

## ADJUDICATORY ISSUE INFORMATION

June 26, 2001

SECY-01-0115

FOR: The Commission

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

SUBJECT: LITIGATION REPORT - 2001- 02

Novoste Corp. v. NRC, No. 01-1162 (D.C. Cir., filed April 6, 2001)

Petitioner, a medical device manufacturer, brought this lawsuit to challenge NRC staff instructions on licensing petitioner's brachytherapy system. Petitioner views the NRC staff instructions as a final agency rule. Petitioner also asked the NRC staff to reconsider its instructions, and (with our consent) filed a motion in the court of appeals to hold the lawsuit in abeyance pending reconsideration. The court of appeals subsequently entered an order staying further judicial proceedings.

Petitioner will decide whether to reactivate its suit after receiving and reviewing the NRC staff's reconsideration determination.

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Orange County v. NRC, No. 01-1246 (D.C. Cir, filed May 31, 2001)

This lawsuit culminates Orange County's long-running effort to halt the plan of Carolina Power and Light to expand spent fuel storage capacity at CP&L's Shearon Harris plant. In an agency adjudicatory proceeding, the County unsuccessfully contested a license amendment requested by the CP&L to implement its storage expansion plan. The County now has brought its claims to the court of appeals.

Orange County accompanied its petition for judicial review with a motion for a judicial stay. The County's stay motion argues that its environmental claims are likely to prevail in the court of appeals, and that irreparable injury, *i.e.*, a catastrophic spent fuel pool accident, may occur in the meantime. We have opposed the stay motion on the grounds that the risk of a spent fuel pool accident at Shearon Harris is extremely small and that Orange County's lawsuit lacks merit.

A court decision on the stay is expected shortly, with full briefing and argument on the merits of the County's suit to follow later this year.

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