

## ADJUDICATORY ISSUE INFORMATION

July 10, 2001

SECY-01-0123

FOR: The Commission

FROM: John F. Cordes, Jr. *R/A*  
Solicitor

SUBJECT: LITIGATION REPORT - 2001- 03

Orange County v. NRC, No. 01-1246 (D.C. Cir., order issued June 29, 2001)

This lawsuit seeks judicial review of an NRC adjudicatory decision allowing Carolina Power & Light Company to expand spent fuel storage capacity at its Shearon Harris nuclear power plant. Petitioner sought a stay of the NRC decision, pending full appellate review, and also sought an expedited briefing and argument schedule. The court of appeals (Sentelle, Rogers & Tatel, JJ) denied both motions. The court stated that "Petitioner has not demonstrated the requisite likelihood of success on the merits or irreparable injury to warrant either a stay or expedition."

The court of appeals now will establish a briefing and argument schedule. It likely will be a number of months before the court hears the case.

CONTACT: Charles E. Mullins  
415-1618

Grand Canyon Trust v. NRC, No. 99-70922 (9<sup>th</sup> Cir., order issued June 26, 2001)

This lawsuit challenged an NRC-approved reclamation plan for a mill tailings site at Moab, Utah. Petitioners claimed violations of the Endangered Species Act and the National Environmental Policy Act. All parties filed briefs in the case last year, and the court of appeals scheduled oral argument. Subsequently, however, the court postponed the oral argument in light of new legislation transferring jurisdiction over the site from the NRC to the Department of Energy.

After holding the case in abeyance for some months, the court of appeals now has dismissed the case, without prejudice to its reinstatement no later than November 28, 2001. Because DOE is expected to take over full jurisdiction at Moab prior to November 28, we do not expect petitioners to attempt to reactivate their suit against the NRC.

CONTACT: Marjorie S. Nordlinger  
415-1616

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-1246

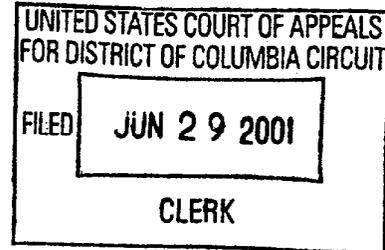
September Term, 2000

Orange County, North Carolina,  
Petitioner

v.

Nuclear Regulatory Commission and  
United States of America,  
Respondents

Filed On:



BEFORE: Sentelle, Rogers, and Tatel, Circuit Judges

**ORDER**

Upon consideration of the motion for stay pending review of the petition, the oppositions thereto, and the reply; and the motion for expedited review of the petition, it is

**ORDERED** that the motions be denied. Petitioner has not demonstrated the requisite likelihood of success on the merits or irreparable injury to warrant either a stay or expedition. See Washington Metropolitan Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); D.C. Circuit Handbook of Practice and Internal Procedures 32-33 (2000).

**Per Curiam**

FOR THE COURT:  
Mark J. Langer, Clerk

BY:

A handwritten signature in cursive script, appearing to read "Elizabeth D. [unclear]".  
Deputy Clerk/LD

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUN 26 2001

GATHY A. CATTERSON, CLERK  
U. S. COURT OF APPEALS

GRAND CANYON TRUST, et al.,

Petitioners,

v.

NUCLEAR REGULATORY  
COMMISSION; et al.,

Respondents.

No. 99-70922

ORDER

Petitioners' motion to dismiss the case without prejudice is granted in part. The case is dismissed without prejudice to a motion to reinstate provided that any motion to reinstate is filed by November 28, 2001.

A certified copy of this order sent to the agency shall act as and for the mandate of this court.

For the Court:

CATHY A. CATTERSON  
Clerk of the Court



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Cole Benson  
Deputy Clerk  
Ninth Cir. R. 27-7/Appendix A,  
General Orders for the  
United States Court of Appeals