

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-1293

PUBLIC CITIZEN, INC.,

Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, *et al.*,

Respondents.

**PETITIONERS' CERTIFICATE OF COUNSEL AS TO PARTIES,
RULINGS AND RELATED CASES UNDER LOCAL RULE 28(a)(1)**

Pursuant to Rule 28(a)(1) of this Court, counsel for petitioner certifies as follows:

A. Parties

The parties in this Court are Public Citizen, Inc., petitioner, and the United States Nuclear Regulatory Commission and United States of America, respondents. Public Citizen, Inc., is a non-profit corporation engaged in advocacy efforts on a range of issues including openness in government. Public Citizen, Inc., has no parent company and no subsidiaries or affiliates that have issued shares to the public. No publicly held company has an ownership interest in it.

B. Order Under Review

The order under review is the Nuclear Regulatory Commission's "Order Modifying License," issued "In the Matter of All Power Reactor Licensees and Research Reactor Licensees Who Transport Spent Nuclear Fuel," docket and order numbers "redacted" by the NRC. The order was published in the Federal Register on July 13, 2004 (at 69 Fed. Reg. 42,071). The order revises the Commission's regulations providing for security measures that transporters of spent nuclear fuel must take to protect shipments against terrorist threats. *See* 10 C.F.R. 73.37.

C. Related Cases

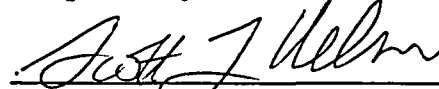
This case has not previously been before this Court or any other court. A case presenting related issues, *Public Citizen, Inc., et al., v. Nuclear Regulatory Commission*, No. 03-1181, is currently pending before this Court. On September 17, 2004, following briefing and oral argument, the Court issued an order holding that case in abeyance pending the initiation of rulemaking proceedings by the NRC.

In addition, in *this* case, Public Citizen filed a hearing request with the NRC on August 2, 2004, challenging the legality of the NRC's issuance of the order at issue.¹ That request for hearing remains pending before the NRC, because the

¹ Public Citizen filed the request as a protective matter based on the NRC's assertion in No. 03-1181 that such a request for hearing is a necessary prerequisite to judicial review. Public Citizen also was forced to file this petition for review

NRC on September 3, 2004, issued an order holding *it* in abeyance pending this Court's decision in No. 03-1181. Now that the Court has held its own decision in No. 03-1181 in abeyance, we understand that the NRC intends to address Public Citizen's request for hearing in this matter, and the parties accordingly intend to file a joint motion asking this Court to hold this petition for review in abeyance pending the NRC's action on that request.

Respectfully submitted,



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Counsel for Petitioner

Dated: October 8, 2004

while the request for hearing remained pending before the agency because, as explained in its briefs in No. 03-1181, Public Citizen's reading of this Court's case law indicates that the request for hearing before the agency not only is not a prerequisite to judicial review, but also does not stay the running of the time for seeking review of the agency's order under the Hobbs Act.

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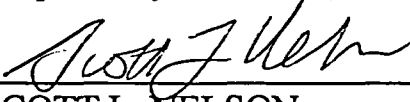
UNITED STATES NUCLEAR REGULATORY COMMISSION, *et al.*

Respondents.

PETITIONER'S STATEMENT REGARDING DEFERRED APPENDIX

A deferred appendix will not be used in this case.

Respectfully submitted,



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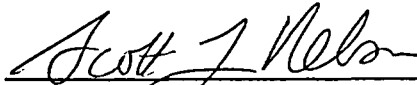
Respondents.

PETITIONER'S STATEMENT OF ISSUES TO BE RAISED

This case raises the following issue:

Whether the Nuclear Regulatory Commission violated the Administrative Procedure Act, 5 U.S.C. § 553, by issuing an "order" altering the security requirements imposed by the Commission's regulations on transporters of spent nuclear fuel without engaging in notice-and-comment rulemaking.

Respectfully submitted,



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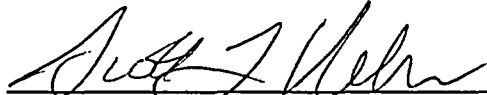
Counsel for Petitioner

Dated: October 8, 2004

CERTIFICATE OF SERVICE

I hereby certify that, this 8th day of October, I caused a copy of the foregoing docketing statement, statement of issues, certificate of counsel, and statement concerning deferred appendix, to be served by Federal Express on:

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Scott L. Nelson