

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

No. _____

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

Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION,

Respondent.

PETITION FOR REVIEW

Pursuant to 42 U.S.C. § 2239(b) and 28 U.S.C. § 2344, petitioners Public Citizen, Inc., and San Luis Obispo Mothers for Peace, through their undersigned counsel, hereby petition for review of the action of the United States Nuclear Regulatory Commission in purporting to revise the “design basis threat” set forth in 10 C.F.R. § 73.1, which describes the types of terrorist threats against which nuclear power plants and certain other facilities must maintain effective security measures. The Commission took its action in the attached “Order Modifying Licenses,” No. EA-03-086 (Exhibit A hereto), as well as in two other “Orders Modifying Licenses,” Nos. EA 03-087 (Docket Nos. 70-27 and 70-143, License Nos. SNM-42 and SNM-124), which are also attached as Exhibits B and C. The Orders are all dated April 29, 2003. Order EA 03-086 was published in the Federal Register (at 68 Fed. Reg. 24,517) on May 7, 2003; Orders EA 03-087 were published in the Federal Register (at 68 Fed. Reg. 26,675 and 68 Fed. Reg. 26,676) on May 16, 2003. Petitioners seek review of the Orders revising the “design basis threat” on the ground that in issuing the Orders and revising the “design basis threat,” the Nuclear Regulatory

Commission engaged in rulemaking without complying with the procedural requirements, including notice (consistent with the protection of any legitimately confidential safeguards information) and an opportunity for public comment, required by the Administrative Procedure Act (5 U.S.C. § 553), the Atomic Energy Act (42 U.S.C. § 2239), and the agency's regulations (10 C.F.R. §§ 2.800 et seq.). Venue is proper in the United States Court of Appeals for the District of Columbia Circuit under 28 U.S.C. § 2343. Petitioners respectfully request that this Court vacate the Orders and the revision of the "design basis threat" and remand to the Commission with instructions to conduct a rulemaking proceeding (during which the revised "design basis threat" may remain in force as an interim measure) in accordance with the statutes and rules cited above.

Respectfully submitted,

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