (72 Fed. Reg. 12705). As the State of New York noted on the Form C-A that the State filed with this Court, other organizations have petitioned the U.S. Court of Appeals for the Ninth Circuit for review of the same final rule. The case in the Ninth Circuit is captioned, Public Citizen, *et al.*, v. NRC, No. 07-71868. However, petitioners in that case filed their petition on May 11, 2007, three days before the State of New York filed its petition with the Second Circuit.

Section 2112(a) of 28 U.S.C. directs that, in circumstances such as these, the record required by Rule 17 of the Federal Rules of Appellate Procedure be filed in the Court of Appeals where the first petition was filed, and that all lawsuits challenging the same agency action be transferred to that Court.

Pursuant to section 2112(a), the NRC intends to file the record in the Ninth Circuit, and the NRC and the State of New York respectfully ask the Second Circuit to transfer the above-captioned case to the Ninth Circuit. On May 30, the Second Circuit issued two orders, a Telephonic Pre-Argument Conference Notice and Order, and an Agency Appeal Scheduling Order # 1. The parties also ask that the Court vacate those orders.

Respectfully submitted,



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