

ADJUDICATORY ISSUE
(Information)

September 27, 2002

SECY-02-0174

FOR: The Commission

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

SUBJECT: LITIGATION REPORT - 2002 - 03

Orange County, North Carolina v. NRC, Nos. 01-1073 & 01-1246 (D.C. Cir., decided Sept. 19, 2002)

This petition for review challenged an NRC adjudicatory decision approving Carolina Power & Light Company's application to expand its spent fuel storage capacity at its Shearon Harris nuclear power reactor. Petitioner claimed, among other things, that the agency should have issued an environmental impact statement analyzing the possibility of a catastrophic spent fuel pool fire. After considering petitioner's claims under the special hearing process established in 10 C.F.R. Part 2, Subpart K, the Licensing Board found their concerns too remote to warrant an EIS or a full-scale evidentiary hearing. The Commission subsequently upheld the Board ruling.

Deciding the case just two weeks after the oral argument, the court of appeals (Edwards, Rogers & Williams, JJ) issued a 2-page judgment-order (unpublished) ruling summarily in favor of the NRC. Citing the Commission's two opinions in the case, and "[f]inding no error in NRC's determinations," the court said that it was denying the petitions for review "primarily for the reasons given in the agency's orders."

Petitioner has 45 days to seek rehearing in the court of appeals and 90 days to seek review in the Supreme Court.

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California Public Utilities Commission v. NRC, No. 02-72735 (9th Cir., filed Aug. 23, 2002)

This lawsuit, brought by the California Public Utility Commission and the County of San Luis Obispo, challenges a Commission adjudicatory decision that rejected petitions to intervene in the Diablo Canyon license transfer proceeding. Acting under 10 C.F.R. Part 2, Subpart M, the Commission found that CPUC's concerns were primarily economic, not justifying standing in an NRC license transfer proceeding. The Commission also ruled that CPUC had failed to set out the kind of safety contentions that the Commission considers under Subpart M. As for the County, the Commission found that its contentions, like CPUC's, lacked foundation, and that the County in any event had filed its contentions too late.

The court of appeals has established a briefing schedule making our brief due in December of this year. The court has not set an oral argument date.

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