

October 20, 2010

Molly C. Dwyer, Clerk
United States Court of Appeals
for the Ninth Circuit
James R. Browning Courthouse
95 Seventh Street
San Francisco, California 94103

RE: *San Luis Obispo Mothers for Peace v. U.S. Nuclear Regulatory Commission*,
No. 08-75058 (Oral Argument scheduled for November 4, 2010).

Dear Ms. Dwyer:

Pursuant to Fed. R. App. P. 28(j), we respectfully call the Court's attention to a decision by this Circuit after our brief was filed that supports arguments in our brief.

The case is *Public Citizen v. NRC*, 573 F.3d 916 (9th Cir. 2009), which recognized that the Atomic Energy Act and the Freedom of Information Act (FOIA) authorized NRC to shield Classified and Safeguards information from the public in a rulemaking proceeding. "The Commission cannot be required to reveal classified information about nuclear facilities, nor would it be able to do so while fulfilling its duty to maintain the common defense and security of classified information." *Id.* at 928. This supports the similar argument in our brief (pp. 29-32; 47-62) that the National Environmental Policy Act (NEPA) and FOIA authorize NRC to withhold Classified, Safeguards and other FOIA-exempt information from petitioners in a NEPA-based adjudication.

This case is scheduled for oral argument on November 4, 2010, before a panel consisting of Judges Reinhardt, Thomas and Chief Judge Restani of the International Court of Trade. Please distribute a copy of this letter to each of them.

Respectfully submitted,

s/Charles E. Mullins

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Electronic filing