

ADJUDICATORY ISSUE
(Information)

September 27, 2002

SECY-02-0174

FOR: The Commission

FROM: John F. Cordes, Jr. */RA/*
Solicitor

SUBJECT: LITIGATION REPORT - 2002 - 03

Orange County, North Carolina v. NRC, Nos. 01-1073 & 01-1246 (D.C. Cir., decided Sept. 19, 2002)

This petition for review challenged an NRC adjudicatory decision approving Carolina Power & Light Company's application to expand its spent fuel storage capacity at its Shearon Harris nuclear power reactor. Petitioner claimed, among other things, that the agency should have issued an environmental impact statement analyzing the possibility of a catastrophic spent fuel pool fire. After considering petitioner's claims under the special hearing process established in 10 C.F.R. Part 2, Subpart K, the Licensing Board found their concerns too remote to warrant an EIS or a full-scale evidentiary hearing. The Commission subsequently upheld the Board ruling.

Deciding the case just two weeks after the oral argument, the court of appeals (Edwards, Rogers & Williams, JJ) issued a 2-page judgment-order (unpublished) ruling summarily in favor of the NRC. Citing the Commission's two opinions in the case, and "[f]inding no error in NRC's determinations," the court said that it was denying the petitions for review "primarily for the reasons given in the agency's orders."

Petitioner has 45 days to seek rehearing in the court of appeals and 90 days to seek review in the Supreme Court.

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415-1618

California Public Utilities Commission v. NRC, No. 02-72735 (9th Cir., filed Aug. 23, 2002)

This lawsuit, brought by the California Public Utility Commission and the County of San Luis Obispo, challenges a Commission adjudicatory decision that rejected petitions to intervene in the Diablo Canyon license transfer proceeding. Acting under 10 C.F.R. Part 2, Subpart M, the Commission found that CPUC's concerns were primarily economic, not justifying standing in an NRC license transfer proceeding. The Commission also ruled that CPUC had failed to set out the kind of safety contentions that the Commission considers under Subpart M. As for the County, the Commission found that its contentions, like CPUC's, lacked foundation, and that the County in any event had filed its contentions too late.

The court of appeals has established a briefing schedule making our brief due in December of this year. The court has not set an oral argument date.

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Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals for the Ninth Circuit

FILED

JUG 25 2002

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

California Public Utilities Commission and)
County of San Luis Obispo,)
Petitioners)
)
v.)
)
U.S. Nuclear Regulatory Commission,)
Respondent)

Petition for Review

02-72735

The California Public Utilities Commission and the County of San Luis Obispo hereby petition the court for review of the Order of the U.S. Nuclear Regulatory Commission (NRC), CLI-02-16, 55 NRC ---, entered on June 25, 2002. This NRC Order declined to admit Petitioners as Parties to, and dismissed all of the contentions proffered by Petitioners in, the NRC's license transfer proceeding for Pacific Gas and Electric Company's Diablo Canyon Power Plant, Units 1 and 2.

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California Public Utilities Commission and)
 County of San Luis Obispo,)
 Petitioners)
 v.)
 U.S. Nuclear Regulatory Commission,)
 Respondent)

Petition for Review

Representation Statement

The following are parties to the proceeding below, who are not named Petitioners:

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Dated this 23rd day of August, 2002


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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

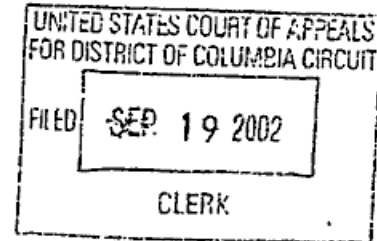
No. 01-1073

September Term, 2002

Orange County, North Carolina,
Petitioner

v.

Nuclear Regulatory Commission and
United States of America,
Respondents



And Consolidated Case No. 01-1246

Petitions for Review of Orders of the
Nuclear Regulatory Commission

Before: EDWARDS and ROGERS, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*

J U D G M E N T

These causes were considered on petitions for review of orders of the Nuclear Regulatory Commission and were briefed and argued by counsel. It is

ORDERED and **ADJUDGED** that the petitions for review are hereby denied.

In an administrative proceeding, Orange County presented arguments that the NRC's environmental assessment of a proposed storage expansion of a nuclear reactor was inadequate. After comparing risk calculations offered by the petitioner, the agency's staff, and the applicant facility, the NRC upheld the finding that the chances of an accident were too remote to trigger a full evidentiary hearing on the issue. See *In re Carolina Power & Light Company*, 53 NRC 370 (2001). Once the agency determined that the expansion posed no significant safety hazards, the NRC granted the license amendment for the expansion. In re *Carolina Power & Light Company*, 53 NRC 113 (2001). Finding no error in NRC's determinations, the court hereby denies the petitions for review primarily for the reasons stated in the agency's orders.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-1073

September Term, 2002

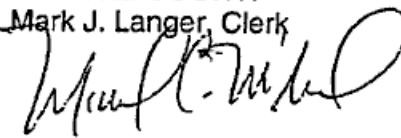
Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

By:



Michael C. McGrail
Deputy Clerk