

## ADJUDICATORY ISSUE INFORMATION

March 21, 2003

SECY-03-0041

FOR: The Commission

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

SUBJECT: LITIGATION REPORT - 2003 - 01

***Bullcreek v. NRC***, No. 03-1018 (D.C. Cir., filed Jan. 30, 2003)

This lawsuit, filed by Goshute Indians opposed to the proposed Private Fuel Storage facility in Utah, challenges the NRC's authority to license the facility. Petitioners argue that the Commission, in CLI-02-29, 56 NRC \_\_\_\_ (Dec. 18, 2002), wrongfully turned down a petition for rulemaking. The petition asked the Commission to "make clear" that it lacks authority to license away-from-reactor spent fuel storage facilities. The licensing authority question also has come up the still-pending NRC adjudication in *Private Fuel Storage*.

The court of appeals has consolidated this case with *State of Utah v. NRC*, No. 03-1022 (D.C. Cir.), which raises the same licensing authority question. The court has not yet set a briefing or argument schedule.

CONTACT: Grace H. Kim  
415-3605

***State of Utah v. NRC***, No. 03-1022 (D.C. Cir., filed Feb. 11, 2003)

This lawsuit, filed by the State of Utah, challenges the NRC's authority to license an away-from-reactor spent fuel storage facility. Utah opposes the Private Fuel Storage facility proposed to be built on Indian land in Utah. Utah argues that the Commission, in CLI-02-29, 56 NRC \_\_\_\_ (Dec. 18, 2002), wrongfully turned down a petition for rulemaking. The petition asked the Commission to "make clear" that it lacked licensing authority. The licensing authority question also has come up the still-pending NRC adjudication in *Private Fuel Storage*.

The court of appeals has consolidated this case with *Bullcreek v. NRC*, No. 03-1018 (D.C. Cir.), which raises the same licensing authority question. The court has not yet set a briefing or argument schedule.

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***Riverkeeper v. Collins***, No. 03-4313 (2d Cir., filed Feb. 11, 2003)

This lawsuit challenges a decision by the Director of the Office of Nuclear Reactor Regulation to reject (in part) a petition for enforcement under 10 C.F.R. § 2.206. The 2.206 petition sought, among other things, the shutdown of the Indian Point reactors because of the threat of terrorism. The court has not yet set a briefing or argument schedule.

CONTACT: David A. Cummings  
415-1520

***Connecticut Coalition Against Millstone v. NRC***, No. 03-4372 (2d Cir., filed Feb. 18, 2003)

This lawsuit challenges a Commission adjudicatory decision, CLI-02-22, 56 NRC 213 (2002), rejecting a hearing contention based on Millstone's "loss" of spent fuel rods some years ago. Petitioners argued that the lost fuel rods incident, and alleged delays in reporting it, warranted rejection of a license amendment request for expansion of the Millstone spent fuel pool. The Licensing Board and the Commission were satisfied that the expansion could proceed safely.

The court has not yet set a briefing or argument schedule.

CONTACT: Charles E. Mullins  
415-1618

***State of Nevada v. United States & NRC***, No. 03-1058 (D.C. Cir., filed March 4, 2003)

This lawsuit challenges the Commission's rejection of a petition for rulemaking filed by the State of Nevada. The petition had asked for a change in the NRC's Yucca Mountain licensing standards, 10 C.F.R. Part 63, to make geology "the primary" barrier for isolating high-level radioactive waste at the repository. The court of appeals has consolidated this lawsuit with Nevada's earlier-filed suit (No. 02-1116) attacking Part 63 directly.

The NRC's brief is due in April. The court of appeals will hold oral arguments in September on Yucca Mountain cases involving the NRC, EPA, and DOE.

CONTACT: Steven F. Crockett  
415-2871

***Northern California Power Agency v. NRC***, No. 03-1038 (D.C. Cir., filed Feb. 25, 2003)

This lawsuit challenges a recent Commission adjudicatory decision, CLI-03-02 (Feb. 14, 2003), on an application to transfer of the license for the Diablo Canyon nuclear power reactor. The decision refused to carry over antitrust conditions to new entities that would come into existence after the license transfer. Petitioner supports retaining the conditions. The underlying license

transfer remains in limbo because of ongoing bankruptcy proceedings involving Diablo Canyon's owner, Pacific Gas & Electric Company.

The court has not yet set a briefing or argument schedule.

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415-3605