

## ADJUDICATORY ISSUE INFORMATION

July 10, 2001

SECY-01-0123

FOR: The Commission

FROM: John F. Cordes, Jr. *R/A*  
Solicitor

SUBJECT: LITIGATION REPORT - 2001- 03

Orange County v. NRC, No. 01-1246 (D.C. Cir., order issued June 29, 2001)

This lawsuit seeks judicial review of an NRC adjudicatory decision allowing Carolina Power & Light Company to expand spent fuel storage capacity at its Shearon Harris nuclear power plant. Petitioner sought a stay of the NRC decision, pending full appellate review, and also sought an expedited briefing and argument schedule. The court of appeals (Sentelle, Rogers & Tatel, JJ) denied both motions. The court stated that "Petitioner has not demonstrated the requisite likelihood of success on the merits or irreparable injury to warrant either a stay or expedition."

The court of appeals now will establish a briefing and argument schedule. It likely will be a number of months before the court hears the case.

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Grand Canyon Trust v. NRC, No. 99-70922 (9<sup>th</sup> Cir., order issued June 26, 2001)

This lawsuit challenged an NRC-approved reclamation plan for a mill tailings site at Moab, Utah. Petitioners claimed violations of the Endangered Species Act and the National Environmental Policy Act. All parties filed briefs in the case last year, and the court of appeals scheduled oral argument. Subsequently, however, the court postponed the oral argument in light of new legislation transferring jurisdiction over the site from the NRC to the Department of Energy.

After holding the case in abeyance for some months, the court of appeals now has dismissed the case, without prejudice to its reinstatement no later than November 28, 2001. Because DOE is expected to take over full jurisdiction at Moab prior to November 28, we do not expect petitioners to attempt to reactivate their suit against the NRC.

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