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Vol. 38  
Index 1

# INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

July - September 1993



U.S. NUCLEAR REGULATORY COMMISSION

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# INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

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**U.S. NUCLEAR REGULATORY COMMISSION**

Prepared by the  
Division of Freedom of Information and Publications Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(301/492-8925)

## Foreword

Digests and indexes for issuances of the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Denials of Petitions for Rulemaking (DPRM) are presented in this document. These digests and indexes are intended to serve as a guide to the issuances.

Information elements common to the cases heard and ruled upon are:

- Case name (owner(s) of facility)
- Full text reference (volume and pagination)
- Issuance number
- Issues raised by appellants
- Legal citations (cases, regulations, and statutes)
- Name of facility, Docket number
- Subject matter of issues and/or rulings
- Type of hearing (for construction permit, operating license, etc.)
- Type of issuance (memorandum, order, decision, etc.).

These information elements are displayed in one or more of five separate formats arranged as follows:

### 1. Case Name Index

The case name index is an alphabetical arrangement of the case names of the issuances. Each case name is followed by the type of hearing, the type of issuance, docket number, issuance number, and full text reference.

### 2. Digests and Headers

The headers and digests are presented in issuance number order as follows: the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judge (ALJ), the Directors' Decisions (DD), and the Denials of Petitions for Rulemaking (DPRM).

The header identifies the issuance by issuance number, case name, facility name, docket number, type of hearing, date of issuance, and type of issuance.

The digest is a brief narrative of an issue followed by the resolution of the issue and any legal references used in resolving the issue. If a given issuance covers more than one issue, then separate digests are used for each issue and are designated alphabetically.

### **3. Legal Citations Index**

This index is divided into four parts and consists of alphabetical or alpha-numerical arrangements of Cases, Regulations, Statutes, and Others. These citations are listed as given in the issuances. Changes in regulations and statutes may have occurred to cause changes in the number or name and/or applicability of the citation. It is therefore important to consider the date of the issuance.

The references to cases, regulations, statutes, and others are generally followed by phrases that show the application of the citation in the particular issuance. These phrases are followed by the issuance number and the full text reference.

### **4. Subject Index**

Subject words and/or phrases, arranged alphabetically, indicate the issues and subjects covered in the issuances. The subject headings are followed by phrases that give specific information about the subject, as discussed in the issuances being indexed. These phrases are followed by the issuance number and the full text reference.

### **5. Facility Index**

The index consists of an alphabetical arrangement of facility names from the issuance. The name is followed by docket number, type of hearing, date, type of issuance, issuance number, and full text reference.

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CLL-93-15 GEORGIA POWER COMPANY, et al. (Hatch Nuclear Plant, Units 1 and 2; Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-321, 50-366, 50-424, 50-425, REQUEST FOR ACTION, July 14, 1993; MEMORANDUM AND ORDER

A The Commission sua sponte vacates and remands to the NRC Staff for further consideration the Staff's partial decision under 10 C.F.R. § 2.206, DD-93-8, 37 NRC 314 (1993). The Commission takes such action in view of the commonality of some of the issues decided in the petition both with matters in a pending license transfer proceeding and with other matters remaining for decision in the section 2.206 petition.

B The Commission generally discourages use of section 2.206 procedures as an avenue for deciding matters that are under consideration in a pending adjudication; however, this general rule is not intended to bar petitioners from seeking immediate enforcement action from the NRC Staff in circumstances in which the presiding officer in a proceeding is not empowered to grant such relief.

CLL-93-16 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3; OPERATING LICENSE AMENDMENT; August 19, 1993; MEMORANDUM AND ORDER

A The Commission considers the appeal of a licensing board decision, LBP-93-5, 37 NRC 96 (1993), which granted a Petitioner's request for intervention and for hearing on a proposal by the Georgia Power Company to transfer its operating authority over the Vogtle nuclear power plant to a new licensee; the Board's decision also admitted one consolidated contention. The Commission denies the appeal and affirms the Licensing Board's order, finding that the Petitioner has standing to intervene and has submitted admissible contention.

B The integrity or character of a licensee's management personnel bears on the Commission's ability to find reasonable assurance that a facility can be safely operated.

C Lack of either technical competence or character qualifications on the part of licensee or applicant is sufficient grounds for the revocation of a license or the denial of a license application.

D In making determinations about character, the Commission may consider evidence bearing upon the licensee's candor, truthfulness, willingness to abide by regulatory requirements, and acceptance of responsibility to protect public health and safety. However, not every licensing action throws open an opportunity to engage in an inquiry into the "character" of the licensee. There must be some direct and obvious relationship between the character issues and the licensing action in dispute.

E The past performance of management or high-ranking officers, as reflected in deliberate violations of regulations or untruthful reports to the Commission, may indicate whether a licensee will comply with agency standards, and will candidly respond to NRC inquiries.

F To determine whether a petitioner has established sufficient interest to intervene in a proceeding the Commission has long applied judicial concepts of standing.

G For standing, a petitioner must allege an "injury in fact" from the licensing action being challenged, and this injury must be to an interest arguably within the zone of interests protected by the governing statute. The alleged injury must be concrete and particularized, fairly traceable to the challenged action, and likely to be redressed by a favorable decision.

H For proceedings involving the issuance of a construction permit or operating license, the Commission generally has recognized a presumption in favor of standing for those petitioners who have sufficient contacts within the geographic area that could be affected by a release of fission products. However, for



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this presumption to apply to license amendment proceedings, the proposed action must involve "clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences." Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). Otherwise the petitioner must allege a specific "injury in fact" that will result from the proposed action.

I A request to transfer operating authority under a full-power license for a power reactor may be deemed an action involving "clear implications for the offsite environment," for purposes of determining threshold injury.

J Under 10 C.F.R. § 2.714(b)(2)(iii), if an application contains disputed information or omits required information, the petitioner normally must specify the portions of the application that are in dispute or are incomplete. However, a petitioner need not refer to a particular portion of the licensee's application when the licensee neither identified, nor was obligated to identify, the disputed issue in its application.

CLI-93-17 ONCOLOGY SERVICES CORPORATION, Docket No. 30-31765-EA (Suspension Order) (Byproduct Material License No. 37-28540-01); ENFORCEMENT ACTION, August 19, 1993; MEMORANDUM AND ORDER

A The Commission denies Oncology Services Corporation's request to reverse LBP-93-10, 37 NRC 455 (1993), which granted in part the Nuclear Regulatory Commission Staff's motion for an additional delay of this enforcement proceeding, and vacates as moot portions of LBP-93-6, 37 NRC 207 (1993), an order that had granted the NRC Staff's original motion for a stay.

B The presiding officer may delay an enforcement proceeding for good cause. 10 C.F.R. § 2.202(e)(2)(ii). In determining whether good cause exists, the presiding officer must consider both the public interest as well as the interests of the person subject to the immediately effective order.

C In determining whether to delay the conduct of an enforcement hearing pursuant to 10 C.F.R. § 2.202(e)(2)(ii), the Commission need not choose between the test applied by the Supreme Court in United States v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850) in United States Currency, 461 U.S. 555 (1983), and the test applied by the Supreme Court in FDIC v. Mallen, 486 U.S. 230, 242 (1988), but may weigh the factors considered by the Court in both cases.

D In determining whether good cause exists for delay of an enforcement proceeding, the factors to be considered in balancing the competing interests include (1) length of delay, (2) reason for delay, (3) risk of erroneous deprivation, (4) assertion of one's right to prompt resolution of the controversy, (5) prejudice to the licensee, including harm to the licensee's interests and harm to the licensee's ability to mount an adequate defense.

E The determination of whether the length of delay is excessive depends on the facts of the particular case and the nature of the proceeding.

F The risk of erroneous deprivation is reduced if the licensee is given an opportunity to request that the presiding officer set aside the immediate effectiveness of the suspension order by challenging whether the suspension order, including the need for immediate effectiveness, is based on adequate evidence.

G Staff's showing of possible interference with an investigation being conducted by the NRC Office of Investigations and a strong interest in protecting the integrity of the investigation in conjunction with a demonstration that the risk of erroneous deprivation has been reduced weighs heavily in the Staff's favor.

H Irrespective of whether the licensee failed to challenge the basis for the immediate effectiveness of the Staff's suspension order, a licensee's vigorous opposition to a stay and its insistence on a prompt adjudicatory hearing are entitled to strong weight.

I Without a particularized showing of harm to the licensee's interests, licensee's argument that the stay affects its interests and the licensee's vigorous opposition to a stay do not tip the scale in favor of the licensee when balancing the competing interests.

CLI-93-18 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OLA-2, 50-323-OLA-2 (Construction Period Recovery); OPERATING LICENSE AMENDMENT; August 19, 1993; MEMORANDUM AND ORDER

A The Commission declines to address the issue, referred by the Licensing Board, of whether an Applicant should be required to disclose to Intervenor a document prepared by the Institute for Nuclear Power Operations. The Commission noted that, after the Board had referred the issue to the Commission, the Applicant agreed to disclose the document and the Licensing Board issued a protective order addressing the

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conditions under which the document is to be released. The Commission found that these events rendered Commission interlocutory review of the matter unnecessary under 10 C.F.R. § 2.786(g).

B Where subsequent developments indicated the absence of any immediate controversy suggesting that interlocutory review was appropriate of a licensing board's order to disclose an assertedly privileged document, the Commission declines review of the licensing board's referred ruling.

CLI-93-19 SACRAMENTO MUNICIPAL UTILITY DISTRICT (Rancho Seco Nuclear Generating Station), Docket No. 50-312-DCOM; DECOMMISSIONING; September 10, 1993; MEMORANDUM AND ORDER

A The Commission provides guidance to the Atomic Safety and Licensing Board on one aspect of Environmental and Resources Conservation Organization's (ECO's) environmental contention which the Commission admitted in its decision, CLI-93-3, 37 NRC 135 (1993).

CLI-93-20 VERMONT YANKEE NUCLEAR POWER CORPORATION (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA-5; OPERATING LICENSE AMENDMENT; September 16, 1993; MEMORANDUM AND ORDER

A The Commission affirms the Licensing Board's ruling that the Board lacked authority under 10 C.F.R. § 2.107(a) to address a notice of withdrawal that the Licensee had filed after a hearing request had been referred to the Atomic Safety and Licensing Board Panel but before the Licensing Board had issued a Notice of Hearing. The Commission reverses the Licensing Board's related ruling that the NRC Staff's acceptance of the withdrawal had the effect of terminating the proceeding. In the interest of efficiency, the Commission dismisses the proceeding on its own authority, rather than remanding it to the Board.

B Under 10 C.F.R. § 2.107(a), the Licensing Board assumes jurisdiction to address the withdrawal of an application in a license amendment proceeding only after the issuance of a Notice of Hearing as provided in 10 C.F.R. § 2.105(e)(2). Prior to that issuance, the Commission (or NRC Staff, by delegation of authority) has exclusive jurisdiction to address such withdrawals.

C The Commission's regulations do not grant the NRC Staff the authority to terminate a license amendment proceeding after a hearing request has been referred to the Atomic Safety and Licensing Board Panel but before the presiding licensing board or officer has issued a Notice of Hearing. Nor has the Commission, through case law, accorded Staff such authority. Rather, it is the presiding board or officer that has jurisdiction to terminate proceedings under such circumstances.

CLI-93-21 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 1), Docket No. 50-440-OLA-3; OPERATING LICENSE AMENDMENT; September 30, 1993; MEMORANDUM AND ORDER

A The Commission considers the appeal of a Licensing Board decision, LBP-92-4, 35 NRC 114 (1992), which denied, on the basis of lack of standing, the appellants' petition for leave to intervene and for a hearing on a request by Cleveland Electric Illuminating Company to amend its operating license for the Perry facility, Unit 1. The license amendment transfers the reactor vessel material surveillance withdrawal schedule from the Perry plant's technical specifications and transfers the schedule to the facility's updated safety analysis report. On the ground that the appellants alleged sufficient injury for standing, the Commission grants the appeal, reverses the Licensing Board's order, and remands the Petitioners' contention to the Board for an evaluation of the contention's admissibility.

B To determine whether a petitioner has established the requisite interest to intervene in a proceeding, the Commission has long applied contemporaneous judicial concepts of standing.

C To demonstrate standing, the petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision. The injury also must be to an interest arguably within the zone of interests protected by the governing statute. Injury may be actual or threatened.

D The loss of the rights to notice, opportunity for a hearing, and opportunity for judicial review constitutes a discrete injury.

E Standing may be based upon the alleged loss of a procedural right, as long as the procedure at issue is designed to protect against a threatened concrete injury.

F For construction permit and operating license proceedings, the Commission generally has recognized a presumption in favor of standing for those persons who have frequent contacts with the area near a nuclear power plant. In license amendment proceedings, residence near a nuclear facility is sufficient to establish injury for standing if the proposed action involves an "obvious potential for offsite consequences."

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See Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

CLI-93-22 ADVANCED MEDICAL SYSTEMS, INC. (One Factory Row, Geneva, Ohio 44041). Docket No. 30-16055-CivP (Civil Penalty); ENFORCEMENT ACTION; September 30, 1993, MEMORANDUM AND ORDER AFFIRMING IN PART AND REVERSING IN PART ATOMIC SAFETY AND LICENSING BOARD'S ORDER, AND REMANDING ISSUES

- A The Commission affirms in part the Atomic Safety and Licensing Board's decision, LBP-91-9, 33 NRC 212 (1991), in which the Licensing Board granted the Nuclear Regulatory Commission Staff's motion for summary disposition in a proceeding to impose a \$6250 civil penalty on the Licensee, Advanced Medical Systems, Inc. The Commission reverses the Licensing Board's disposition of one violation and remands to the Board for further proceedings all issues related to that violation.
- B The party seeking summary judgment bears the burden of showing the absence of a genuine issue as to any material fact and the evidence must be viewed in the light most favorable to the party opposing summary disposition.
- C To preclude summary disposition, when the proponent has met its burden, the party opposing the motion may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue. Bare assertions or general denials are not sufficient.
- D The opposing party must controvert any material fact properly set out in the statement of material facts that accompanies a summary disposition motion or that fact will be deemed admitted.
- E When the movant has satisfied its initial burden and has supported its motion by affidavit, the opposing party must either proffer rebuttal evidence or submit an affidavit explaining why it is impractical to do so. If the presiding officer determines from affidavits filed by the opposing party that the opposing party cannot present by affidavit the facts essential to justify its opposition, the presiding officer may order a continuance to permit such affidavits to be obtained or may take other appropriate action.
- F A licensee is excused from complying with the maximum permissible dose standards set out in 10 C.F.R. § 20.101(a), only if the licensee can satisfy the conditions set forth in section 20.201(b).
- G Prior NRC inspection reports that conclude that at the time of an inspection there were no regulatory violations found do not in themselves raise a genuine issue of material fact. The failure by the NRC to detect a violation does not necessarily prove the negative that no violation existed. The NRC inspectors are not omniscient, and limited NRC resources preclude careful review of all but a fraction of the licensed activity.
- H When determining what constitutes a survey, 10 C.F.R. § 20.201 requires consideration of more than quantitative measurements of radiation levels used to determine exposure. It also requires, where appropriate, consideration of physical surveys of the location of materials and equipment.
- I An evidentiary hearing is necessary only if a genuine issue of material fact is in dispute.

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- LBP-93-12 NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 2), Docket Nos. 50-336-OLA (ASLBP No. 92-665-02-OLA) (FOL No. DPR-65) (Spent Fuel Pool Design); OPERATING LICENSE AMENDMENT; July 9, 1993; DECISION AND ORDER (Terminating Proceeding by Summary Disposition)
- LBP-93-13 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OLA-2, 50-323-OLA-2 (ASLBP No. 92-669-03-OLA-2) (Construction Period Recovery) (Facility Operating Licenses No. DPR-80, DPR-82); OPERATING LICENSE AMENDMENT; July 19, 1993; MEMORANDUM AND ORDER (Granting Discovery Request/Referring Ruling to Commission)
- A Ruling on an intervenor discovery request, the Licensing Board orders production of a report of the Institute for Nuclear Power Operations (INPO), subject to a protective order; refers its ruling to the Commission; and stays the effectiveness of its disclosure directive pending Commission action.
- B Under NRC rules, it is not clear when a balancing of interests is required before permitting disclosure of a report that is claimed to contain trade secrets or privileged or confidential commercial or financial information. The Federal Rules of Civil Procedure clearly permit a balancing. See Fed. R. Civ. P. 26(c)(7). NRC rules include a comparable balancing test, see 10 C.F.R. § 2.740(c)(6), but this test is subject to the provisions of 10 C.F.R. § 2.790. In particular, the balancing test appears to be overridden by section 2.790(b)(6). Cf. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775 (1980) (access by intervenors to security plan permitted subject to protective order).
- LBP-93-14 ST. JOSEPH RADIOLOGY ASSOCIATES, INC., and JOSEPH L. FISHER, M.D. (d.b.a. ST. JOSEPH RADIOLOGY ASSOCIATES, INC.), and FISHER RADIOLOGICAL CLINIC, Docket Nos. 030-00320-EA, 999-90003-EA (ASLBP No. 93-672-02-EA); ENFORCEMENT ACTION; July 20, 1993; ORDER
- LBP-93-15 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment, Transfer to Southern Nuclear); OPERATING LICENSE AMENDMENT; July 21, 1993; MEMORANDUM AND ORDER (Case Management)
- A The Board determined that when a contention is admitted into a proceeding, the contention determines the scope of discovery. However, as a matter of case management, the Board limited the first phase of discovery and hearing to the proffered bases. After the hearing on the first phase, the Board would determine whether it had a complete record for decision or whether further discovery and a further hearing are necessary.
- B An admitted contention determines the scope of the proceeding.
- C Discovery may be limited to admitted bases during the first phase of a proceeding. After the hearing on the first phase, the Board can determine whether it has a complete record for decision or whether further discovery is necessary.
- LBP-93-16 VERMONT YANKEE NUCLEAR POWER CORPORATION (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA-5 (ASLBP No. 92-665-02-OLA-5) (FOL No. DPR-28); OPERATING LICENSE AMENDMENT; July 28, 1993; MEMORANDUM (Termination of Proceeding)
- LBP-93-17 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OLA-2, 50-323-OLA-2 (ASLBP No. 92-669-03-OLA-2) (Construction Period Re-

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covery) (Facility Operating License Nos. DPR-80 and DPR-82); OPERATING LICENSE AMENDMENT; August 13, 1993; MEMORANDUM AND ORDER (Telephone Conference Call, 8/13/93)

- A In response to a request by Intervenor for further discovery concerning alleged attempts to alter fire logs (the subject of an admitted contention) as to which the NRC's Office of Investigation had made preliminary inquiries but found no further inquiry warranted, the Licensing Board defers action on the motion pending cross-examination at the hearing of the custodian of the records regarding any possible falsification. The Board also requires that a sanitized copy of the letter raising the question be made available to the Intervenor.

LBP-93-18 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment, Transfer to Southern Nuclear); OPERATING LICENSE AMENDMENT; September 8, 1993; MEMORANDUM AND ORDER (Discovery Motion)

- A The Board ruled that statements were privileged both as attorney work-product and attorney-client privilege when the statements were given to Applicant's attorneys at a time that they had reason to believe they were relevant to an OI investigation that could occur. An allegation that the interviewees were "hounded" to make them tell a common story is not enough to overcome the privilege. However, persuasive evidence, presented at a hearing, of "hounding" or other improper attorney conduct could overcome the privilege.

- B Proof at a hearing that clients had been "hounded" or otherwise improperly treated could overcome a claim of privilege, either under the work product privilege or the attorney-client privilege. Where a party is on notice that such proof may be presented, he may be ordered to have disputed documents available at the hearing for purposes of possible production.

- C Attorney-client and work-product privileges are not limited to a controlling group with a corporation. The privileges are broadly construed to encourage full information-gathering by attorneys. *Upjohn Co. v. United States*, 449 U.S. 383 (1981).

- D An evidentiary privilege held by a corporation may be waived only by an authorized employee.

LBP-93-19 BOSTON EDISON COMPANY (Pilgrim Nuclear Power Station), Docket No. 50-293-OLA (ASLBP No. 93-678-03-OLA) (Facility Operating License No. DPR-35); OPERATING LICENSE AMENDMENT; September 13, 1993; MEMORANDUM AND ORDER (Termination of Proceeding)

LBP-93-20 ONCOLOGY SERVICES CORPORATION, Docket No. 030-31765-EA (ASLBP No. 93-674-03-EA) (EA 93-006) (Order Suspending Byproduct Material License No. 37-28540-01); ENFORCEMENT ACTION; September 21, 1993; MEMORANDUM AND ORDER (Granting in Part NRC Staff Motion to Delay Proceeding; Requiring Submission of Staff Status Reports)

- A In response to a third NRC staff motion for an additional delay in conducting a license suspension proceeding, the Licensing Board orders discovery delayed for seventy-five days.

- B In determining whether to delay an enforcement proceeding pending the outcome of a Staff investigation, five factors must be weighed. They are: (1) length of the delay; (2) reasons for the delay; (3) risk of erroneous deprivation of the due process property or liberty interests of the licensee or any other party; (4) assertion of the right to a hearing by the party opposing the delay, and (5) prejudice to the party opposing the delay. See CLI-93-17, 38 NRC 44, 49-52 (1993).

- C In assessing the balancing factor of the reasons for the delay in the proceeding, the presiding officer is called upon to appraise two separate concerns. First, there is the question of what legitimate government interest is served by the delay. This involves an inquiry into the propriety of the Staff's demonstration that there will be a detrimental impact on the investigative process if the delay is not granted. Additionally, there is the question of whether the Staff has shown that there is a legitimate basis for the period of delay it seeks. This involves an inquiry into whether the Staff has made "a credible showing that it is attempting to complete its investigation expeditiously." LBP-93-10, 37 NRC 455, 462, aff'd, CLI-93-17, 38 NRC 44 (1993).

- D It is the rule in administrative hearings that hearsay evidence is generally admissible so long as it is reliable (as well as relevant and material) evidence. See *Duke Power Co. (Perkins Nuclear Power Station, Units 1, 2, and 3)*, ALAB-668, 15 NRC 450, 477 (1982).

**DIGESTS**  
**ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS**

- E Two components that make up the factor of prejudice to the party opposing delay in an enforcement proceeding are prejudice to the party's ability to conduct licensed activities and prejudice to its ability to defend against the charges in the enforcement order.
- F Regarding the ability of the party opposing any delay in an enforcement proceeding to defend itself against the charges leveled by the Staff, although the passage of time is likely to affect the memory of some witnesses, the prejudice arising from this phenomenon is extremely difficult to gauge in the abstract. See CLI-93-17, 38 NRC at 58-59.
- G In granting a Staff request to delay an enforcement proceeding, the presiding officer has the responsibility to minimize the effects of any delay and to monitor closely the status of the Staff's investigation to ensure that due diligence is being exercised to bring its inquiry to a conclusion. See *id.* at 60.
- LBP-93-21 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment, Transfer to Southern Nuclear); OPERATING LICENSE AMENDMENT, September 24, 1993; MEMORANDUM AND ORDER (Georgia Power Motion to Reconsider Scope of Proceeding)
- A The Board acknowledged error in an earlier opinion, resulting from accepting the unopposed arguments of Intervenor and therefore interpreting a portion of the Intervenor's Amended Petition out of context. This opinion narrows the issues.
- B Motions for reconsideration are for the purpose of pointing out errors in the existing record, not for stating new arguments. However, new arguments have been presented and there is no time pressure in the present status of this case. Consequently, the Board chose in its discretion to decide the motion on the merits by granting it.
- C Intervenor must carefully communicate the scope of their contentions so that neither the board nor the other parties need to guess their meaning. Unclear contentions may be construed narrowly rather than having the parties search for materials that might have been referenced by a vague, unspecific reference.
- D The Board refused to rule that contentions could not reference material not included in the petition. It considered it more important that the contentions be clearly worded, with or without references, and that the parties not be required by a nonspecific reference to hunt for a needle in a haystack.
- E The amended petition should be construed in light of all four corners of the document, and individual passages should not be interpreted out of context.

**DIGESTS**  
ISSUANCE OF ADMINISTRATIVE LAW JUDGE

ALJ-93-1 LLOYD P. ZERR, Docket No. 93-01-PF (ASLBP No. 93-673-01-PF); PROGRAM FRAUD;  
September 20, 1993, RULING ON DEFENDANT'S MOTION TO DISMISS

DIGESTS

ISSUANCE OF ADMINISTRATIVE LAW JUDGE

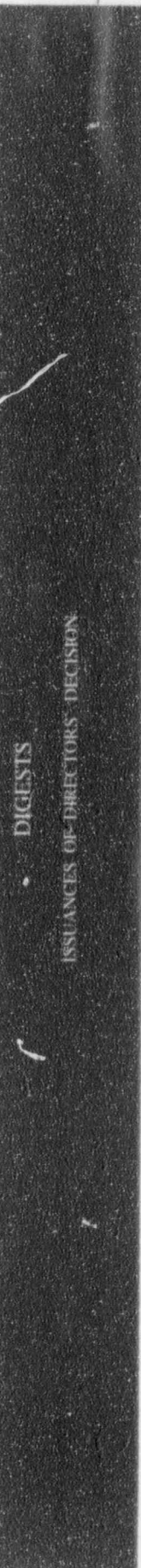
**DIGESTS**  
**ISSUANCES OF DIRECTORS' DECISION**

DD-93-14 BALTIMORE GAS AND ELECTRIC COMPANY (Calvert Cliffs Independent Spent Fuel Storage Installation), Docket Nos. 72-8, 50-317, 50-318; REQUEST FOR ACTION, August 16, 1993; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Material Safety and Safeguards denies a Petition filed by the Maryland Safe Energy Coalition regarding the licensed Independent Spent Fuel Storage Installation (ISFSI) at the Calvert Cliffs Nuclear Power Plant. Petitioner had requested that the NRC: (1) halt the transfer of nuclear waste from the spent fuel pool to the ISFSI until certain alleged safety problems had been fully solved; (2) conduct hearings for further rulemaking and regulation of nuclear waste at the plant; and (3) deny a Certificate of Compliance (COC) and suspend the license issued to the Licensee for dry cask storage of spent fuel until the concerns set forth in the Petition had been addressed by the NRC and the Licensee. Preliminarily, the Director noted that the licensing of this ISFSI did not fall under the Subpart of 10 C.F.R. Part 72 requiring rulemaking and issuance of a COC for approval of the cask design and, therefore, denied this part of the Petition. (Earlier, the Director had informed the Petitioner that its request for further rulemaking and regulation of dry cask storage was a request to modify the Commission's regulations and had advised the Petitioner to follow the provision of 10 C.F.R. § 2.802 if it sought rulemaking.) The Director then considered each of the safety problems alleged by the Petitioner and concluded that the Petitioner had not raised any substantial health and safety issues. The Director, therefore, denied the remaining actions requested in the Petition.

DD-93-15 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 1), Docket No. 50-440 (License No. NPF-58); REQUEST FOR ACTION, September 21, 1993; SUPPLEMENTAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director, Office of Nuclear Reactor Regulation, supplements his denial of this petition regarding the construction and operation of an interim onsite low-level radioactive waste processing and storage facility that was set forth in DD-93-5 (37 NRC 238 (1993)). In DD-93-5, the Director had concluded that the construction and operation of the proposed interim facility did not raise any substantial public health and safety issues and that the Licensee had complied with all applicable NRC regulations and guidance. This Supplemental Decision was prepared to respond to a letter from the Petitioner to the Commission asserting that DD-93-5 fell far short of demonstrating the safety of the interim low-level waste facility itself and only addressed the effect the facility could have on existing equipment at the plant. In this Supplemental Decision, the NRC Staff reviews the Licensee's safety evaluation and supporting documentation for the design, construction, and operation of the interim facility and concludes that those activities do not raise an "unreviewed safety question" under 10 C.F.R. § 50.59 and that the design and operation of the facility will conform to the Licensee's Final Safety Analysis Report (FSAR) prepared for operation of the Perry plant. In confirming his earlier decision, the Director clarified the following points: (1) with limited exceptions, the design and operation of the interim facility do not involve changes in the handling and storage of low-level radioactive waste as described in the FSAR; (2) those few changes to the FSAR description do not involve unreviewed safety questions; and (3) therefore, under section 50.59, NRC review and approval was not required for construction and operation of the facility, no federal action was required for the construction and operation of this facility, and the requirements of the National Environmental Policy Act (NEPA) and the Commission's NEPA implementing regulations do not apply.



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