

March 4, 1999

For: The Commission
 From: John F. Cordes, Jr. /s/
 Solicitor
 Subject: LITIGATION REPORT - 1999 - 1

Dienethal v. NRC, No. 99-1001 (D.C. Cir., filed Jan. 4, 1999)

Petitioner in this lawsuit, a former worker at the Zion Nuclear Power Station, challenges a Licensing Board decision to turn down his request to intervene in a license amendment proceeding. Petitioner filed his lawsuit at a time when his administrative appeal of the Licensing Board decision was still pending before the Commission. Recently (on March 2), the Commission rejected petitioner's administrative appeal and affirmed the Board decision. The Commission agreed with the Board that petitioner lacked standing to challenge the Zion license amendments.

We have filed a motion to dismiss petitioner's prematurely-filed lawsuit. Petitioner may file a fresh petition for review challenging the Commission's final decision on standing, but has not yet done so.

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National Whistleblower Center v. NRC, Nos. 99-1002 & 99-1043 (D.C. Cir., filed Jan. 4, 1999 & Feb. 8, 1999)

Petitioner in these lawsuits, a Washington-centered whistleblower protection organization, challenges the Commission's decision to terminate the Calvert Cliffs license renewal proceeding for lack of admissible contentions. Petitioner had previously filed a lawsuit in December (No. 98-1581) challenging the Licensing Board's decision in the Calvert Cliffs case. That lawsuit, in our view, was filed prematurely, as an appeal was still pending before the Commission at the time, and we have moved to dismiss it.

The two newly-filed suits, while apparently redundant, are timely and likely will be consolidated for briefing and argument later this year.

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Grand Canyon Trust v. Babbitt, No. 2:98CV0803S (D. Utah, filed Dec. 16, 1998)

This lawsuit, brought by Utah environmental groups, a Utah county government, and individual citizens, claims that the NRC is violating the Endangered Species Act in allowing the Atlas Corporation to continue to store radioactive mill tailings at Moab, Utah, a site near the Colorado River. The NRC staff currently is considering a proposed license amendment that would approve a reclamation plan for the site. In the meantime, Atlas has initiated Chapter 11 bankruptcy proceedings in Denver, in an effort to protect itself against creditors while it reorganizes its affairs.

The lawsuit not only challenges the NRC's regulatory acts under the ESA, but also attacks a "biological opinion" issued by the Fish and Wildlife Service containing directives on how to protect the endangered Colorado squawfish and razorback sucker. We have filed a motion to dismiss the lawsuit against the NRC on the ground that NRC licensing actions are reviewable exclusively in the federal courts of appeals and cannot be reviewed in federal district courts. The district court has not yet acted on our jurisdictional motion.

We are working with attorneys from the Department of Justice in Washington in defending this suit.

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