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ADJUDICATORY ISSUE

October 1, 1990

(Information)

SECY-90-334

For: The Commissioners
From: John F. Cordes, Jr.
Solicitor
Subject: LITIGATION REPORT 1990-29

By this report I am informing you of one case gone from our litigation roster and a new case added to it. Because the former has long been inactive and the new case will likely long be inactive, the changes have minimal significance.

1. Uranium Environmental Subcommittee v. United States Nuclear Regulatory Commission, No. 86-2089 (10th Cir., dismissed September 17, 1990).

On motion of the petitioner, Uranium Environmental Subcommittee, the Court dismissed this lawsuit with prejudice. As we previously informed the Commission, the case has long been on hold pending the conclusion of "settlement" negotiations. Those negotiations, now concluded, were essentially between the State of New Mexico and the petitioner and involved reaching an agreement whereby funds paid to the state during the time it was an "agreement state" with respect to mill tailings could be released for use in petitioner's current compliance with NRC regulation.

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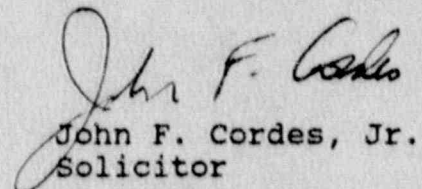
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2. Pacific Gas and Electric Company v. United States Nuclear Regulatory Commission, No. 90-1463 (D.C. Cir. filed September 21, 1990).

Pacific Gas and Electric Company (PG&E) filed with the Court of Appeals for the D.C. Circuit a petition for review of the Director's Decision under 10 C.F.R. § 2.206 (DD-90-3). DD-90-03 is an antitrust decision which granted in part petitions for relief by the Northern Carolina Power Agency and resulted in a notice of violation to PG&E. In DD-90-03 the Director relied upon findings made by the district court in United States v. PG&E, 714 F. Supp. 1039 (N.D.C.A., 1989) to conclude that PG&E had violated certain antitrust conditions of its license to operate Diablo Canyon. Counsel informed us before filing this lawsuit that PG&E had taken an appeal of the district court case and was timely challenging DD-90-03 to protect itself from any detrimental precedential effect to PG&E that could be occasioned by allowing DD-90-03 to become final and unappealable. Counsel also informed us that PG&E has no current wish to prosecute this appeal and will ask the Court to hold it in abeyance until appeal of the district court case is resolved.

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FROM: SECY, Operations Branch A. B. [Signature]

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- 2. dtd 9/27/90 12. _____
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- 3. sheet on 90-277 13. _____
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