ADJUDICATORY ISSUE
INFORMATION

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FOR: The Commission

FROM: John F. Cordes, Jr. ***/RA/***
Solicitor

SUBJECT: LITIGATION REPORT - 2001- 01

National Whistleblower Center v. NRC, No. 00-422 (S. Ct., certiorari denied Jan. 8, 2001)

This lawsuit claimed that the Commission ought to have granted petitioner more time to frame issues for agency adjudication in the Calvert Cliffs license renewal proceeding. In January the United States Supreme Court declined to review a court of appeals decision upholding the Commission's refusal to grant petitioner a hearing. A litigation report that we forwarded last spring summarized the court of appeals decision. See Litigation Report 2000-02, SECY-00-0103. The Supreme Court order turning down the Center's certiorari petition is the final step in this long-running case.

CONTACT: Marjorie S. Nordlinger
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Orange County v. NRC, No. 01-1073 (D.C. Cir., filed Feb. 16, 2001)

This lawsuit challenges the immediate effectiveness of a license amendment permitting Carolina Power and Light Company to put into service two previously unused spent fuel pools at CP&L's Shearon Harris facility. The NRC staff issued the immediately effective license amendment upon a determination that the amendment posed "no significant hazards consideration." The petitioner in the court of appeals is Orange County, North Carolina. Orange County also is an intervenor in the Shearon Harris license amendment proceeding. That proceeding currently is before the Commission on Orange County's petition for review of an adverse Licensing Board decision.

Orange County has informed us that it will ask the court of appeals to hold its lawsuit in abeyance to await the Commission's disposition of the County' s pending petition for Commission review and pending motion for a stay.

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State of Maine v. NRC, No. 00-1476 (D.C. Cir., dismissed Jan. 10, 2001)

Petitioner in this lawsuit, the State of Maine, challenged the NRC's rule certifying the so-called NAC-UMS dry cask storage system for spent nuclear fuel. Maine moved for a stay of the rule, and we filed an opposition to the stay motion. Prior to any judicial decision, however, we reached a settlement agreement with Maine whereby Maine withdrew its lawsuit, and the NRC gave the Department of Energy an opportunity to comment on the transportation aspects of the NAC-UMS system.

The court of appeals subsequently granted Maine's motion for voluntary dismissal of its suit.

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Grand Canyon Trust v. NRC, Civ. No. 2:00CV 0288 ST (D. Ut., dismissed Dec. 14, 2000)

This lawsuit, filed under the Freedom of Information Act, sought judicial review of the NRC's denial of a fee waiver for plaintiff, the Grand Canyon Trust, which was seeking access to documents related to the Atlas-Moab mill tailings site. Working through the United States Attorney's office, we reached a settlement with plaintiff, and provided plaintiff documents and indexes of documents. We also agreed to pay a portion of plaintiff's legal costs. The district court subsequently granted plaintiff's motion to dismiss its case voluntarily.

Meanwhile, in a related case, Grand Canyon Trust v. NRC, No. 99-70922 (9th Cir.), where the Grand Canyon Trust seeks relief against the NRC under the Endangered Species Act, we and the Trust agreed to a joint motion holding the case in abeyance in light of last fall's legislation that, when fully implemented, will transfer authority over the Atlas-Moab site to the Department of Energy.

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Kelley v. United States, No. 01-69C (U.S. Court of Federal Claims, filed Feb. 6, 2001)

This lawsuit, brought by an NRC retiree, seeks an adjustment in his retirement eligibility date, and a consequent increase in his retirement benefits. The United States Office of Personnel Management, not the NRC, decided on the appropriate retirement eligibility date, and hence OPM presumably will work with the Department of Justice in defending the case. But we will provide any back-up litigating support that DOJ requires.

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