

April 8, 1996

For: The Commission
 From: John F. Cordes, Jr. /s/ Solicitor
 Subject: LITIGATION REPORT - 1996 - 3

Citizens Awareness Network v. NRC, No. 96-1302 (1st Cir., filed March 28, 1996)

In this lawsuit petitioners (the Citizens Awareness Network and the New England Coalition on Nuclear Pollution) challenge two recent NRC staff decisions under [10 C.F.R. § 2.206](#) that refused to halt certain activities at the shut-down Yankee Rowe reactor in Massachusetts. The Commission recently affirmed those § 2.206 decisions. See CLI-96-06 (April 1, 1996). Petitioners accompanied their lawsuit with an "Application for Emergency Stay" that seeks a court-ordered halt to all decommissioning-related activity at Yankee Rowe.

Petitioners' basic argument is that the NRC has found permissible too much "piecemeal" decommissioning activity at Yankee Rowe and thereby has taken away the right to a "meaningful hearing" guaranteed by last summer's court of appeals decision in *Citizens Awareness Network v. NRC*, 59 F.3d 284 (1st Cir. 1996).

We have filed an opposition to petitioners' emergency stay motion. We argue, among other things, that petitioners filed their lawsuit prematurely (i.e., prior to the Commission's final decision), that the lawsuit constitutes an impermissible attack on NRC enforcement discretion and that (as explained by the Commission itself in CLI-96-06) the NRC has protected petitioners' hearing opportunity and acted reasonably by preventing "major" dismantling at Yankee Rowe during the pendency of the adjudicatory process.

The court of appeals has not yet decided the emergency motion or established a briefing and argument schedule for the petition for review.

CONTACT: Charles E. Mullins
 415-1618

McLandrich v. Southern California Edison Co., Civ. No. 0151-B (S.D. Cal., decided March 21, 1996)

This lawsuit for damages results from the cancer-caused death of a nuclear engineer who worked at the San Onofre nuclear power reactor in California. His family attributes his death to excessive radiation exposures at San Onofre. The family has sued, among others, Southern California Edison and the Institute for Nuclear Power Operations (INPO).

The lawsuit is in its early stages. INPO filed a motion invoking the "primary jurisdiction" doctrine. INPO argued that the claims against it -- principally that it had conspired with nuclear utilities to under-report radiation exposures -- should be referred to the NRC for initial resolution. Last fall, we considered whether to intervene in the lawsuit and take a position on the primary jurisdiction question. After consultation with the Commission, we decided against doing so.

The district court (Brewster, J.) now has denied INPO's primary jurisdiction motion. The court concluded that the lawsuit concerns a claim "that defendant INPO was advising licensees to withhold the truth of the full extent of workers' exposures" and does not turn "on any technical intricacy of the applicable regulations" requiring "the special expertise of the NRC" (Slip op. at 8-9). The court also pointed out that many tort cases under the Price-Anderson Act involve NRC regulations, but Congress nonetheless "concluded that these cases should be placed before the District Court, not before the NRC" (Id.).

INPO may well take the primary jurisdiction ruling to the court of appeals. We will continue to monitor this case, as well as other similar cases pending in California.

CONTACT: Daryl M. Shapiro
 415-1631

John F. Cordes
 Solicitor

ATTACHMENT

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