

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ORANGE COUNTY, NORTH CAROLINA,)	
)	
Petitioner,)	No. 01-1073
)	
v.)	
)	
UNITED STATES NUCLEAR REGULATORY)	
COMMISSION and the UNITED STATES)	
OF AMERICA,)	
)	
Respondents)	

UNOPPOSED MOTION TO HOLD IN ABEYANCE

Petitioner, the Board of Commissioners of Orange County, North Carolina (“Orange County”), hereby moves that the Court hold in abeyance the above-captioned review of a final order by the U.S. Nuclear Regulatory Commission (“NRC”). Orange County seeks to hold this appeal in abeyance in order to await the outcome of a separate NRC proceeding, which may render moot the issues that are under review by the Court.

Factual Background

This appeal concerns an administrative adjudication before the NRC regarding a proposed amendment to the operating license for the Shearon Harris nuclear power plant. The amendment was requested by the plant’s owner, Carolina Power & Light Company (“CP&L”) in late 1998.¹ In 1999, Orange County sought and obtained a hearing before

¹ CP&L has filed an unopposed motion to intervene in the case. The motion has not yet been acted upon by the Court.

the NRC's Atomic Safety and Licensing Board ("ASLB") on the proposed license amendment.

On December 21, 2000, while the administrative adjudication was still pending before the ASLB, the NRC issued a final order granting the license amendment. *See* United States Nuclear Regulatory Commission, Carolina Power & Light Company, Docket No. 50-400, Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration (hereinafter "NSHC Order"). Orange County filed a petition for review of the NSHC Order before this Court on February 16, 2001, on the grounds that the NRC had violated its regulations and the Administrative Procedure Act by issuing the license before the conclusion of the hearing.

Subsequently, on March 1, 2001, the ASLB issued a decision in the administrative adjudication, which ruled for CP&L and terminated the administrative proceeding. LBP-01-09, Memorandum and Order (Denying Request for Evidentiary Hearing and Terminating Proceeding) (hereinafter "LBP-01-09"). As permitted by NRC regulations, Orange County has filed a petition for review of LBP-01-09 and two other related ASLB decisions before the NRC Commissioners. *See* Orange County's Petition for Review of LBP-00-12, LBP-00-19, and LBP-01-09 (March 16, 2001). The petition, which is now pending before the NRC Commissioners, seeks the reversal of LBP-01-09 and resumption of the administrative adjudication.

ARGUMENT

Orange County seeks to hold this appeal in abeyance, in order to await the outcome of the NRC Commissioners' disposition of Orange County's administrative

petition for review. Under certain circumstances, it is possible that the instant judicial appeal will become moot: that is, if the NRC Commissioners affirm LBP-01-09 and Orange County decides not to appeal that decision to the U.S. Court of Appeals. Under those circumstances, the issue in the instant case, *i.e.*, whether it was lawful for the NRC to issue the Shearon Harris license amendment before the conclusion of the contested hearing, will be resolved.

Alternatively, if the NRC Commissioners reverse LBP-01-09 and remand the case for further proceedings, then the issues raised in the instant appeal will not be moot, and Orange County will wish to proceed. In another scenario, if the NRC Commissioners affirm LBP-01-09, and Orange County decides to appeal that decision to the U.S. Court of Appeals, then the issues raised in the instant case will also not be moot. Under those circumstances, the two judicial appeals should be consolidated.

Accordingly, in order to conserve the resources of the Court and the parties, Orange County respectfully requests that the Court hold this appeal in abeyance, pending the decision of the NRC Commissioners on Orange County's administrative petition for review of LBP-01-09.

Orange County is authorized to state that counsel for the NRC and counsel for the prospective intervenor, CP&L, do not object to holding this petition for review in abeyance, so long as any judicial abeyance order be entered without prejudice to the right of the NRC and CP&L to file dispositive motions, if appropriate, within 21 days after reactivation of the case.

Respectfully submitted,



Diane Curran
Harmon, Curran, Spielberg & Eisenberg
1726 M Street N.W., Suite 600
Washington, D.C. 20036
202/328-3500
Counsel for Orange County

March 22, 2001

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ORANGE COUNTY, NORTH CAROLINA,)
)
Petitioner,) No. 01-1073
)
)
v.)
)
UNITED STATES NUCLEAR REGULATORY)
COMMISSION and the UNITED STATES)
OF AMERICA,)
)
Respondents)

CERTIFICATE OF SERVICE

I certify that on March 22, 2001, copies of the foregoing Unopposed Motion to Hold in Abeyance were served on the following by first-class mail:

James Kilbourne, Esq.
Appellate Division
Environment and Natural Resources
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530

John F. Cordes, Esq.
Charles E. Mullins, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

John H. O'Neill, Esq.
Douglas Rosinski, Esq.
ShawPittman
2300 N Street N.W.
Washington, D.C. 20036

Respectfully submitted,



Diane Curran

Harmon, Curran, Spielberg & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
202/328-3500