

NUREG-0750
Vol. 14
Index 2

INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

July-December 1981



U. S. NUCLEAR REGULATORY COMMISSION

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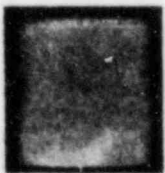
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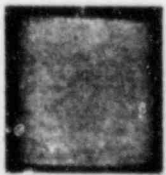
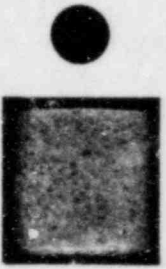
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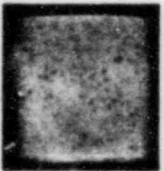
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**INDEXES TO
NUCLEAR REGULATORY
COMMISSION ISSUANCES**

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U. S. NUCLEAR REGULATORY COMMISSION





Foreword

Digests and indexes for issuances of the Commission (CLI), the Atomic Safety and Licensing Appeal Panel (ALAB), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judge (ALJ), the Directors' Decisions (DD), and the Denials of Petitions of Rulemaking 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 (owners 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

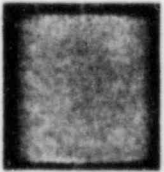
The case name index is an alphabetical arrangement of the case names of the issuances. Each case name is followed by the type of hearing, the type of issuance, docket number, issuance number, and full text reference.

2. Digests and Headers

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

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 alphanumerical 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

This 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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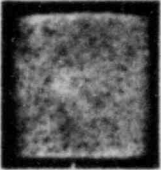

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DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- CLI-81-15 DUKE POWER COMPANY (WILLIAM B. MCGUIRE NUCLEAR STATION, UNITS 1 AND 2), Docket Nos. 50-369, 50-370; SPECIAL PROCEEDING; June 29, 1981; ORDER
- A Following the issuance of a Licensing Board's decision (LBP-81-13) authorizing the Director of Nuclear Reactor Regulation to issue a full-power, full-term license for the operation of Units 1 and 2 of the McGuire facility, and upon the completion of its "effectiveness review" of that decision as it relates to full power operation of Unit 1, the Commission authorizes the Director to issue the full-power, full-term license for the operation of Unit 1. The Commission takes this action without prejudice to its "effectiveness review" for Unit 2, the normal appellate review of the Licensing Board's decision (as it pertains to both Units 1 and 2) by the Appeal Board and by the Commission, and the motion to stay the effectiveness of the Licensing Board's decision now before the Appeal Board.
- CLI-81-16 STATEMENT OF POLICY: FURTHER COMMISSION GUIDANCE FOR POWER REACTOR OPERATING LICENSES; SPECIAL PROCEEDING; November 3, 1980; ORDER
- A The Commission (by equally divided vote) denies a requested stay of the Commission's "Statement of Policy: Further Commission Guidance for Power Operating Licenses," published in 45 Fed. Reg. 41738 (June 20, 1980).
- CLI-81-17 METROPOLITAN EDISON COMPANY, et al. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), Docket No. 50-289 (Restart); OPERATING LICENSE; August 13, 1981; ORDER
- A The Commission revised its July 2, 1979 order by extending its provision that Metropolitan Edison Company keep Unit 1 in cold shutdown condition until further Commission order to GPU Nuclear Corporation. The Commission also revises its August 19, 1979 (CLI-79-8) and March 6, 1980 (CLI-80-5) orders to provide that the Licensing Board consider GPU Nuclear's management competence, rather than Metropolitan Edison's, during the restart proceedings for Unit 1. The Commission further authorizes the NRC staff to issue an amendment to the operating license for Unit 1 which will transfer operating authority for the unit to GPU Nuclear.
- CLI-81-18 WESTINGHOUSE ELECTRIC CORP. (EXPORT OF LEU TO THE PHILIPPINES), Docket No. 11000495, Application No. XSNM-1471; SPECIAL PROCEEDING; August 20, 1981; ORDER
- A The Commission denies petitioners' request for leave to intervene and for a hearing on applicant's request for authorization to export special nuclear material to the Philippines, finding that petitioners failed to assert the requisite "affected interest" or "injury-in-fact" to entitle them to a hearing as a matter of right and that since the Commission has decided in earlier proceedings (CLI-80-15, 11 NRC 672, and CLI-76-6, 3 NRC 563) not to consider health, safety and environmental impacts in evaluating fuel export applications, there is no basis for holding further public proceedings on the request.
- CLI-81-19 METROPOLITAN EDISON COMPANY (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), Docket No. 50-289; RESTART PROCEEDING; August 20, 1981; ORDER
- A The Commission issues an order in this Restart proceeding stating its intention to begin its immediate effectiveness review of the Licensing Board's first partial initial decision (on management competence) soon after its expected issuance later in the month, if the Board resolves the management competence issues in a manner favorable to the eventual operation of Unit 1. The Commission requests the views of the parties on the immediate effectiveness of the Board's decision. The Commission also modifies its Order of August 9, 1979, CLI-79-8, 10 NRC 141 (which provided that the record in the proceeding be certified by the Licensing Board directly to the Commission for final decision), to provide that an Atomic Safety and Licensing Appeal Board be established to hear initial appeals in this proceeding, subject to possible Commission review in response to petitions for review filed pursuant to 10 CFR 2.786 or on the Commission's own motion.

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

CLI-81-20 METROPOLITAN EDISON COMPANY, et al. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), Docket No. 50-289 (Restart); SPECIAL PROCEEDING; September 17, 1981; ORDER

A On reconsideration of a question on which a four-member Commission had divided equally before, the result of which was to exclude consideration of psychological stress contentions from this restart proceeding, a full Commission, by majority vote, decides to adhere to the previous result.

CLI-81-21 PACIFIC GAS AND ELECTRIC COMPANY (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), Docket Nos. 50-275 OL, 50-323 OL (Security); OPERATING LICENSE; September 17, 1981; ORDER

A In response to an intervenor's request for clarification on the procedure for seeking review of the Appeal Board's September 9, 1981 physical security decision (ALAB-653 and ALAB-653 RESTRICTED), the Commission: (1) directs that review of the decision be sought by the filing of a petition for review pursuant to 10 CFR 2.786; (2) extends the time for filing such petitions; and (3) instructs the parties to follow the filing and service procedures used in the Appeal Board security proceeding.

B The Commission's normal practice for review of Atomic Safety and Licensing Appeal Board decisions applies even when an Appeal Board has conducted evidentiary hearings. Pacific Gas and Electric Power Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903 (June 16, 1981); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-578, 11 NRC 189 (1980); Northern States Power Co. (Prairie Island Nuclear Generating Station, Units 1 and 2), ALAB-343, 4 NRC 169 (1976).

CLI-81-22 PACIFIC GAS AND ELECTRIC COMPANY (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), Docket Nos. 50-275 OL, 50-323 OL; OPERATING LICENSE; September 21, 1981; MEMORANDUM AND ORDER

A Pursuant to its Immediate Effectiveness review under 10 CFR 2.764(f), the Commission, inter alia, (1) decides that the Licensing Board's July 17, 1981 Partial Initial Decision, LBP-81-21, 14 NRC 107, authorizing issuance of a fuel-loading and low-power testing license should become effective with respect to Unit 1, subject to documentation by the Director of Nuclear Reactor Regulation on the basis of findings to be made by him regarding certain matters specified by the Appeal Board in ALAB-653, 14 NRC 629; (2) directs that two contentions excluded by the Licensing Board from the low-power proceeding be included in the full-power proceeding (without prejudice to the Appeal Board review (and later Commission review) to the exclusion of these and other contentions in both the low and full-power proceedings); (3) denies the requests of the Governor of California and intervenors for a waiver of the Immediate Effectiveness rule for the Licensing Board's decision and certain other requests relating to the procedure for review of that decision, including stay requests; and (4) asks for the current views of FEMA regarding the adequacy of emergency planning for purposes of low-power testing at Diablo Canyon.

B That one party or an interested State may differ sharply with the Licensing Board's resolution of contested issues in an operating license case is not a "special circumstance" that could justify waiver of the immediate effectiveness rule, 10 CFR 2.764, pursuant to 10 CFR 2.758. This is because the immediate effectiveness rule, 10 CFR 2.764, itself deals with operating license cases only if they are contested.

C Nothing in Section 274 i. of the Atomic Energy Act grants to an interested State any right to bypass normal appeal and stay review procedures and to bring matters directly before the Commission prior to license issuance.

CLI-81-23 CONSOLIDATED EDISON COMPANY OF NEW YORK (INDIAN POINT, UNIT 2); POWER AUTHORITY OF THE STATE OF NEW YORK (INDIAN POINT, UNIT 3); Docket Nos. 50-247, 50-286; SPECIAL PROCEEDING; September 18, 1981; MEMORANDUM AND ORDER

A The Commission clarifies its previous Memorandum and Order, CLI-81-1, 13 NRC 1 (1981) which inter alia, directed the holding of a hearing to consider certain long-term safety issues relating to Units 2 and 3 of the Indian Point facility, and appoints an Atomic Safety and Licensing Board to preside over the proceeding.

CLI-81-24 TEXAS UTILITIES GENERATING COMPANY, et al. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), Docket Nos. 50-445, 50-446; SPECIAL PROCEEDING; September 22, 1981; ORDER

A The Commission requests the Licensing Board to describe the particular factors that constituted the basis for the Board's adoption sua sponte or certain of a dismissed intervenor's contentions.

B In operating License proceedings, a licensing board may exercise its sua sponte authority to examine matters not put into controversy by the parties only if it "determines that a serious safety, environmental, or common defense and security matter exists." 10 CFR 2.760a.

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- C In operating license proceedings, a licensing board's determination to raise a matter sua sponte pursuant to 10 CFR 2.760a should be set forth in a separate order which makes the requisite findings and briefly states the reasons for raising the issue.
- CLI-81-25 COMMONWEALTH EDISON COMPANY (DRESDEN NUCLEAR POWER STATION, UNIT 1), Docket No. 50-10; SPECIAL PROCEEDING; September 28, 1981; MEMORANDUM AND ORDER
- A The Commission directs the appointment of an Atomic Safety and Licensing Board to rule on petitions for hearings with regard to licensee's proposal to chemically decontaminate Unit 1 of the Dresden facility, and provides guidance on the conduct of a hearing should the Board decide one is required.
- B Section 189a of the Atomic Energy Act, as amended, provides that the Commission shall conduct a hearing at the request of persons whose interest may be affected. Petitioners satisfy the Commission's criteria for intervention if they are found to have standing and come forward with at least one litigable contention.
- C Neither prior notice nor a prior hearing is required under Section 189a of the Atomic Energy Act, as amended, for Commission approval of a license amendment in situations where the NRC staff makes a "no significant hazards consideration" finding.
- D Each person seeking intervention in a Commission licensing proceeding must separately establish standing. 10 CFR 2.714.
- E Intervention in a Commission licensing proceeding may be granted as a matter of discretion according to specific criteria. Portland General Electric Co. et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976).
- F Participation in a Commission licensing proceeding by a person who is not a party is at the discretion of the presiding officer and can only take the form of a limited appearance. 10 CFR 2.715.
- G Only parties to a Commission licensing proceeding may be consolidated. Petitioners who are not admitted as parties may not be consolidated for the purpose of participation as a single party. 10 CFR 2.715a.
- H Neither the Atomic Energy Act, the National Environmental Policy Act, nor the Commission's regulations require that there be a hearing on an environmental impact statement. Vermont Yankee Nuclear Power Corp. v. NRC, 435 U.S. 519, 548 (1978). Public hearings are held on an EIS only if the Commission finds such hearings are required in the public interest. 10 CFR 2.104.
- CLI-81-26 CENTRAL ELECTRIC POWER COOPERATIVE, INC. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT NO. 1), Docket No. 395A; SPECIAL PROCEEDING; October 16, 1981; MEMORANDUM AND ORDER
- A The Commission denies a petition for reconsideration of its decision of June 26, 1981 (CLI-81-14) in which it declined to make a "significant changes" determination under Section 105c(2) of the Atomic Energy Act, thus precluding statutory antitrust review of applicants in connection with their pending application for an operating license for the Virgil C. Summer facility.
- B A petition for a "significant changes" determination pursuant to Section 105c(2) of the Atomic Energy Act does not require decision (and may not be decided) by a formal adjudicatory proceeding governed by the Commission's Rules of Practice, 10 CFR Part 2, Subpart G.
- C Motions to reconsider an order should be associated with requests for re-evaluation of the order in light of an elaboration upon, or refinement of, arguments previously advanced; they are not the occasion for advancing an entirely new thesis. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977).
- D Under Section 105c(2) of the Atomic Energy Act, a second formal antitrust review at the operating license stage of a reactor licensing proceeding is the exception and not the rule.
- E Under Section 105c(2) of the Atomic Energy Act, to determine whether "significant changes" have occurred requiring the matter to be referred to the Attorney General for formal review, the "significant changes" determination requires that there be a factual basis for the determination and that the alleged changes be reasonably apparent.
- CLI-81-27 ALABAMA POWER COMPANY (JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-348A, 50-364A; SPECIAL PROCEEDING; October 22, 1981; MEMORANDUM AND ORDER
- A The Commission denies petitions by the licensee and an intervenor for review of the Appeal Board's June 30, 1981 decision (ALAB-646) imposing certain remedial antitrust conditions on the operating licenses for the Farley nuclear units; the Commission also denies the licensee's motion for a stay of the decision's effectiveness pending judicial review of the decision.
- B The four factors to be considered in reviewing a request for a stay are set forth in Section 2.788 of the Commission's regulations, 10 CFR 2.788. While no single factor is dispositive, the most crucial one is whether irreparable injury will be incurred by the movant absent a stay. Public Service

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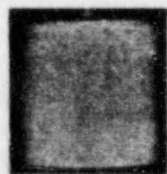
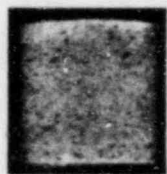
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- Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-437, 6 NRC 630, 632 (1977).
- C The burden of persuasion on the four factors in 10 CFR 2.788 rests on the moving party. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 270 (1978).
- D To meet the standard of making a strong showing that it is likely to prevail on the merits of its appeal (the first factor under 10 CFR 2.788), the movant must do more than merely establish possible grounds for appeal. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), LBP-77-7, 5 NRC 452 (1977). In addition, an "overwhelming showing of likelihood of success on the merits" is necessary where the showing on the other three factors is weak. Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-404, 5 NRC 1185, 1186-89, and ALAB-415, 5 NRC 1435, 1437 (1977). Moreover, where an applicant is asking as a preliminary matter for the full relief to which it might be entitled if successful at the conclusion of its appeal, it has a heavy burden to establish a right to it. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units No. 1), ALAB-385, 5 NRC 621, 626 (1977).
- CLI-81-28 HOUSTON LIGHTING & POWER COMPANY, et. al. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), Docket Nos. STN-50-498 OL, STN-50-499 OL; OPERATING LICENSE; November 4, 1981; ORDER
- A The Commission decides (by 3-2 vote) not to reconsider its earlier 2-2 vote on the question of whether to review sua sponte the Appeal Board's decision in ALAB-639, 13 NRC 469 (1981), authorizing the withholding by staff from discovery of the names of confidential informants on the quality assurance program for the plant.
- CLI-81-29 NUCLEAR FUEL SERVICES, INC. AND NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (WESTERN NEW YORK NUCLEAR SERVICE CENTER), Docket No. 50-201, Provisional Operating License No. CSF-1; OPERATING LICENSE AMENDMENT; November 6, 1981; ORDER AND NOTICE OF HEARING
- A Acting on a request by a licensee for (1) postponement of the effectiveness of a license amendment issued by the NRC staff; and (2) a prior hearing on the amendment, the Commission denies the request but directs the Chairman of the Atomic Safety and Licensing Panel to establish a Licensing Board (1) to conduct a hearing on the amendment in accordance with 10 CFR Part 2, Subpart G while the amendment remains effective and (2) to rule on any petitions for leave to intervene in the license amendment proceeding which may be filed.
- B A bare claim of absolute right to a prior hearing on the issuance of license amendment by the NRC staff does not constitute a substantial showing of irreparable injury necessary to satisfy the irreparable injury requirement for a stay under 10 CFR 2.788(e).
- C A license amendment may become immediately effective under 10 CFR 2.204 without prior hearing if the public health, safety, or interest requires.
- D Latent conditions which may potentially cause harm in the future are a sufficient basis for making a license amendment immediately effective without a prior hearing where the consequences may not be subject to correction in the future. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673 (1979); Consumers Power Company (Midland Plant, Units 1 and 2), CLI-74-3, 7 AEC 10-12 (1973).
- CLI-81-30 PACIFIC GAS AND ELECTRIC COMPANY (DIABLO CANYON NUCLEAR POWER PLANT, UNIT 1), Docket No. 50-275 OL; OPERATING LICENSE; November 19, 1981; ORDER SUSPENDING LICENSE
- A Following the licensee's discovery and reporting (subsequent to the grant of a license to load fuel and conduct low-power testing at the Diablo facility) of new information indicating, inter alia, that certain structures, systems and components important to the safety of the plant may not be properly designed to withstand the effects of earthquakes, the Commission suspends the license pending completion of certain reverification actions by the licensee. The Commission's order is made immediately effective and provides an opportunity for the licensee to show cause pursuant to 10 CFR 2.202 and 50.100 why the license should not be suspended pending satisfactory completion of the actions specified.
- CLI-81-31 FLORIDA POWER AND LIGHT COMPANY (TURKEY POINT PLANT, UNITS 3 & 4), Docket Nos. 50-250, 50-251; SPECIAL PROCEEDING; November 25, 1981; ORDER
- A The Commission denies a person's request for a hearing on an order of the Director of the Division of Licensing, Office of Nuclear Reactor Regulation, confirming the licensee's commitment to comply with requirements related to the TMI Action Plan (NUREG-0737).
- B A party seeking a hearing of right on an enforcement order must show that it has an interest adversely affected by the order. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

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- C An intervention petition must, under 10 CFR 2.714(a)(2), (1) "set forth with particularity" certain factors regarding the petitioner's interest in the proceeding and (2) address the criteria set forth in 10 CFR 2.714(d).
- CLI-81-32 CONSUMERS POWER COMPANY (BIG ROCK POINT PLANT), Docket No. 50-155; SPECIAL PROCEEDING; November 25, 1981; ORDER
- A The Commission denies petitioner's request for a hearing on an order issued by the Director of the Division of Licensing, Office of Nuclear Reactor Regulation, confirming the licensee's commitment to comply with requirements related to the TMI Action Plan (NUREG-0737).
- B In order to be granted a hearing of right on an enforcement order, a party must show that it has an interest adversely affected by the order. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).
- C 10 CFR 2.714(a)(2) requires a petitioner to "set forth with particularity" certain factors regarding the petitioner's interest in the proceeding, and to address the criteria of 10 CFR 2.714(d).
- CLI-81-33 SOUTHERN CALIFORNIA EDISON COMPANY, et al. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), Docket Nos. 50-361 OL, 50-362 OL; OPERATING LICENSE; December 8, 1981; MEMORANDUM AND ORDER
- A The Commission decides that its current regulations do not require consideration of the impacts on emergency planning of earthquakes which cause or occur during an accidental radiological release, and that the Commission will consider on a generic basis whether the regulations should be changed to address the potential impacts of a severe earthquake on emergency planning. The Licensing Board is directed not to pursue this issue, which it had raised sua sponte, in this operating license proceeding.
- CLI-81-34 METROPOLITAN EDISON COMPANY (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), Docket No. 50-389 (Restart); SPECIAL PROCEEDING; December 23, 1981; ORDER
- A The Commission revises its schedule for the receipt of comments on (1) whether the Licensing Board's December 14, 1981 decision on hardware/design issues, emergency planning and the separation of Units 1 and 2 should be made effective immediately and (2) whether the Commission should defer its own decision on restart after a Board decision on certain cheating incidents. The Commission withdraws Appeal Board authority to stay proceedings during the pendency of appeals in this case, and advises any party supporting or opposing a stay to so argue in its comments to the Commission on the two questions.
- CLI-81-35 UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY (CLINCH RIVER BREEDER REACTOR PLANT), Docket No. 50-537 (Exemption Request Under 10 CFR 50.12); SPECIAL PROCEEDING; December 24, 1981; MEMORANDUM AND ORDER
- A The Commission announces procedures and a schedule for the consideration of the merits of the request of the Department of Energy — a co-applicant for a construction permit for the Clinch River Breeder Reactor — for an exemption from 10 CFR 50.10, pursuant to 10 CFR 50.12, to conduct site preparation activities prior to the issuance of a construction permit or limited work authorization for the plant.
- B Neither the Atomic Energy Act nor NEPA dictates the form of proceedings on requests for exemptions from 10 CFR 50.10 pursuant to 10 CFR 50.12.
- CLI-81-36 TEXAS UTILITIES GENERATING COMPANY, et al. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), Docket Nos. 50-445, 50-446; SPECIAL PROCEEDING; December 29, 1981; ORDER
- A The Commission directs the Licensing Board to dismiss certain contentions of an intervenor from the proceeding which the board had retained pursuant to its sua sponte authority under 10 CFR 2.760a subsequent to the Board's dismissal of the intervenor.
- B A board's inherent power to shape the course of the proceeding, Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 201-208 (1978), should not be confused with its limited authority under 10 CFR 2.760a to shape the issues of the proceeding. The latter is not a substitute for or means to accomplish the former.
- C The apparent need to expedite a licensing proceeding or need to monitor the staff's progress in identifying and/or evaluating potential safety or environmental issues are not factors which authorize a board to exercise its sua sponte authority under 10 CFR 2.760a.
- D The mere acceptance of a contention, which only requires that the contention be set forth with reasonable specificity, Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973), does not justify a board's assuming that a serious safety, environmental, or common defense and security matter exists or otherwise relieve it of the obligation under 10 CFR 2.760a to affirmatively determine that such a matter exists.



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ALAB-647 DUKE POWER COMPANY (WILLIAM B. MCGUIRE NUCLEAR STATION, UNITS 1 AND 2). Docket Nos. 50-369, 50-370; OPERATING LICENSE; July 1, 1981; MEMORANDUM AND ORDER

A The Appeal Board denies a motion requesting a stay pendente lite of the Licensing Board's initial (LBP-79-13, 9 NRC 489) and supplemental initial (LBP-81-13, 13 NRC 652) decisions authorizing the Director of Nuclear Reactor Regulation to issue full-term operating licenses for Units 1 and 2 of the McGuire facility upon the Director's making the findings required by 10 CFR 50.57(a) on those matters not considered in the adjudicatory proceeding.

B Under new subsection (f)(2) of 10 CFR 2.764, upon its receipt of a licensing board decision authorizing the issuance of an operating license, the Commission will undertake to determine on its own initiative whether to stay the effectiveness of the decision. That determination is to be based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by operation pending review, and other relevant public interest factors. Such Commission review is without prejudice to Appeal Board or other Commission decisions, including decisions on stay requests filed under 10 CFR 2.788.

C Requests for stays of Licensing Board decisions will be judged by a balancing of the four factors specified in 10 CFR 2.788(e).

ALAB-648 PUERTO RICO ELECTRIC POWER AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1). Docket No. 50-376; CONSTRUCTION PERMIT; July 2, 1981; MEMORANDUM AND ORDER

A The Appeal Board denies intervenors' motion to supplement the record.

B An Appeal Board ordinarily will not entertain an issue raised for the first time on appeal; its disinclination to do so will be particularly strong in circumstances where the issue and the factual averments underlying it could have been, but were not, timely put before the Licensing Board.

C It is unfair for a party to seek relief from a trial tribunal on one theory and, if unsuccessful, then to mount an appeal on a discrete theory founded on additional asserted facts which, although available at the time, had not been given to that tribunal; requests to supplement the record will not be entertained by an appeal board in aid of such an appeal.

ALAB-649 PACIFIC GAS & ELECTRIC COMPANY (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2). Docket Nos. 50-275 OL, 50-323 OL (Security Proceeding); SPECIAL PROCEEDING; July 15, 1981; MEMORANDUM AND ORDER

A The Appeal Board denies a motion for an oral briefing of an alleged incident of sabotage occurring recently at another facility, which was submitted without explanation of the incident's connection with this proceeding or accompanying information except for a copy of a report of the incident taken from a trade journal.

ALAB-650 PUBLIC SERVICE ELECTRIC AND GAS COMPANY, et al. (SALEM NUCLEAR GENERATING STATION, UNIT 1). Docket No. 50-272 OLA (Spent Fuel Pool Expansion); OPERATING LICENSE AMENDMENT; July 17, 1981; DECISION

A The Appeal Board affirms the Licensing Board's decision (LBP-80-27, 12 NRC 435) authorizing the issuance of an amendment to the facility's operating license permitting the installation of new storage racks, designed to increase the capacity of Salem's spent fuel pool.

B A party's brief on appeal must be confined to a consideration of the exceptions previously filed by the party and should specify, inter alia, the precise portion of the record relied upon in support of the assertion of error. 10 CFR 2.762(a).

C A party's exceptions, which are to specify errors in the decision below, must relate to matters raised in the party's proposed findings of fact and conclusions of law; absent a serious substantive issue, appeal boards will not entertain arguments that a licensing board had no opportunity to address and that are raised for the first time on appeal. Tennessee Valley Authority (Hartsville Plant, Units 1A, 2A, 1B, and 2B). ALAB-463, 7 NRC 341, 348 (1978).

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- D A party's proposed findings and conclusions must be confined to the material issues of fact and law presented on the record. 10 CFR 2.754(c).
- E Briefs are necessary not only to give appeal boards sufficient information to evaluate the basis of objections to the decision below, but also to provide an opponent with a fair opportunity to come to grips with the appellant's arguments and attempt to rebut them. The absence of a brief virtually precludes an intelligent response by appellees; accordingly, unbriefed exceptions will generally be regarded as waived. Public Service Co. of Indiana (Marble Hill Station, Units 1 and 2), ALAB-461, 7 NRC 313, 315 (1978).
- F It is incumbent upon intervenors who wish to participate in NRC proceedings to structure their participation so that it is meaningful and alerts the agency to the intervenors' position and contentions. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553 (1978).
- G Even parties who participate in NRC licensing proceedings pro se have the obligation to familiarize themselves with the Commission's Rules of Practice and the proper briefing format. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-563, 10 NRC 449, 450 n.1 (1979).
- H NFPA does not require consideration of circumstances that are only "remote and speculative possibilities." Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 838 (D.C. Cir. 1972).
- I Generalized assertions to the effect that "more evidence is needed" are not enough to warrant reopening a record.
- J NEPA requires consideration of alternatives only when the proposed action is a "major" one "significantly affecting the quality of the human environment," or "involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. §§ 4332(2)(C), (E).
- K Error in a licensing board finding that does not affect or impair the board's ultimate conclusion is harmless and gives no cause for reversal.
- L More than the size and duration of a project must be evaluated when determining whether its federal approval constitutes a major action with a significant environmental impact; in order to make that evaluation, the precise federal action involved must be defined. See Aberdeen & Rockfish R.R. v. SCRAP, 422 U.S. 289, 322 (1975).
- M In a spent fuel pool expansion proposal, the proper focus of the environmental inquiry is the incremental effect on the environment occasioned by the proposed license amendment. Portland General Electric Co. (Trojan Plant), ALAB-531, 9 NRC 263, 266 n.6 (1979).
- N After failing to raise and litigate matters properly before the licensing board, a party may not then seek reversal of the board on the ground that the board denied it due process and did not consider matters "forcefully presented." Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553-554 (1978).
- O Technical issues discussed included: Criticality; Boron integrity, corrosion, swelling; Spent fuel pool LOCA, spent fuel oxidation.
- ALAB-651 DUKE POWER COMPANY (AMENDMENT TO MATERIALS LICENSE SNM-1773 — TRANSPORTATION OF SPENT FUEL FROM OCONEE NUCLEAR STATION FOR STORAGE AT MCGUIRE NUCLEAR STATION), Docket No. 70-2623; SPECIAL PROCEEDING; August 10, 1981; DECISION
- A The Appeal Board reverses the Licensing Board's initial decision (LBP-80-28, 12 NRC 459) and authorizes the issuance of an amendment to applicant's materials license, allowing, subject to one condition, the highway transportation of 300 spent fuel assemblies from the applicant's Oconee Nuclear Station to the McGuire Nuclear Station for storage.
- B NEPA requires the preparation of an environmental impact statement only in connection with major federal actions which can be expected to have a significant impact on the quality of the human environment.
- C Where federal approval is sought of a portion of a private plan, developed without federal involvement, an agency may confine its scrutiny under NEPA to the portion of the plan for which approval is sought so long as (1) that portion has independent utility; and (2) as a result, the approval does not foreclose the agency from later withholding approval of subsequent portions of the overall plan.
- D An environmental impact appraisal must supply "convincing reasons" why an action with arguably potentially significant environmental impacts does not require a detailed impact statement; the appraisal should (1) reflect that a hard look was taken at the problem; (2) identify the relevant areas of concern; and (3) make a convincing case that the impact is significant. Maryland-National Capital Park and Planning Comm'n v. U.S. Postal Service, 487 F.2d 1029, 1039-40 (D.C. Cir. 1973).

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- E An environmental impact statement need not consider remote and highly speculative consequences; neither do they trigger the obligation to prepare a detailed environmental impact statement.
- F Neither Section 102(2)(C) nor Section 102(2)(E) of NEPA obligates the federal agency "to search out possible alternatives to a course which itself will not either harm the environment or bring into serious question the manner in which this country's resources are being expended." Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 266 (1979).
- ALAB-652 THE TOLEDO EDISON COMPANY, et al. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), Docket Nos. 50-500, 50-501; SPECIAL PROCEEDING; September 3, 1981; MEMORANDUM**
- A The Appeal Panel Chairman decides against the need to convene an Appeal Board to examine conditions imposed by the Licensing Board in connection with the withdrawal of a construction permit application and termination of this licensing proceeding, and explains the reasons for his action.
- B Appeal board review will be routinely undertaken of any final disposition of licensing proceeding that either was or had to be founded upon substantive determinations of significant safety or environmental issues. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687, 692 (1979).
- ALAB-653 PACIFIC GAS AND ELECTRIC COMPANY (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), Docket Nos. 50-275 OL, 50-323 OL; OPERATING LICENSE; September 9, 1981; DECISION**
- A Based upon its review of the entire record on the physical security plan issued in this operating license proceeding for the Diablo Canyon facility, the Appeal Board concludes that the applicant's security plan, subject to certain conditions and restrictions, conforms to all applicable provisions of the Atomic Energy Act of 1954, as amended, and the Commission's security regulations. The Board set out its findings of fact and conclusions of law in a sealed separate opinion (ALAB-653 RESTRICTED) because of the sensitive character of the numerous details of the facility security plan which the opinion discusses.
- ALAB-654 PHILADELPHIA ELECTRIC COMPANY, et al. (PEACH BOTTOM ATOMIC POWER STATION, UNITS 2 AND 3), Docket Nos. 50-277, 50-278; METROPOLITAN EDISON COMPANY, et al. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 2), Docket No. 50-320; PUBLIC SERVICE ELECTRIC AND GAS COMPANY (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), Docket Nos. 50-654, 50-355; SPECIAL PROCEEDING; September 11, 1981; MEMORANDUM AND ORDER**
- A The Appeal Board orders intervenors in this consolidated proceeding, as condition precedent to a further evidentiary hearing on the environmental effects of radon releases associated with the uranium fuel cycle, to make a preliminary showing that a genuine issue of a material fact exists by the documented opinion of one or more qualified authorities to the effect that the incremental fuel cycle-related radon emissions on the amount found by the Appeal Board in ALAB-640, 13 NRC 487, will have a significant environmental effect in terms of human health.
- ALAB-655 SACRAMENTO MUNICIPAL UTILITY DISTRICT (RANCHO SECO NUCLEAR GENERATING STATION), Docket No. 50-312 SP; SPECIAL PROCEEDING; October 7, 1981; MEMORANDUM AND ORDER**
- A Upon review, sua sponte, of the record and Licensing Board's decision in this special proceeding (LBP-81-12) — which was instituted to determine the adequacy of certain short-term actions and long-term requirements for continued reactor operation ordered by the Commission as a result of the March 1979 accident at Three Mile Island — the Appeal Board defers judgment on the Licensing Board's decision that approved continued reactor operation and requests submission of further analyses and information by the licensee and NRC staff.
- B It is the Appeal Board's practice to review sua sponte any final disposition of a licensing proceeding that either was or had to be founded upon substantive determinations of significant safety or environmental issues. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687, 692 (1979).
- C The Appeal Board's standard in conducting a review, sua sponte, is similar to that required in a contested proceeding. The Appeal Board may reject or modify findings of the Licensing Board if, after giving its decision the probative force it intrinsically commands, the Appeal Board is convinced that the record compels a different result. Northern States Power Co. (Monticello Plant, Unit 1), ALAB-611, 12 NRC 301, 304 (1980).
- D Licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission. Potomac Electric Power Co. (Douglas Point Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974).

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- E Technical issues discussed include: Auxiliary Feedwater System Reliability; Anticipatory Reactor Trips; Small-break LOCA Analyses; High Pressure Injection; Operator Training and Competence; Instrumentation; Hydrogen Control.
- ALAB-656 BOSTON EDISON COMPANY, et al. (PILGRIM NUCLEAR POWER STATION, UNIT 2), Docket No. 50-471 CP; CONSTRUCTION PERMIT; November 16, 1981; ORDER
- A At the applicants' request, the Appeal Board terminates this proceeding and vacates, on the ground of mootness, the Licensing Board's partial initial decision (LBP-81-3, 13 NRC 103) that conditionally authorized the issuance of a construction permit for the Pilgrim Nuclear Power Station, Unit 2.
- ALAB-657 PHILADELPHIA ELECTRIC COMPANY (FULTON GENERATING STATION, UNITS 1 AND 2), Docket Nos. 50-463 CP, 50-464 CP; CONSTRUCTION PERMIT; November 17, 1981; DECISION
- A The Appeal Board vacates a Licensing Board's unpublished decision dismissing a construction permit application "with prejudice," and remands the matter for action in conformity with the Appeal Board's opinion.
- B A dismissal "without prejudice" ordinarily signifies that no merits disposition was made; a dismissal "with prejudice" suggests otherwise. See *Jamison v. Miracle Mile Rambler, Inc.*, 536 F.2d 560, 564 (3d Cir. 1976); 5 Moore's Federal Practice ¶41.05[2] at 41-75 (2d ed. 1981).
- C A licensing board is vested with the power to dismiss an application with prejudice. See 10 CFR 2.107(a), 2.721(d).
- D A licensing board has substantial leeway in defining the circumstances in which an application may be voluntarily withdrawn (10 CFR §2.107(a)); but, as in all other areas, the board may not abuse this discretion by exercising its power in an arbitrary manner. See *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976); 5 Moore's Federal Practice ¶41.05[1] at 41-58 (2d ed. 1981).
- E The terms prescribed by a licensing board at the time of voluntary withdrawal from a proceeding must bear a rational relationship to the conduct and legal harm at which they are aimed, and the record must support any findings concerning the conduct and harm in question. See *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604-05 (5th Cir. 1976).
- F The Commission's early site review regulations do not require that the applicant have a "firm plan" to construct a nuclear plant at the involved site; rather, they were designed simply to enhance the licensing process by providing an opportunity to resolve siting issues in advance of any substantial commitment of resources. 10 CFR 2.101(a-1), 2.600 et seq.; 42 Fed. Reg. 22882-83 (1977). See also *Commonwealth Edison Co. (Carroll County Site)*, ALAB-601, 12 NRC 18, 26 (1980).
- G The parties must be given the opportunity, at oral hearing or by written pleadings, to produce relevant, material, and reliable evidence concerning alleged abuses of Commission regulations and adjudicatory process; a licensing board should not engage in its own independent and selective search of the record. See *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 605 (5th Cir. 1976). See also 10 CFR 2.749.
- H A dismissal with prejudice requires some showing of harm to either a party or the public interest in general. See Fed. R. Civ. P. 41 (2)(2); *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976); 5 Moore's Federal Practice ¶41.05[1] at 41-73 (2d ed. 1981); *Boston Edison Co. (Pilgrim Station, Units 2 and 3)*, LBP-74-62, 8 AEC 324, 327 (1975).
- I A decision to order a dismissal with prejudice requires careful consideration of the circumstances, giving due regard to the legitimate interests of all parties. See *Selas Corp. of America v. Wilshire Oil Co. of Texas*, 57 F.R.D. 3, 5-6 (E.D. Pa. 1972); 5 Moore's Federal Practice ¶41.05[1] at 41-59 (2d ed. 1981).
- J It is well settled that the prospect of a second lawsuit (or another application to construct a nuclear plant at the same site) does not provide the requisite quantum of legal harm to warrant dismissal with prejudice. *Jones v. Securities and Exchange Commission*, 298 U.S. 1, 19 (1936).
- ALAB-658 METROPOLITAN EDISON COMPANY (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), Docket No. 50-289 (Restart - Management Issues); SPECIAL PROCEEDING; November 19, 1981; ORDER
- A Following a stipulation entered into by the parties and approved by the Special Master and the Licensing Board, the Appeal Board grants the unopposed requests of licensee and "three involved individuals" to withdraw their appeals from the Licensing Board's November 6, 1981 unpublished decision. That decision approved the special master's denial of the individuals' requests for confidential treatment of their identities in this inquiry into alleged cheating on NRC examinations (LBP-81-50). To avoid any residual inconsistency with the terms of the stipulation, the Appeal Board also vacates the memoranda and orders of the Special Master and the Licensing Board.

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ALAB-659 COMMONWEALTH EDISON COMPANY (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), Docket Nos. 50-454 OL, 50-455 OL; OPERATING LICENSE; November 19, 1981; MEMORANDUM AND ORDER

A The Appeal Panel Chairman denies a motion by the applicant requesting (1) reconsideration of his unpublished order tolling the running of the period in which intervenors may file exceptions to a Licensing Board order (LBP-81-52, 14 NRC 901 (1981) dismissing them as a party to this proceeding, and (2) an order directing the briefing now, on an expedited basis, of exceptions which the intervenors had provisionally submitted earlier while seeking reconsideration by the Licensing Board of its dismissal order.

B It is accepted appellate practice for the appeal period to be tolled while the trial tribunal has before it an authorized and timely-filed petition for reconsideration of the decision or order in question.
ALAB-660 FLORIDA POWER & LIGHT COMPANY (TURKEY POINT NUCLEAR GENERATING, UNITS NOS. 3 AND 4), Docket Nos. 50-250 SP, 50-251 SP; SPECIAL PROCEEDING; November 30, 1981; DECISION

A The Appeal Board affirms two orders of the Licensing Board (1) granting the staff's motion for summary disposition of intervenor's contentions opposing the licensee's proposal to repair the steam generators at Turkey Point Nuclear Generating, Units 3 and 4 (LBP-81-14, 13 NRC 677 (1981); and (2) authorizing the issuance of license amendments to effect the repairs after finding that the impact of a hurricane or tornado on low level waste to be stored at Turkey Point during the repairs would not endanger the health and safety of the public (LBP-81-16, 13 NRC 1115 (1981)).

B A grant of summary disposition is proper where the pleadings and affidavits on file "show that there is no genuine issue as to any material fact and that the moving party is entitled to decision as a matter of law." 10 CFR 2.749(d). See generally Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980).

C A contention is inadmissible where, taking everything in the contention as true and provable, it nevertheless provides a legally insufficient reason for the proposition sought to be litigated.

D The purpose of the Commission's NEPA inquiry is to determine whether a proposed action brings about changes in the environmental status quo, and to measure the justification for the proposed action against those changes.

E Where an environmental impact statement is required by NEPA the Commission is obliged to take a harder look at alternatives than if the proposed action were inconsequential. See Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 266 (1979); 40 CFR 1508.9.

F NEPA's rule of reason establishes a continuum where more is expected and required of the agency depending upon the environmental significance of the proposal before it. See generally 40 CFR 1502.2, 1502.14.

G The Commission does not have the authority, under NEPA or any other statute, to reject an applicant's proposal solely because an alternative might prove less costly financially.

H The Commission's role in assessing financial matters regarding nuclear power plants is limited under the Atomic Energy Act to whether the company will be able to build and operate the plant without compromising safety because of pressing financial needs. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-63.

I If under NEPA the Commission finds there are environmentally preferable alternatives to a proposal for constructing and operating a nuclear power plant, then it must undertake a cost-benefit balancing to determine whether such alternatives should be implemented. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 115, 162-63. Nothing in NEPA compels an agency to sift through environmentally inferior alternatives to find a cheaper (but dirtier) way of handling the proposal. Where there are no environmentally preferable alternatives, evaluation of the purely economic aspects of the proposal is left to the business judgment of the utility companies and the control of State regulatory agencies. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-63 (1978).

J Applying NEPA's "rule of reason," Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978), the Commission need not examine solar power and energy conservation in connection with need for power in regard to an already operating power plant when the action initiating the NEPA inquiry is of minor environmental consequence, and the principal claimed advantage of the conservation alternative is an economic one.

K The need for a programmatic environmental impact statement arises when several proposals for action "that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency." Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976). It is the impact of the resolution not the commonality of the problem that is crucial. Even in that situation, so long as one action does not commit the agency to approval of other pending projects, "an agency could approve one pending project that is fully covered by an impact statement, then take into consideration the

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- environmental effects of that existing project when preparing the comprehensive statement on the cumulative impact of the remaining proposals." *Kleppe v. Sierra Club*, 427 U.S. at 414 fn. 26.
- L The purpose of having a "record of decision" is to link the environmental review process with the agency's decision. The decisions of the Commission's adjudicatory tribunals on the licensing proposal before them provide the agency "record of decision." 40 CFR 1505.2; 43 Fed. Reg. 55985-86 (November 29, 1978).
- M The purpose of "scoping" is to provide a means for early identification of what are and what are not the important issues deserving of study in an environmental impact statement. 40 CFR 1501.7; 43 Fed. Reg. 55982 (November 29, 1978).
- N The Atomic Energy Act requires that the Commission be reasonably assured that wastes can be safely handled and stored as they are generated, and that permanent disposal can be accomplished safely when, from a public health and safety standpoint, it is likely to become necessary.
- O The NEPA environmental review for onsite waste storage should cover the time-period over which it is foreseeable the wastes will remain on site. See generally *Minnesota v. Nuclear Regulatory Commission*, 602 F.2d 412 (D.C. Cir. (1979)).
- P A Licensing Board decision based on the evidentiary record before it is deemed to modify the final environmental statement as prepared by the Commission staff. 10 CFR 51.52(b)(3); *New England Coalition on Nuclear Pollution v. Nuclear Regulatory Commission*, 582 F.2d 87, 93-94 (1st Cir. 1978); *Citizens for Safe Power Inc. v. Nuclear Regulatory Commission*, 524 F.2d 1292, 1294 and fn. 5 (D.C. Cir. 1975). However, the absence of discussion of an issue in a Final Environmental Statement (FES) may be so fundamental an omission as to call for its recirculation. *Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2)*, ALAB-573, 10 NRC 775, 785-87 (1979).
- Q An appeal board will generally examine a licensing board's discovery rulings only to entertain a claim that the licensing board abused its discretion. *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, ALAB-459, 7 NRC 179, 188 (1978).
- ALAB-661 FLORIDA POWER & LIGHT COMPANY (ST. LUCIE PLANT, UNIT NO. 2), Docket No. 50-389 OL; OPERATING LICENSE; December 3, 1981; DECISION
- A The Appeal Board affirms, but for different reasons, an unpublished Licensing Board order denying two intervention petitions and requests for a "limited antitrust" hearing filed in this operating license proceeding, and deems final the Board's order dismissing this proceeding.
- B Upon agreement of the parties, the issuance of a construction permit need not await the outcome of an antitrust hearing. *Louisiana Power and Light Co. (Waterford Steam Electric Generating Station, Unit 3)*, CLI-73-25, 6 AEC 619, 621-22 (1973).
- C Section 105c of the Atomic Energy Act, as amended (42 U.S.C. 2135c), "establishes a particularized regime for the consideration and accommodation of possible antitrust concerns arising in connection with the licensing of nuclear power plants." *Houston Lighting and Power Co. (South Texas Project, Unit Nos. 1 and 2)*, CLI-77-13, 5 NRC 1303, 1309 (1977).
- D The NRC must hold an antitrust hearing on a construction permit application if the Attorney General so recommends; however, the NRC is authorized to conduct an antitrust review at the operating license stage only if it finds changes in the licensee's activities that are both "significant" and "subsequent" to the previous Attorney General and Commission review (including any NRC antitrust hearing). *South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit No. 1)*, CLI-80-28, 11 NRC 817, 823 n. 11, 824-25 (1980).
- E Where a construction permit antitrust proceeding is under way, the antitrust provisions of the Atomic Energy Act effectively preclude the Commission from instituting a second antitrust hearing in conjunction with an operating license application for the plant.
- F There is a strong Commission policy of holding antitrust hearings separate from those involving health, safety, and environmental issues. *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, ALAB-316, 3 NRC 167, 170-174 (1976).
- G A notice of opportunity for hearing necessarily corresponds to the agency's statutory authority over a given matter; it cannot confer or broaden that jurisdiction to matters expressly proscribed by law.
- ALAB-662 PUERTO RICO ELECTRIC POWER AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), Docket No. 50-376; CONSTRUCTION PERMIT; December 7, 1981; DECISION
- A The Appeal Board affirms a Licensing Board decision (46 Fed. Reg. 14099 (February 25, 1981)), issued without an evidentiary hearing, allowing the applicant to withdraw its construction permit application and granting its motion requesting termination of the construction permit proceeding without prejudice.
- B The Commission has the authority to condition the withdrawal of a license application on such terms as it thinks just. 10 CFR 2.107(a).

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- C Dismissal of a construction permit application with prejudice is a severe sanction which should be reserved for those unusual situations which involve substantial prejudice to the opposing party or to the public interest in general. Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 978-79 (1981).
- D Although the National Environmental Policy Act mandates that the Commission satisfy itself that the power to be generated by the nuclear facility under consideration will be needed, that statute does not foreclose the placement of heavy reliance on the judgment of local regulatory bodies which are charged with the duty of insuring that the utilities within their jurisdiction fulfill the legal obligation to meet customer demands. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), ALAB-490, 8 NRC 234, 241 (1978); see also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc. 435 U.S. 519, 550 (1978).
- E To trigger an evidentiary hearing on the question of withdrawal of a construction permit application with prejudice, the allegations of substantial prejudice must not only be serious, but also supported by a showing, typically through affidavits or un rebutted pleadings, of sufficient weight and moment to cause reasonable minds to inquire further.
- F The contention requirement of 10 CFR 2.714(b) does not require an evidentiary showing, but only reasonably specific assertions. Whether the assertions can be proved is a merits question that is quite beside the point at the preliminary contention stage of the proceeding. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548-49 (1980).
- G Where a licensing board believes the integrity of the adjudicatory process has been compromised, it should have wide scope to satisfy its concerns. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-78-18, 8 NRC 293 (1978).
- H The possibility of future litigation with its expenses and uncertainties is a consequence of any dismissal without prejudice; it does not provide a basis for departing from the usual rule that a dismissal should be without prejudice. Jones v. SEC, 298 U.S. 1, 19 (1936); 5 Moore's Federal Practice ¶41.05 [1] at 41-72 to 41-73 (2d ed. 1981).
- I An applicant who seeks early site review is not required to own the proposed power plant site. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975); New England Power Co. (NEP Units 1 and 2), LBP-78-9, 7 NRC 271, 281-83 (1978). See also 10 CFR 2.101(a-1), 2.600-2.606. The real test for deciding on early site review is whether or not the applicant, as a practical matter, can produce the information required by regulation and necessary for an effective hearing. Concerned Citizens of Rhode Island v. Nuclear Regulatory Commission, 430 F. Supp. 627, 632-33 (D.R.I. 1977).
- J Under the Commission's rules, the applicant for a license bears the cost of staff work performed for its benefit. 10 CFR 170; see Mississippi Power & Light Co. v. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). This rule applies whether an applicant carries the process through to fruition or withdraws its application at an earlier time. 46 Fed. Reg. 49573 (October 7, 1981), petition for review docketed, New England Power Co. v. Nuclear Regulatory Commission, No. 81-1839 (1st Cir. Nov. 25, 1981).
- ALAB-663 SOUTH CAROLINA ELECTRIC AND GAS COMPANY, et al. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), Docket No. 50-395 OL; OPERATING LICENSE; December 14, 1981; MEMORANDUM
- A The Appeal Board issues an explanatory memorandum on its unpublished order denying a petition for directed certification filed by the NRC staff seeking interlocutory review of a determination by the Licensing Board to invoke the assistance of several independent consultants on certain seismic issues raised in this operating license proceeding.
- B A licensing board should not call upon independent consultants to supplement an adjudicatory record except in that most extraordinary situation in which it is demonstrated beyond question that a board simply cannot otherwise reach an informed decision on the issue involved.
- C The authority conferred by 10 CFR 2.718(i) to direct the certification of questions arising in proceedings before licensing boards is specifically included within the express delegation to appeal boards of the authority and review functions which would otherwise have been exercised and performed by the Commission in, inter alia, proceedings on applications for operating licenses under 10 CFR Part 50. 10 CFR 2.785(b)(1).
- D The standard for an appeal board's determination whether to undertake discretionary interlocutory review of a licensing board's proposed course of action is whether that action would affect "the basic structure of the proceeding in a pervasive or unusual manner." Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-588, 11 NRC 533, 536 (1980).
- E A licensing board is duty-bound to carry out the instructions of an appeal board so long as those instructions are not countermanded by the Commission.



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- F Licensing boards have not been given the function of passing their own judgment on the soundness or propriety of rulings and instructions of a reviewing appellate tribunal.
- G The Commission's Rules of Practice, 10 CFR Part 2, and the guidance found in Appendix A to those rules, give the staff, as a representative of the public interest, a dominant role in assessing the radiological health and safety aspects of facilities involved in a licensing proceeding; adjudicatory boards should give the staff every opportunity to explain, correct, or supplement its testimony before resorting to outside experts of their own.

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- LBP-81-18 LONG ISLAND LIGHTING COMPANY (SHOREHAM NUCLEAR POWER STATION, UNIT 1), Docket No. 50-322 OL; OPERATING LICENSE; July 7, 1981; MEMORANDUM AND ORDER
- A The Licensing Board rules on the admissibility of a contention submitted by an intervenor in this operating license proceeding, accepting the contention in part and rejecting it in part.
 - B A proponent of a motion does not have the right to reply to an answer to the motion; parties who do not seek leave to file a reply are expressly denied the opportunity to do so. 10 CFR §2.730(c).
 - C Contentions in NRC adjudicatory proceedings are like federal court complaints; before any suggestion that a contention should not be entertained can be acted upon favorably, the proponent of the contention must be given some chance to be heard in response. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 CFR 521 (1979).
- LBP-81-19 FLORIDA POWER & LIGHT COMPANY (ST. LUCIE PLANT, UNIT NO. 2), Docket No. 50-389A; ANTITRUST PROCEEDING; July 7, 1981; MEMORANDUM AND ORDER
- A The Licensing Board in this antitrust proceeding permits the resumption of discovery, establishes a schedule for the submission of briefs on various questions and matters identified by the Board, and schedules two prehearing conferences to consider those questions and matters.
- LBP-81-20 PACIFIC GAS AND ELECTRIC COMPANY (HUMBOLDT BAY POWER PLANT UNIT NO. 3 - AMENDMENT TO FACILITY OPERATING LICENSE), Docket No. 50-133-OLA; OPERATING LICENSE AMENDMENT; July 14, 1981; MEMORANDUM AND ORDER
- A Upon consideration of Licensee's motion to withdraw, without prejudice, its application for an amendment to its operating license for the facility designed to allow the Licensee to resume its operation upon satisfactory completion of certain modifications to the facility (it has been in shut-down state since 1976), the Licensing Board defers ruling on the motion and directs Licensee to provide it with additional information regarding the modifications.
- LBP-81-21 PACIFIC GAS AND ELECTRIC COMPANY (DIABLO CANYON NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-275-OL, 50-323-OL, (Low Power Test Proceeding); OPERATING LICENSE; July 17, 1981; PARTIAL INITIAL DECISION
- A The Licensing Board issues a partial initial decision (subject to review by the Commission pursuant to 10 CFR 2.764) authorizing the issuance of a license for fuel loading and low-power testing up to 5% of rated power at the Diablo Canyon facility. The Board notes for Commission attention that issues relating to the security of the plant are still before the Appeal Board and that the partial initial decision will not be complete without their resolution.
 - B Full compliance with the Commission's emergency planning standards in NUREG-0654 and Appendix E to 10 CFR Part 50 is not required prior to fuel loading and low-power testing; however, emergency planning for fuel loading and low-power testing must be sufficient to confer the same level of protection to the public as afforded by full compliance with the regulations at full power operation.
 - C Technical issues discussed include: Release of radioactive radon gas from uranium mining and milling for reactor fuel; Quality assurance; Unresolved generic safety issues; Emergency planning requirements for fuel loading and low-power testing; Risks of low-power operation; Radiation exposures at the site boundary and low population zone (LPZ); Risk of accidents during testing; Emergency planning zones; Radiological monitoring; County emergency plans; Relief, safety, and block valves.
- LBP-81-22 TEXAS UTILITIES GENERATING COMPANY, et al. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), Docket Nos. 50-445 OL, 50-446 OL (Application for Operating License); OPERATING LICENSE; July 23, 1981; MEMORANDUM AND ORDER
- A The Licensing Board grants in part and denies in part applicants' motion to strike three contentions propounded by an intervenor in this proceeding, denies the intervenors' requests for a protective order and oral argument, and issues instructions to the parties concerning the future conduct of discovery.

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LBP-81-23 TEXAS UTILITIES GENERATING COMPANY, et al. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), Docket Nos. 50-445-OL, 50-446-OL (Application for Operating License); OPERATING LICENSE; July 24, 1981; MEMORANDUM AND ORDER

- A The Licensing Board (1) grants an intervenor's motion that it be permitted to withdraw from the proceeding; (2) dismisses as moot all pending motions by or against the intervenor; (3) designates new lead intervenors for those jointly-sponsored contentions of which the withdrawing intervenor was previously so designated; (4) explains the basis for its raising of those questions sua sponte (in compliance with the Commission's June 2, 1981 directions relating to issues raised sua sponte by Licensing and Appeal Boards); and (5) rules on the admissibility of those contentions solely sponsored by the withdrawing intervenor, dismissing certain of the contentions and adopting others as Board questions.
- B In an operating license hearing, matters not put into controversy by the parties will be examined and decided by the presiding officer only where he or she determines that a serious safety, environmental, or common defense and security matter exists. 10 CFR 2.760(a).
- C The Commission has directed that when a Licensing Board or an Appeal Board raises an issue sua sponte in an operating license proceeding, it shall issue a separate order making the requisite findings, briefly state its reasons for raising the issue, and forward a copy of that order to the Office of the General Counsel and to the Commission.

D In an operating license proceeding, the power of the staff alone to decide whether any other matters (beyond those contested issues admitted by the Licensing Board) need to be considered prior to the issuance of an operating license arises only after the Board has resolved the question of potential sua sponte issues.

LBP-81-24 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (PERRY NUCLEAR POWER PLANT, UNITS 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; July 28, 1981; SPECIAL PREHEARING CONFERENCE MEMORANDUM AND ORDER CONCERNING PARTY STATUS, MOTIONS TO DISMISS AND TO STAY, THE ADMISSIBILITY OF CONTENTIONS, AND THE ADOPTION OF SPECIAL DISCOVERY PROCEDURES

- A The Licensing Board issues a special prehearing conference order concerning the admission of parties, motions to dismiss and to stay, admissibility of contentions, and the adoption of special discovery procedures.
- B The Commission has jurisdiction to license nuclear facilities located within the United States. The fact that some emergency planning activities required for licensing may take place in Canada does not deprive the Commission of jurisdiction.
- C An organization whose claim to have standing to intervene is based on residence of members 125 miles from the reactor site is not entitled to standing as a matter of right.
- D When the board has required applicant and staff to file briefs concerning the admissibility of contentions, intervenor must give reasons or authority for rejecting arguments presented in the required briefs.
- E In ruling on the admissibility of a contention, licensing boards should not reach the merits and should not require the introduction of underlying evidence, provided that the basis for the contention is identified with reasonable specificity.
- F The degree of specificity required of a contention depends on many factors. One is the nature of the challenge to its admissibility. Another is whether intervenor has provided bases for a claim for which relief can be granted.
- G The doctrine of collateral estoppel traditionally applies only when the parties in the case were also parties (or their privies) in the previous case. A limited extension of that doctrine permits "offensive" collateral estoppel; i.e., the claim by a person not a party to previous litigation that an issue had already been fully litigated against the defendant and that the defendant should be held to the previous decision because he has already had his day in court. *Parkland Hosiery Co., Inc. v. Leo M. Shore*, 439 U.S. 322 (1979). In operating license proceedings, estoppel may also be applied defensively, to preclude an intervenor who was not a party from raising issues litigated in the construction permit proceeding.

LBP-81-25 TEXAS UTILITIES GENERATING COMPANY, et al. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), Docket Nos. 50-445, 50-446 (Application for Operating License); OPERATING LICENSE; July 30, 1981; ORDER

- A The Licensing Board issues a discovery order which inter alia strikes certain motions and answers by the parties relating to discovery and directs them to meet and negotiate in good faith on all of their pending disputes, report to the Board the outcome of their negotiations including a detailed description of any remaining disputes and the bases for their respective positions, on an expedited basis.

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- B In modern administrative and legal practice, pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing or trial. Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).
- C Interrogatories must have at least general relevancy, for discovery purposes, to the matter in controversy in the proceeding.
- D Contentions constitute the method by which the parties to a licensing proceeding frame issues under NRC practice, similar to the use of pleadings in their judicial counterparts.
- LBP-81-26 CONSUMERS POWER COMPANY (PALISADES NUCLEAR POWER FACILITY), Docket No. 50-255-CO; SPECIAL PROCEEDING; July 31, 1981; MEMORANDUM AND ORDER
- A The Licensing Board denies a petition by labor unions for a hearing on an order of the Director of Inspection and Enforcement imposing inter alia certain restrictions on overtime work by licensed operators.
- B In enforcement cases, as in licensing cases, the Commission applies judicial concepts of standing in determining rights to a hearing under section 189a of the Atomic Energy Act. To have standing one must first allege some injury that has occurred or will probably result from the action involved. In addition, one must allege an interest arguably within the zone of interests protected by the Act. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980); Wisconsin Electric Power Co. (Point Beach Unit 1), CLI-80-38, 12 NRC 547 (1980); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976).
- C Economic interest, including a labor union's economic interest in maintaining contractually protected employment rights, is not an interest which is within the "zone of interests" protected by the Atomic Energy Act; such interest cannot serve as a basis to request a hearing as a matter of right. The Board also denied standing as a matter of discretion.
- LBP-81-27 PACIFIC GAS AND ELECTRIC COMPANY (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), Docket Nos. 50-275 OL, 50-323 OL; OPERATING LICENSE; August 4, 1981; MEMORANDUM AND ORDER
- A The Licensing Board rules on contentions asserted by Joint Intervenor in connection with their petition for reopening the full-power licensing proceeding for the plant. The Board admits a contention on emergency planning but denies intervenor's other contentions as not meeting the requirements of the Commission's order of April 1, 1981 (CLI-81-5) for reopening a record which has been closed, as not presenting litigable issues, as not presenting an issue which has already been decided, or as too general to be accepted for purposes of litigation.
- LBP-81-28 FLORIDA POWER & LIGHT COMPANY (ST. LUCIE PLANT, UNIT NO. 2), Docket No. 50-389A; ANTITRUST PROCEEDING; August 5, 1981; MEMORANDUM AND ORDER
- A The Licensing Board denies an untimely petition for leave to intervene in this antitrust proceeding upon balancing the factors in 10 CFR 2.714(a)(1); the Board denies the petition also for lack of a nexus between petitioners' allegations and the proceeding.
- B Where a late petition for intervention is involved, the special factors set forth in 10 CFR 2.714(a)(1) must be balanced and applied before the petition may be granted. These factors are: (1) Good cause, if any, for failure to apply on time. (2) The availability of other means whereby the petitioner's witness will be protected. (3) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record. (4) The extent to which the petitioner's interest will be represented by existing parties. (5) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.
- C A late petition for intervention shall not be granted if a remedy for the alleged harm is available before the Federal Energy Regulating Commission and petitioner has not shown how that remedy is insufficient.
- D Under 10 CFR 2.714(a)(1), the test for intervention becomes increasingly vigorous as time passes.
- E For purposes of intervention in an antitrust proceeding under the Atomic Energy Act, a competitor to an applicant for a license to construct and operate a nuclear plant normally need only allege the nature of its business and the existence of a situation inconsistent with the antitrust laws to show "nexus" since a nuclear plant would place it at a competitive disadvantage; such allegations by a non-competitor are not sufficient to show a "nexus" to the license proceeding.

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LBP-81-29 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA RESEARCH REACTOR), Docket No. 50-142 OL (Proposed Renewal of Facility License); OPERATING LICENSE; August 10, 1981; ORDER RELATIVE TO PARTICIPATION OF DANIEL O. HIRSCH UNDER 10 CFR 2.733

- A The Board grants an intervenor's motion for the qualification of an expert interrogator under 10 CFR 2.733.
- B An expert interrogator under 10 CFR 2.733(a) need not meet the same standard of expertise as an expert witness. The standard for interrogators under 10 CFR 2.733(a) is that the individual "is qualified by scientific training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination or cross-examination."

LBP-81-30 FLORIDA POWER AND LIGHT COMPANY (TURKEY POINT NUCLEAR GENERATING, UNITS 3 AND 4), Docket Nos. 50-250-SP, 50-251-SP (Proposed Amendments to Facility Operating Licenses to Permit Steam Generator Repairs); SPECIAL PROCEEDING; August 12, 1981; MEMORANDUM AND ORDER

- A The Licensing Board denies an intervenor's application for a stay pursuant to 10 CFR 2.788 of the Board's Final Order (LBP-81-16) cancelling further hearings on license amendments to permit steam generator repairs.
- B In deciding whether to grant a stay of an order, a Licensing Board is governed by the four-factor test of 10 CFR 2.788, which essentially codifies the judicial principles applicable to motions for preliminary injunctions.
- C No single factor among the four to be considered for a stay decision under 10 CFR 2.788 is necessarily dispositive. Rather, the "strength or weakness of the showing by the movant on a particular factor influences, principally how strong his showing on the other factors must be in order to justify the sought relief." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-338, 4 NRC 10, 14 (1976).

LBP-81-30-A COMMONWEALTH EDISON COMPANY (BYRON STATION, UNITS 1 AND 2), Docket Nos. 50-454-OLA, 50-455-OLA; OPERATING LICENSE AMENDMENT; August 18, 1981; MEMORANDUM AND ORDER

- A The intervention board was only attempting to determine whether there was at least one viable contention in order to trigger an evidentiary hearing in an operating license proceeding. It is sufficient for an intervenor at the pleading stage merely to state his reasons (i.e., the basis) for the contentions, and he is not required to plead evidence or to establish that the assertions are well-founded in fact.
- B "Petition" or "intervention" board does not rule on admissibility of all contentions, but it only determines standing and at least one viable contention in operating license proceedings.
- C A petition for intervention is not required to plead evidence or to establish that the assertions are well-founded in fact, but at the pleading stage it is sufficient to state the reasons (i.e., the basis) for contentions.
- D Applicants are entitled to prompt discovery concerning the bases of contentions, as much information is already available from the FSAR and other documents, which should be supplemented by later information.
- E The involvement of a party's lawyers in other litigation or professional business does not excuse noncompliance with nor extend deadlines for compliance with discovery requests or other rules of practice.

LBP-81-31 DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR, OPERATING LICENSE AND SHOW CAUSE), Docket Nos. 50-409-OL, 50-409-SC (Provisional Operating License DPR-45); OPERATING LICENSE; August 19, 1981; MEMORANDUM AND ORDER

- A The Board orders the consolidation of an operating license proceeding (to convert a provisional operating license to a full-term license) with another proceeding resulting from a Commission show-cause order.
- B Under 10 CFR 2.716, consolidation is permitted if found to be conducive to the proper dispatch of the Board's business and to the ends of justice.

LBP-81-32 METROPOLITAN EDISON COMPANY (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), Docket No. 50-289-SP (Restart); SPECIAL PROCEEDING; August 27, 1981; PARTIAL INITIAL DECISION

- A In this proceeding to determine whether and the conditions under which Unit 1 of the facility should be allowed to resume operation, the Licensing Board issues a partial initial decision on the matter of the licensee's management capability to operate the Unit, reserving for later decision issues on plant design and procedures, separation of the facility's two units, and emergency planning. With the exception of an issue relating to operator examination over which it is retaining jurisdiction, the Board finds that the licensee has demonstrated the managerial capability and technical resources to

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- operate Unit 1 while maintaining Unit 2 in a safe configuration and carrying out planned decontamination and restoration activities for that Unit; that the licensee has complied with the Commission's short-term recommendations related to management competence specified in NUREG-0578; and that it has made reasonable progress toward completion of long-term recommendations related to management competence specified in NUREG-0578.
- B** A Licensing Board's partial initial decision upholding the applicant's selection of a site is immediately appealable notwithstanding the fact that it does not authorize any construction activity where there would be a long hiatus before further findings. Houston Power and Lighting Company (Allens Creek Nuclear Generating Station, Units 1 and 2), ALAB-301, 2 NRC 853, 854 (1975).
- C** A partial initial decision favorable to the applicant on the issue of alternate construction sites is immediately appealable notwithstanding the fact that it neither authorizes any construction activity nor contemplates a long hiatus before further findings. Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-597, 11 NRC 870 (1980).
- LBP-81-33 THE TOLEDO EDISON COMPANY, et al. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3; TERMINATION OF PROCEEDINGS), Docket Nos. 50-500-CP, 50-501-CP; CONSTRUCTION PERMIT; August 28, 1981; ORDER**
- A** The Licensing Board grants applicant's request to withdraw its application for construction permits for Units 2 and 3 of the Davis-Besse facility and orders that applicant take certain steps to redress the site pursuant to 10 CFR 2.107(e); vacates its partial initial decisions, LBP-75-75, 2 NRC 993 (1975) and LBP-78-29, 8 NRC 284 (1978), which authorized issuance of two limited work authorizations for those units, and terminates the construction permit proceedings for those units.
- LBP-81-34 HOUSTON LIGHTING AND POWER COMPANY (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), Docket No. 50-466-CP; CONSTRUCTION PERMIT; September 1, 1981; SECOND ORDER**
- A** Licensing Board grants several motions filed by the Applicant and by the NRC Staff for summary disposition of certain health and safety contentions, denies several other such motions, and grants, in part, a motion of the Staff for the summary disposition of an environmental contention.
- B** A contention will not be summarily disposed of where the Licensing Board determines that there still exist controverted issues of material fact.
- LBP-81-35 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; September 9, 1981; MEMORANDUM AND ORDER**
- A** Denying objections to its special prehearing conference order, the Licensing Board clarifies this order and orders the appointment of lead intervenors to consolidate and coordinate the actions of party intervenors for purposes of the orderly conduct of the proceeding. In addition, the Licensing Board grants the petition of Ashtabula County Commissioners and Ashtabula County Disaster Services Agency for admission as non-party participants under 10 CFR §2.715(c).
- B** A change in the need for power, at the operating license stage, must be sufficiently extensive to offset the environmental and economic costs of construction before it may be raised as a viable contention.
- C** If Applicant bears a burden of proof on an issue and moves for summary disposition, intervenors will have the burden of going forward to demonstrate that factual issues exist which require a hearing. The applicant retains, however, the ultimate burden of demonstrating that there is no genuine issue of fact with respect to any issue it seeks to exclude from a hearing.
- D** Where intervenors have filed consolidated briefs they may be treated as a consolidated party; one intervenor may be appointed lead intervenor for purposes of coordinating responses to discovery, but discovery requests should be served on each party intervenor. It is not necessary that a contention or contentions be identified to any one of the intervening parties, so long as there is at least one contention admitted per intervenor.
- E** Non-parties, participating under 10 CFR §2.715(c), need not comply with the requirements of 10 CFR §2.714 that intervenors must either file their contentions in a timely fashion or show cause for their late intervention.
- LBP-81-36 SOUTHERN CALIFORNIA EDISON COMPANY, et al. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), Docket Nos. 50-361-OL, 50-362-OL; OPERATING LICENSE; September 14, 1981; ORDER**
- A** The Licensing Board refers to the Appeal Board a Licensing Board order raising on the Board's own motion the issue of possible effects on emergency plans of an earthquake of a magnitude greater than the Safe Shutdown Earthquake at the facility. In connection with the issue raised, the Licensing Board directs the parties to address questions of evacuation time in the event of earthquake damage to highways, per effect of structural damage to possible shelters from a radioactive plume or radioactive particulate debris, and radiation dose estimates in the event of delayed evacuation.

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- B In a seismically active area a Licensing Board should consider the possible effects of a very large earthquake on emergency plans. This consideration could involve an earthquake exceeding the SSE and causing a release of radiation while damaging evacuation routes.
- C Very specific or detailed factual findings are not a prerequisite to sua sponte review of an issue that is a serious safety matter. The Board need only give its reasons for raising the issue.
- D A Licensing Board may raise a safety issue sua sponte when sufficient evidence of a serious safety matter has been presented that reasonable minds would inquire further. Very specific findings are not required since they could cause prejudgment problems.
- E The size of the EPZ has been decided generically and is inappropriate for site specific analysis.
- F Size of the EPZ is a generic issue, but other aspects of emergency plans, particularly evacuation routes, are site specific.
- G A finding of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency goes beyond a checklist determination whether a plan meets the standards at 10 CFR §50.47(b).
- H Referral of the earthquake issue in this case is based upon its possible significant ramifications for other cases.
- I Referral directly to the Commission by the Licensing Board will not be granted absent a strong reason for bypassing the Appeal Board.
- J Technical issues discussed included: Emergency plan; Multiple disasters.
- LBP-81-37 COMMONWEALTH EDISON COMPANY (DRESDEN STATION, UNITS 2 AND 3), Docket Nos. 50-237-OLA, 50-249-OLA (Spent Fuel Pool Modification); OPERATING LICENSE AMENDMENT; September 24, 1981; PARTIAL INITIAL DECISION
- A Acting upon the motion of Applicant, the Licensing Board issues a Partial Initial Decision modifying the operating license of Dresden Unit 3 to permit the installation of five high-density spent fuel storage racks and the withdrawal of thirteen of the present spent fuel racks. The modification to permit the use of five high-density spent fuel pool racks in connection with the required January 1, 1982 fuel outage will be less risky and less costly than any of the possible alternative methods available to meet the requirement.
- LBP-81-38 TEXAS UTILITIES GENERATING COMPANY, et al. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), Docket Nos. 50-445-OL, 50-446-OL (Application for Operating License); OPERATING LICENSE; September 25, 1981; ORDER CONCERNING SUA SPONTE ISSUES, SCHEDULING ORDER, NOTICE OF EVIDENTIARY HEARING AND PREHEARING CONFERENCE
- A Acting pursuant to an order of the Commission, the Licensing Board issues an order describing those factors "beyond the mere pendency of staff review" which formed the basis for its determination to adopt eight of a former Intervenor's eleven admitted contentions sua sponte, after the voluntary dismissal for financial reasons of the party which had originally pleaded the contentions.
- B A Licensing Board should not automatically reject otherwise viable contentions involving significant health and safety consequences following the voluntary dismissal for financial reasons of the party which pleaded these issues, unless these contentions may be disposed of on their merits. It would be a dereliction of duty for a Licensing Board to dismiss an accepted contention absent some threshold level of informational justification, and the Board should retain such issues at least until the Staff adopts some position as to them.
- LBP-81-39 WISCONSIN ELECTRIC POWER COMPANY (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-266-OLA, 50-301-OLA; OPERATING LICENSE AMENDMENT; October 1, 1981; MEMORANDUM AND ORDER
- A In order to help expedite the proceeding, the Board asked a series of questions based on a technical report submitted in support of the application for a license amendment. The Board also adopted special procedures to attempt to resolve the case fairly prior to the time Applicant seeks to conduct a demonstration program.
- B Under extraordinary circumstances created by the need to decide rapidly whether to authorize Applicant to conduct a tubesleeving demonstration program, it is appropriate for the Board to address questions to Applicant even before formal action has been completed concerning the admission of an Intervenor into a license amendment proceeding.
- C The Board can authorize a variety of special filings in order to expedite a proceeding sufficiently to permit a decision to be made prior to the date on which Applicant requests approval to conduct a demonstration program pursuant to its license amendment request.
- D Special sensitivity must be shown to Intervenor's procedural rights when the cause for haste in a proceeding was a voluntary decision by Applicant concerning both the timing and content of its request for a license amendment.

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- E Board questions designed to elicit information rapidly in order to expedite a license amendment proceeding, need not be considered sua sponte issues requiring notification of the Commission.
- F When haste is required, Petitioners can be granted the right to utilize discovery even before they are admitted as parties.
- G Applicant can proceed with a proposed demonstration program requiring a license amendment unless Petitioner/Intervenor can show cause why it would be appropriate not to authorize the demonstration program.
- LBP-81-40 TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 AND 3), Docket Nos. 50-259-OL, 50-260-OL, 50-296-OL; OPERATING LICENSE; October 2, 1981; PREHEARING CONFERENCE MEMORANDUM AND ORDER
- A Licensing Board denies petitions to intervene in regard to Applicant's request for temporary onsite storage of low-level radioactive waste because the petitions fail to raise an acceptable contention.
- B The environmental assessment of a proposed Federal action may be confirmed to that action together with its unavoidable consequences.
- C Contentions which raise matters outside the scope of an application for a license amendment are inadmissible.
- LBP-81-41 FLORIDA POWER & LIGHT COMPANY (ST. LUCIE PLANT, UNIT NO. 2), Docket No. 50-389-A; ANTITRUST PROCEEDING; October 2, 1981; MEMORANDUM AND ORDER
- A The Board's Order denying intervention to Parsons & Whittemore, Inc., is affirmed after considering objections and making minor changes in the initial Order.
- LBP-81-42 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (PERRY NUCLEAR POWER PLANT, UNITS 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; October 2, 1981; MEMORANDUM AND ORDER
- A An electromagnetic pulse (EMP) contention was excluded from the proceeding because 10 CFR §50.13 prohibits consideration of design features related to attacks on the facility by an enemy of the United States (U.S.). Any explosion causing an EMP that affects the plant would be considered to be an attack on the facility by an enemy of the U.S.
- B A brief suspension of an admitted contention concerning anticipated transients without scram (ATWS) can no longer be continued when it no longer appears likely that the Commission is about to issue a proposed rule on the subject.
- C Contentions regarding the effect of an EMP are barred from consideration by 10 CFR §50.13 because such a pulse necessarily constitutes an attack on the facility by an enemy of the U.S.
- LBP-81-43 WISCONSIN ELECTRIC POWER COMPANY (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-266-OLA, 50-301-OLA; OPERATING LICENSE AMENDMENT; October 7, 1981; MEMORANDUM AND ORDER
- A The Board issued a written order establishing the agenda for an on-the-record telephone conference call convened by the Board in order to expedite the proceeding.
- LBP-81-44 WISCONSIN ELECTRIC POWER COMPANY (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-266-OLA, 50-301-OLA; OPERATING LICENSE AMENDMENT; October 13, 1981; MEMORANDUM AND ORDER
- A The Board requested further information from the Applicant in order to clarify the record.
- B Intervenor may be required to show cause why a licensing amendment should not be issued to permit Applicant to conduct a demonstration program.
- C Under exceptional circumstances, Board questions may precede discovery by the parties.
- LBP-81-45 WISCONSIN ELECTRIC POWER COMPANY (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-266-OLA, 50-301-OLA; OPERATING LICENSE AMENDMENT; October 13, 1981; MEMORANDUM AND ORDER
- A The Board admitted a single, broad contention based on four admitted contentions. It decided, based on a review of Applicant's filing, that the contentions should be admitted because they provided reasons for doubting the safety of the proposed steam generator tube sleeving program. It then admitted the single broad contention because it concluded that a decision was required within a short time which was insufficient to accommodate the usual procedure for deciding whether late-filed contentions should be admitted.
- B Whether or not basis for contentions has been established must be decided by considering the contentions in the context of the entire record of the case up to the time that the contentions are filed.
- C When an application for a license amendment is itself incomplete, the standard for the admission of contentions is lowered because it is easier for petitioners to have reasons for believing that the application has not demonstrated the safety of the proposed procedures for which an amendment is sought.
- D When quick action is required on a license amendment, it is appropriate to interpret petitioner's safety concerns broadly and to admit a single broad contention which will permit wide-ranging

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- discovery within the limited time without the necessity to decide repeated motions for late filing of new contentions.
- E A contention may not be admitted unless it is related to the license amendment which is requested. Petitioner may not challenge the safety of activities already permitted under the license.
- F If a contention states more than is required for its admission into the proceeding, its admission should be considered in light of the minimum necessary allegation for admission into the proceeding.
- G Parties are required to set forth the purpose for each discovery request, to discuss differences concerning contentions informally before filing formal objections and to file discovery progress reports.
- LBP-81-46 WISCONSIN ELECTRIC POWER COMPANY (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-266-OLA, 50-301-OLA; OPERATING LICENSE AMENDMENT; October 15, 1981; MEMORANDUM AND ORDER
- A In a license amendment proceeding in which expedition was required in order to make a timely decision, the Board issued an Order calling a single hearing related to an order to show cause, a motion for summary judgment and the hearing of evidence.
- B When time pressure causes special difficulties for intervenors, discovery against intervenors may be restricted in order to prevent interference with their preparation for a hearing.
- C A Board may authorize specially tailored proceedings in the interest of expedition.
- LBP-81-47 SOUTH CAROLINA ELECTRIC AND GAS COMPANY, et al. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), Docket No. 50-395-OL; OPERATING LICENSE; October 15, 1981; MEMORANDUM AND ORDER
- A The Licensing Board reaffirms its intention of calling seismology experts as Board witnesses and orders the NRC Staff to respond to the experts' reports.
- B The Licensing Board's determination to call its own expert witnesses is not sufficient cause for the NRC Staff to impugn the motivation of the Board Chairman where the record of the case does not demonstrate improper motives.
- C Rule 706 of the Federal Rules of Evidence, which permits Federal courts to appoint expert witnesses of their own selection, merely codified existing law under which the inherent power of a trial judge to appoint an expert of his own choosing is virtually unquestioned.
- D *Scott v. Spanjer Bros. Inc.*, 298 F.2d 928 (2d Cir. 1962) and *Danville Assn. v. Bryant-Buckner Assocs., Inc.*, 333 F.2d 202 (4th Cir. 1964) are the principal Federal appellate decisions recognizing the inherent power of a trial court to appoint its own expert, a practice which dates back to cases recorded in the 14th century.
- E Appellate tribunals have not reversed, or even granted interlocutory review of, decisions by Federal administrative judges to call their own experts.
- F NRC Licensing Boards have adopted the practice of calling their own expert witnesses when the circumstances warrant it.
- G The Appeal Board has indicated that the decision to call a witness for the Board rests ultimately and solely upon the sound discretion of the tribunal which called the witness. *Consumers Power Co. (Midland Plant, Units 1 and 2)*, ALAB-382, 5 NRC 603, 608 (1977).
- H In order to call its own expert witness, a Licensing Board need not satisfy a standard requiring that there be an extraordinary situation in which it is demonstrated without question that the Board cannot otherwise reach an informed decision.
- I If the safety of the plant is not established in the record, the Board must deny the operating license. It would be improper and contrary to the public interest for a Board to presume that a license must issue and be required to affirmatively seek evidence to support the issuance.
- J Matters pertaining to trial management are not always apparent to appellate tribunals.
- K Administrative boards cannot voluntarily adopt rules that curtail their own powers in conflict with established legal standards.
- L A policy standard for Licensing Boards which derogates from the commonly accepted powers of a hearing tribunal may conflict with §191 of the Atomic Energy Act, which established the Licensing Boards as independent tribunals, and the Administrative Procedure Act, under which they function.
- M Licensing and Appeal Boards lack the power to make policy. *Offshore Power Systems (Floating Nuclear Power Plants)*, CLI-79-9, 10 NRC 257, 261 (1979).
- N Where the Appeal Board has not decided the Staff's motion for directed certification and has not issued an order on the merits of the Staff's motion, it has not issued a holding establishing a new standard that must be followed by Licensing Boards.

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LBP-81-48 LOUISIANA POWER & LIGHT COMPANY (WATERFORD STEAM ELECTRIC STATION, UNIT 3), Docket No. 50-382-OL; OPERATING LICENSE; October 20, 1981; MEMORANDUM AND ORDER

- A The Licensing Board grants the Applicant's motion for summary disposition of one of the Joint Interveners' contentions which related to safety-related concrete, and dismisses the contention.
- B It is the party seeking summary judgement, not the party opposing it, which has the burden of showing the absence of a genuine issue as to any material fact, and, where the moving party's evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no evidentiary matter is presented. *Adickes v. Kress and Co.*, 398 U.S. 144 (1970).
- C If the movant has properly supported its motion for summary disposition, it is incumbent upon the opposition to answer, setting forth specific facts showing that there is a genuine issue of fact. *Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2)*, ALAB-584, 11 NRC 451 (1980).
- D A party cannot avoid summary disposition on the mere hope that at trial he will be able to discredit movant's evidence nor can he be permitted to go to trial on the vague supposition that something may turn up. *Gulf States Utilities Co. (River Bend Station, Units 1 and 2)*, LBP-75-10, 1 NRC 246 (1975).
- E If the issue is demonstrably insubstantial, it should be decided pursuant to summary disposition procedures in order to avoid unnecessary and possibly time-consuming hearings. *Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1)*, ALAB-590, 11 NRC 542 (1980).

LBP-81-49 PACIFIC GAS & ELECTRIC COMPANY (HUMBOLDT BAY POWER PLANT, UNIT NO. 3), Docket No. 50-133-OLA; OPERATING LICENSE AMENDMENT; October 20, 1981; MEMORANDUM AND ORDER

- A In a license amendment proceeding, the Licensing Board seeks information from the Staff on whether maintaining the plant in long-term cold shutdown pending issuance by the Commission of backfit requirements for older plants presents risk to the health and safety of the public.

LBP-81-50 METROPOLITAN EDISON COMPANY (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), Docket No. 50-289-SP (Restart Reopened Proceeding); SPECIAL PROCEEDING; October 22, 1981; MEMORANDUM AND ORDER

- A The Special Master issues a Memorandum and Order ruling that there is no right, on behalf of the individuals involved in cheating incidents, the Licensee, or the NRC Staff, to prevent the disclosure of the identities of these individuals during the hearing process.
- B Under *Chrysler Corporation v. Brown*, 441 U.S. 281, 60 L.Ed.2d 208, 995 S. Ct. 1705 (1979) neither the Privacy Act, 5 U.S.C. §552a (1974) nor the Freedom of Information Act, 5 U.S.C. §552 (1977) gives a private individual the right to prevent disclosure of names of individuals where the Licensing Board elects to disclose.
- C 10 CFR §2.744 requires a weighing of the need for a proper decision against the interest in privacy where information is eligible for exemption from disclosure under 10 CFR §2.790(a) (7).
- D It is within the discretion of the Special Master to hold information confidential if to do so would increase the likelihood of a fair and impartial hearing.

LBP-81-51 TEXAS UTILITIES GENERATING COMPANY, et al. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), Docket Nos. 50-445-OL, 50-446-OL; OPERATING LICENSE; October 23, 1981; MEMORANDUM AND ORDER

- A The Licensing Board in an operating license proceeding declines to defer consideration of contentions relating to financial qualifications. Although the Commission is considering adopting a new regulation related to financial qualifications review, the notice of proposed rulemaking indicates that only when final is the rule to be applied to ongoing proceedings.
- B Although a rulemaking concerning review of financial qualifications is pending, hearings on contentions concerning financial qualifications may go forward when the contentions were previously admitted. The intention of the Commission, shown by the notice of proposed rulemaking, is that proceedings with financial qualifications contentions continue. (46 Fed. Reg. 41786.)
- C When a contention is admitted before the issue in contention becomes the subject of a general rulemaking by the Commission, the Commission's intention, as shown by the notice of proposed rulemaking, determines whether consideration of that contention should be deferred. *Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2)*, ALAB-218, 8 AEC 79, 85 (1974).

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- LBP-81-52 COMMONWEALTH EDISON COMPANY (BYRON STATION, UNITS 1 AND 2), Docket Nos. STN 50-454-OLA, 50-455-OLA; OPERATING LICENSE AMENDMENT; October 27, 1981; MEMORANDUM AND ORDER
- A In considering the applicant's motion for sanctions because of the intervenor's failure or refusal to answer interrogatories, the Board found nothing to excuse or condone the willful failure to provide responsive answers to interrogatories and the intervenor was consequently dismissed as a party.
 - B An applicant is entitled to prompt answers to interrogatories inquiring into the factual bases for contentions and evidentiary support for them, as intervenors are not permitted to make skeletal contentions and keep the bases for them secret.
 - C The willful failure or refusal of an intervening party to answer interrogatories and its unexcused failure to comply with a Licensing Board's orders to do so, warrant the imposition of sanctions (10 CFR §§ 2.707, 2.718, 2.740).
 - D Where a party's derelictions of duty concerning the furnishing of ordered discovery were part of a pattern of behaviour rather than isolated incidents, such conduct resulted in the striking of all of its contentions (114) and its dismissal as a party (Commission's "Statement of Policy on Conduct of Licensing Proceedings" [CLI-81-8, 13 NRC 452, 454 (1981)]).
- LBP-81-53 COMMONWEALTH EDISON COMPANY (QUAD CITIES STATION, UNITS 1 AND 2), Docket Nos. 50-254-OLA, 50-265-OLA; OPERATING LICENSE AMENDMENT; October 27, 1981; ORDER
- A The Licensing Board held a prehearing conference and admitted as parties two petitioning organizations who satisfied the Commission's standing and valid contention requirements in this spent fuel pool expansion proceeding. The Board deferred ruling on one disputed contention and rejected two other disputed contentions.
 - B A Licensing Board has no objection to explore alternatives under NEPA except upon a showing that the action in question will constitute a "major Commission action significantly affecting the quality of the human environment." This determination should not be made until the NRC Staff's environmental impact assessment is available.
 - C Applicant for operating license amendments, such as an amendment authorizing expansion of a spent fuel pool, are not required to prove their financial ability to implement the amendment.
- LBP-81-54 HOUSTON LIGHTING AND POWER COMPANY, et al. (SOUTH TEXAS PROJECT UNITS 1 AND 2), Docket Nos. STN 50-498 OL, STN 50-499 OL (Operating License); OPERATING LICENSE; October 30, 1981; MEMORANDUM AND ORDER
- A The Licensing Board schedules an evidentiary hearing to consider the means by which the Applicants plan to maintain quality with respect to certain near-term safety-related construction activities, in light of (1) the transition of design-engineering and construction-management responsibilities, and possibly construction responsibilities, to a new contractor; and (2) deficiencies in engineering pointed out in an independent consultant's report sponsored by the Applicants. The Board also inquires concerning the means by which the NRC Staff plans to monitor the Applicants' commitments to maintain quality in regard to the specified construction activities. The Board further schedules a prehearing conference.
 - B The decision whether to approve a plan for construction during the period in which certain design engineering and construction management, and possibly construction, responsibilities are being transferred from one contractor to another is initially within the province of the NRC Staff. But because of the safety significance of the work to be performed, and its clear bearing on whether, or on what terms, a project should be licensed, and on the resolution of certain existing contentions, consideration of the adequacy of, and controls to be exercised by, the Applicants and NRC Staff over such work falls well within the jurisdiction of the Licensing Board. Cf. 10 CFR § 2.717(b).
 - C When a Licensing Board in an operating license proceeding considers issues which might be deemed to be raised sua sponte by the Board, it should transmit copies of the Order raising such issues to the Commission and General Counsel, in accordance with the Secretary's memorandum of June 30, 1981.
- LBP-81-55 WISCONSIN ELECTRIC POWER COMPANY (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-266-OLA, 50-301-OLA; OPERATING LICENSE AMENDMENT; November 5, 1981; MEMORANDUM AND ORDER
- A The Board conducted a special show-cause proceeding to determine whether it was appropriate to grant to Wisconsin Electric Company a license amendment which would permit it to conduct a demonstration program in which it would return its reactor to power with up to six degraded tubes repaired by "sleeving" rather than being removed from service by plugging. The limited license amendment was granted because the Board found that Intervenor, Wisconsin's Environmental Decade, had failed to show the existence of an important genuine issue concerning the environmental or safety consequences of the proposed demonstration program.

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- B** When summary disposition is requested before discovery is complete, it may be considered by the Board but the standard used to evaluate the motion must be changed so that summary disposition will be denied either upon a showing of the existence of a genuine issue of fact or upon a showing that there is good reason for the Board to defer judgment until after specific discovery requests are made and answered.
- C** In a case in which an expedited decision is requested in order to suit Applicant's operational needs, special procedural advantages should be granted to the Intervenor in order to make it possible for it to act more rapidly. In this proceeding, Intervenor was granted discovery rights even before it was admitted as a party and its contentions were interpreted broadly so that it could raise any important safety or environmental issue without need to file for the admission of a late contention. In addition, the Board asked several technical questions in order to assist Intervenor in obtaining possibly useful information and to help the Board to satisfy itself that expedition would not cause an improper result.
- D** Once an appropriate protective order is issued so that Intervenor can obtain useful information, the Board can defer ruling on further objections concerning the public's right to know until after it has considered the merits of the case. If Intervenor chooses not to participate in in camera sessions held to protect arguably proprietary information, it may create problems for itself but these problems cannot affect the Board's ruling on the merits of the case.
- E** General fears or criticisms of past practices of the nuclear industry or Applicant are not appropriate bases for contentions unless there is reason to suspect the specific procedures or safety-related tests used in a proposed demonstration program which requires a license amendment.
- LBP-81-56 ILLINOIS POWER COMPANY, et al. (CLINTON POWER STATION, UNITS 1 AND 2),** Docket Nos. 50-461-OL, 50-462-OL; OPERATING LICENSE; November 13, 1981; ORDER
- A** A motion for severance of Unit 2 of the Clinton Power Station from the proceedings for Unit 1 is granted because Unit 2 will not be completed until 1995.
- LBP-81-57 CLEVELAND ELECTRIC ILLUMINATING POWER COMPANY, et al. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2),** Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; November 30, 1981; ORDER
- A** Petitioner claimed that 10 CFR §50.13, which previously had been interpreted to exclude a contention concerning the effect of electromagnetic pulses, should be waived under 10 CFR §2.758(b). However, the Board found that many nuclear plants are vulnerable to electromagnetic pulses and that waiver, which requires special circumstances related to the particular proceeding, was not appropriate.
- B** Waiver of a Commission rule is not appropriate for a generic issue. Petitioner must demonstrate that there is a special circumstance related to the particular proceeding or waiver under 10 CFR §2.758(b) will be denied.
- C** The proper avenue in which to seek a remedy for a problem which affects nuclear reactors generally is to petition the Commission to promulgate an amendment to its rules under 10 CFR §2.802. If the issue is sufficiently urgent, the petitioner may request suspension of a licensing proceeding during the pendency of the rulemaking.
- LBP-81-58 FLORIDA POWER & LIGHT COMPANY (ST. LUCIE PLANT, UNIT NO. 2),** Docket No. 50-389-A; ANTITRUST PROCEEDING; December 11, 1981; MEMORANDUM AND ORDER
- A** Summary disposition on the merits is granted to intervenors in this antitrust action after the Board finds that the use of a nuclear power plant would maintain a situation inconsistent with the antitrust laws. The Board accepts findings from two prior cases, including decisions of a United States Court of Appeals and the Federal Energy Regulation Commission (FERC). Based on these cases, the Board finds that applicant conspired with another utility to divide markets and that it exercised monopoly power within its territorial limits.
- B** The Board also finds after reviewing the entire record and concluding that there is no remaining genuine issue of fact, that applicant participated in joint planning, with other major utilities, of generation and transmission, including nuclear generation.
- C** Because of the lengthy and somewhat disorganized record, the Board establishes an objections procedure in which parties wishing to preserve their grounds for appeal are required to file objections for resolution by the Board. In addition, procedures are established to expedite the decision of the case.
- D** The Board discusses the relationship of its decision to remedies which might be granted. It states that cities within applicant's territorial boundaries should be entitled to purchase a share of its nuclear power plant, as has already been accomplished in a "settlement" agreement adopted in this case. However, the Board does not rule on whether the terms of the settlement agreement already provide adequate relief for "inside" cities. In addition, the Board refrains from ruling on whether these "outside" cities should be permitted to purchase a share in applicant's nuclear power plant or in other nuclear power plants it operates.

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- E Utilities located within an area in which a utility has exercised monopoly power are entitled to purchase a share in a nuclear power plant which the utility is planning to operate. In addition, cities allegedly outside a utility's area may not be refused the right to purchase firm power when the utility's territorial line was developed in part as the result of a conspiracy to divide markets.
- F The Commission gives effect to factual findings of federal courts and sister agencies when those findings are part of a final judgment, even when the party seeking estoppel effect was not a party to the initial litigation. Although the application of collateral estoppel would be denied if a party could have easily joined in the prior litigation, the Commission will apply collateral estoppel even though it is alleged that a party could have joined in, if the prior litigation was a complex antitrust case. Furthermore, FERC determinations about the applicability of antitrust laws are sufficiently similar to Commission determinations to be entitled to collateral estoppel effect. Even a shift in the burden of persuasion (which did not occur) between FERC and Commission proceedings does not exclude the application of collateral estoppel when it is apparent that the FERC opinion did not arrive at its antitrust conclusions because of the burden of persuasion.
- G On the other hand, the decision of a federal district court on a summary judgment motion is not a final judgment entitled to collateral estoppel effect, particularly when the court did not fully explain the grounds for its opinion and when its decision was issued after the hearing board had already begun studying the record and had formed factual conclusions which were not adequately addressed in the district court's opinion.
- H The Board requires parties to object to the Board's decision in order to preserve grounds for appeal.
- I The Board requires that parties citing cases as authority must explain the relevant facts of the cited cases or the Board may disregard the citations. In addition, parties citing a string of cases for the same proposition should know that if the first case in the string is found to be inapplicable other cases will not be considered.
- J The Board requires parties to file their objections to its decision pursuant to a Board-established schedule or to waive them.
- K Partial summary disposition is granted in an antitrust proceeding after the findings of two prior cases were accepted because of the application of collateral estoppel and after the Board found there was no genuine dispute as to an additional material fact.
- L The Board simultaneously establishes schedules for the filing of objections, the holding of oral argument and the holding of an evidentiary hearing or remaining questions of fact. Briefs on objections are limited to 40 pages in length, with limited permission for appendices. Parties are authorized to cite material already in the record without copying it over.
- LBP-81-59 METROPOLITAN EDISON COMPANY (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), Docket No. 50-289-SP (Restart); SPECIAL PROCEEDING; December 14, 1981; PARTIAL INITIAL DECISION (PLANT DESIGN AND PROCEDURES, UNIT SEPARATION, AND EMERGENCY PLANNING ISSUES)
- LBP-81-60 METROPOLITAN EDISON COMPANY (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), Docket No. 50-289-SP (Restart Reopened Proceeding); SPECIAL PROCEEDING; December 15, 1981; MEMORANDUM AND ORDER ON NEPA—COMPLIANCE ISSUES
- A The Licensing Board refuses to hold evidentiary hearings on certain contentions relating to the adequacy of an Environmental Impact Appraisal (EIA) and the need for an Environmental Impact Statement (EIS). It also denies a motion to reject the EIA.
- B Each action the board takes must be founded upon either express or necessarily implicit delegation of authority. The board has strong doubts that it has jurisdiction to consider the need for and content of an EIS where the Commission has shown considerable interest and become directly involved in the proceeding, and where neither the Commission's notice of hearing nor any later Commission document suggests that the board should consider the need for an EIS.
- C The parties cannot by agreement confer on the Board subject matter jurisdiction. However, the Board will take jurisdiction to rule on NEPA issues where 10 CFR §51.52(d) at least arguably authorizes the Board to decide these issues, and where an exercise of jurisdiction by the board would ultimately produce the most efficient and orderly disposition of the issues.
- D The Board's mandate is not to conduct a plenary review to determine whether the Staff has complied with NEPA and 10 CFR Part 51, but rather to decide any matters in controversy among the parties.
- E Where the only NEPA matters in controversy are legal contentions that there has been a failure to comply with NEPA and 10 CFR Part 51, the Board will rule on the contentions without further evidentiary hearings, making use of the existing evidentiary record on substantive issues and additional material of which it can take official notice.

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- F In determining whether it can hold as a matter of law that the requirements of NEPA and 10 CFR Part 51 have not been met, the Board considers not only the EIA but also any relevant supplemental information in the hearing record and in its own partial initial decisions.
- G Technical issues discussed include: Impact of Class 9 accidents; Impact of Unit 2 cleanup on Unit 1 operation; Impact of fuel handling accident; Cumulative dose from Unit 2 cleanup and Unit 1 restart; Radioactive waste storage onsite; Radioactive waste disposal offsite; Impacts of emergency preparedness requirements on state and local governments; Impacts of alert-notification system; Impacts of evacuation and other protective actions; Construction effects; Psychological stress; Effluent monitoring; Ground water monitoring; Protection of ground water.
- LBP-81-61 ILLINOIS POWER COMPANY, et al. (CLINTON POWER STATION, UNIT 1), Docket No. 50-461-OL; OPERATING LICENSE; December 16, 1981; MEMORANDUM AND ORDER
- A The Intervenor, Prairie Alliance, and the State of Illinois (participating as an "interested state") filed motions to compel answers to unanswered interrogatories served upon the Applicants, Illinois Power Company, et al., during first round of discovery. The motions were granted in part and denied in part. In addition, a stipulation with respect to certain contentions was allowed and a previously accepted schedule for future discovery was confirmed and expanded.
- B Under 10 CFR §2.714(b) an intervention petition must include the bases for each contention set forth with reasonable specificity. Contentions must be sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose.
- C Where a contention is made up of a general allegation which, standing alone, would not be admissible under 10 CFR §2.714(b), plus one or more alleged bases for the contention set forth with reasonable specificity, the matters in controversy raised by each such contention are limited in scope by the specific alleged basis or bases set forth in the contention.
- D 10 CFR §2.740(b)(1) provides in part that:
"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding . . . including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter."
- E The discovery rules as between the parties are to be construed liberally. In modern administrative and legal practice discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious trial.
- LBP-81-62 WISCONSIN ELECTRIC POWER COMPANY (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-266-OLA, 50-301-OLA; OPERATING LICENSE AMENDMENT; December 21, 1981; MEMORANDUM AND ORDER
- A This decision responds in part to a claim that the Board lacks the jurisdiction to determine whether filed documents claimed to be confidential should be released to the public. The Board rules that when a party files a document that it proposes be treated as confidential because it contains trade secrets, the hearing board must apply the standards set forth in 10 CFR §2.790 to determine whether all or a portion of the document should be kept confidential. The obligation placed on the Board by the rules is mandatory and does not require that any party request the Board to fulfill its obligation.
- B The Board also rules that an affidavit concerning the confidentiality of a filed document ordinarily cannot be reviewed by the Board to determine the legitimacy of a claim that the affidavit is confidential. 10 CFR §2.790(b)(1)(ii). However, the Board determines that this exemption from its jurisdiction is subject to three threshold limitations: the allegedly confidential portions of the affidavit must be "appropriately marked", that the certification of confidentiality must have been made in good faith by the affiant, and that the exemption does not apply to legal arguments that cannot properly be included in a confidential affidavit. The Board then holds that the allegedly confidential affidavit filed in this case did not meet any of these threshold requirements and that part of it must be released to the public.
- C 10 CFR §2.790(e) delegates to hearing boards the authority and obligation to determine whether proposals of confidentiality filed pursuant to §2.790(b)(1) should be granted pursuant to the standards set forth in subsections (b)(2) through (c) of that section.
- D It is not acceptable practice for a party to impugn the integrity of another party without any evidence to support the charges.
- E Under 10 CFR §2.790, licensing boards must determine whether it is appropriate to grant proposals filed with them concerning the need to withhold evidence from the public. Ordinarily, when parties submit affidavits supporting claims of confidentiality, they may claim that the affidavits are confidential and the board will not have the jurisdiction to review the claim; however, the confidentiality of supporting affidavits is exempt from board jurisdiction only if they are "appropriately marked" by the affiant in good faith, after a careful review, and the board also retains jurisdiction to

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determine whether legal arguments have been improperly inserted into an affidavit and claimed to be confidential.

LBP-81-63 CONSUMERS POWER COMPANY (MIDLAND PLANT, UNITS 1 AND 2), Docket Nos. 50-329-CP, 50-330-CP; CONSTRUCTION PERMIT PROCEEDING; December 22, 1981; PARTIAL INITIAL DECISION

- A In a Partial Initial Decision on a construction permit application, the Licensing Board addresses the remanded issue of misconduct by the parties and their counsel. The Licensing Board finds that the full voluntary disclosure required of all parties was not practiced, but determines that no sanctions are appropriate because the requirements for disclosure in NRC proceedings has not been specifically addressed previously and there was no evidence of deliberately unethical behavior. After reopening the record to take evidence on the effects of radon emissions from the uranium fuel cycle, the Licensing Board concludes these effects are not significant in comparison to the effects of natural radon emissions.
- B Parties and counsel must adhere to the highest standards in disclosing all relevant factual information to the Licensing Board.
- C Material facts, i.e., those facts which could conceivably influence the Licensing Board whether or not they in fact do so, must be affirmatively disclosed to the Licensing Board by a party or its counsel.
- D Counsel cannot justify nondisclosure of information by stating that it is material on which a Licensing Board may not rely or by arguing that such reliance would be unjustified. Only the Board has the function of deciding on what information it will rely.
- E Drafts of testimony are not covered by the attorney work product privilege.
- F External factors such as the threat of a lawsuit will not relieve a party of its duties toward the Licensing Board.
- G If counsel have any doubts whether they have a duty to disclose to the Licensing Board particular facts, those facts must be disclosed.
- H Prepared testimony should be the work of the witness, not of his counsel. The words should be those of the witness although counsel may suggest clarifications or omissions of totally irrelevant material.
- I Technical issue discussed includes: Uranium fuel cycle (radon 222).

LBP-81-64 FLORIDA POWER & LIGHT COMPANY (ST. LUCIE PLANT, UNIT NO. 2), Docket No. 50-389-A; ANTITRUST PROCEEDING; December 30, 1981; MEMORANDUM AND ORDER

- A On motion of the Applicant the Board modified the procedural schedule it had issued in its December 11, 1981 Order (LBP-81-58).

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DD-81-12 GEORGIA POWER COMPANY (ALVIN W. VOGTLE NUCLEAR PLANT, UNITS 1 & 2), Docket Nos. 50-424, 50-425; CONSTRUCTION PERMIT; July 2, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

- A The Director of Nuclear Reactor Regulation denies a petition filed under 10 CFR 2.206 of the Commission's regulations to require the reopening of the record upon which construction permits were issued in order to assess the need for the power to be produced by the facilities.
- B An applicant may demonstrate that there is a need for the power to be produced by a particular facility by showing (1) that the demand for electricity within the facility's service area is increasing; (2) that the facility may be needed as a substitute for power currently produced by burning short-supply fossil fuels; (3) that the facility may be needed to meet the reserve margin requirements of power pools in which the facility is a participant; or (4) that the applicant is capable of selling power outside its immediate service area to meet the demand for power in other areas.
- C Every forecast of need or demand for power carries an associated uncertainty and, thus, the most that can be required is that the forecast be a reasonable one in light of what is ascertainable at the time it is made.
- D NEPA does not require that decisions based on environmental impact statements be reconsidered whenever information developed subsequent to the action becomes available, unless that new information would clearly mandate a change in result.

DD-81-13 PORTLAND GENERAL ELECTRIC COMPANY, et al., (TROJAN NUCLEAR PLANT), Docket No. 50-344, (10 CFR 2.206); SPECIAL PROCEEDING; July 13, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

- A The Director of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 which requested suspension of operation of the Trojan Plant on the basis of matters related to fire protection and environmental qualification of electric equipment.

DD-81-14 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (SEABROOK STATION, UNITS 1 AND 2), Docket Nos. 50-443, 50-444 (10 CFR 2.206); SPECIAL PROCEEDING; July 15, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

- A The Director of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 that requested institution of proceedings to suspend or revoke the Seabrook construction permits on the basis of evacuation considerations at the site.
- B Matters bearing on acceptability of emergency plans for the facility did not indicate extraordinary circumstances such that the institution of proceedings was warranted to take up these matters before the operating license review.

DD-81-15 FLORIDA POWER & LIGHT COMPANY (ST. LUCIE PLANT, UNIT NO. 2), Docket No. 50-389A, (10 CFR 2.206); ANTITRUST PROCEEDING; August 7, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

- A The Director of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 which requested institution of enforcement action against the licensee for its asserted failure to abide by an antitrust condition of its license.
- B The Director will not institute a requested proceeding where the petitioner's basis for relief rests on resolution of an issue that is pending before another agency and that is peculiarly within the competence of that agency to decide.

DD-81-16 COMMONWEALTH EDISON COMPANY (ZION NUCLEAR PLANT, UNITS 1 AND 2), Docket Nos. 50-295, 50-304, (10 CFR 2.206); SHOW CAUSE; September 29, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

- A The Director of the Office of Inspection and Enforcement denies a petition under 10 CFR 2.206 that requested institution of a proceeding to show cause why operation of the Zion Station Units 1 and 2 should not be suspended pending the licensee's full compliance with emergency planning requirements pertaining to installation of a prompt notification system.

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DD-81-17 NORTHEAST NUCLEAR ENERGY COMPANY (MILLSTONE NUCLEAR POWER STATION, UNITS 1 AND 2). Docket Nos. 50-245, 50-286 (10 CFR 2.206); SHOW CAUSE; September 29, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

A The Director of the Office of Inspection and Enforcement denies a petition under 10 CFR 2.206 that requested institution of a proceeding to show cause why operation of two units of the Millstone Station should not be suspended or revoked for failure to comply with emergency planning requirements pertaining to installation of a prompt notification system.

DD-81-18 WABASH VALLEY POWER ASSOCIATION AND PUBLIC SERVICE COMPANY OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 & 2). Docket Nos. 50-546, 50-547 (10 CFR 2.206); CONSTRUCTION PERMIT; October 13, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

A The Director of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 which requested action against a co-owner of the Marble Hill project for securing additional financing for its participation in the project in an allegedly improper manner.

B Although decisions of other agencies may be relevant to the administration of the NRC's regulatory program, the Director of NRR will not institute proceedings to determine whether other agencies have carried out their own unique responsibilities.

C In the absence of a transfer of ownership or exercise of certain creditors' rights, the NRC's authorization need not be obtained in connection with financing arrangements a licensee may make with financial institutions.

D When a licensing proceeding has been concluded and a matter is no longer before a board, a licensee does not have a general duty to inform parties to the concluded proceeding of new information or developments regarding matters that were adjudicated in the proceeding.

E A petition under 10 CFR 2.206 must allege facts that would indicate further inquiry into a matter raised in the petition is warranted.

DD-81-19 SOUTHERN CALIFORNIA EDISON COMPANY (SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 1). Docket No. 50-206 (10 CFR 2.206); SPECIAL PROCEEDING; November 16, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

A The Director of Nuclear Reactor Regulation denies petitions submitted by some 1500 California residents who requested suspension or revocation of the San Onofre Unit 1 license on the basis of seismic design deficiencies and emergency planning considerations.

DD-81-20 SOUTHERN CALIFORNIA EDISON COMPANY (SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 1). Docket No. 50-206 (10 CFR 2.206); OPERATING LICENSE; November 16, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

A The Director of Nuclear Reactor Regulation denies a petition filed by Ralph Nader which requested suspension of operation of San Onofre Unit 1 pending a "license review" on the basis of seismic design and other considerations. The Director found that suspension was not warranted during the conduct of the SEP review of the plant and that operation for a limited period pending plant upgrading would not pose an undue risk to public health and safety.

DD-81-21 FLORIDA POWER AND LIGHT COMPANY (TURKEY POINT PLANT, UNIT 4). Docket No. 50-251 (10 CFR 2.206); OPERATING LICENSE; November 5, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 which requested the Commission (1) to order an immediate shutdown of Turkey Point Plant, Unit 4, to inspect the steam generator tubes, and (2) to consider the suspension of the operating license of Turkey Point Plant, Unit 4, because of concerns over the safety of the reactor pressure vessel.

DD-81-22 PUBLIC SERVICE COMPANY OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 & 2). Docket Nos. STN 50-546, STN 50-547 (10 CFR 2.206); SPECIAL PROCEEDING; November 30, 1981; SUPPLEMENTAL DECISION UNDER 10 CFR 2.206

A The Director of the Office of Inspection and Enforcement reevaluates an earlier denial (DD-81-10) under 10 CFR 2.206 to determine whether additional concrete testing should be performed in light of a statistical modeling error regarding multiple-stage sampling in the original testing program. In view of the actual results of the testing program in the context of a single-stage sampling program, the Director declines to initiate an additional program.

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DD-81-23 PETITION CONCERNING FINANCIAL QUALIFICATIONS OF NUCLEAR POWER PLANT LICENSEES, 10 CFR 2.206; SHOW CAUSE PROCEEDING; December 4, 1981; DIRECTOR'S DECISION UNDER 10 CFR 2.206

- A The Director of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 which requested issuance of orders to show cause to all commercial power plant licensees to require a demonstration of their financial capability to absorb the costs of on-site property damage resulting from plant accidents.
- B As part of an applicant's demonstration of its financial qualifications for an operating license, the Commission has not required a specific demonstration of an ability to absorb the costs of severe accidents or to obtain the necessary funds to clean up after an accident.
- C Where the Commission has taken steps to generically consider an issue by rulemaking, the Director will generally not institute individual proceedings to modify or suspend licenses in the absence of a compelling reason for such action that cannot await the outcome of the generic proceeding.



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DPRM-81-2 ECKERT, SEAMANS, CHERIN & MELLOTT, Docket No. PRM-2-6; SPECIAL PROCEEDING; July 8, 1981; DENIAL OF REQUEST FOR RECONSIDERATION OF PETITION FOR RULEMAKING

- A The Commission denies a request for reconsideration of its earlier denial of the petition for rulemaking (PRM-2-6) submitted by Eckert, Seamans, Cherin & Mellott. The petitioner, on behalf of the Westinghouse Electric Corporation, had requested the Commission to amend its regulations to prescribe fixed time periods for the completion of licensing reviews by the Commission's regulatory staff and Atomic Safety and Licensing Boards.
- B While the Commission is responsible for and concerned with efficiency in its licensing process and believes that unnecessary or inappropriate delays should be avoided whenever possible, of overriding importance is the Commission's statutory responsibility to ensure that issuance of a license to an applicant will not be inimical to the health and safety of the public and will satisfy the requirements of applicable environmental laws.
- C The imposition of fixed time periods for the completion of licensing reviews would unduly restrict the necessary discretion of the Commission's regulatory staff and licensing boards.

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