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# ADJUDICATORY ISSUE

January 5, 2000

(Information)

SECY-00-0005

For: The Commissioners

From: John F. Cordes, Director  
 Office of Commission Appellate Adjudication

Subject: ANNUAL REPORT ON COMMISSION ADJUDICATION

Purpose: To provide the Commission a perspective on the adjudicatory caseload and the Commission's role in adjudication during calendar year 1999.

## INTRODUCTION

At the NRC, the Commission alone is authorized to review the decisions of presiding officers and Atomic Safety and Licensing Boards in agency adjudications. The Office of Commission Appellate Adjudication (OCAA) assists the Commission in this role. The Commission may exercise its appellate authority to review these trial-level decisions either when a dissatisfied party to an NRC adjudicatory proceeding seeks review, or when the Commission, on its own initiative, determines that review is warranted. The Commission also has original jurisdiction to offer the Licensing Board guidance on significant novel questions raised in a proceeding and to resolve those occasional legal matters that appropriately should be resolved in the first instance directly by the Commission. Moreover, for the last year, the Commission has had original jurisdiction over all reactor license transfer proceedings -- another matter on which OCAA assists the Commission.

As part of OCAA's monitoring role over adjudicatory matters, I am providing the Commission this annual report on agency adjudications for calendar year 1999. This report updates information contained in the last report (SECY-99-018, Jan. 14, 1998), and is based upon the information in the attached charts. Chart 1 presents information regarding the **thirty** substantive decisions (CLIs) issued by the Commission in 1999, Chart 2 identifies the **twenty-one** final decisions issued by presiding officers or Licensing Boards in 1999, and Chart 3 lists and describes the **twelve** new proceedings that the Commission referred to the Atomic Safety and Licensing Board Panel (ASLBP) in 1999. Chart 4 provides a numerical breakdown of the proceedings referred to the ASLBP since OCAA's inception in July 1991 -- divided into substantive and procedural categories. Finally, Chart 5 provides a breakdown of Commission decisions issued during that same period, divided into substantive and jurisdictional categories.

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## GENERAL OBSERVATIONS AND TRENDS

The year 1999 saw a continuation of 1998's dramatic increase in the adjudicatory workload of both the Commission and the ASLBP, extending a trend that started in 1997. The number of CLIs issued by the Commission (30) continued its dramatic recent rise (up from 25 in 1998 and 15 in 1997) and reached the highest level since 1983. The ASLBP's 46 LBPs (including non-final orders) were the most since 1990, topping last year's total of 33. The number of final Board (or presiding officer) decisions in 1999 (21) was also impressive -- it was the second-highest since OCAA began keeping these records in 1991. The only significant arena in which the numbers did not increase was the number of new proceedings referred to the ASLBP (12), which dropped back to its usual level of around a dozen from last year's aberrational high of 24. However, this number of referrals is deceptive because it does not include 7 reactor license transfer applications -- a category of proceeding over which the Commission has accorded itself direct jurisdiction. In all, then, 19 new adjudications began in 1999.

### 1. The ASLBP's Caseload

The number of new enforcement cases decreased from 5 to 1. The new reactor-related cases (license amendment, license renewal and operator license proceedings) returned to their more typical level of 2, after an aberrational jump to 12 in 1998. By contrast, the number of new materials cases continued their climb to 9, from 7 in 1998 and 6 in 1997. For the first time since the inception of the informal Subpart L rules, the Board in 1999 processed the bulk of its new caseload using those procedures (9 cases) rather than the formal Subpart G procedural rules (3 cases).

### 2. The Commission's Caseload

The increase in the number of CLIs the Commission issued in 1999 is largely attributable to one proceeding (the Hydro Resources materials licensing case which generated 6 CLIs in 1999) and to the reactor transfer proceedings (11 CLIs in 1999). Due in large part to the decisions in Hydro Resources, the number of materials license CLIs remained static at 10 -- compared with 10 in 1998 and 9 in 1997. Similarly, the number of reactor license amendment decisions remained at its average level of 3 since 1995. Likewise, the enforcement CLIs remained at 1 -- the same as in 1998 and tied for the lowest figure since OCAA began keeping records in 1991. The number of reactor relicensing orders dropped from 5 CLIs in '98 down to 1 in 1999. The Commission also issued 3 CLIs addressing import or export license applications and 1 CLI involving an ISFSI application.

Looking at the Commission's 1999 orders from a procedural perspective, the rise in CLIs is principally attributable to the 17 CLIs issued under the Commission's original jurisdiction (up from 10, 2, 2, and 5 in '98, '97, '96, and '95, respectively). The Commission issued 11 of these 17 CLIs in the new Subpart M license transfer proceedings -- an area that promises continued activity for years to come. (The 17 CLI's also included an unusually high 3 orders involving applications to import or export nuclear material under Part 110.)

Appeals as of right under section 2.714a backed off a bit to 5 from its post-1990 record level of 7 in 1998; still, this is considerably above the levels of the three prior years -- 2, 1 and 1 during '97, '96 and '95, respectively. The Commission considered roughly the same number of

discretionary appeals in 1999 (3) as in previous recent years (4, 0, 0 and 5 in '98, '97, '96 and '95, respectively). The same was true for sua sponte matters 1 in 1999, compared with 2, 0, 1 and 1 in '98, '97, '96 and '95, respectively. For the second straight year, the Commission issued markedly fewer final "merits" decisions than in prior years: 4 (along with 2 in 1998), compared with 11, 9 and 5 in '97, '96 and '95, respectively.

### 3. Speed in Resolving Cases

Another caseload-related matter is the speed with which the agency as a whole is resolving adjudicatory proceedings. Of the 12 cases referred to the Board prior to Labor Day in 1999, the Board and Commission had closed 3 by year's end -- 2 by settlement or withdrawal and 1 by denial of intervention. (These numbers compare unfavorably with those from the preceding three years: 12 of 15 such cases closed in 1998, 5 of 9 such cases in 1997, and 6 of 7 such cases in 1996.) However, the Commission should not read too much into these raw numbers. Neither the Commission nor the Boards can control many of the factors that govern the speed with which these cases are resolved (e.g., the number and complexity of the issues, the willingness of parties to settle, the pace with which the Department of Justice pursues parallel criminal actions). Nevertheless, the speed with which the agency decides cases will be viewed by some outside the Commission as a reflection of its level of emphasis on both the importance of adjudications and the need for their expeditious resolution. The Commission's continued willingness to become involved in cases earlier, to set proposed schedules for adjudications, to monitor Board action (or inaction) more closely, and generally to take a more active supervisory role should assist in moving proceedings forward at the Board level. OCAA will continue to monitor the Board's adjudicatory caseload and be on the lookout for opportunities where the Commission may appropriately exercise its supervisory role.

The ASLBP has committed itself to issuing decisions within sixty days after the parties file their closing pleading. Similarly, OCAA has undertaken to complete its drafts of Commission decisions within 60 days of receipt of the final appellate document whenever possible, and more quickly than that whenever OCAA's resources and the nature of the issues permit. OCAA has been quite successful in this regard, getting its draft CLIs to the Commission an average of only 20 calendar days after receipt of the last salient document, with more than half submitted in less than a week. Only three draft orders (in Hydro Resources, IUSA and Zion -- all highly complex cases) took longer than 60 days to produce.

With the recent arrival of a much-needed third attorney, OCAA should be in an even better position than before to promptly provide the Commission with draft orders. Moreover, the streamlined procedural rules for hearings on license transfer applications under Subpart M promises rapid resolution of those cases as well. However, Subpart M applications could strain the recently-enhanced resources of OCAA if any of these proceedings actually go to hearing. (So far, none has.) This is because Subpart M contemplates that the Commission itself (rather than the Board) will in the first instance resolve contested applications on the merits, after a hearing, with OCAA ordinarily providing drafting assistance to the Commission.

#### 4. Future Agency Caseload

As OCAA noted in its 1998 Annual Report, we anticipate an increase in the number of adjudications involving reactor relicensing, reactor decommissioning,<sup>1</sup> and reactor license transfers. The age of many currently-operating reactors makes an upswing in the first two categories quite likely, and the restructuring of the electric industry makes a significant number of the third category highly probable.<sup>2</sup> With Phase I of the Hydro Resources proceeding winding down, the Commission will probably review fewer materials licensing LBPs and issue fewer such CLIs than in the recent past. Likewise, the Commission can expect a continued lower-than-average enforcement caseload.

Another factor that could affect the Commission's future caseload is the anticipated reform of the NRC's hearing process. The potential impact here is unpredictable. A reformed system may succeed in reducing threshold procedural disputes and winnowing out insubstantial claims -- thus saving adjudicatory time by the Commission and its staff. On the other hand, the Commission's current interest in moving toward more informal proceedings could generate additional proceedings and an increased workload, as members of the public become aware that participation in the NRC process need not be overly costly or complex.

#### **SIGNIFICANT DECISIONS IN 1999**

In 1999, the Commission issued the following CLIs addressing significant issues:

North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201 (3/5/99), where the Commission for the first time set a Subpart M case for hearing and addressed numerous procedural issues of first impression.

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<sup>1</sup> Although the Commission by rulemaking has removed decommissioning itself from the adjudicatory process, the process of decommissioning nonetheless will likely "spin off" occasional adjudications. E.g., Yankee Atomic Elec. Co., LBP-98-12, 47 NRC 343, aff'd in part and rev'd in part, CLI-98-21, 48 NRC 85 (1998).

<sup>2</sup> For example, AmerGen Energy Company shows every indication of continuing its nuclear power plant buying spree -- it has already acquired TMI Unit 1 and Clinton in 1999 and is currently attempting three other acquisitions (Nine Mile Point, Vermont Yankee and Oyster Creek). Entergy Corporation (AmerGen's principal competitor in the nuclear reactor market) has announced that it expects to buy five more nuclear plants. And Constellation Energy Group (parent of Baltimore Gas & Electric Company) has indicated its intention to buy nuclear plants. These three (and other) potential buyers will have no shortage of plants on which to bid. Consolidated Edison Inc. announced in December that it is considering the sale of Indian Point Unit 2, and the New York State Power Authority announced in November that it is negotiating to sell both Indian Point 3 and FitzPatrick. Meanwhile, reactor licensees continue to merge or fragment at a rapid rate, with both actions requiring NRC approval. For instance, Carolina Power & Light Company plans to split itself into subsidiaries under a new holding company; PECO Energy Company has proposed to merge with Unicom Corp.; and Consolidated Edison is acquiring Northeast Utilities.

Kansas Gas & Electric Co. (Wolf Creek Generating Station , Unit 1), CLI-99-19, 49 NRC 441 (6/18/99), in which the Commission concluded that the Atomic Energy Act does not require or even authorize antitrust reviews of post-operating-license transfer applications and further that such reviews are inadvisable from a policy perspective.

Hydro Resources, Inc., CLI-99-22, 50 NRC 3 (7/23/99), where the Commission upheld the Presiding Officer's rulings on waste disposal issues, historic preservation and performance-based licensing, and a portion of his rulings on financial assurance.

Duke Energy Corp., CLI-99-11, 49 NRC 328 (4/15/99), in which the Commission emphasized that contentions must rest on more than references to Requests for Additional Information issued by the NRC staff to the licensee.

### **SIGNIFICANT ISSUES CURRENTLY PENDING BEFORE THE COMMISSION**

The Commission currently has before it two draft orders addressing significant issues. First, the Commission is considering a petition for review of a Partial Initial Decision in Hydro Resources Inc., LBP-99-13, 49 NRC 233 (3/9/99), raising issues of first impression regarding "financial assurance." Second, International Uranium (USA) Corp., LBP-99-5, 49 NRC 107 (2/9/99), addressing the definition of § 11e.(2) byproduct material under the Atomic Energy Act. OCAA also is reviewing a number of other pending appeals and petitions for review, including potentially significant ones in Hydro Resources (regarding LBP-99-18, -19 and -30), Private Fuel Storage and Sequoyah Fuels Corp.

### **SUMMARY OF ACTIVITIES OF THE ATOMIC SAFETY AND LICENSING BOARD PANEL**

- The Board Panel issued 21 final decisions.
- The Board Panel established 12 new proceedings, 3 of which have been terminated.
- 16 cases were pending before the Board Panel as of 12/31/99:

- Atlas Corp. (MLA-3)
- Atlas Corp. (MLA-4)
- Cabot Performance Materials (MLA)
- Cabot Performance materials (MLA-2)
- Carolina Power & Light Co. (Shearon Harris)
- Fansteel, Inc. (MLA)
- General Electric Co. (Vallecitos Nuclear Center)
- Hydro Resources Inc. (in abeyance)
- International Uranium (USA) Corp. (MLA-4)
- International Uranium (USA) Corp. (MLA-5)
- International Uranium (USA) Corp. (MLA-6)
- Molycorp.
- Northeast Nuclear Energy Corp. (Millstone, Unit 3) (LA-3)
- Private Fuel Storage
- Sequoyah Fuels Corp. (MLA-4)
- U.S. Department of the Army

If the Commissioners would like any additional information on this memorandum or on any adjudicatory proceeding, I would be happy to provide it.

Enclosures: Charts 1-5 (G:\ADMINIS\1999 ANN RPT CHARTS.WPD)

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**CHART 1**

COMMISSION ADJUDICATORY DECISIONS, JANUARY - DECEMBER 1999					
Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
1) CLI-99-1 49 NRC 1 (1/29/99)	Hydro Resources Inc. (Albuquerque, NM)	Materials License -- Part 40 (adjudicated under Subpart L)	None. The Commission takes <u>sua sponte</u> review of an unpublished scheduling order (1/21/99), which the Presiding Officer had reaffirmed (1/25/99).	Responding to a motion for extension of time, the Presiding Officer extended a filing deadline for intervenors beyond the date intervenors had requested.	The Commission vacates the scheduling order and requires intervenors to file briefs by 2/15/99.
2) CLI-99-2 49 NRC 23 (2/11/99)	General Public Utilities Nuclear Corp. (TMI, Unit 1)	Reactor License Transfer Application -- Part 50. (adjudicated under Subpart M).	None.	GPU Nuclear seeks authorization to transfer Unit 1 of TMI to AmerGen. Petitioner seeks intervention.	The Commission denies intervention on grounds that petitioner has failed to satisfy the intervention requirements set forth in Subpart M.
3) CLI-99-3 49 NRC 25 (2/11/99)	Hydro Resources, Inc. (Albuquerque, NM)	Materials License -- Part 40 (adjudicated under Subpart L)	Unpublished order on procedural issues (2/4/99), denying both a request to adjust schedule and a request to extend the 2/16/99 deadline established in CLI-99-1.	Intervenors challenges both denials.	The Commission extends until 2/19/99 the deadline established in CLI-99-1, but does not alter the remainder of the Presiding Officer's procedural order.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
4) CLI-99-4 49 NRC 185 (3/2/99)	Commonwealth Edison Co. (Zion, Units 1 and 2)	Reactor License Amendment -- Part 50 (adjudicated under Subpart G)	LBP-98-27 48 NRC 271 (11/5/98).	Petitioner challenges the Licensing Board's denial of its requests for intervenor status and a hearing.	The Commission affirms LBP-98-27.
5) CLI-99-5 49 NRC 199 (3/2/99)	Kansas Gas and Electric Co. (Wolf Creek, Unit 1)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	Petitioners seek intervenor status and a hearing, raising antitrust issues.	The Commission requests comments on its proposal to direct its staff no longer to conduct "significant changes" antitrust reviews in license transfer cases, including the current proceeding.
6) CLI-99-6 49 NRC 201 (3/5/99)	North Atlantic Energy Service Corp. (Seabrook Station, Unit 1)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	Petitioners seek intervenor status and a hearing.	The Commission denies one petitioner's untimely intervention petition, grants in part a second petitioner's timely intervention petition and hearing request, limits the scope of the proceeding, establishes a filing schedule, and imposes other procedural requirements.
7) CLI-99-7 49 NRC 230 (3/23/99)	Hydro Resources, Inc. (Albuquerque, NM)	Materials License -- Part 40 (adjudicated under Subpart L)	Unpublished Memorandum and Order on procedural issues (3/3/99), reconsideration denied, Unpublished Memorandum and Order (3/9/99).	Applicants, in a petition for interlocutory review, seek reversal of the Presiding Officer's two orders on the ground that they inappropriately provided Hydro Resources and the NRC staff with a second opportunity to address issues that they had earlier failed to address.	The Commission denies the petition on the ground that it failed to meet the standards for interlocutory review.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
8) CLI-99-8 49 NRC 311 (4/6/99)	Hydro Resources, Inc. (Albuquerque, NM)	Materials License -- Part 40 (adjudicated under Subpart L)	LBP-99-15 49 NRC 261 (3/18/99).	Intervenors, in a petition for interlocutory review, again on the ground that they inappropriately provided Hydro Resources and the NRC staff with a second opportunity to address issues that they had earlier failed to address.	The Commission denies the petition on the ground that it failed to meet the standards for interlocutory review.
9) CLI-99-9 49 NRC 314 (4/8/99) [OGC, not OCAA]	Transnuclear, Inc. (Export of 93.3% Enriched Uranium)	Export License -- Part 110	None.	Petitioner seeks intervention and a hearing on an application for a license to export highly enriched uranium.	The Commission requests participants to provide further information.
10) CLI-99-10 49 NRC 318 (4/15/99)	Private Fuel Storage, L.L.C. (ISFSI)	ISFSI License -- Part 72 (adjudicated under Subpart G)	LBP-99-3 49 NRC 40 (2/3/99).	Applicant challenges the Licensing Board's decision to grant a late-filed intervention petition.	The Commission affirms the Licensing Board's decision.
11) CLI-99-11 49 NRC 328 (4/15/99)	Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3)	Reactor License Renewal -- Part 50 (adjudicated under Subpart G)	LBP-98-33 48 NRC 381 (12/29/98).	Petitioner challenges the Licensing Board's denial of its petition to intervene and request for hearing.	The Commission reviews and affirms LBP-98-33.
12) CLI-99-12 49 NRC 347 (4/26/99)	Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility)	Materials License -- Part 40 (adjudicated under Subpart L)	LBP-99-12 49 NRC 155 (2/23/99).	Petitioners challenge the Presiding Officer's denial of their petition to intervene and request for hearing.	The Commission denies the appeal and affirms LBP-99-12.
13) CLI-99-13 49 NRC 359 (4/26/99)	International Uranium (USA) Corp. (MLA-4)	Materials License Amendment -- Part 40 (adjudicated under Subpart L)	LBP-99-5 49 NRC 107 (2/9/99).	Intervenor seeks Commission review of the Presiding Officer's decision upholding a license amendment.	The Commission grants the petition for review and sets a briefing schedule.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
14) CLI-99-14 49 NRC 361 (4/26/99)	Aharon Ben Haim	Enforcement Action (regarding Part 30 license) -- (adjudicated under Subpart G)	LBP-99-4 49 NRC 55 (2/8/99).	<p>In a petition for review, the staff challenges the Board's ruling reducing (from five to three years) the period within which Dr. Ben Haim was prohibited from participating in NRC-licensed activities.</p> <p>In his petition for review, Dr. Ben Haim challenges the Board's finding that he "deliberately" caused a company for which he was consulting to violate several Commission regulations.</p>	The Commission denied both petitions for review.
15) CLI-99-15 49 NRC (4/26/99) [OGC, not OCAA]	Transnuclear, Inc. (Export of 93.3% Enriched Uranium)	Export License -- Part 110	None.	Petitioner seeks intervenor status and a hearing.	The Commission concludes that petitioner lacks standing to intervene as of right, declines to order a discretionary hearing under Part 110, but permits all participants to inform the Commission of their positions at a public meeting.
16) CLI-99-16 49 NRC 370 (4/26/99)	North Atlantic Energy Service Corp. (Seabrook, Unit 1)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	N/A	The Commission terminates the proceeding.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
17) CLI-99-17 49 NRC 372 (4/26/99)	Boston Edison Co. and Entergy Nuclear Generation Co. (Pilgrim)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	N/A	The Commission terminates the proceeding.
18) CLI-99-18 49 NRC411 (5/27/99)	Hydro Resources, Inc. (Albuquerque, NM)	Materials License -- Part 40 (adjudicated under Subpart L)	Unpublished Board Memorandum and Order (4/21/99), reconsid'n denied, unpublished Board Memorandum and Order (5/3/99). Unpublished Commission Order (SECY, 5/3/99).	Intervenors seek reconsideration of a 5/3/99 Commission order, issued by the Secretary, setting page limits for their petition for review. Intervenors also seek interlocutory review of two Board orders posing a series of questions to the parties, on the ground that they inappropriately provided Hydro Resources and the NRC staff with a second opportunity to address issues that they had earlier failed to address.	The Commission grants reconsideration of SECY's order and changes the page limit for the petition for review and any responses thereto. The Commission denies the petition for interlocutory review.
19) CLI-99-19 49 NRC 441 (6/18/99) [Joint product of OCAA & OGC]	Kansas Gas and Electric Co. (Wolf Creek)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	Petitioners seek intervenor status and a hearing, raising antitrust issues.	The Commission concludes that the AEA does not require or even authorize antitrust reviews of post-operating license transfer applications, and that such reviews are inadvisable from a policy perspective. The Commission therefore dismisses the petition to intervene.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
20) CLI-99-20 49 NRC 469 (6/29/99) [OGC, not OCAA]	Transnuclear, Inc. (Export of 93.3% Enriched Uranium)	Export License -- Part 110	None.	Applicant seeks license authorizing it to export highly enriched uranium to Canada.	The Commission grants the application
21) CLI-99-21 50 NRC 1 (7/7/99)	International Uranium (USA) Corp. (MLA-5, -6)	Materials License Amendment -- Part 40 (adjudicated under Subpart L)	LBP-99-11, 49 NRC 153 (2/19/99); LBP- 99-20, 49 NRC 429 (5/21/99).	Petitioner appeals its dismissal from two proceedings or lack of standing.	The Commission holds the two appeals in abeyance pending resolution of the federal court litigation on the same issue of standing.
22) CLI-99-22 50 NRC 3 (7/23/99)	Hydro Resources, Inc. (Albuquerque, NM)	Materials License -- Part 40 (adjudicated under Subpart L)	LBP-99-1, 49 NRC 29 (2/3/99); LBP-99- 9, 49 NRC 136 (2/19/99); LBP-99- 10, 49 NRC 145 (2/19/99); LBP-99- 13, 49 NRC 233 (3/9/99).	In a petition for review, intervenor challenge Board's partial initial decisions in favor of Hydro regarding waste disposal issues, historic preservation, performance- based licensing, and financial assurance.	The Commission partially affirms LBP-99-1, -9 and -10, and requests further briefs regarding LBP-99-13.
23) CLI-99-23 50 NRC 21 (7/23/99)	Duquesne Light Co. (Beaver Valley)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	Petitioner seeks intervention status, but declined to seek a hearing.	The Commission denies the petition.
24) CLI-99-24 50 NRC 219 (9/10/99)	Yankee Atomic Electric Co. (Yankee Rowe)	Reactor License Amendment -- Part 50 (adjudicated under Subpart G)	LBP-99-14, 49 NRC 238 (3/17/99), <u>reconsid'n denied</u> , LBP-99-17, 49 NRC 375 (4/22/99).	Licensee requests permission to terminate without prejudice its appeal of LBP-99-14 and -17, in which the Board admitted four contentions.	The Commission grants applicant's motion to terminate without prejudice its pending appeal, and also vacates both Board orders.

<b>Decision Number/Cite/ Date</b>	<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Decision Being Challenged</b>	<b>Relief Sought</b>	<b>Commission Action</b>
25) CLI-99-25 50 NRC 224 (9/24/99)	Duquesne Light Co. (Beaver Valley)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	Petitioners seek to supplement their earlier comments.	The Commission waives the time limits for comments and refers the petitioners' supplemental comments to the staff.
26) CLI-99-26 50 NRC 255 (10/20/99)	Advanced Medical Systems, Inc. (Cleveland, Ohio)	Materials License Renewal -- Part 30 (adjudicated under Subpart L)	LBP-99-28, 50 NRC 67 (8/4/99).	In a petition for review, the City of Cleveland seeks to have the NRC retain jurisdiction over two related proceedings involving AMS's license renewal application.	The Commission denies the petition for review as an inappropriate attempt to challenge the scope of a recent agreement between the NRC and the State of Ohio.
27) CLI-99-27 50 NRC 257 (10/21/99)	North Atlantic Energy Service Corp. (Seabrook, Unit 1); Northeast Nuclear Energy Co. (Millstone Unit 3)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	Three co-owners of the two facilities seek intervenor status and a hearing.	The Commission grants petitions to intervene, sets a procedural schedule and makes other procedural rulings.
28) CLI-99-28 50 NRC 291 (11/19/99)	North Atlantic Energy Service Corp. (Seabrook, Unit 1) (LT-2); Northeast Nuclear Energy Co. (Millstone Unit 3) (LT)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	All parties seek to terminate the proceeding.	The Commission grants the joint motion to terminate.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
29) CLI-99-29 50 NRC ____ (12/22/99)	GPU Nuclear Corp. (Oyster Creek)	Reactor License Amendment -- Part 50 (adjudicated under Subpart G)	LBP-99-45, 50 NRC ____ (12/15/99).	Licensee seeks to withdraw without prejudice its license amendment request.	The Commission vacates the Board's order on the ground that it lacked authority to grant the motion; the Commission grants the requested relief on the same grounds as those offered by the Board.
30) CLI-99-30 50 NRC ____ (12/22/99)	Niagara Mohawk Power Corp. (Nine Mile Point)	Reactor License Transfer -- Part 50 (adjudicated under Subpart M)	None.	Co-owners seek intervenor status and a hearing. The New York Attorney General seeks the same.	The Commission grants co- owners standing but defers ruling on the admissibility of their issues; denies the Attorney General intervenor status but permits him participation rights analogous to those of 10 C.F.R. § 2.715(c); declines to apply Subpart G procedures; and suspends the proceeding.

**CHART 2**

<b>FINAL LICENSING BOARD DECISIONS,<sup>1</sup> JANUARY - DECEMBER 1999</b>						
<b>Decision Number/Cite/ Date</b>	<b>Case</b>	<b>Referred to Board</b>	<b>Type of Proceeding</b>	<b>Nature of Decision</b>	<b>Appeal Taken</b>	<b>Commission Action</b>
1) LBP-99-1 49 NRC 29 (2/3/99)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Rejected intervenors' challenges regarding liquid waste disposal.	Yes	The Commission affirmed LBP-99-1. CLI-99-22, 50 NRC 3 (7/23/98).
2) LBP-99-2, 49 NRC 38 (2/3/99)	Special Testing Laboratories	12/29/98	Enforcement Action (suspension order)	Granted joint motion to terminate.	No	No review (3/5/99)
3) LBP-99-4 49 NRC 55 (2/8/99)	Aharon Ben- Haim, Ph.D.	8/22/97	Enforcement Action (suspension order)	Found Dr. Ben-Haim deliberately cause the company for which he was consulting to violate the Commission's regulations; also reduced the prohibition period from five to three years.	Yes (both licensee and the staff)	The Commission affirmed LBP-99-4. CLI-99-14, 49 NRC 361 (4/26/99).

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<sup>1</sup> Includes all decisions or orders which are designated as either an "Initial Decision" or "Partial Initial Decision" on the merits of part or all of a case and are therefore subject to a petition for review; which terminate a proceeding and are therefore subject to a petition for review; or which deny party status to a person and are therefore subject to an appeal as of right.

Decision Number/Cite/ Date	Case	Referred to Board	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
4) LBP-99-5 49 NRC 107 (2/9/99)	International Uranium (USA) Corp. (MLA-4)	7/29/98	Materials License Amendment -- Part 40	Rejected State of Utah's challenges to IUSA's license and affirmed the grant of the license to IUSA.	Yes	The Commission granted review of LBP-99-5 and set a briefing schedule. CLI-99-13, 49 NRC 359 (4/26/99).
5) LBP-99-8 49 NRC 131 (2/19/99)	International Uranium (USA) Corp. (MLA-5)	12/10/98	Materials License -- Part 40	Denied certain intervention petitions.	No	No review (3/31/99)
6) LBP-99-9 49 NRC 136 (2/19/99)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Rejected challenges regarding National Historic Preservation Act, Native American Graves Protection and Repatriation Act, and cultural resources.	Yes	The Commission affirmed LBP-99-9. CLI-99-22, 50 NRC 3 (7/23/99).
7) LBP-99-10 49 NRC 145 (2/19/99)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Rejected challenges regarding performance- based licensing.	Yes	The Commission affirmed LBP-99-10. CLI-99-22, 50 NRC 3, (7/23/99).
8) LBP-99-11 49 NRC 153 (2/19/99)	International Uranium (USA) Corp. (MLA-5)	12/20/98	Materials License -- Part 40	Denied "economic competitor" standing to petitioner.	Yes	The Commission held the appeal in abeyance pending resolution of the federal court litigation on the same issue of standing. CLI- 99-21, 50 NRC 1 (7/7/99).

Decision Number/Cite/ Date	Case	Referred to Board	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
9) LBP-99-12 49 NRC 155 (2/23/99)	Shieldalloy Metallurgical Corp.	12/29/98	Materials License Amendment -- Part 40	Denied petition to intervene, finding no standing as of right.	Yes	The Commission affirmed LBP-99-12. CLI-99-12, 49 NRC 347 (4/26/99).
10) LBP-99-13 49 NRC 233 (3/9/99)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Rejected challenges regarding financial assurance.	Yes	The Commission requested further briefs. CLI-99-22, 50 NRC 3 (7/23/99). Petitions for Review are pending.
11) LBP-99-16 49 NRC 270 (3/26/99)	Shaun P. O'Hern (Denial of Operator's License)	10/5/98	Reactor Operator License -- Part 55	Grants Mr. O'Hern's appeal and awards him a passing grade on the operator's examination.	No	No review (5/5/99)
12) LBP-99-18 49 NRC 415 (5/11/99)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Rejected challenges regarding technical qualifications.	Yes	Commission review is pending.
13) LBP-99-19 49 NRC 421 (5/13/99)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Rejected challenges regarding radioactive air emissions.	Yes	Commission review is pending.
14) LBP-99-20 49 NRC 429 (5/21/99)	International Uranium (USA) Corp. (MLA-6)	5/17/99	Materials License Amendment -- Part 40	Denied "economic competitor" standing to petitioner.	Yes	The Commission held the appeal in abeyance pending resolution of the federal court litigation on the same issue of standing. CLI- 99-21, 50 NRC 1 (7/7/99).

Decision Number/Cite/ Date	Case	Referred to Board	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
15) LBP-99-24 49 NRC 495 (6/25/99)	International Uranium (USA) Corp. (MLA-7)	6/8/99	Materials License Amendment -- Part 40	Petition for hearing dismissed because of failure to particularize injuries that would be caused by grant of amendment.	No	No review (8/4/99)
16) LBP-99-27 50 NRC 45 (7/28/99)	Yankee Atomic Electric Co. (Yankee Rowe)	3/6/98	Reactor License Amendment -- Part 50	Granted motion to withdraw license termination plan.	No	No review CLI-99-24, 50 NRC 219 n.1 (9/10/99)
17) LBP-99-28 50 NRC 67 (8/4/99)	Advanced Medical Systems, Inc.	10/26/98	Materials License Renewal -- Part 30	Suspended proceeding pending transfer of jurisdiction to State of Ohio and prospectively terminating the proceeding as of the effective date of the transfer.	Yes	The Commission denied the petition for review and upheld LBP-99-28. CLI-99-26, 50 NRC 255 (10/20/99).
18) LBP-99-29 50 NRC 73 (8/11/99)	Gary Isakoff	3/24/99	Enforcement Action (suspension order)	Approved settlement and dismissed proceeding.	No	No review (9/20/99)
19) LBP-99-30 50 NRC 77 (8/20/99)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Rejected challenges regarding groundwater, NEPA, cumulative impacts, and environmental justice.	Yes	Petition for Review is pending.

Decision Number/Cite/ Date	Case	Referred to Board	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
20) LBP-99-44 50 NRC ____ (12/9/99)	Michel A. Phillipon (Denial of Senior Operator License Application)	10/26/98	Reactor Operator License -- Part 55	Granted applicant's appeal and awarded him a passing grade on the senior operator licensing examination.	Yes	Petition for Review is pending.
21) LBP-99-45 50 NRC ____ (12/15/99)	GPU Nuclear Corp. (Oyster Creek)	11/22/99	Reactor License Amendment -- Part 50	Granted request to withdraw application and terminated proceeding.	No	The Commission <u>sua</u> <u>sponte</u> vacated LBP-99- 45 for lack of Board authority, but also terminated the proceeding on the same grounds as had the Board. CLI-99-29, 50 NRC ____ (12/22/99).

**CHART 3**

<b>NEW PROCEEDINGS REFERRED TO THE LICENSING BOARD PANEL, JANUARY - DECEMBER 1999</b>				
<b>Date of Referral</b>	<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Status</b>	<b>Commission Action</b>
1) 2/8/99	Atlas Corp. (Moab, Utah) (MLA-3)	Materials License Amendment -- Subpart L.	Hearing pending.	--
2) 2/25/99	Atlas Corp. (Moab, Utah) (MLA-4)	Materials License Amendment -- Subpart L.	Hearing pending.	--
3) 3/24/99	Gary Isakoff	Enforcement Action (prohibiting involvement in NRC-licensed activities) -- Subpart G.	Case closed.  LBP-99-29, 50 NRC 73 (8/4/99) approved settlement and terminated proceeding. No appeal.	No <u>sua sponte</u> review (9/20/99).
4) 5/17/99	International Uranium (USA) Corp. (MLA-6)	Materials License Amendment -- Subpart L.	Appeal as of right pending before the Commission.  LBP-99-20, 49 NRC 429 (5/21/99) denied "competitor standing to petitioner.	The Commission held the appeal in abeyance pending resolution of the federal court litigation on the same issue of standing. CLI-99-21, 50 NRC 1 (7/7/99).
5) 6/8/99	International Uranium (USA) Corp. (MLA-7)	Materials License Amendment -- Subpart L.	Case closed.  LBP-99-24, 50 NRC 495 (6/25/99) dismissed sole petition to intervene. No appeal.	No <u>sua sponte</u> review (8/4/99).
6) 6/17/99	U.S. Department of the Army	Materials License ____ Subpart L.	Case pending before the Presiding Officer, but held in abeyance.	--

Date of Referral	Case Name	Type of Proceeding	Status	Commission Action
7) 7/9/99	Molycorp., Inc.	Materials License Amendment -- Subpart L.	Case pending.	--
8) 7/21/99	Sequoyah Fuels Corp. (MLA-4)	Materials License Amendment -- Subpart L.	Case pending.	--
9) 10/14/99	Northeast Nuclear Energy Co. (LA-2)	Reactor License Amendment -- Subpart G.	Case pending.	--
10) 10/21/99	Fansteel, Inc.	Materials License Amendment -- Subpart L.	Case pending.	--
11) 11/22/99	GPU Nuclear Corp. (Oyster Creek) (OLA-2)	Reactor License Amendment -- Subpart G.	Case closed.  In LBP-99-45, the Licensing Board granted licensee's motion to withdraw its license amendment application. 50 NRC ____ (12/15/99).	The Commission <u>sua sponte</u> vacated LBP-99-45 on the ground that the Board lacked authority to grant the request; however, the Commission adopted the Board's rulings. 50 NRC ____ (12/22/99).
12) 12/2/99	General Electric Vallecitos Nuclear Center	Materials License Amendment -- Subpart L.	Case pending.	--

**PROCEEDINGS DECIDED AND REFERRED TO THE ATOMIC SAFETY & LICENSING BOARD -- CY-1999 CHART 4**

PERIOD	FINAL ASLBP DECISIONS	NEW PROCEEDINGS REFERRED TO THE ASLBP	SUBSTANTIVE TYPES OF NEW PROCEEDINGS							PROCEDURAL RULES GOVERNING NEW PROCEEDINGS		
			ENFORCEMENT	REACTOR LICENSE AMENDM'T	REACTOR LICENSE RENEWAL	REACTOR OPERATOR	MATERIALS LICENSING MATTERS	DECOMMISSIONING	OTHER	SUBPART G	SUBPART L	PART 13
JULY - DEC. 1991	6	6	4	2	0	0	0	0	0	6	0	0
JAN. - JUNE 1992	11	11	4	2	0	0	1	4	0	11	0	0
JULY - DEC. 1992	6	7	2	3	0	0	1	1	0	5	2	0
JAN. - JUNE 1993	2	5	2	2	0	0	0	0	1	4	0	1
JULY - DEC. 1993	6	6	4	1	0	0	0	1	0	6	0	0
JAN. - JUNE 1994	5	12	7	0	0	0	3	1	1	7	4	1
JULY - DEC. 1994	9	8	4	1	0	0	3	0	0	5	3	0
JAN. - JUNE 1995	5	3	2	0	0	0	1	0	0	2	1	0
JULY - DEC. 1995	8	1	0	1	0	0	0	0	0	1	0	0
JAN. - JUNE 1996	10	6	3	1	0	1	0	1	0	5	1	0
JULY - JUNE 1996	9	3	1	0	0	1	1	0	0	2	1	0
JAN. - JUNE 1997	11	7	1	1	0	1	4	0	0	2	5	0
JULY-DEC 1997	12	6	4	0	0	0	2	0	0	5	1	0
1998	20	24	5	7	2	3	7	0	0	14	10	0
1999	21	12	1	2	0	0	9	0	0	3	9	0

- KEY:**
- **Enforcement** proceedings include those initiated by orders imposing a civil penalty, orders to modify, suspend, or revoke a license, or orders to individuals.
  - **Reactor licensing** proceedings concern applications for a construction permit or operating license, amendments to permits or operating licenses, or applications to transfer a license.
  - **Reactor renewal** proceedings involve applications for 20-year renewals of power reactor operating licenses.
  - **Reactor operator** proceedings involve challenges to the staff's rejection of either reactor operator or senior reactor operator license applications.
  - **Materials licensing** proceedings involve applications to grant an initial license, or to amend or renew a license for the possession and use of radioactive material in various applications regulated by the NRC.
  - **Decommissioning** proceedings involve review and approval of decommissioning plans or related amendments for reactor or materials facilities.
  - **Other** proceedings involve NRC claims made under the Program Fraud Civil Remedies Act.
  - Proceedings under **Subpart G** and **Part 13** are conducted according to formal, trial-type procedures. **Subpart L** proceedings are conducted under informal procedures and involve either materials licenses or reactor operator licenses.

COMMISSION DECISIONS ON ADJUDICATORY MATTERS -- CY-1999

CHART 5

PERIOD	REQUESTS FOR RELIEF or SUA SPONTE MATTERS DECIDED	BASIS FOR COMMISSION JURISDICTION					SUBSTANTIVE TYPES OF CASES							
		APPEAL/PETITION FOR REVIEW ON THE MERITS	INTERLOCUTORY APPEAL, AS OF RIGHT (§ 2.714a)	INTERLOCUTORY APPEAL, DISCRETIONARY	ORIGINAL JURISDICTION	SUA SPONTE ACTION	Enforcem't Actions (Subpart G)	Reactor Licence Amendm'ts (Subpart G)	Reactor License Renewal (Subpart G)	Reactor Operator License (Subpart L)	Materials License (Subpart L)	Decommissioning (Subp'ts L or G)	Reactor License Transfer (Subpart M)	Other
JULY - DEC. '91	6	0	2	0	2	2	0	5	0	0	0	1		0
JAN. - JUNE '92	15	2	5	1	5	2	2	5	0	0	1	7		0
JULY - DEC. '92	7	1	1	1	3	1	1	2	0	0	3	1		0
JAN. - JUNE '93	14	1	3	1	8	1	2	6	0	0	2	4		0
JULY - DEC. '93	12	2	2	2	3	3	4	7	0	0	0	0		1
JAN. - JUNE '94	9	2	0	2	5	0	2	2	0	0	1	2		2
JULY - DEC. '94	7	0	4	1	1	1	4	2	0	0	0	1		0
JAN. - JUNE '95	9	3	0	3	3	0	2	2	0	0	3	1		1
JULY - DEC. '95	8	2	1	2	2	1	1	5	0	0	2	0		0
JAN. - JUNE '96	7	3	1	0	2	1	1	1	0	0	1	4		0
JULY - DEC. '96	6	6	0	0	0	0	0	1	0	1	1	1		2
JAN - JUNE '97	8	6	1	0	1	0	1	0	0	1	5	0		1
JULY - DEC. '97	7	5	1	0	1	0	2	0	0	1	4	0		0
1998	25	2	7	4	10	2	1	4	5	0	10	0		5
1999	30	4	5	3	17	1	1	3	1	0	10	0	11	4

- KEY:**
- **Original jurisdiction** is exercised by the Commission over, e.g., reactor license transfer applications, export licensing applications, motions to quash investigatory subpoenas, reconsideration and some stay motions, requests for hearing in some circumstances, and motions to reopen closed adjudicatory proceedings.
  - Commission **sua sponte action** is taken to provide additional guidance to the staff or the ASLBP on matters of policy or procedure in the exercise of the Commission's inherent supervisory authority over adjudications and other agency business.
  - **Enforcement** proceedings include those initiated by orders imposing a civil penalty, orders to modify, suspend, or revoke a license, or orders to individuals. Decisions on motions to quash investigatory subpoenas are also included.
  - **Reactor licensing** proceedings concern applications for a construction permit or operating license, amendments to permits or operating licenses, or applications to transfer a license.
  - **Reactor renewal** proceedings involve applications for 20-year renewals of power reactor operating licenses.
  - **Reactor operator** proceedings involve challenges to the staff's rejection of either reactor operator or senior reactor operator license applications.
  - **Materials licensing** proceedings involve applications to grant an initial license or to amend or renew a license for the possession and use of radioactive material in various applications regulated by the NRC.
  - **Decommissioning** proceedings involve review and approval of decommissioning plans or related amendments for reactor or materials facilities.
  - **Reactor license transfer** proceedings involve requests by owners of interests in commercial nuclear reactors for authorization to sell their financial interests.
  - **Other matters** include requests for hearing or other relief in matters involving export licensing (Part 110) or the U.S. Enrichment Corp. They also include the Commission's 1998 Policy Statement on Adjudicatory Proceedings.