

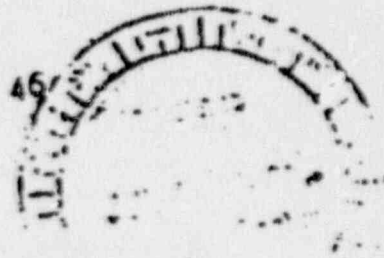
UNITED STATES OF AMERICA <sup>RECEIVED</sup>  
 NUCLEAR REGULATORY COMMISSION

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## COMMISSIONERS:

Nunzio J. Palladino, Chairman  
 Victor Gilinsky  
 Peter A. Bradford  
 John F. Ahearne

USNRC-DELD



In the Matter of

PENNSYLVANIA POWER & LIGHT CO. and  
 ALLEGHENY ELECTRIC COOPERATIVE,  
 INC.

(Susquehanna Steam Electric  
 Station, Unit 1)

Docket No. 70-2937

ORDER

On December 23, 1980 the applicants in this proceeding filed with the Director, Nuclear Materials Safety and Safeguards, an application for authority pursuant to 10 CFR Part 70 "to receive, possess, store, inspect and package for transport nuclear fuel bundles/assemblies" for use at Unit 1 of the Susquehanna Steam Electric Station. The authority requested would permit the applicants to store unirradiated fuel in the reactor building at Susquehanna while the operating license proceeding continues.

Requests for a hearing on the Part 70 application have been submitted by Susquehanna Environmental Advocates ("SEA") and Citizens Against Nuclear Dangers ("CAND"), both intervenors in the operating license proceeding. The Commission hereby directs the Chairman of the Atomic Safety and Licensing Board Panel (ASLBP) to designate an atomic safety and licensing board to review these hearing requests to determine

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whether the hearing requirements of Section 189a. of the Atomic Energy Act and the Commission's regulation in 10 CFR 2.714 have been met and, if so, to conduct an appropriate licensing proceeding under Subpart G of Part 2 and Part 70.<sup>2/</sup>

The Commission delegates to the Atomic Safety and Licensing Appeal Board authority to exercise the review functions in this Part 70 proceeding which otherwise would have been exercised and performed by the Commission. 10 CFR 2.785.

It is so ORDERED.

For the Commission

  
SAMUEL J. CHALK  
Secretary of the Commission



Dated at Washington, DC,  
this 22 day of July, 1981.

<sup>2/</sup> This Commission order is made necessary by the Licensing Board's order in the operating license proceeding dated May 21, 1981 declining to assume jurisdiction over the Part 70 licensing proceeding.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1 and 2

Jurisdiction of Adjudicatory Boards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its Statement of Organization and Rules of Practice to make explicit the jurisdiction of its adjudicatory boards in certain ancillary licensing matters which may arise in the course of an operating license proceeding for a nuclear power reactor. The amendments clarify the boards' authority to decide issues related to a license application for the receipt of cold fuel at a reactor site prior to issuance of an operating license.

EFFECTIVE DATE: (Date of publication in the FEDERAL REGISTER.)

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: 301-492-8693.

SUPPLEMENTARY INFORMATION: The Commission has delegated to its adjudicatory boards jurisdiction to preside over reactor operating license proceedings under 10 CFR Part 50. The Atomic Safety and Licensing Boards are broadly empowered to preside "in such proceedings...as the Commission may

designate" and to "perform such other adjudicatory functions as the Commission deems appropriate." See 10 CFR 2.721(a). The Atomic Safety and Licensing Appeal Boards are authorized to perform the Commission's review functions "in (1) proceedings on applications for licenses under Part 50 of this chapter and (2) such other licensing proceedings...as the Commission may specify." See 10 CFR 2.785(a). These delegations are also described in the Commission's Statement of Organization. See 10 CFR 1.11, 1.12.

Occasionally, during the course of an operating license proceeding, the applicant may file a separate license application under 10 CFR Part 70 for permission to receive and store cold reactor fuel at the reactor site. This license application may become the subject of a hearing upon the request of a person whose interest may be affected. Such requests have been made in several operating license proceedings over the past several years. See In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 3 NRC 73 (1976); In the Matter of Cincinnati Gas and Electric Company et al. (William H. Zimmer Nuclear Station), 10 NRC 226 (1979); In the Matter of Pennsylvania Power and Light Company et al. (Susquehanna Steam Electric Station, Unit 1), Docket No. 70-2937, Commission Order of July 22, 1981.

The amendments set out below make explicit the jurisdiction of the Commission's adjudicatory boards to hear and decide Part 70 matters arising during the course of an operating license proceeding. The first amendment simply deletes the limiting reference to 10 CFR Part 50 contained in 10 CFR

1.12. This section is intended only to describe the Appeal Board's functions in a general way, and becomes needlessly complex if specific grants or limitations of authority are also included. The second and third amendments expressly confer Part 70 jurisdiction upon the Licensing and Appeal Boards by revising the relevant sections of the Commission's Rules of Practice, 10 CFR 2.721(a) and 2.785(a). The revised text of 2.785(a) will also authorize Appeal Board review of other types of cases, for example, appeals from board or administrative law judge decisions in enforcement cases, without the need for case-by-case delegation of jurisdiction. The fourth amendment simply conforms a parallel section in Appendix A of Part 2 providing a narrative description of the Appeal Board's jurisdiction.

The fifth amendment adds a new subsection to 10 CFR 2.717. This subsection provides that when a request for hearing has been received in connection with a Part 70 cold fuel application, the existing operating license board will decide whether a hearing is warranted, and, if necessary, conduct a Part 70 hearing and decide the issues presented.

Because the amendments relate solely to matters of internal agency procedure and do not change any substantive practice, notice of proposed rulemaking and public procedure thereon are not required by 5 U.S.C. 553, and, for the same reason, the Commission has found that good cause exists for making the amendments effective upon publication in the FEDERAL REGISTER.

A Regulatory Flexibility Act statement is not necessary because that Act



does not apply to final rules where notice of proposed rulemaking is not required. The rule contains no recordkeeping or reporting requirements subject to the Paperwork Reduction Act.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of the United States Code, the Commission hereby amends Parts 1 and 2 of Chapter 1, Title 10 of the Code of Federal Regulations as follows:

1. Section 1.12 of Part 1 is amended to read as follows:

The Atomic Safety and Licensing Appeal Panel is the organizational group from which Atomic Safety and Licensing Appeal Boards are selected. Under powers delegated by the Commission, these three-member Boards exercise the authority and perform the regulatory review functions which would otherwise be exercised and performed by the Commission. They perform these functions in ~~proceedings on licenses under 10 CFR Part 50, and~~ such other licensing proceedings as the Commission may specify, reviewing initial decisions and other issuances of Atomic Safety and Licensing Boards and other presiding officers. The Panel shall be comprised of a Chief Administrative Judge who shall be Chairman and such other Administrative Judges as may be appointed members of the Panel.

2. Section 2.721(a) of Part 2 is amended to read as follows:

(a) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may from time to time establish one or more atomic safety and licensing boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission or the Chairman of the Atomic Safety and Licensing Board Panel deems appropriate to the issues to be decided, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, including proceedings on applications for licenses under Parts 50 and 70 of this chapter, and to perform such other adjudicatory functions as the Commission deems appropriate. The members of an atomic safety and licensing board shall be designated from the Atomic Safety and Licensing Board Panel established by the Commission.

3. Section 2.785(a) of Part 2 is amended to read as follows:

(a) The Commission has authorized the Atomic Safety and Licensing Appeal Boards to exercise the authority and perform the review functions which would otherwise have been exercised and performed by the Commission, including, but not limited to, those

under § 2.760, 2.771, 2.912, and 2.913. The Appeal Boards are authorized to exercise this authority with respect to all decisions rendered by Atomic Safety and Licensing Boards or by administrative law judges, unless the Commission directs otherwise in a specific case or class of cases.

4. Section IX(a) of Appendix A to 10 CFR Part 2 is amended to read as follows:

(a) An Atomic Safety and Licensing Appeal Board, composed of three members assigned from the Atomic Safety and Licensing Appeal Panel, designated by the Commission, reviews all initial decisions rendered by Licensing Boards or by administrative law judges, unless the Commission directs otherwise in a specific case or class of cases.

In such proceedings, an Atomic Safety and Licensing Appeal Board performs the functions and exercises the authority of the Commission described in sections 1(e), V(f)(4), and VI(f), except as their context may require otherwise. The Atomic Safety and Licensing Appeal Board is required to decide each matter before it in accordance with the rules and regulations, case precedent, and established policies of the Commission.

In a proceeding on an application for an operating license, if the Atomic Safety and Licensing Appeal Board determines that a serious safety, environmental, or common defense and security



matter has not been raised by the parties, it has the authority to give appropriate consideration to that matter.

It has no responsibility or authority for issuing rules or regulations. The Appeal Board for a particular proceeding is composed of three members assigned from the Atomic Safety and Licensing Appeal Panel and possessing qualifications deemed appropriate to the issues to be decided. The Chairman of the Appeal Board for a particular proceeding shall be qualified in the conduct of administrative proceedings.

5. A new subsection (c) is added to Section 2.717 of Part 2, to read as follows:

(c) When a request for hearing has been filed with respect to a Part 70 application for the receipt of cold fuel at a facility for which

an operating license proceeding is pending, the presiding officer for that proceeding will rule on the request, and, if a hearing is determined to be necessary, will conduct the hearing and decide the issues presented.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948, etc.)

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Chilk  
Secretary of the Commission

Dated this \_\_\_\_\_ day of

September, 1981, at Washington, D.C.