

ADJUDICATORY ISSUE INFORMATION

March 21, 2003

SECY-03-0041

FOR: The Commission

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

SUBJECT: LITIGATION REPORT - 2003 - 01

Bullcreek v. NRC, No. 03-1018 (D.C. Cir., filed Jan. 30, 2003)

This lawsuit, filed by Goshute Indians opposed to the proposed Private Fuel Storage facility in Utah, challenges the NRC's authority to license the facility. Petitioners argue that the Commission, in CLI-02-29, 56 NRC __ (Dec. 18, 2002), wrongfully turned down a petition for rulemaking. The petition asked the Commission to "make clear" that it lacks authority to license away-from-reactor spent fuel storage facilities. The licensing authority question also has come up the still-pending NRC adjudication in *Private Fuel Storage*.

The court of appeals has consolidated this case with *State of Utah v. NRC*, No. 03-1022 (D.C. Cir.), which raises the same licensing authority question. The court has not yet set a briefing or argument schedule.

CONTACT: Grace H. Kim
415-3605

State of Utah v. NRC, No. 03-1022 (D.C. Cir., filed Feb. 11, 2003)

This lawsuit, filed by the State of Utah, challenges the NRC's authority to license an away-from-reactor spent fuel storage facility. Utah opposes the Private Fuel Storage facility proposed to be built on Indian land in Utah. Utah argues that the Commission, in CLI-02-29, 56 NRC __ (Dec. 18, 2002), wrongfully turned down a petition for rulemaking. The petition asked the Commission to "make clear" that it lacked licensing authority. The licensing authority question also has come up the still-pending NRC adjudication in *Private Fuel Storage*.

The court of appeals has consolidated this case with *Bullcreek v. NRC*, No. 03-1018 (D.C. Cir.), which raises the same licensing authority question. The court has not yet set a briefing or argument schedule.

CONTACT: Grace H. Kim
415-3605

Riverkeeper v. Collins, No. 03-4313 (2d Cir., filed Feb. 11, 2003)

This lawsuit challenges a decision by the Director of the Office of Nuclear Reactor Regulation to reject (in part) a petition for enforcement under 10 C.F.R. § 2.206. The 2.206 petition sought, among other things, the shutdown of the Indian Point reactors because of the threat of terrorism. The court has not yet set a briefing or argument schedule.

CONTACT: David A. Cummings
415-1520

Connecticut Coalition Against Millstone v. NRC, No. 03-4372 (2d Cir., filed Feb. 18, 2003)

This lawsuit challenges a Commission adjudicatory decision, CLI-02-22, 56 NRC 213 (2002), rejecting a hearing contention based on Millstone's "loss" of spent fuel rods some years ago. Petitioners argued that the lost fuel rods incident, and alleged delays in reporting it, warranted rejection of a license amendment request for expansion of the Millstone spent fuel pool. The Licensing Board and the Commission were satisfied that the expansion could proceed safely.

The court has not yet set a briefing or argument schedule.

CONTACT: Charles E. Mullins
415-1618

State of Nevada v. United States & NRC, No. 03-1058 (D.C. Cir., filed March 4, 2003)

This lawsuit challenges the Commission's rejection of a petition for rulemaking filed by the State of Nevada. The petition had asked for a change in the NRC's Yucca Mountain licensing standards, 10 C.F.R. Part 63, to make geology "the primary" barrier for isolating high-level radioactive waste at the repository. The court of appeals has consolidated this lawsuit with Nevada's earlier-filed suit (No. 02-1116) attacking Part 63 directly.

The NRC's brief is due in April. The court of appeals will hold oral arguments in September on Yucca Mountain cases involving the NRC, EPA, and DOE.

CONTACT: Steven F. Crockett
415-2871

Northern California Power Agency v. NRC, No. 03-1038 (D.C. Cir., filed Feb. 25, 2003)

This lawsuit challenges a recent Commission adjudicatory decision, CLI-03-02 (Feb. 14, 2003), on an application to transfer of the license for the Diablo Canyon nuclear power reactor. The decision refused to carry over antitrust conditions to new entities that would come into existence after the license transfer. Petitioner supports retaining the conditions. The underlying license transfer remains in limbo because of ongoing bankruptcy proceedings involving Diablo Canyon's owner, Pacific Gas & Electric Company.

The court has not yet set a briefing or argument schedule.

CONTACT: Grace H. Kim
415-3605

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Attorneys for Petitioners

IN THE UNITED STATES COURT OF APPEALS
 FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARGENE BULLCREEK, LISA)
 BULLCREEK, REX ALLEN, MARY)
 ALLEN, DANIEL MOON, DELFORD)
 MOON, LENA KNIGHT, ABBY)
 BULLCREEK, and LINDA WILLIAMS,)
 individual members of the Skull Valley)
 Band of Goshute Indians and members of)
 the Band's General Council, and OHNGO)
 GAUDADEH DEVIA, an unincorporated)
 association,)
)
 Petitioners,)
 v.)
)
 UNITED STATES NUCLEAR)
 REGULATORY COMMISSION, and the)
 UNITED STATES OF AMERICA)
)
 Respondent.)
 _____)

PETITION FOR REVIEW

No. 03-1018


COME NOW, Margene Bullcreek, Lisa Bullcreek, Rex Allen, Mary Allen, Daniel Moon, Delford Moon, Lena Knight, Abby Bullcreek, and Linda Williams, individual members of the Skull Valley Band of Goshute Indians and members of the Band's General Council, and Ohngo Gaudadeh Devia ("OGD"), through their attorneys, EchoHawk Law Offices, and pursuant to 28 U.S.C. § 2342, 42 U.S.C. § 2239, 5 U.S.C.

§§ 703, 704, 706, and Fed. R. App. P. 15, hereby petition this Court for review of the Nuclear Regulatory Commission's ("NRC") Memorandum and Order, CLI-02-29, entered on December 18, 2002, to the extent the Memorandum and Order denied the Petition to Institute Rulemaking filed before the NRC on February 11, 2002.¹ Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

The NRC's December 18, 2002 Memorandum and Order, CLI-02-29, denied a petition to institute rulemaking pursuant to 10 C.F.R. § 2.802(a) to amend regulations governing independent spent fuel storage installations ("ISFSIs"), 10 C.F.R. Part 72, to make clear that licensing is allowed only for federally owned and operated away-from-reactor spent nuclear fuel ("SNF") storage facilities and not for an away-from reactor storage facility that is privately owned. The requested amendment is necessary to bring Part 72 into conformity with the Nuclear Regulatory Policy Act of 1982, as amended, 42 U.S.C. §§ 10101 *et seq.*

DATED: January 30, 2003.

ECHOHAWK LAW OFFICES

By 
Paul C. EchoHawk, of the firm
Attorneys for Petitioners

¹ The Petitioners do not petition for review of the Order to the extent it resolves Utah's Suggestion of Lack of Jurisdiction filed February 11, 2002 in the licensing proceeding known as In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Sean Barnett, Esq.
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Assistant Attorney General
Utah Attorney General's Office
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P.O. Box 140873
Salt Lake City, Utah 84114-0873



for ECHOHAWK LAW OFFICES

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Assistant Attorney General
MARK L. SHURTLEFF, Utah Bar #4666
Utah Attorney General
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Telephone: (801) 538-9527
Attorneys for Petitioner

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF UTAH, Petitioner, vs. UNITED STATE NUCLEAR REGULATORY COMMISSION, and the UNITED STATES OF AMERICA, Respondent,	PETITION FOR REVIEW <i>03-1022</i>
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Pursuant to 28 U.S.C. §§ 2342-44, 42 U.S.C. § 2239(a)(1)(A) and (b)(1), 5 U.S.C. §§ 703, 704, 706, and Rule 15, Federal Rules of Appellate Procedure, the State of Utah petitions this Court for review of the Nuclear Regulatory Commission's Memorandum and Order, CLI-02-29, docketed and served on 18 December 2002 ("the Order") to the extent the Order denies Utah's Petition to Institute Rulemaking filed 11

February 2002. That denial constitutes final agency action subject to immediate appellate review. (Utah does not petition for review of the Order to the extent the Order resolves Utah's Suggestion of Lack of Jurisdiction filed 11 February 2002 in the licensing proceeding known as In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI.)

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

Relief is sought on these grounds: Pursuant to 10 CFR 2.802(a), the State of Utah ("Utah") petitioned the Nuclear Regulatory Commission ("the Commission" or "the NRC") to amend its regulations governing independent spent fuel storage installations ("ISFSIs"), 10 CFR Part 72, to the extent those regulations may be deemed to relate to a privately owned, away-from-reactor, spent nuclear fuel storage facility. Specifically, Utah petitioned that the Commission amend the ISFSI regulations to make clear that licensing is allowed only for federally owned and operated away-from-reactor, spent nuclear fuel ("SNF") storage facilities and not for an away-from-reactor storage facility when privately owned. The requested amendment is necessary to bring the Part 72 regulation into conformity with governing federal law, the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§ 10101 *et seq.* The Order denied Utah's Petition to Initiate Rulemaking.

Utah prays for an order from this Court directing that the Commission add the following language, or an appropriate equivalent, to 10 CFR Part 72 as section 72.2(d):

Notwithstanding any other provision in this Part, this Part does not authorize the licensing of any privately owned, away-from-reactor, spent nuclear fuel storage facility. Under federal law, storage of spent nuclear fuel from commercial nuclear power plants at an away-from-reactor storage facility is not allowed except in a Monitored Retrievable Storage facility owned and operated by the federal government pursuant to the Nuclear Waste Policy Act of 1982, as amended. An away-from-reactor, spent nuclear fuel storage facility is any ISFSI not located on, or adjacent to, a reactor site.

Dated: 11 February 2003

MONTE N. STEWART
Special Assistant Attorney General
HELEN A. FROHLICH
Assistant Attorney General
MARK L. SHURTLEFF
Utah Attorney General
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2003, I served a true and correct copy of the foregoing **PETITION FOR REVIEW** via United States first-class mail, postage prepaid, to each of the following:

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Shaw Pitman
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*Counsel for Private Fuel
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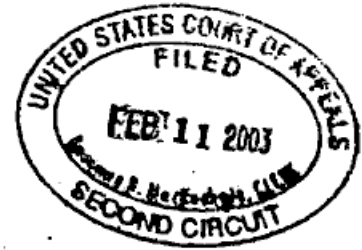
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*Counsel for Private Fuel
Storage, L.L.C.*

UNITES STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

03-4313

RIVERKEEPER, INC.,)
)
) *Petitioner*)
)
) v.)
)
)
) SAMUEL J. COLLINS, Director, Office of Nuclear)
) Reactor Regulation; DR. WILLIAM TRAVERS,)
) Executive Director for Operations of the Nuclear)
) Regulatory Commission; UNITED STATES NUCLEAR)
) REGULATORY COMMISSION; the UNITED STATES)
) OF AMERICA; ENTERGY NUCLEAR INDIAN)
) POINT 2, LLC; ENTERGY NUCLEAR INDIAN)
) POINT 3, LLC; and ENTERGY NUCLEAR)
) OPERATIONS, INC.)
)
) *Respondents.*)



PETITION FOR
REVIEW

Riverkeeper, Inc. (hereinafter "Riverkeeper"), hereby petitions the Court for review of the final Order of Executive Director for Operations of the United States Nuclear Regulatory Commission ("NRC" or "Commission") in a 10 C.F.R. § 2.206 petition for action concerning Indian Point Nuclear Power Station, in which the NRC denied Riverkeeper's administrative petition requesting the immediate shutdown of Indian Point Units 2 & 3, entered on the 18th day of November, 2002, which pursuant to 10 C.F.R. § 2.206 (c) became final on the 13th of December, 2002, twenty-five days after issuance.

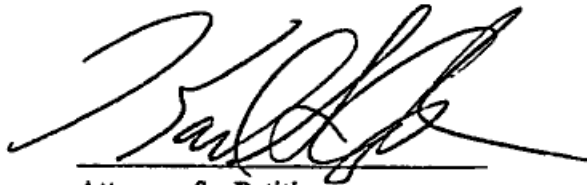
Riverkeeper seeks review and reversal of the Director's Decision number DD-02-06, Nuclear Regulatory Commission docket numbers 50-003, 50-247, and 50-286 on the grounds that it violates the Atomic Energy Act as amended and constitutes an abuse of the Commission's discretion and a complete abdication of its statutory duty under 42 U.S.C. § 2201(i) "to protect health and to minimize dangers to life or property." Pursuant to 28 U.S.C. § 2343, Riverkeeper seeks review in the Second Circuit Court of Appeals, where petitioner has its principal office.

A true copy of the final order of the Directors Decision, DD-02-06, is attached as Exhibit

"A."

DATED: White Plains, NY

February 10, 2003

A handwritten signature in black ink, appearing to read 'Karl S. Coplan', written over a horizontal line.

Attorney for Petitioners
Karl S. Coplan, Esq.
Pace Environmental Litigation Clinic
78 North Broadway
White Plains, NY 10603

gpc

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CONNECTICUT COALITION	:	Docket No. 50-423 LA-3
AGAINST MILLSTONE,	:	
Petitioner	:	
	:	
v.	:	03-4372
	:	
U.S. NUCLEAR REGULATORY	:	
COMMISSION,	:	
Respondent	:	FEBRUARY 18, 2003

PETITION FOR REVIEW


The Intervenor, Connecticut Coalition Against Millstone, hereby petitions this Court, pursuant to 28 U.S.C. Sections 2342 and 2344 and Rule 15(a) of the Federal Rules of Appellate Procedure, to review the decision of the U.S. Nuclear Regulatory Commission by Memorandum and Order dated November 21, 2002 (CLI-02-22), In the Matter of Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station Unit No. 3, Facility Operating License NPF-49), Docket No. 50-423-LA-3, terminating reactor license amendment proceedings arising from Northeast Nuclear Energy Company's ("NNECO") request, dated March 19, 1999, to increase the storage capacity of the spent fuel pool at the Millstone Unit No. 3 reactor through the use of high-density storage racks.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. Section 2342. Venue lies in the Second Circuit pursuant to 28 U.S.C. Section 2343.

The Connecticut Coalition Against Millstone, an organization of statewide safe energy groups, families residing within the five-mile emergency evacuation zone

of the Millstone Nuclear Power Station and former employees of the Millstone Nuclear Power Station, was admitted as an intervening party in the licensing proceedings below. The Connecticut Coalition Against Millstone submits that the U.S. Nuclear Regulatory Commission decision was contrary to law, was not supported by substantial evidence and was arbitrary and capricious. The Connecticut Coalition Against Millstone requests a declaration that the Commission's action was unlawful, an order to convene an evidentiary hearing and any other appropriate relief.

Respectfully submitted,



Nancy Burton, Esq.
147 Cross Highway
Redding Ridge CT 06876
Tel. 203-938-3952
Fax 203-938-3168

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Review has been served on the following via U.S. Mail, postage pre-paid, on February 18, 2003:

U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

Office of the Secretary
ATTN: Rulemaking and Adjudication Staff
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

Office of Commission Appellate Jurisdiction
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

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Ann P. Hodgdon, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

A handwritten signature in cursive script, appearing to read "Henry K. ...", is written over a horizontal line.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEVADA,)	
)	
Petitioner,)	
)	
v.)	
)	Case No. 03- <u>1058</u>
UNITED STATES OF AMERICA)	
and the UNITED STATES)	
NUCLEAR REGULATORY)	
COMMISSION,)	
)	
Respondents.)	
)	
)	
)	

PETITION FOR REVIEW

The State of Nevada hereby petitions the Court for review of the United States Nuclear Regulatory Commission’s (“NRC”) denial of Nevada’s Petition for Rulemaking, docketed as PRM-63-1. Nevada’s Petition had requested that NRC amend 10 C.F.R. Part 63, its regulations governing the disposal of high-level radioactive waste in a proposed geologic repository at Yucca Mountain, Nevada. 10 C.F.R. Part 63 is a final rule of the NRC, and it was published in the Federal Register, 66 Fed. Reg. 55,732-55,816 (attached at Tab A), on November 2, 2001. NRC’s denial of Nevada’s Petition for Rulemaking is a final agency action, and it was published in the Federal Register, 68 Fed. Reg. 9023-9032 (attached at Tab B), on February 27, 2003. The amendments

requested by Nevada were necessary to be made in order for 10 C.F.R. Part 63 to be in conformity with, and not in violation of, the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. § 10101, *et seq.* (the Act).

This Court has jurisdiction over this Petition for Review pursuant to Section 119 of the Act, 42 U.S.C. § 10139. Alternatively, this Court has jurisdiction over this Petition for Review pursuant to 28 U.S.C. §§ 2342(4) and 2344.

Venue is proper in the United States Court of Appeals for the District of Columbia Circuit pursuant to Section 119 of the Act, 42 U.S.C. § 10139.

Alternatively, venue is proper under 28 U.S.C. § 2343.

WHEREFORE, the State of Nevada respectfully requests that the Court, *inter alia*:

- (1) Grant this Petition for Review;
- (2) Declare that Part 63 is inconsistent with applicable law;
- (3) Direct the NRC to reissue Part 63 incorporating the amendments requested by Nevada in Petition for Rulemaking PRM-63-1 to make it consistent with the Act, other applicable laws, and this Court's findings; and
- (4) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Joseph R. Egan*
Counsel of Record

Attorneys for Petitioner the State of Nevada

DATED: March 4, 2003

* Member, D.C. Circuit Bar

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR REVIEW was served this 4th day of March, 2003, by certified mail on:

Ms. Annette Vietti-Cook, Secretary
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General Counsel
Office of the General Counsel
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The Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Roscoe C. Howard, Jr.
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District of Columbia
Judiciary Center
555 Fourth Street, N.W.
Washington, D.C. 20530

Vincent J. Colatiano

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NORTHERN CALIFORNIA POWER AGENCY,
Petitioner

Petition for Review

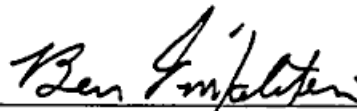
v.

NUCLEAR REGULATORY COMMISSION and
UNITED STATES OF AMERICA,
Respondents

No. No. 03-1038

The Northern California Power Agency hereby petitions this Court, pursuant to 28 U.S.C. § 2344 and to Fed. R. App. P. 15(a), for review of Memorandum and Order CLI-03-02, issued by the Nuclear Regulatory Commission on February 14, 2003 in the matter of Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LT, 50-323-LT.

Respectfully submitted,



Robert C. McDiarmid
Ben Finkelstein

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ATTORNEYS FOR NORTHERN CALIFORNIA
POWER AGENCY

February 25, 2003

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NORTHERN CALIFORNIA POWER AGENCY,
Petitioner

Petition for Review

v.

NUCLEAR REGULATORY COMMISSION and
UNITED STATES OF AMERICA,
Respondents

No. _____

**NORTHERN CALIFORNIA POWER AGENCY CORPORATE
DISCLOSURE STATEMENT**

The Northern California Power Agency, as a governmental body, is not
subject to the disclosure requirements of Fed. R. App. P. 26.1.

Respectfully submitted,



Robert C. McDiarmid
Ben Finkelstein
Attorneys for the Northern California
Power Agency

Law Offices of:

Spiegel & McDiarmid
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(202) 879-4000

February 25, 2003