

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 7/7/99

COMMISSIONERS:

SERVED 7/7/99

Greta Joy Dicus, Chairman
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)		
)		
INTERNATIONAL URANIUM (USA))	Docket Nos.	40-8681-MLA-5
CORPORATION)		40-8681-MLA-6
)		
(Request for Materials License Amendment))		
)		
)		

CLI-99-21

ORDER

Envirocare of Utah, Inc. ("Envirocare") has appealed its dismissal from two separate Subpart L proceedings, both involving license amendment requests made by the International Uranium (USA) Corporation ("IUSA"). See LBP-99-11, 49 NRC 153 (1999); LBP-99-20, 49 NRC ____ (May 21, 1999). In both proceedings, the Presiding Officer found that Envirocare's asserted "competitor" injury does not fall within the zone of interests of the Atomic Energy Act or the National Environmental Protection Act. Last year, on the same ground, the Commission affirmed the dismissal of Envirocare from two other license amendment proceedings. See Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1 (1998); International Uranium (USA) Corp. (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259 (1998). Envirocare has sought judicial review of the Commission's decisions in Quivira and IUSA. See *Envirocare v. NRC*, Nos. 98-1426 & 98-1592 (D.C. Cir., consolidated Jan. 12, 1999).

Envirocare's latest appeals acknowledge the Commission's stance on competitor standing. Envirocare seeks only to preserve the opportunity to participate in the IUSA license amendment requests in the event that Envirocare wins its federal court appeal. However, because the competitor standing issues are the same here as in Quivira and IUSA, the Commission believes that in the interest of minimizing repetitious decisions by the Commission and pleadings by Envirocare, IUSA, and the NRC staff, and repetitious lawsuits in the court of appeals, the best course is to hold Envirocare's current appeals in abeyance, pending the outcome of Envirocare's petition for judicial review in the D.C. Circuit. Similarly, we would expect that the Presiding Officer will hold in abeyance future hearing requests of Envirocare, if any, that rest solely on Envirocare's interest as an industry competitor.

Accordingly, Envirocare's appeals of LBP-99-11 and LBP-99-20 are hereby held in abeyance pending resolution of the federal court litigation on Envirocare's standing.

IT IS SO ORDERED.

For the Commission⁽¹⁾
[Original signed by
Annette L. Vietti-Cook]

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of July, 1999.

1. Commissioner Diaz was not available for the affirmation of this Order. If he had been present, he would have approved the Order.