

October 28, 2010

Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

SUBJECT: *San Luis Obispo Mothers for Peace v. U.S. Nuclear Regulatory Commission, No. 08-75058 (Oral Argument Scheduled for November 4, 2010 before Judges Reinhardt, Thomas and Chief Judge Restani of the International Court of Trade)*

Dear Ms. Dwyer:

On behalf of San Luis Obispo Mothers for Peace (“SLOMFP”), I am writing to respond to letters submitted on October 20, 2010, by the U.S. Nuclear Regulatory Commission (“NRC”) and Pacific Gas and Electric Co. (“PG&E”). Both letters erroneously claim that *Public Citizen v. NRC*, 573 F.3d 916 (9th Cir. 2009) supports their position here.

In *Public Citizen*, the Court found that in a security-related rulemaking promulgated under the Atomic Energy Act, the NRC had discretion to rely on classified and safeguards documents in its own files, without disclosing them to the public. 573 F.3d at 928. But this case involves the adjudication of the adequacy of an Environmental Assessment prepared by the NRC under the National Environmental Policy Act (“NEPA”). An agency’s duties under NEPA are not discretionary. *Calvert Cliffs Coordinating Comm. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1115 (D.C. Cir. 1971). Thus, as this Court held in *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1028 (9th Cir. 2006), the appropriate standard for review of the NRC’s legal interpretation of NEPA is one of “reasonableness.”

NEPA requires the NRC to consider environmental issues “to the fullest extent possible” in its decision-making process, including hearings conducted under Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a). 42 U.S.C. § 4332; *Calvert Cliffs Coordinating Comm.*, 449 F.2d at 1117-18. In this case, where the NRC could apply statutorily mandated procedures to protect relevant sensitive security information in a closed adjudicatory hearing (*see* 42 U.S.C. § 2231 and 10 C.F.R. Part 2, Subpart I), it was not entitled to use the sensitivity of the information as an excuse for refusing to consider SLOMFP’s environmental concerns in the hearing process.

Sincerely,

/s/ Diane Curran
Diane Curran

Cc: Counsel of Record (via CM/ECF)