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BIENNIAL REPORT

FISCAL YEARS 1993-1994

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Memorial

to

Robert M. Lazo

This Biennial Report is dedicated to Robert M. Lazo who died in office on May 6, 1994 following 22 years of distinguished and faithful public service as a Member, Acting Chairman, and Deputy Chief Administrative Judge of the Atomic Safety and Licensing Board Panel. His friends and colleagues remember him with affection and respect.

ABSTRACT

In Fiscal Year 1993, the Atomic Safety and Licensing Board Panel ("the Panel") handled 30 proceedings. In Fiscal Year 1994, the Panel handled 36 proceedings. The cases addressed issues in the construction, operation, and maintenance of commercial nuclear power reactors and other activities requiring a license from the Nuclear Regulatory Commission. This report sets out the Panel's caseload during the year and summarizes, highlights, and analyzes how the wide-ranging issues raised in those proceedings were addressed by the Panel's judges and licensing boards.

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EXECUTIVE SUMMARY

Overview

The caseload for Fiscal Years 1993 and 1994 focused on issues arising out of the continuing operation of more than 111 nuclear power plants or related facilities, and programs related to 7,000 nuclear materials licensees and other nuclear licenses. The Panel's fiscal year, like the Commission's, begins on October 1. The 1993–1994 cases reflected the kinds of disputes that arise from the regulation of a mature industry. In keeping with budget constraints and the NRC program to reduce the frequency of reports, the Licensing Panel has replaced its Annual Report with a Biennial Report.

Docket Data

Caseload — There were 30 cases on the Panel's docket in Fiscal Year 1993 and 36 in Fiscal Year 1994. In FY 1993, 13 cases involved nuclear power plants or related facilities, 15 involved other Commission licensees, and one involved an NRC employee in a Program Fraud Civil Remedy Act proceeding. In FY 1994, seven cases involved nuclear power plants, 28 involved other Commission licensees, and one involved an NRC employee in a Program Fraud Civil Remedy Act proceeding.

Completed Proceedings — Of the docketed cases closed in FY 1993, 36 percent were closed within 6 months from the time they were first docketed and 64 percent were closed in less than 1 year. For 1994, 73 percent of the cases closed were on the docket six months or less.

Administration

Staffing — During Fiscal Years 1993–1994, one full-time judge (legal) left the Panel and became a part-time judge, one fulltime judge died, and three part-time judges retired from the Panel. At the end of the period, September 30, 1994, the Panel had 14 full-time and 21 part-time judges.

The Panel's Electronic Docket — The Panel replaced its fulltext INQUIRE system with a personal computer LAN-based system using Personal Librarian Services Software. This new system will represent a potential annual cost savings for the Panel of $30,000 to $40,000.

I. INTRODUCTION

The intent of Congress when enacting the Atomic Energy Act was to provide that the public's views regarding nuclear matters be given full consideration. Public participation at the NRC reaches fruition in licensing hearings which are conducted on the record before independent tribunals.

The public can participate in NRC hearings in one of three ways: (1) by submitting written statements for consideration by hearing tribunals; (2) by making oral presentations at hearings; or (3) by becoming "intervenors" in hearings with full participatory rights as parties, including cross-examination of other participants. Parties to NRC hearings may appeal adverse decisions to the Commission and, ultimately, to Federal Courts of Appeal and the Supreme Court of the United States.

Adjudicatory hearings at the NRC are conducted by licensing boards or presiding officers drawn from the Atomic Safety and Licensing Board Panel. Nuclear reactor licensing and construction permit hearings before these boards have been among the most complex, lengthy, and controversial administrative proceedings conducted by the Federal Government. This has resulted principally from three factors. First, these hearings routinely have involved difficult interrelated questions of policy, law, physics, engineering, and risk assessment, often at the cutting edge of science and technology, where boards must confront highly technical and scientific theories, opinions, and research findings. Second, difficult technical questions at the NRC hearings are often resolved in the complicated environment of local concerns about the consequences of severe accidents and the national debate over the role nuclear power should play in meeting the Nation's energy needs. Third, in deciding whether a license, permit, amendment, or extension should be granted to a particular applicant, individual boards must be more than mere umpires. Where appropriate, they are required to go beyond the issues placed before them by the parties in order to identify, explore, and resolve significant questions involving threats to the public health and safety which come to the boards' attention during the proceedings.

In recent years, the Panel's caseload has shifted away from the large nuclear power plant operating license and construction permit proceedings that dominated its docket during earlier years. The site decontamination, enforcement actions, reactor license amendment, and materials license proceedings that are taking their place continue to raise difficult and sometimes unexplored questions of law and science. And in the near future, projected proceedings involving facility decommissioning, license renewal, applications to license high level and low level waste repositories, and new reactor design certifications are anticipated to be complex and highly contested and will involve novel scientific issues. The high level waste repository proceeding scheduled for Yucca Mountain, Nevada, in particular, has the potential for being one of the most complex and controversial administrative proceedings ever conducted by the Federal Government.

The Panel handled 30 cases in Fiscal Year 1993 and 36 cases in Fiscal Year 1994. This report summarizes, highlights, and analyzes how the wide-ranging issues raised in these proceedings were addressed and resolved by the boards and the judges of the Panel during the two-year period. This report also describes the present status of the Panel, recent adjudicatory developments at the NRC, and present and projected future caseloads.

II. PANEL DUTIES

1. Panel Hearings

Contested hearings at the Nuclear Regulatory Commission (NRC) are conducted either by three-member boards or by single presiding officers drawn from the Atomic Safety and Licensing Board Panel. The NRC's regulations provide the opportunity for numerous types of hearings. These hearings include:

Reactor Licensing. The Atomic Energy Act of 1954, as amended by the Energy Reorganization Act of 1974 and the Energy Policy Act of 1992 ("the Act"), and its implementing regulations require that a hearing be held on every application for a combined construction permit and operating license for a nuclear facility that produces electric power. The combined hearing provides an opportunity for affected individuals and organizations to raise health, safety, and antitrust issues. In addition, post-construction hearings on combined licenses are allowed under circumstances when the facility's acceptance criteria have not been met and there is no reasonable assurance of adequate protection. Separate hearings may be held on applications for construction permits or for operating licenses for a nuclear power plant or related facility if a combined license is not requested.

License Amendments. Affected parties may challenge proposed license amendments for nuclear reactors which seek to alter the operating mode or the physical configuration of the reactor. If the public health and safety warrants, hearings will be required before the license amendment is authorized.

Materials Licenses. Hearings may be conducted to contest NRC licensing actions involving the commercial use of nuclear materials. These cases include licensing actions involving the manufacture, treatment, disposal, or storage of radioactive and the commercial use of radioactive materials used in such fields as nuclear medicine, well logging, and radiography.

Enforcement Proceedings. Hearings are available to individuals, employees, licensees, contractors, subcontractors, and vendors for contesting penalties (ranging from monetary fines and civil penalties to facility shut-down and license revocation) brought against them by the NRC staff for alleged infractions of NRC regulations.

Antitrust Proceedings. Hearings can be conducted on antitrust grounds to contest the licensing of a nuclear reactor. These hearings allow affected parties to challenge the licensing of nuclear reactors if the operation of such reactors would create or maintain a situation inconsistent with the antitrust laws.

Commission-Ordered Proceedings. Hearings can be conducted for any nuclear-related matter that the Commission directs be heard. For example, although hearings are not required under the Administrative Procedure Act for agency rulemaking, recently promulgated Part 52 of the NRC's regulations provides for a hearing opportunity to contest proposed rules which would certify designs for new reactors. *See* 10 C.F.R. 52.51.

Personnel Matters. Hearings also may be conducted by Panel members for cases involving non-nuclear related activities. Such hearings include cases involving employee grievances or agency personnel action. Hearings also are available to resolve differing professional opinions and for individuals to contest agency action involving fraudulent claims brought under the Program Fraud Civil Remedies Act of 1986.

2. Types of Hearings

Hearings at the NRC may be either formal or informal. The Panel's formal proceedings are governed by the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, as implemented by the Commission's own rules of practice set out at 10 C.F.R. Part 2. Formal proceedings consist of the traditional procedures used in non-jury Federal court cases including pretrial discovery between the parties and formal trial procedures at the hearing. Formal procedures traditionally have been used at the NRC in cases involving the licensing of reactors and for enforcement

proceedings brought by the agency against individuals and licensees.

Informal hearing procedures are authorized in matters affecting one of the NRC's more than 7,000 materials licensees. Informal proceedings are generally conducted under the procedures in 10 C.F.R. Part 2, Subpart L. While the deliberative process for judges remains the same under either type of hearing, informal hearings involve significantly different procedures for developing the record upon which decisions must be based. The principal differences include the use of a single presiding officer (as opposed to a threemember licensing board), written submittals by the parties instead of a hearing on the record, and, if the presiding officer determines it to be necessary after considering the written submittals, oral presentations by the parties subject to questioning by the presiding officer. Subpart L proceedings do not allow for discovery by the parties or for cross-examination by a party of the other parties' witnesses, expert or conventional.

3. High-Level Waste

The Panel has several responsibilities regarding the projected high-level waste repository scheduled to be built at Yucca Mountain, Nevada. Ultimately, the Panel's administrative judges will be responsible for making the initial decision in a formal hearing on whether this repository satisfies applicable safety and environmental requirements and should be granted a license.

In recent years, the Panel has helped develop procedural rules governing licensing hearings for the facility. The Panel also affords legal and technical advice and support to the Licensing Support System Administrator (LSSA) for developing the electronic document management system for licensing the facility. The LSSA oversees the development of the Licensing Support System (LSS), a state-of-the-art, electronic document capture and retrieval system to be housed in the Department of Energy and used by parties and licensing boards in the high-level waste proceedings.

Within the next few years, the Panel will adjudicate discovery disputes after LSS documents (estimated at up to 20 million pages) are loaded in the LSS's electronic repository. This electronic document data base will eliminate the need for most discovery after the Department of Energy's license application has been docketed for hearing.

4. Other Panel Responsibilities

The Panel also performs a number of other additional services for the NRC such as:

Advisory Opinions—The Panel monitors all proposed rules, regulations and legislation affecting the NRC's hearing process and advises the Commission when potential problems exist. Upon request, the Panel furnishes comments to the Office of the General Counsel on rules and regulations proposed by that office.

Drafting NRC Procedural Rules—The Panel is currently working on a rewrite of the Commission's Rules of Practice to make them more easily understandable and useable and consistent with rules followed by other agencies. Upon completion, the proposed draft will be presented to the Commission for rulemaking. In the past, the Panel has worked with other NRC offices in drafting procedural rules under 10 C.F.R. Part 2.

Electronic Filing Services—In 1993, the Panel formed a committee with other NRC offices to consolidate and computerize the NRC's adjudicatory dockets. This project is still ongoing. During the same period, Panel members joined a consortium of volunteer government and private sector representatives to develop methods of electronic document filing in administrative hearings. The NRC was chosen as the pilot federal agency for this project. After the project's completion, the electronic filing standards developed will be reviewed to determine whether they should be adopted for NRC adjudicatory proceedings.

Alternative Dispute Resolution—Panel members and the Panel's Legal Counsel are trained in Alternative Dispute Resolution techniques. This resource is available to the agency and to NRC offices for mediation and facilitation services.

Managing Court Reporting Services—The Panel is responsible for managing NRC court reporting

services for all proceedings, meetings, depositions, public hearings, oral arguments, and investigative interviews held in the United States, including its protectorates, and the countries of Canada and Mexico. In addition to its own adjudicatory needs, the Panel provides for the court reporting service needs for the rest of the NRC including the Commission's Advisory Committees' meetings and out-of-town Commissioners' meetings. The Panel also provides reporting services for investigative interviews of the Office of Investigations and the Office of the Inspector General and for selected meetings and workshops conducted by other Commission offices.

III. ENHANCING THE ADJUDICATORY PROCESS

1. Improving Case Management Techniques

During Fiscal Years 1993 and 1994, the Panel continued to streamline and improve the hearing process. For informal hearings, the informality of Subpart L requires that presiding officers be innovative in creating and shaping the record and resourceful in ensuring an expedited proceeding with a just outcome. Although these informal proceedings require only a single judge, the Panel has adopted a procedure of assigning a legal or technical judge from the Panel as an assistant to the designated presiding officer. Thus, while obtaining the benefits of the informal procedures, the assignment preserves the cross-expertise of the traditional three-member licensing boards to ensure issuance of fully-informed decisions.

For formal hearings, boards and presiding officers take an active role in shaping the issues before them by such measures, when appropriate, as consolidating the contentions of the parties. In complex proceedings involving numerous issues under several distinct topics, the Panel often creates separate, parallel licensing boards to handle one or more topics. In addition to the time saved through parallel adjudication, each board can be assigned Panel members whose expertise best matches the issues to be resolved. In addition, to further enhance efficiency, boards segregate topics at hearings and subdivide hearing schedules into distinct phases so that each phase deals most efficiently with discrete groupings of related issues. Boards also actively monitor the discovery segment of proceedings to expedite the case.

For both formal and informal proceedings, boards and presiding officers affirmatively foster an atmosphere conducive to the free exchange of views among the parties and encourage the possible settlement of disputed issues. A large percentage of proposed contentions and issues in NRC proceedings are thus resolved informally. Boards and presiding officers also continuously encourage the settlement of entire proceedings. To this end, the Panel has initiated programs to train its judges in alternative dispute resolution techniques. In addition, the Panel has adopted a program of assigning settlement judges, when appropriate, to litigated cases to assist the parties in settlement negotiations.

2. Utilizing New Technologies

The Panel has increasingly relied upon computer support systems in its day-to-day operations. These systems have proven to be particularly important for expediting adjudicatory proceedings, managing the Panel's voluminous and complex hearing records, and supporting Panel administration

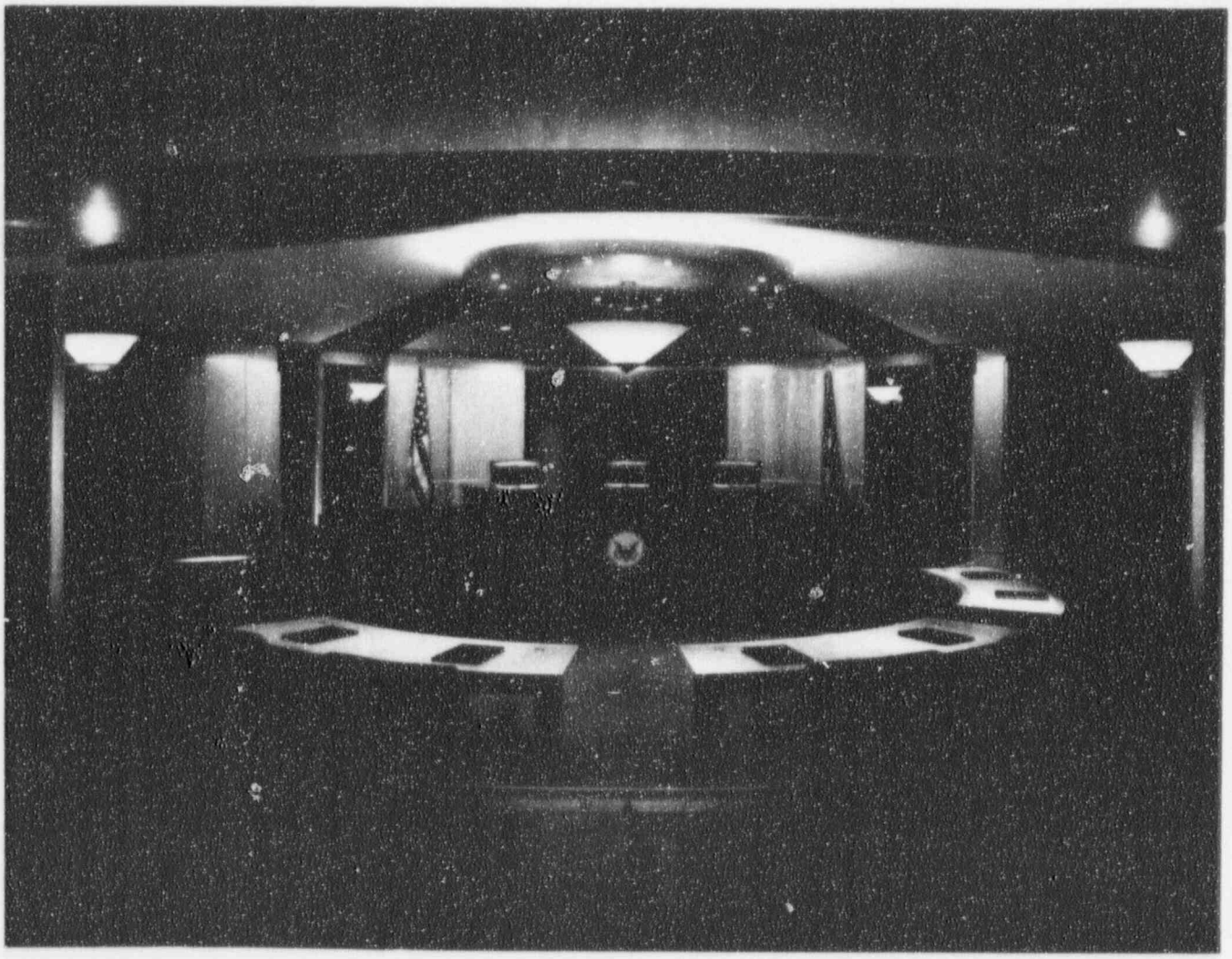
Important technology innovations for expediting hearings have included the installation of computerized work stations for the judges and key Panel personnel. To assist in decision writing, judges can now access full text documents from their computers using in-house customized database management systems while simultaneously doing legal research on the computer through external systems such as LEXIS and WESTLAW. In addition, as presently configured, judges and professional support staff can, from their desks, draft, share, and comment on proposed decisions; access and quickly search either the Panel's electronic docket or the Commission's document retrieval system; and communicate with each other or other employees of the NRC through the Commission's electronic mail system.

Document availability and case management techniques have been considerably enhanced by the Panel's electronic docket. For routine hearings, documents received by the Panel are abstracted and entered into the adjudicatory database by the end of each working day. In selected complex cases, the full text of significant documents such as pre-filed testimony and hearing transcripts are electronically indexed and added to the database. Once in the database, the system contains indexing, companion search, and retrieval capabilities. During the 1993-1994 period, the Panel's INQUIRE system (a full-text database manager for document storage) was phased out for a more efficient, up-to-date, and less expensive system. The new system, Personal

Librarian Services (PLS), designed by the Panel to utilize the agency's local area network system (Autos) implementation plan, is PC LAN based and can be maintained on a stand-alone personal computer. A network version of this system on a network file server has potential annual cost savings of $30,000 to $40,000.

3. The Two White Flint North Hearing Room

In July 1994, the Panel moved its offices to the Two White Flint North building in Rockville, Maryland. These new quarters include a hearing room designed specifically for conducting NRC



New Panel hearing room at Two White Flint North

licensing and enforcement adjudications. The judges' bench, counsel tables, and the witness, clerk and reporters' boxes are arranged in a circular configuration that affords all participants

an essentially unobstructed view of events within the "well of the court." Audience seating is

available to accommodate approximately 100 members of the public.

With proceedings such as the high-level waste repository and the monitored retrievable storage facility in the offing, the Panel will need to add state-of-the-art audio, video, and computer

technology to enhance efficient conduct of hearings. Immediate plans for the new hearing room include the installation of a speakerphone system that will permit conference calls between the presiding officer and off-site parties using the microphones and speaker system in the hearing room. The Panel also plans to install a local area network (LAN) in the room (possibly radio based) that, using notebook computers, will allow the presiding officer, counsel, and witnesses to locate and view electronic text or imaged versions of exhibits and record materials, perform wordprocessing or spreadsheet functions, and do research using LEXIS/NEXIS, WESTLAW, or CD-ROM library materials via outside computer databases. Thus, the Panel will have a paperless courtroom capable of accessing the largest cases and legal databases instantaneously.

By creatively combining off-the-shelf systems, the cost of this modern courtroom will be modest. The savings to the parties will pay for the modernization on the first large case.

Also during the period, the Panel began serving as the test vehicle for a project to draft standards for electronic filing. The project would use American National Standards Institute's X.12 standards for electronic data interchange (EDI). EDI makes it possible for one computer to communicate directly with another regardless of the software and hardware involved, thereby eliminating not only the mail system, but also all human handling now required for one party to transmit a document to another. Widely used in many industries including banking, trucking, and retail, an EDI filing standard for textual documents could save enormous amounts of both money and time. For example, the time allowed for service of documents in large cases (which can add up to months) would be eliminated, as would the cost of postage and duplicating. The result would mean thousands of dollars of savings in a complex case.

In addition, the Panel's project could establish a standard useable throughout NRC as well as by all administrative agencies. Given the potential delays and unreliability consequent from the explosive growth of the Internet, a working EDI standard could take on critical importance and enormous value. The Panel hopes to complete writing the standard and obtaining ANSI X.12 approval of it in the next 12 to 18 months.

IV. CASELOAD

1. Overview

The Panel's 1993–1994 caseload continued to reflect a trend, beginning during the late 1980's, toward more focused proceedings of a greater technical and legal diversity typical of a maturing industry. Unlike earlier years, construction permit and operating license proceedings for nuclear reactors did not dominate the Panel's docket.

2. The Fiscal Years 1993 and 1994 Dockets

During Fiscal Year 1993, as shown in Tables 1 and 2, the Panel had 30 proceedings on its docket. Of these proceedings, 13 involved nuclear power plants or related facilities, 15 involved other Commission licensees, and one involved NRC personnel.

Table 1. Fiscal Year 1993 Docket Recapitulation

Status of Cases	Date	No. of Cases
Pending	10/01/92	16
Docketed	FY93	14
Total	FY93	30
Closed	FY93	11
Pending	10/01/93	19

Table 2. Fiscal Year 1994 Docket Recapitulation

Status of Cases	Date	No. of Cases
Pending	10/01/93	19
Docketed	FY94	17
Total	FY94	36
Closed	FY94	12
Pending	10/01/94	24

In 1994, there were a total of 36 proceedings, 7 involving nuclear power plants, 28 involving other Commission licensees, and one involving an NRC employee. Fourteen new cases were docketed and 11 cases were closed in FY 1993, and, in FY 1994, 17 new cases were docketed and 12 cases were closed.

The Panel's 30 cases in 1993 totalled 8 less than in 1992. The decline in 1993 was caused by a significant drop in the number of enforcement cases from 18 in 1992 to only 9 in 1993. The Panel had projected at least 15 enforcement cases for 1993 based on the average number of enforcement cases in the three previous years of 17.3. The 1993 reduction was believed to be an anomaly which was not expected to continue in the future. In 1994, as predicted, enforcement cases increased to 18 and there were a total of 36 docketed cases, a 20 percent increase over 1993.

The Panel's 1993–1994 caseload followed the trend, begun in the late 1980's, of cases primarily concerned with NRC enforcement actions, materials licensing actions, and actions pertaining to the regulation of nuclear reactors that have been licensed and are operating. This caseload differs significantly from the three previous decades which were dominated by construction permit and operating license proceedings for licensing new reactors. Tables 3 and 4 set out the number and types of cases that were on the Panel's 1993–1994 docket.

Table 3. 1993 Panel Caseload

Types of Cases	Number of Cases
Antitrust	1
Decommissioning	1
Enforcement	18
License amendment	9
Materials Licenses	5
Personnel matters	1
Other	3

Table 4. 1994 Panel Caseload

Types of Cases	Number of Cases
Decommissioning	1
Enforcement	18
Licensing amendments	3
Materials licenses	9
Personnel matters	2
Other	2

The difference in cases between the earlier era and the present era is graphically demonstrated by comparing Figure 1, infra, depicting the caseload mix for 1983, with Figures 2 and 3, infra, representing the caseload mix for 1993 and 1994. In Fiscal Year 1983, construction and operating license proceedings accounted for 62 percent of the Panel's docket. Although license amendment proceedings constituted a significant 26 percent, no significant number of enforcement actions and materials licensing proceedings were docketed. In Fiscal Years 1993 and 1994, in contrast, there were no active operating license or construction permit proceedings, and enforcement actions, license amendments, and materials licensing proceedings accounted for 80 and 83 percent of the docket, respectively, for those years.

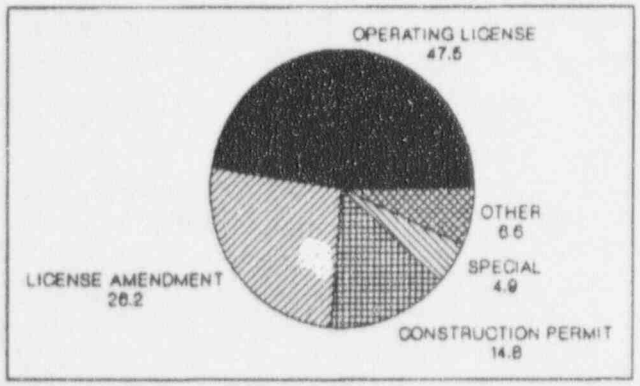


Figure 1. Fiscal Year 1983 caseload mix by percent

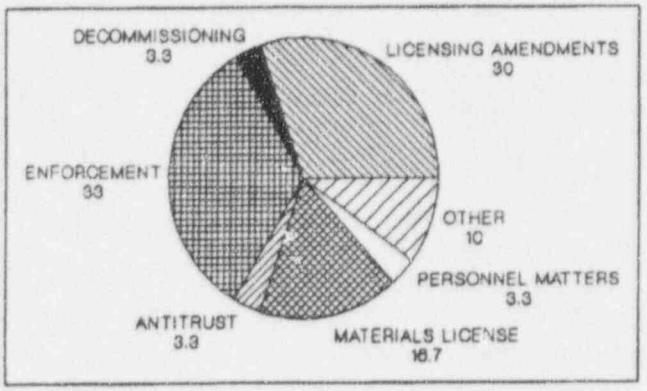


Figure 2. Fiscal Year 1993 caseload mix by percent

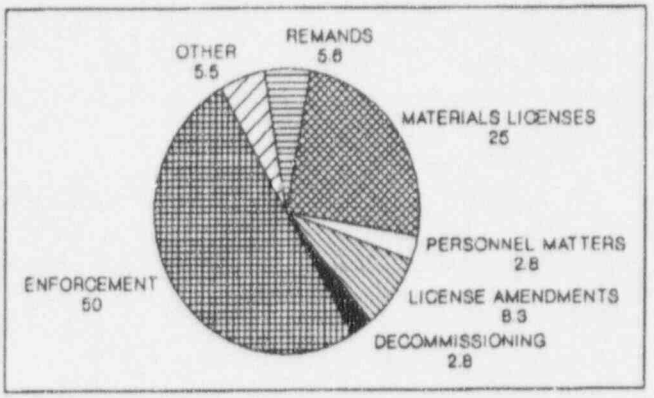


Figure 3. Fiscal Year 1994 caseload mix by percent

Licensing boards and presiding officers exercised effective case management techniques during 1993–1994. Sixty-four percent of cases closed in FY 1993 had been on the docket less than 1 year and 36 percent had been on the docket for only 6 months or less. In 1994, 73 percent of cases closed that year had been on the docket for 6 months or less. In addition, as shown in Tables 5 and 6, 57 percent of the 30 cases in 1993 and 58 percent in 1994 had been on the docket for less than 1 year.

Table 5. Months Fiscal Year 1993 Cases Were on Docket

Duration of Cases	No. of Cases	Percent
1 to 3 months	7	18
4 to 6 months	8	21
7 to 9 months	5	14
10 to 12 months	5	13
More than 12 months	13	34

Table 6. Months Fiscal Year 1994 Cases Were on Docket

Duration of Cases	No. of Cases	Percent
1 to 3 months	8	22
4 to 6 months	8	22
7 to 9 months	0	0
10 to 12 months	5	14
More than 12 months	15	42

3. Projected Future Caseload

Figures 4 and 5 forecast the Panel's near-term caseload mix for Fiscal Years 1995 and 1996, respectively. Just as in Fiscal Years 1993 and 1994, enforcement, license amendment, and materials licensing proceedings are expected to dominate the Panel's near-term docket, with these types of proceedings accounting for approximately 81 percent of the projected Fiscal Year 1995 docket and 71 percent of the projected 1996 docket.

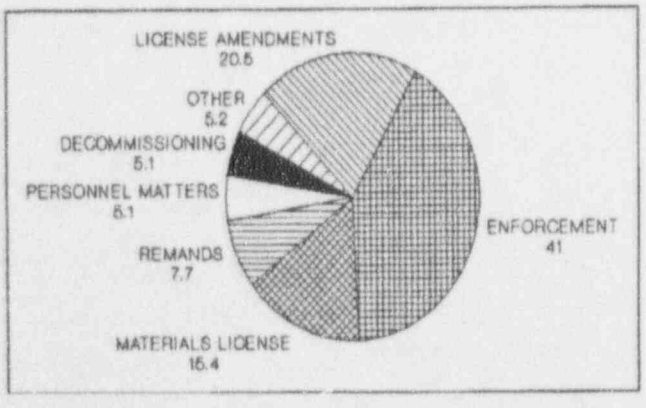


Figure 4. Fiscal Year 1995 Projected caseload mix by percent

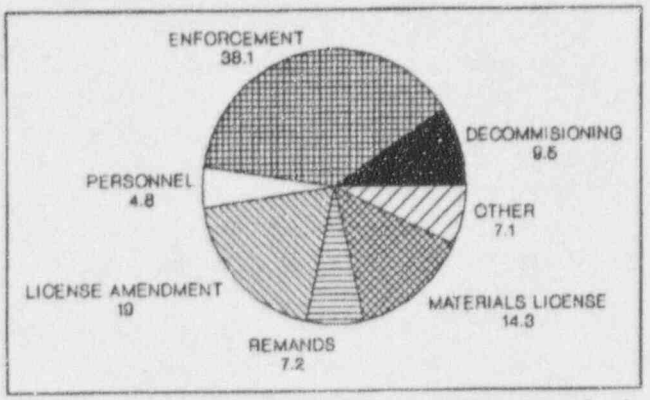


Figure 5. Fiscal Year 1996 Projected caseload mix by percent

Beginning after 1996, an influx of new types of cases is expected on the Panel's docket. These cases will be in addition to the baseload of reactor license amendment, enforcement, and materials licensing cases which the Panel is presently handling. Areas where new cases are projected to occur include: [1]

License extension of existing reactors—The Commission is actively getting the reactor operating license renewal process on track so that reactors may operate for a longer period than the period for which they are presently licensed. A new license renewal rule is expected to be issued which will make the license renewal of older reactors a more viable option. Potentially, a substantial number of hearings could be generated by license renewal applications.

Standard design certification of new reactors—Rulemaking hearings are expected in 1995 to certify the designs of the General Electric Advanced Boiling Water Reactor and the ABB-Combustion Engineering System 80. During the mid- to late-1990's additional hearings are also projected for certifying novel light water designs employing passive features and modular construction. Passive-design reactors will include the Westinghouse AP 600 and General Electric Simplified BWR, for certification in the near term, and potentially the CANDU, MHTGR, PRISM and PIUS for certification in the long

[1]In addition to those listed here, there is also some slight potential for hearings concerning early site selection of new reactors and renewed proceedings for previously deferred construction permit and operating license applications.

term. These hearings may ultimately result in the construction of new reactors which, in turn, will require combined construction permit/operating license hearings.

Low-level waste—Under the Low-level Waste Policy Amendments Act of 1985, states are required to provide low-level waste disposal facilities individually or in compacts with other states. Although most state compacts are moving slowly in planning sites, future hearings may well eventuate to license low-level waste sites for some Non-Agreement States.

High-level waste—Licensing hearings are projected in the year 2001 for the high level waste facility at Yucca Mountain, Nevada. Prior to site licensing and possibly as early as 1997, licensing boards will begin ruling on discovery disputes for the LSS document loading. See discussion in Section II, B, supra.

Decommissioning—Increased decommissioning hearings are expected in the near term for nuclear reactors whose licenses expire or retire early. Contested cases are also projected to increase for decommissioning materials licensees' sites, some of which could emanate from the Commission's Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plant Sites (See 57 F.R. 13,389, April 16, 1992).

V. PERSONNEL AND SUPPORT

1. Panel Members

Commission appointment of administrative judges to the Panel is based upon the appointee's recognized experience, achievement, and independence in his or her field of expertise. Once appointed, judges are assigned, as cases arise, to individual licensing boards where their professional expertise will assist in resolving the technical and legal matters likely to be raised during the proceeding.

To ensure the Commission's workload is met, the Panel has initiated an active program to establish registers of persons qualified for appointment to the Panel in the wide range of disciplines required. The Panel also provides training for its judges in complex technical areas and in the rapidly changing legal areas involved in nuclear law.

Panel meeting at National Judicial College

First row: (Standing) J. Whetstine, (seated) G. Anderson, F. Hooper, D. Callihan, W. Jordan, C. Bechhoefer, P. Lam, J. Frye, H. Foreman, E. Johnson, R. Lazo, M. Miller, and (standing) E. Leins.

Second row: Senior Federal Circuit Judge Ruggero J. Aldisert, H. Rein, K. McCollom, G. Bright, R. Foster, C. Kelber, G. Bollwerk, G. Tidey, L. Rubenstein, D. Schink, I. Smith, G. Ferguson, P. Morris, and B. Cotter.

Third row: J. Kline, E. Luebke, F. Shon, R. Cole, M. Margulies, L. Dewey, P. Bloch, T. Moore, R. Pierce, J. Gleason, J. Carpenter, E. Hill, R. Parizek, T. Elleman, and Professor Elizabeth James.

During the 1993–1994 period, the Panel had available a total of 39 judges (16 full-time and 23 part-time). See Appendix B. By academic discipline, they included 11 lawyers, 10 public health and environment scientists, 9 engineers, 7 physicists, and 3 physicians. Collectively, they held 60 postbaccalaureate degrees in engineering, scientific, or legal disciplines, and as a group they represented more than nine centuries of experience in the nuclear field. See Appendix C. Several part-time members are or have been heads of departments at major universities or national laboratories.

Some judges left the Panel or changed their Panel status during the period. In September 1993, Judge James H. Carpenter went from a full-time to a part-time member. The Panel subsequently lost two more full-time members when its Deputy Chief Administrative Judge, Robert M. Lazo, died in May 1994, and its Chief Administrative Law Judge, Morton M. Margulies, retired in July 1994. Three of its part-time members, Judges Sheldon J. Wolfe, Walter H. Jordan, and Glen O. Bright, also retired from the Panel in the summer of 1994. As of the end of Fiscal Year 1994, the Panel had 14 full-time and 21 part-time judges.

2. Professional and Support Staff

Support for the activities of the Panel, individual licensing boards, and the Panel's judges is structured along functional lines: (1) legal, (2) technical, and (3) administrative. The Chief Administrative Judge of the Panel manages and supervises these interrelated support activities.

Technical and Legal Support

Legal support and advice for the Panel and its 39 full- and part-time judges is provided by the Panel's Legal Support Staff. The staff consists of the Panel's Chief Counsel, a Staff Senior Attorney, and seasonal interns and law clerks who are added as required by the caseload.

Directed by the Chief Counsel, the Technical and Legal Support Staff: (1) provides legal advice, research capabilities, opinion drafting, editing services, and support at hearings; (2) supports the Chief Administrative Law Judge with assistance on a broad range of policy matters; (3) provides legal training and keeps Panel members informed of important nuclear-related activities and legal proceedings; (4) oversees, with the help of the Administrative Support Staff, the Panel's legal/technical library; and (5) participates in the evaluation of computer support appropriate to the conduct of adjudicatory proceedings.

Historically, individual licensing boards have obtained technical support from a Panel reactor safety engineer and an environmental health scientist. However, both positions were vacated some years ago and have not been filled because of personnel ceiling limitations. During Fiscal Years 1988 through 1990, technical assistance, particularly in physics and computer development, was provided by the Panel's Senior Technical Advisor. This position was vacated in 1991 and has not been filled. Currently, the Panel uses Administrative Judges (Technical), when they are available, to perform these support functions.

Administrative Support

Program Support—The Program Support and Analysis Staff (PSAS) performs the Panel's administrative duties and assists in planning, developing and coordinating administrative programs to support the Panel's hearing mission. Its main responsibilities include, adjudicatory filing requirements, budget assistance, hearing space and facilities, labor relations, library support (legal and technical), management of the NRC court reporting contract (excluding the reporting contract for the Office of the Secretary), paralegal services, personnel, professional service contracts, and travel. PSAS is also responsible for performing a wide range of automated data processing (ADP) services, including maintenance of the Panel's electronic docket.

Information Processing Section—The Chief of the Information Processing Section reports to the Director, PSAS. This section is responsible for supporting the Panel by developing and implementing: (1) docket management services; (2) adjudicatory database management through automatic data processing (ADP) systems; (3) general office support services; (4) legal and technical library services; and (5) ADP training, research, development and assistance.

3. Awards and Activities

Awards

In Fiscal Years 1993 and 1994 High Quality Increase awards were received by Espanola F. Hughes Robert R. Pierce in recognition of high quality service which resulted in a significant contribution to the work of the Nuclear Regulatory Commission.

Special Achievement awards were received by James A. Cavanaugh, James M. Cutchin V (2), Lee S. Dewey, Sherma K. Donovan, Carolyn K. Ecker, C. Joyce McDow, Florence M. Miller, Doris M. Moran, and Jack G. Whetstine in recognition of a special achievement which resulted in a significant contribution to the work of the Commission.

Length of Government Service

The Panel has been well and faithfully served by both judges and staff. During the period the following awards were given:

Ten years:	Sherma K. Donovan Judge Peter S. Lam
Twenty years:	Judge Richard F. Cole Carolyn K. Ecker Judge James P. Gleason
Thirty years:	Judge Charles Bechhoefer Chief Counsel Lee S. Dewey
Fifty years:	Doris M. Moran

Doris Moran receiving an award from Judge Cotter

Activities of Note

In Fiscal Year 1993, Chief Judge Cotter, acting as Chairman of the Supreme Court Opinion Network (SCON), turned over control of Project Hermes to Associate Justice Sandra Day O'Connor. SCON, a volunteer, non-profit consortium of judges, bar associations, information providers, libraries, and vendors, was formed to establish a system to distribute the Supreme Court's opinions electronically. That system was named Project Hermes by the Court. SCON and Project Hermes succeeded in revolutionizing the distribution of the court's opinions. The 170 paper copies previously handed out on opinion day have been replaced by full text availability of opinions throughout the country within 24 to 48 hours. Interestingly, SCON was terminated once its purpose was fulfilled, a rarity in Washington.

Judge Cotter with Supreme Court Justice Sandra Day O'Connor

VI. SIGNIFICANT DECISIONS

During Fiscal Years 1993–1994, the Panel's boards and presiding officers published 72 decisions and issued several hundred memoranda and orders in connection with the 66 proceedings on the Panel's docket. See Appendix D. All published board decisions are available in full text in *Nuclear Regulatory Commission* Issuances and also electronically in the Energy Libraries of LEXIS/NEXIS and WESTLAW. Some of the more significant of these formal issuances are summarized below.

1. Antitrust

In 1993 a significant antitrust decision examined and affirmed the continuing applicability of those laws in the Perry/DavisBesse proceeding. *Ohio Edison Company* (Perry Nuclear Power Plant, Unit 1; *Cleveland Electric Illuminating Company* and *Toledo Edison Company* (Davis-Besse Nuclear Power Station, Unit 1) LBP-92-32, 36 NRC 269 (1992). In this proceeding, the operating utilities requested that the antitrust license conditions be deleted for the Perry and Davis-Besse nuclear facilities. They contended that the conditions were no longer justified because these facilities had higher costs of generating electric power compared to competing resources. Thus, they reasoned, the facilities could not assist in the creation or maintenance of a situation inconsistent with the antitrust laws as set out in Section 105(c) of the Atomic Energy Act, as amended. The licensing board rejected licensees' argument by focusing on the purpose of the antitrust laws and analyzing the nature of market power. The board concluded that, in an electric utility case such as this, the test for determining a situation inconsistent with the antitrust laws is weighed in terms of the possession and use of market power. The board found that market power is determined by numerous factors such as firm size, market concentration, barriers to entry into the market, pricing policy, profitability, and past competitive conduct. Because market power is not limited, as argued by the licensees, to the comparative cost of doing business as measured by the cost of power generation, there was insufficient basis for suspending the Perry and Davis-Besse license conditions. This case had potentially far-reaching consequences because, if Perry and Davis-Besse had their antitrust license conditions lifted, most other electric utilities would have requested similar relief.

2. Stays in NRC Proceedings

Several important Panel decisions dealt with attempts to stay NRC proceedings. In *Oncology Services Corporation*, LBP-93-6, 37 NRC 207 (1993), the licensing board granted a 120 day stay of an enforcement proceeding sought by NRC staff to protect the confidentiality of ongoing federal and state criminal investigations concerning the licensee. Although the board found some prejudice to the licensee from delaying the NRC proceeding, it determined that, on balance, the greater harm could occur from premature disclosures in the criminal investigations. It, nevertheless, recognized a duty to monitor the delay to ensure that the good cause for delay continued, and it warned that the delay would be cancelled once the balance tilted in favor of going ahead with the hearing process. It also moved forward with aspects of the hearing which were unaffected by the investigations. To monitor the delay, it set timetables for submitting status reports on the ongoing investigations.

3. Standing To Intervene in NRC Proceedings

Several 1993–1994 decisions involved the issue of "standing to intervene" in NRC licensing proceedings. To demonstrate that a petitioner has sufficient standing to participate as a party in an NRC proceeding, the petitioner must show that the licensing action in question may cause it actual injury in fact and that the petitioner's interest is within the zone of interests protected by the NRC's governing statutes.

Standing Based on Injury to Property Interests

A standing issue of first impression was decided in a proceeding involving the transfer of ownership and installation of a new operator for the River Bend nuclear reactor. *Gulf States Utilities Company* (River Bend Station, Unit 1), LBP-94-3, 39 NRC 31 (1994). There the licensing

board granted standing on the grounds that the property interest of the petitioner, who was a co-owner of the facility, might be jeopardized by potentially unsafe operation of the facility caused by under-funding. The board acknowledged that in past NRC cases standing had traditionally been denied based on property interests. However, it distinguished those cases because those property interests were primarily based upon economic interests of ratepayers and taxpayers or general concerns about a facility's impact on local utility rates and the local economy, and were too far removed from the purpose of the underlying statutes governing those proceedings. The board concluded that the property interests in this case were protected by the Atomic Energy Act since the petitioner's stated interest was to protect its property, the nuclear facility, from radiological hazards arising from the facility's unsafe operations.

Establishing Particularized Injury to a Petitioner

In *Sequoyah Fuels Corporation* and *General Atomics* (Gore, Oklahoma Site), LBP-94-5, 39 NRC 54 (1994), a petitioner sought to establish injury sufficient to confer standing to intervene by alleging that ground water flow from a nuclear site might migrate onto his property. To controvert this assertion, the licensee of the facility furnished affidavits from technical personnel contending that such migration was not possible. In granting intervention, the licensing board concluded that the test for determining injury was whether there was a "potential for consequences" to a petitioner. The board found such a potential here since groundwater conceivably could move in the general direction of the petitioner's property. The board cautioned that it must avoid the familiar trap of confusing the standing determination with the assessment of the petitioner's case on the merits.

Third Party Standing To Intervene in Enforcement Proceedings

A novel standing question was addressed by a licensing board when a native American tribe attempted to intervene in an NRC enforcement proceeding to support an NRC staff enforcement order. Third parties rarely attempt to intervene in enforcement actions against NRC licensees. The licensee claimed that a third party lacks standing in this type of proceeding. In allowing intervention, the board reasoned that the tribe's interests could potentially be adversely affected if the order was not sustained, or if it was modified or withdrawn by some unilateral staff action or by a settlement between the staff and the parties. Sequoyah Fuels Corporation and General Atomics (Gore, Oklahoma Site Decontamination Funding), LBP-94-5, 39 NRC 54 (1994).

Standing Under NEPA

A Standing was denied in *Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility—Decommissioning Plan), LBP-93-4, 37 NRC 72 (1993) when petitioner sought standing under the National Environmental Policy Act (NEPA). Because NEPA requires federal agencies to undertake appropriate assessments of the environmental impacts of their actions, the petitioner claimed that it sustained injury in fact when the NRC staff filed a more limited Environmental Assessment rather than a full Environmental Impact Statement with respect to a proposed licensing activity. In deciding this claim, the presiding officer recognized that under NEPA a more lenient standard exists in determining injury in fact since the public has the right to be informed about the environmental consequences of an agency's actions. However, he concluded that the petitioner had failed to show a concrete harm to a legitimate health, safety or environmental interest because its injury complaint was confined to economic interests (e.g., property values, local tax revenues) and it had framed its concerns in terms of undefined injury to the local community as a whole rather than to injury the petitioner itself would suffer.

Standing for License Recapture and License Extension Proceedings

The potential for an accident conveyed standing to intervene in a license recapture proceeding. In *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-9, 37 NRC 433 (1993), a petitioner contended that the 13 to 15 additional years that would be added to a nuclear facility's operating license (recapture time for construction of the facility) was a potential accident threat sufficient to establish requisite injury in fact. The licensee argued that

the extension of operating time sought by the recapture amendment was purely a ministerial or administrative change to the license which could not produce injury in fact. The licensing board granted standing on the basis that the risks associated with a potential accident during the recapture period are the same as for the original operating period; therefore, residency within a 50-mile radius of the plant was sufficient in establishing standing just as it was in the original operating license proceeding.

In *Texas Utilities Electric Company* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370 (1992) a board was asked to grant standing to intervene in a construction permit extension proceeding in which a utility had requested a three year extension for completing construction of its nuclear facility. The board concluded that the same standing principles apply to an extension of an existing construction permit as they do for a new construction permit or operating license application. Thus, one of the petitioners was granted standing on the basis of his residence being located within 50 miles of the nuclear facility. Separately, in the *Texas Utilities* decision, the board addressed a petitioner's claim that a personal injury he had sustained, allegedly resulting from the utility's mismanagement, supported his standing in the proceeding. The board denied this claim because the alleged mismanagement was not related to the proposed extension of the construction permit completion date and the petitioner's grievances were grounded in employment rights and could not be redressed by any decision concerning license extension that would be issued in the proceeding.

Standing Based on Proof of Residence

In *Georgia Power Company*, et al. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-92-38, 36 NRC 394 (1992), a standing decision turned on proof of residence. To meet the standing requirement, a petitioner claimed residence within 50 miles of the Vogtle Plant. The licensee disputed petitioner's residence by asserting that petitioner had declared his only residence to be in another state and that he had voted there. The board placed the burden of proof on the petitioner to establish residency by a preponderance of the evidence.

4. Contentions in NRC Cases

Another line of 1993–1994 Panel decisions delineated the acceptability of contentions proffered by intervenors for litigation. In *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-9, 37 NRC 433 (1993), the utility claimed that the issue raised in one of the contentions was barred because it had been addressed in a prior Partial Director's Decision under 10 C.F.R. 2.206. The board ruled that the claim was not barred from litigation because a Director's Decision under 10 C.F.R. 2.206 is not afforded appellate review, even for abuse of discretion, and thus does not constitute an adjudicatory decision under Section 189(b) of the Atomic Energy Act, as amended, 42 U.S.C. 2239(b). On a procedural issue, the board also ruled that the validity and admissibility of late-filed contentions in the case should be considered before ruling on their timeliness. Even though the contentions theoretically could have been summarily dismissed for being late-filed without considering the contentions' admissibility, the board reasoned that it was in the public interest to take this approach because the seriousness of the asserted safety and environmental problems alleged merited a closer look to avoid the possibility of not considering them for a purely procedural reason.

Another case involved the admission of contentions in a license recapture proceeding where the licensee requested that the years for constructing its nuclear facility not be included as part of the 40 year operating license period. In *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5 (1993), the utility sought to limit the scope of the petitioner's contentions claiming that the recapture proceeding was an administrative change equivalent to a proceeding for a license renewal where contentions are limited to issues of age-related degradation of structures, systems, and components. Because the Commission had not enacted regulations regarding the scope of contentions allowable in recapture proceedings, the licensing board ruled that the scope in those cases should be similar to that permitted in any license amendment involving a degree of risk to the public. However, as characteristic of the limited scope of most license amendment cases,

the licensing board ruled that the scope of contentions in this case was limited to direct challenges to the permit holder's asserted reasons that show good cause justification for the delay for construction.

A third case regarding contentions involved a significant procedural question. In *Georgia Power Company* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-22, 40 NRC 37 (1994); LBP-94-27, 40 NRC 103 (1994), the question presented was whether the board should apply the requirements for filing new contentions in 10 C.F.R. § 2.714(a)(1) when an intervenor attempts to add a new basis to an existing contention. The board decided that the § 2.714(a)(1) requirements do not apply because intervenors are not required to supply all the bases known at the time they file their contentions. The board went on to conclude that the test for accepting new bases should be whether the motion for accepting the basis was timely and whether the new bases present important information regarding a significant issue.

5. Injunctive Relief Based on Wasting of Assets

A Commission materials licensee, which had been ordered by the Commission to decommission and decontaminate its site, attempted to sell a significant portion of its corporate assets to a sister foreign corporation while an enforcement case against the licensee was pending. In an unpublished opinion, *Safety Light Corporation*, et al. (Bloomsburg Site) (January 22, 1993), the licensing board enjoined the licensee from disposing of its assets on authority of 10 C.F.R. 2.718(m) which allows a presiding officer to "[t]ake any action consistent with the [Atomic Energy] Act [19 C.F.R. Chapter 1], and sections 551-558 of Title 5 of the United States Code (The Administrative Procedure Act). The board concluded that: (1) the sale could impair the ability of the licensee to decommission the site by the dissipation of the licensee's assets; and (2) not decommissioning the site could endanger the public health and safety.

6. Attorney Client and Work-Product Privileges

In *Georgia Power Company*, et al. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-11, 37 NRC 469 (1993), the intervenor claimed attorney-client and attorney work-product privilege for six tape recordings sought by the licensee during the discovery phase of the proceeding. The intervenor had been instructed by his attorney to make excerpts of several tape recordings of conversations he had with various licensee employees in preparation for a hearing before a Department of Labor Administrative Law Judge. The intervenor previously had given these tapes to the NRC Office of Investigations and a Congressional Subcommittee. In concluding that the intervenor must produce these tapes, the licensing board found that the tapes were not privileged because the intervenor had not acted as his attorney's agent when preparing the tapes and the original tapes were not prepared in anticipation of the hearing. An attorney workproduct privilege also did not apply since none of the attorney's thought processes were alleged to be directly disclosed in the tapes. The board further concluded that intervenor waived any privilege that may have attached to the tapes by submitting them to the NRC Office of Investigations and to the Congressional Subcommittee.

7. Discovery in NRC Proceedings

Discovery of Confidential Information

In *Pacific Gas and Electric Company*, (Diablo Canyon Nuclear Power Plan, Units 1 and 2), LBP-93-9, 38 NRC 433 (1993) and LBP 93-13, 38 NRC 11 (1993), the intervenor sought to discover information contained in certain reports prepared by the Institute for Nuclear Power Operations (INPO) concerning maintenance and surveillance programs at the licensee's nuclear plant. Although a Federal Circuit court of appeals had earlier determined that INPO reports furnished to the NRC need not be released under the Freedom of Information Act (FOIA), the board found that INPO reports are not privileged in the traditional sense, but rather only subject to nondisclosure under the FOIA. After due consideration of the need for the information by both parties and the board and the fact that the request was limited to

a single INPO report, the Board ruled that the report should be made available to the intervenor subject to a protective order limiting access to the information to specified intervenor representatives, allowing no copying of the information, and allowing reference to the material to be made in litigation only through in camera sessions.

Discovery in the Vogtle Proceedings

Three significant discovery rulings were made during the discovery phase of an enforcement proceeding involving the Vogtle reactor. The first involved the deliberative process privilege. The deliberative process privilege allows documents pertaining to government decision-making to be withheld from public disclosure so that government officials will not temper their candor with a concern for appearances during the decision-making process. The privilege can be invoked in NRC proceedings, but it is qualified and it can be overcome by an appropriate showing of need. During the *Vogtle* proceeding, the staff wanted to delay producing an Office of Investigations report while it decided on whether to institute an enforcement action. Weighing the needs of the parties, the board decided that the entire report did not have to be produced immediately, but the factual information did have to be produced because of its importance to the outcome of the proceeding. With respect to the opinion portions of the report, the board limited the staff's request for additional time to one month but it also tempered this early release by allowing these portions to be subject to a protective order requiring the parties to hold the information in confidence. Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-6, 39 NRC 105 (1994).

The second significant discovery ruling in *Vogtle* pertained to discovery against the NRC staff. The Board held that the staff stands on the same footing as any party in regard to answering requests for admissions because neither 10 C.F.R. § 2.742 nor any other section of the regulations specifically provide for different treatment of the staff. The Board also ruled that the staff was not required to answer interrogatories if they were not necessary to the determination of the case and if the information was reasonably attainable from other sources. *Georgia Power Company* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-26, 40 NRC 93 (1994).

The third ruling pertained to discovery of NRC investigative reports. The NRC Staff requested that it be allowed to delay producing requested discovery for 128 days while its Office of Investigations completed an investigation. *Georgia Power Company* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-22, 38 NRC 189 (1993). The investigation, which had been ongoing for about three years, previously had been the basis for deferring document production for 75 days. In determining whether to grant this additional extension, the board used a balancing test comprised of four factors: (1) the length of the delay, (2) the reason for delay, (3) the defendant's assertion of the right to a prompt proceeding, and (4) the prejudice to the defendant of a delay in the civil proceeding. The board also considered the staff diligence in bringing the investigation to a close. Weighing these factors, the board limited the extension to 39 days based primarily on its concern that the longer the delay in discovery, the more likely that key witnesses would be lost and recollections would fade.

8. Jurisdiction

Jurisdiction of Licensing Boards

A number of important jurisdictional rulings were made in a license amendment proceeding for the River Bend nuclear facility where a Board accepted a contention that a lack of funding could cause unsafe operation of a nuclear power plant. *Gulf States Utilities Company* (River Bend Station, Unit 1), LBP-94-3, 39 NRC 31 (1994). An electric utility cooperative, which was a co-owner of the facility, challenged a proposed merger that would replace the principal owner and operator of the facility, Gulf States Utilities, with a utility holding company and an independent operating company owned by the holding company. The co-op claimed the changes would adversely affect its ownership rights in River Bend and impair existing interconnection agreements that it had with Gulf States. The co-op also contended that the NRC should enforce certain River Bend license conditions which it claimed were being violated. The board found that most of the co-op's claims involved contractual disputes between the co-op and Gulf States that did not

come under NRC jurisdiction because they were not related to the facility's safe operation or environmental concerns. According to the board, contractual disputes should be resolved by the appropriate State, local, or Federal courts. The board also determined that the subject interconnection agreements pertained to interconnection and transmission provisions, rates for electric power and services, cost sharing agreements, long and short term planning functions, and similar utility-related operational agreements, and were matters that fall within the jurisdiction of the Federal Energy Regulatory Commission or appropriate State agencies that regulate electric utilities. Finally, the board ruled that existing NRC license conditions could not be enforced in the present license amendment proceeding because licensing boards have no jurisdiction to enforce license conditions unless they are the subject of an enforcement action initiated pursuant to 10 C.F.R. 202a.

NRC Jurisdiction Over Owners of Licensees (Piercing the Corporate Veil)

In a motion for summary disposition, the parent corporation of a uranium reprocessing company sought to be removed from an NRC order making it jointly and severally liable for providing financial assurance for decommissioning its subsidiary's nuclear processing facility near Gore, Oklahoma. *Sequoyah Fuels Corporation and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-17, 39 NRC 359 (1994). The parent corporation asserted that Section 161 of the Atomic Energy Act does not apply to non-licensed entities such as itself. The board found that a principal issue in the proceeding was whether the NRC could regulate a parent corporation as a *de facto* licensee that exercised enough control over the activities of a licensee subsidiary to permit disregarding the corporate form which separates the parent from the subsidiary. In denying summary disposition, the board found that the parent had been involved in some of the subsidiary's activities, but that the degree of such involvement could not be determined without further evidentiary development in the proceeding.

9. Program Fraud Civil Remedies Act Violation

In *In the Matter of Lloyd P. Zerr*, ALJ-94-1, 39 NRC 131 (1994) and ALJ-94-2, May 4, 1994 Slip Opinion, a board decided the Panel's first case under 10 C.F.R. Part 13, the NRC's implementation of the Program Fraud Civil Remedies Act. The NRC had charged a former NRC employee with 23 false claims for obtaining monies from the government to which he was not entitled. Although the amount so obtained by the ex-employee was $8,855.68, the NRC sought penalties and assessments totaling $132,771.50, including $28,514 for expenses the government incurred in investigating the alleged fraud. The 23 false claims included reimbursement requests for overtime work, house rental, furniture rental, car rental, and meals during the ex-employee's rotational assignment in an NRC regional branch office. The ex-employee claimed that he had not knowingly overcharged the government, blaming the overcharges on mistakes, a lack of knowledge of travel regulations, and sloppy record keeping. In rejecting this defense, the Administrative Law Judge found that the exemployee had resorted to fraudulent documentation for some claims and that he either had or should have had actual knowledge that 22 of the 23 claims were false. As recompense, the judge found that the ex-employee should pay a total of $21,711, an amount which included a double assessment for the $8,855.68 in false claims paid by the government. The judge excluded additional penalties requested by the NRC staff on the basis that the ex-employee had already been subject to criminal prosecution, had lost his position with the NRC, and had reimbursed the government for the false claims he had collected. The judge thus reasoned that the ex-employee had already paid significantly, and that this price established for fraudulent conduct should act as a deterrent for others.

10. Decommissioning

In a case involving potentially far-reaching decommissioning issues for nuclear facilities, a fuel processing company sought to withdraw a pending license renewal application and terminate the proceeding. *Sequoyah Fuels Corporation*, LBP-93- 25, 38 NRC 304 (1993). Intervenors opposed the withdrawal based on their fear that the facility could be decommissioned without

them having an opportunity to confront the licensee's decommissioning plan. Although the presiding officer acknowledged that he could condition the withdrawal, he declined to interfere with the decommissioning process because the withdrawal was not prevented by Commission regulations. He also reasoned that preventing the withdrawal might minimize the NRC staff's regulatory role in overseeing decommissioning activities and delay decontamination of critical areas.

11. Enforcement Actions

Agency Discretion To Prescribe Licensee Conduct Not Required by Agency Regulation

In a license suspension proceeding, a Pennsylvania medical clinic claimed that the enforcement action taken against it lacked legal basis because no specific NRC requirements were violated. *Oncology Services Corporation*, LBP-94-2, 39 NRC 1 (1994). The NRC enforcement order had charged the clinic with "significant corporate management breakdown." The order had cited various incidents of alleged mismanagement in support of this charge, but none violated NRC statutory provisions, regulations, license conditions, technical specifications, or orders. In upholding the order, the board concluded that Federal agencies like the NRC, vested with broad congressional regulatory mandates, have the discretion to take enforcement actions against unacceptable conduct even though the specific actions are not covered by agency rules or regulations. The board reasoned that agencies should be allowed to set standards by individual order because they cannot possibly anticipate and promulgate a rule relative to each activity that they undertake. The board further noted that although the discretion to regulate by individual order might not apply when an order could create a new enforcement standard that a licensee had no reason to rely on, this exception was not present in this case because there was no showing that the staff's concern about "management breakdown" would be inconsistent with administrative precedent.

Relevance Of Post-Violation Activities

In the same license suspension proceeding, the medical clinic sought to present evidence showing that the suspension should be lifted because it had corrected the alleged improper activity after the order was issued. The board held that post-suspension activities were not relevant because the scope of the proceeding was limited to the sufficiency of the legal and factual predicates outlined in the suspension order. The board further held that the extent to which post suspension activities warrant action to modify or withdraw a suspension order is a matter within the discretion of the NRC staff and is not subject to consideration by a board.

12. Financial Qualifications

Several significant financial qualification rulings were involved in a River Bend license amendment proceeding. *Gulf States Utilities Company* (River Bend Station, Unit 1), LBP-94-3, 39 NRC 31 (1994). The first concerned the licensee's claim that a lack of funding for the reactor could not adversely affect safety because the plant would be safely shut down if funding became a problem. The board rejected this argument because it contradicted the rationale of 10 C.F.R. 50.33(f) requiring applicants for operating licenses to demonstrate that they have sufficient funds to operate a nuclear reactor. The board noted that this regulation is based upon safety factors, including the concern that insufficient funding might cause licensees to cut corners on operating or maintenance expenses. The board further noted that even during shutdown there are accident risks associated with a nuclear reactor.

The second ruling concerned the question of whether financial qualification should be an issue in the proceeding. The licensee argued that it should not since the NRC's "financial qualification" rule exempts electric utilities from demonstrating financial qualification. However, the board found this exemption to be inapplicable since 10 C.F.R. 50.33(f) applies only to electric utilities. The operating company for River Bend, whose under-funding would allegedly cause the safety concerns, was not an electric utility.

13. Double Jeopardy

In a case under 10 C.F.R. Part 13 involving the Program Fraud Civil Remedies Act, the NRC staff had sought to collect funds and sizable civil penalties for alleged false claims the defendant made to the NRC. *In the Matter of Lloyd P. Zerr*, ALJ-93-1, 38 NRC 151 (1993). A settlement had been reached in an earlier criminal case against this defendant for the same cause of action when the defendant made restitution of funds to the government. Based on that settlement, the defendant sought dismissal of the NRC civil suit, arguing that, among other things, the NRC suit violated the Fifth Amendment by placing him in double jeopardy. The Chief Administrative Law Judge denied this motion on grounds that the criminal settlement would not result in double jeopardy in the NRC civil case because the pretrial diversion agreement in the criminal action did not constitute jeopardy as contemplated by the double jeopardy clause. Under the pretrial diversion agreement, defendant merely had obtained the benefit of not being prosecuted at the cost of not being placed in jeopardy. The judge also noted that Congress may impose both a criminal and civil sanction for the same act and that there was nothing in the pretrial diversion agreement which prohibited the NRC from instituting an action against the defendant under the Program Fraud Civil Remedies Act.

VII. CONCLUSIONS

Given the economic, energy, and public health and safety costs imposed upon Commission applicants, licensees, and the public at large in the event of unnecessary or avoidable delays in the nuclear licensing and enforcement hearing process, the Panel will continue its program to improve procedures and make the hearing process as efficient as possible.

The Panel's current docket, consisting mainly of enforcement, license amendment, and materials licensing cases, reflects a maturing of the nuclear industry from the construction and initial operation era to an operations and waste handling era. This docket is not expected to remain constant.

On the horizon are new kinds of proceedings arising out of plant life extensions, the decommissioning of reactors and materials facilities, the construction of new facilities (like the Louisiana Energy Services enrichment facility), the approval of new plant designs, and the licensing of high-level and low-level waste facilities. These new proceedings will insure a continuing supply of complex questions involving a novel mix of law and science for the Panel to resolve.

The Panel is currently concerned with preparing itself for new kinds of proceedings arising out of plant life extensions, the decommissioning of older plants, construction of new facilities (like the Louisiana Energy Services enrichment facility), the approval of new plant designs, and the licensing of new low-level-waste facilities. These new proceedings will ensure a continuing supply of complex questions involving a novel mix of law and science for the Panel to resolve.

Given the economic, energy, and public health and safety costs imposed upon Commission applicants, licensees, and the public at large in the event of unnecessary or avoidable delays in the nuclear licensing and enforcement process, the Panel will continue its endeavors to improve procedures and make the hearing process as efficient as possible.

APPENDICES

APPENDIX A

ORGANIZATIONAL CHART

ATOMIC SAFETY AND LICENSING BOARD PANEL

Conducts hearings for the Commission and performs such other regulatory functions as the Commission authorizes. The Chief Administrative Judge develops and applies procedures governing the activities of boards, administrative judges, and administrative law judges, and makes appropriate recommendations to the Commission concerning the rules governing the conduct of hearings.

Chief Administrative Judge (Chairman) ..... B. Paul Cotter, Jr.
Deputy Chief Administrative Judge (Executive) ..... James P. Gleason
Deputy Chief Administrative Judge (Technical) ..... Frederick J. Shon

THE PANEL

Conducts all licensing and other hearings as directed by the Commission primarily through individual Atomic Safety and Licensing Boards appointed by either the Commission or the Chief Administrative Judge. There is no fixed number of positions in the Panel. The Panel is comprised of: (1) administrative judges (full-time and part-time), who are lawyers, physicists, engineers, and environmental scientists; and (2) administrative law judges who hear antitrust, civil penalty, and other cases and serve as Atomic Safety and Licensing Board Chairpersons. One to three administrative judges serve as presiding officers alone or on boards for a broad range of proceedings.

CHIEF COUNSEL

Provides all legal and technical support to the Chief Administrative Judge, the administrative law judges, boards, and panel.

Chief Counsel ..... Lee S. Dewey

PROGRAM SUPPORT AND ANALYSIS STAFF

Provides planning, development, coordination, implementation, and analyses of policies and programs in support of the Panel including budget; personnel; labor relations; professional services; travel; space and facilities; equipment; contracts; information management including ADP equipment and development; adjudicatory files and services; library facilities; stenographic and clerical services including field hearing space; equipment management and coordination; meetings; employee training and development; FOIA; license fee data; security; and safety engineering.

Provides support and services in informatin management which includes computerized adjudicatory files, license fee data, management information systems, and other management information applicable to Panel activities.

Manages court reporting contract for all offices except the Commission's offices.

Director ..... Jack G. Whetstine

APPENDIX B
ATOMIC SAFETY AND LICENSING BOARD PANEL
Fiscal Years 1993 and 1994

I. Panel Members[2]

Officers

B. PAUL COTTER, JR.
Chief Administrative Judge

FREDERICK J. SHON
Deputy Chief Administrative Judge (Technical)

DR. ROBERT M. LAZO
Deputy Chief Administrative Judge (Executive)

MORTON B. MARGULIES
Chief Administrative Law Judge

Full-Time Administrative Judges

JUDGE CHARLES BECHHOEFER
Attorney

JUDGE CHARLES N. KELBER
Physicist

JUDGE PETER B. BLOCH
Attorney

JUDGE JERRY R. KLINE
Environmental Scientist

JUDGE G. PAUL BOLLWERK III
Attorney

JUDGE PETER S. LAM
Nuclear Engineer

JUDGE JAMES H. CARPENTER
Oceanographer

JUDGE THOMAS S. MOORE
Attorney

JUDGE RICHARD F. COLE
Environmental Scientist

JUDGE THOMAS D. MURPHY
Health Physicist

JUDGE JAMES P. GLEASON
Attorney

JUDGE IVAN W. SMITH
Attorney

Part-Time Administrative Judges

JUDGE GEORGE C. ANDERSON
Marine Biologist
Seattle, Washington

JUDGE GEORGE A. FERGUSON
Physicist
Shady Side, Maryland

JUDGE GLENN O. BRIGHT
Engineer
Norman, Oklahoma

JUDGE HARRY FOREMAN
Physician
St. Paul, Minnesota

JUDGE A. DIXON CALLIHAN
Physicist
Davidson, North Carolina

JUDGE RICHARD F. FOSTER
Environmental Scientist
Sunriver, Oregon

JUDGE THOMAS S. ELLEMAN
Nuclear Engineer
Raleigh, North Carolina

JUDGE DAVID L. HETRICK
Physicist
Tucson, Arizona

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[2]All ASLBP Officer, professional and administrative staff and full-time Panel members are based in Bethesda, Maryland.

JUDGE ERNEST E. HILL
Nuclear Engineer
Danville, California

JUDGE FRANK F. HOOPER
Marine Biologist
Ann Arbor, Michigan

JUDGE ELIZABETH B. JOHNSON
Nuclear Engineer
Oak Ridge, Tennessee

JUDGE WALTER H. JORDAN
Physicist
Oak Ridge, Tennessee

JUDGE JAMES C. LAMB III
Sanitary Engineer
Chapel Hill, North Carolina

JUDGE EMMETH A. LUEBKE
Physicist
Chevy Chase, Maryland

JUDGE KENNETH A. McCOLLOM
Electrical Engineer
Stillwater, Oklahoma

JUDGE MARSHALL E. MILLER
Attorney
Daytona Beach, Florida

JUDGE PETER A. MORRIS
Physicist
Potomac, Maryland

JUDGE RICHARD R. PARIZEK
Geologist
University Park, Pennsylvania

JUDGE HARRY REIN
Physician/Attorney
Longwood, Florida

JUDGE LESTER S. RUBENSTEIN
Nuclear Engineer
Oro Valley, Arizona

JUDGE DAVID R. SCHINK
Oceanographer
College Station, Texas

JUDGE GEORGE F. TIDEY
Physician
Houston, Texas

JUDGE SHELDON J. WOLFE
Attorney
McLean, Virginia

II. Professional Staff

LEE S. DEWEY
Director and Chief Counsel
Technical and Legal Support Staff

ROBERT R. PIERCE
Senior Attorney

III. Administrative Officers

JACK G. WHETSTINE
Director
Program Support and Analysis Staff

JAMES M. CUTCHIN V
Chief
Information Processing Section

APPENDIX C
BIOGRAPHICAL SKETCHES OF PANEL MEMBERS

ANDERSON, GEORGE C. B.S., University of British Columbia (1947); M.A., University of British Columbia (1949); Ph.D., University of Washington (1954). Dr. Anderson, currently Professor Emeritus at the School of Oceanography, University of Washington, has been a part-time member of the Panel since 1973. In addition to authoring over 40 publications in the fields of limnology and oceanography, Dr. Anderson has held numerous teaching, research, and administrative positions during his career of over 40 years the University of Washington, the Atomic Energy Commission and the National Science Foundation. He was Director of the School of Oceanography at the University of Washington for several years.

BECHHOEFER, CHARLES. A.B., magna cum laude, Harvard College (1955); LL.B., Harvard Law School (1958). Judge Bechhoefer has been a full-time legal member of the Panel since 1978. Before his appointment to the Panel, his Federal service included positions as Counsel to the Atomic Safety and Licensing Appeal Board, attorney with the Office of the General Counsel of the Atomic Energy Commission, and attorney-adviser in the Office of the General Counsel, U.S. Housing and Home Finance Agency. He is currently a Vice-President and member of the Board of Governors of the National Association of Administrative Law Judges. He is a former editor of the Administrative Judiciary News and Journal and a past member of the Executive Committee of the National Conference of Administrative Law Judges and has held several leadership positions within the Section of Administrative Law of the American Bar Association.

BLOCH, PETER B. B.S., Tufts University (1962); LL.B, Harvard Law School (1965); LL.M., Harvard Law School (1967). Judge Bloch has been a full-time member of the Panel since 1981. His prior positions include: Assistant Director of the Office of Hearings and Appeals, U.S. Department of Energy; attorney-advisor, Office of Opinions and Review, FERC; Executive Director of the Commission on Law and the Economy of the American Bar Association; Senior Research Associate and Project Manager, the Urban Institute; and attorneyadviser, U.S. Securities and Exchange Commission. Judge Bloch has published several articles on the conduct and management of criminal investigations.

BOLLWERK, G. PAUL, III. B.A., University of Notre Dame (1975); J.D., Georgetown University Law Center (1978). Judge Bollwerk has been a fulltime legal member of the Panel since July 1991. Before being appointed to the Panel, Judge Bollwerk served as an administrative judge on the Atomic Safety and Licensing Appeal Panel, a senior attorney on the staff of the NRC Office of the General Counsel, a Special Assistant U.S. Attorney with the Department of Justice, and an associate attorney in the law firm of Gardner, Carton & Douglas in Washington, D.C. After graduating from law school, he clerked for a Federal district court judge and a State supreme court judge. Judge Bollwerk is currently on the faculty of the National Judicial College as a lecturer on managing complex cases.

BRIGHT, GLENN O. B.S., University of Oklahoma (1949); M.S., University of Oklahoma (1950). Judge Bright served as a fulltime member of the Panel from 1972 to 1990 and continued as a part-time member until August 1994. Before his appointment to the Panel, he spent 22 years with the Phillips Petroleum Company or its successor subsidiaries in various technical and management positions overseeing nuclear matters, including one year as a technical consultant to the Government of Venezuela, and several years at the Idaho National Engineering Laboratory in charge of experiments for SPERT I and SPERT II.

CALLIHAN, A. DIXON. A.B., Marshall University (1928); M.A., Duke University (1931); Ph.D., New York University (1933); D.Sc. (Hon.), Marshall University (1961). Dr. Callihan has been a part-time member of the Panel since 1963. In his 60-year career, he has held positions as a physicist with the Union Carbide Corporation and Columbia University, and as assistant professor at the College of the City of New York. Dr. Callihan is currently the chairman or member

of several committees concerning nuclear reactor operations for the United States Army and the American Nuclear Society. In 1988, he received the American National Standards Institute's Meritorious Service Award.

CARPENTER, JAMES H. B.A., University of Virginia (1949); M.A., Johns Hopkins University (1951); Ph.D., Johns Hopkins University (1957). Dr. Carpenter had been a full-time member of the Panel from 1981 until September 1993 when he became a part-time member. In addition to numerous publications in the fields of marine science and environmental chemistry and research activities for the Chesapeake Bay Institute, Dr. Carpenter has held teaching and administrative positions with Johns Hopkins University and the University of Miami (Coral Gables). During his 36- year career, Dr. Carpenter has been on the editorial boards of several national journals, held senior positions in several professional associations, and chaired or participated in numerous professional committees on environmental issues, particularly the marine environment. Dr. Carpenter was a member of the committee that issued the BEIR I report (Committee on the Biological Effects of Ionizing Radiation).

COLE, RICHARD F. B.S.C.E., Drexel University (1959); M.S.S.E., Massachusetts Institute of Technology (1961); Ph.D., University of North Carolina (1968). Dr. Cole has been a full-time member of the Panel since 1973. In addition to publishing numerous articles on water, wastewater treatment, and international training of environmental engineering, Dr. Cole has held teaching, administrative, and engineering positions in the United States and Guatemala with the University of North Carolina, Pennsylvania State University, and the State of Pennsylvania. He has held several leadership positions and committee assignments with numerous professional associations, and is a Diplomate of the American Academy of Environmental Engineers.

COTTER, B. PAUL, JR. A.B., Princeton University (1959); J.D., Georgetown University (1968). Judge Cotter has been the Chief Administrative Judge of the Panel since 1980. Before 1980, Judge Cotter was a member and then Chief Administrative Judge of the Department of Housing and Urban Development Board of Contract Appeals, a trial attorney with the U.S. Department of Transportation, and in private practice for 6 years. He is on the faculty of the National Judicial College, is a member of the American Law Institute, and is a recognized leader in the use of computers in managing complex cases. He is a trustee of the American Inns of Court Foundation, former Chair of the Board of Directors of the Supreme Court Opinion Network, has held several leadership positions with the American Bar Association and the Federal Bar Association. He has written extensively in the field of administrative law.

ELLEMAN, THOMAS S. B.S., Denison University (1953); Ph.D., Iowa State University (1957). Dr. Elleman was appointed to the Panel as a part-time member in 1990. Over the course of his 40-year career, Dr. Elleman has conducted research in private industry, including Carolina Power & Light Co. and General Atomics, and at North Carolina State University where he is currently a professor of nuclear engineering, a department he headed from 1974 to 1979. He has published more than 60 articles in the field of nuclear chemistry. Dr. Elleman is also an American Board of Health Physics Board Certified Health Physicist.

FERGUSON, GEORGE A. B.S., Howard University (1947); M.S., Howard University (1948); Ph.D., Catholic University (1965). Dr. Ferguson has been a part-time member of the Panel since 1972. During his 46-year career, he has held teaching, administrative, and research positions with Howard University, the U.S. Naval Research Laboratory, the University of Pennsylvania, and Clark College (where he was Chairman of the Physics Department). Dr. Ferguson is a member of the American Physical Society and several teaching associations.

FOREMAN, HARRY. B.S., Antioch College (1938); Ph.D., Ohio State University (1942); M.D., University of California (1947). Dr. Foreman has been a part-time member of the Panel since 1971. Dr. Foreman's career spans 52 years in three professional fields. In addition to publishing numerous professional papers in the biological and chemical fields, Dr. Foreman has held

teaching, administrative, and research positions with the University of Minnesota and the University of California, the latter involving work in the area of radiation and biomedical research at Los Alamos.

FOSTER, RICHARD F. B.S., University of Washington (1938); Ph.D., University of Washington (1948). Dr. Foster has been a part-time member of the Panel since 1981. Dr. Foster is the author of numerous professional papers on the discharge of heat and radionuclides into water pathways, and has headed or participated on several panels and committees on radiation and the environment for, among others, the U.S. Public Health Service, the National Academy of Sciences, the International Atomic Energy Agency, and the NRC Advisory Committee on Reactor Safeguards. During his 52-year career, Dr. Foster has also held research and management positions with the State of Washington, the University of Washington, and numerous laboratories and companies at the Hanford, Washington facility.

GLEASON, JAMES P. B.S.S., Georgetown University (1948); LL.B., Georgetown University (1950). Judge Gleason has been a part-time member of the Panel since 1980 and held a similar appointment from 1967–1970. In 1992, he became a full-time Panel member. During his 43- year career, Judge Gleason has held numerous elective and appointive offices at the county, State, and Federal level; taught at the University of Maryland and Harvard University; maintained a private law and consultant practice; and served as an aide to two U.S. Senators.

HETRICK, DAVID L. B.S., Rensselaer Polytechnic Institute (1947); M.S., Rensselaer Polytechnic Institute (1950); Ph.D., University of California, Los Angeles (1954). Dr. Hetrick became a part-time Panel member in 1972. During his career as a physicist, Dr. Hetrick has worked as a private consultant to General Atomics, Hughes Research Laboratories, the Marquardt Corporation, and Brookhaven National Laboratory. He has taught physics at California State University at Northridge, the University of Bologna in Italy, Rensselaer Polytechnic Institute, and at the University of Arizona. Dr. Hetrick has also worked on nuclear projects at the United Kingdom Atomic Energy Agency in Aldermaston, England, the International Atomic Energy Agency in Cuernavaca, Mexico, and at the Los Alamos National Laboratory.

HILL, ERNEST E. B.S., University of California, Berkeley (1943); M.S., University of California, Berkeley (1959). Judge Hill has been a part-time member of the Panel since 1972. Currently the president of Hill Associates, a nuclear engineering consulting company, Judge Hill has held numerous nuclear engineering and management positions in the private sector, with the Atomic Energy Commission, and at the Lawrence Livermore National Laboratory.

HOOPER, FRANK F. B.A., University of California (1939); Ph.D., University of Minnesota (1948). Dr. Hooper has been a part-time member of the Panel since 1973. Currently a Professor Emeritus at the University of Michigan, Dr. Hooper has held teaching and administrative positions at the University of Michigan, the Institute for Fisheries Research, and the University of Minnesota. In 1962–63 and again in 1966, Dr. Hooper was an aquatic ecologist with the Atomic Energy Commission. From 1979 to 1988, he was chairman of the Ecology, Fisheries and Wildlife Program in the School of Natural Resources at the University of Michigan.

JOHNSON, ELIZABETH B. B.S., Western Kentucky University (1943); M.S., Vanderbilt University (1952). Judge Johnson has been a part-time member of the Panel since 1975. Currently on the staff of the Instrumentation & Controls Division of the Oak Ridge National Laboratory, Judge Johnson has held physicist and engineer positions on various Union Carbide Corporation nuclear projects at Oak Ridge and elsewhere, and was a research assistant with the Manhattan Project. During her 50-year career, Judge Johnson published numerous Atomic Energy Commission and other professional papers, principally concerned with reactor experiments and nuclear criticality.

JORDAN, WALTER H. A.B., University of Oklahoma (1930); M.S., University of Oklahoma (1931); Ph.D., California Institute of Technology (1934). Dr. Jordan has been a part-time member of the Panel from 1970 until his departure in July 1994. Dr. Jordan is the author of numerous

articles, professional papers, and books in the nuclear and radar fields, and is a Fellow of the American Nuclear Society and the American Physical Society. In addition to holding teaching positions at the University of South Dakota and the University of Tennessee, Dr. Jordan spent 27 years at the Oak Ridge National Laboratory in various research and management positions, ending his long tenure there as its Deputy Director.

KELBER, CHARLES N. B.A., University of Minneapolis (1947); Ph.D. University of Minnesota (1951). Before joining the Panel as a full-time member in 1990, Dr. Kelber was the Panel's Senior Technical Advisor from 1988 to 1990. He also served in various senior technical positions in the Division of Nuclear Regulatory Research at the Atomic Energy Commission and at the NRC. Before joining the Commission in 1973, Dr. Kelber was a senior scientist at Argonne National Laboratory for 18 years. He is a Fellow of the American Nuclear Society and the American Physical Society.

KLINE, JERRY R. B.S., University of Minnesota (1957); M.S., University of Minnesota (1960); Ph.D., University of Minnesota (1964). Dr. Kline has been a full-time member of the Panel since 1980. Before he was appointed to the Panel, Dr. Kline held various research and management positions with the Puerto Rico Nuclear Center, the Argonne National Laboratory, the Atomic Energy Commission, and the NRC. He is the author of numerous scientific papers and reports in the fields of radioecology and soil science.

LAM, PETER S. B.S., Oregon State University (1967); M.S., Stanford University (1968); Ph.D., Stanford University (1971). Dr. Lam was appointed to the Panel as a full-time judge in 1990. He joined the Nuclear Regulatory Commission as a reactor systems engineer in 1983 and became Chief of the Reactor Systems Section of the NRC Office for Analysis and Evaluation of Operational Data, in 1986. Before coming to the Commission, Dr. Lam held various positions with General Electric and the Argonne National Laboratory. He has taught engineering courses at San Jose State University and George Washington University.

LAMB, JAMES C., III. B.S.C.E., Virginia Military Institute (1947); M.S., Massachusetts Institute of Technology (1952); Sc.D., Massachusetts Institute of Technology (1953). Dr. Lamb has been a part-time member of the Panel since 1974. Currently a distinguished visiting professor of civil engineering at George Washington University and professor of sanitary engineering at the University of North Carolina, Dr. Lamb has also held teaching, engineering, management, and research positions in private industry, at Newark College of Engineering, University of North Carolina, and Massachusetts Institute of Technology.

LAZO, ROBERT M. B.S., University of Alberta (1946); M.A., University of British Columbia (1950); Ph.D., University of Notre Dame (1954); J.D., Rutgers University (1958). Dr. Lazo has been a member of the Panel from 1970 through 1994, first in a parttime capacity from 1970 until 1972, and, from 1976 until his death in May 1994, in a fulltime capacity. Between 1977- 80, he served as the Executive Secretary of the Panel, and since 1980, as the Deputy Chief Administrative Judge. Before joining the Panel as a fulltime member, Dr. Lazo maintained a private legal practice and was a member of the Patent Departments of both Standard Oil of New Jersey and Bell Telephone Laboratories.

LUEBKE, EMMETH A. B.A., Ripon College (1936); Ph.D., University of Illinois (1941). Dr. Luebke became a part-time member of the Panel in 1987 following 15 years of service as a full-time member. A Fellow of the American Nuclear Society and recipient of a Presidential Certificate of Merit for Microwave Radar Research, Dr. Luebke spent 27 years in private industry involved in the design, testing, and operation of nuclear power plants for submarines. Before that, he taught at the University of Illinois and was a research leader at Massachusetts Institute of Technology.

McCOLLOM, KENNETH A. B.S., Oklahoma State University (1948); M.S., University of Illinois (1949); Ph.D., Iowa State University (1964). Dr. McCollom has been a part-time member of the Panel since 1972. He is currently Dean and Professor Emeritus of the College of Engineering, Architecture and Technology, Oklahoma State University. During his 44-year career, he has

held teaching, research, and administrative positions with Oklahoma State University, Iowa State University, and the Atomic Energy Division of Phillips Petroleum Company. In addition, he has held numerous leadership positions with several professional associations and the Oklahoma Board of Registration for Engineers and Land Surveyors.

MARGULIES, MORTON B. B.A., Brooklyn College (1953); J.D., Brooklyn Law School (1954). Judge Margulies has been a full-time member of the Panel since 1982 with his retirement in July 1994. Before his appointment to the Panel, Judge Margulies served as an Administrative Law Judge (1969–1982), Regional Counsel, and trial attorney for the Interstate Commerce Commission, and as a member of the Army Judge Advocate General's Corps.

MILLER, MARSHALL E. A.B. with honors, University of Illinois (1935); LL.B., University of Illinois (1937). Judge Miller was a full-time member of the Panel (1974–1985) and has been a part-time member since 1985. Judge Miller was an Administrative Law Judge for the U.S. Department of Labor for 11 years and previously a partner for 15 years in the Washington, D.C., law firm of Danzansky & Dickey. He is the author of several books on legal practice.

MOORE, THOMAS S. B.A., Miami University (Ohio) (1968); J.D., Ohio State University (1972). Judge Moore was appointed to the ASLBP in 1991 after a distinguished 10-year career as an administrative judge on the Commission's Atomic Safety and Licensing Appeal Board. Judge Moore was in private practice in the firm of Volpe, Boskey and Lyons, worked in the Civil Division of the Department of Justice, served as administrative assistant to the Governor of Ohio, and clerked for Judge Miller on the Sixth Circuit before joining the Nuclear Regulatory Commission in 1980.

MORRIS, PETER A. B.A., Swarthmore College (1943); Ph.D., University of Virginia (1951). Dr. Morris served as a fulltime administrative judge with the Panel from 1981 to 1987. He was appointed as a part-time judge in 1991. Before serving on the Panel, Judge Morris worked as Operational Physics Supervisor with E.I. duPont de Nemours and Co. from 1951 to 1957, and served the Nuclear Regulatory Commission as Director, Office of Operations, and Director, Division of Reactor Licensing.

MURPHY, THOMAS D. B.S., Union College (1956); M.S., University of Rochester (1957); M.S., Rensselaer Polytechnic Institute (1972). Prior to his appointment as a full-time member of the Panel in 1992, Judge Murphy held various management positions with the Department of the Navy, the private sector, and on the Nuclear Regulatory Commission staff. He is a member of the Health Physics Society, the American Nuclear Society, and is certified by the American Board of Health Physics.

PARIZEK, RICHARD R. B.A., University of Connecticut (1956); M.S., University of Illinois (1960); Ph.D., University of Illinois (1961). Dr. Parizek was appointed as a part-time administrative judge in 1990. He has been a professor in the Geology Department at Pennsylvania State University since 1961 and is president of his own consulting firm. Dr. Parizek holds several positions in professional associations and has authored or co-authored more than 120 scientific and technical papers.

REIN, HARRY B.S., New York University (1953); M.D., State University of New York (1957); J.D., University of Florida (1982). Dr. Rein was appointed to the Panel as a part-time administrative judge in 1990. Dr. Rein is an active trial lawyer and has 23 years of active clinical medical experience. Currently, Dr. Rein's trial work is limited to medically related cases. Dr. Rein has published several medical papers and texts, including two on medical malpractice. He has also conducted seminars and courses for lawyers across the United States pertaining to the discovery and trial processes related to cases involving medical questions.

RUBENSTEIN, LESTER S. B.S., University of Arizona (1953); M.S., Carnegie Institute of Technology (1962). Judge Rubenstein was appointed to the Panel as a part-time member in 1990. Before joining the Panel, he served in various leadership capacities with the Nuclear Regulatory Commission, including Assistant Director for Region IV Reactors, NRR; Director, Systems Division and Standardization, NRR; and

Assistant Director, Division of Systems Integration, NRR. Before joining the Atomic Energy Commission in 1967, he worked for the National Aeronautics and Space Administration as a researcher and for the TRW and Westinghouse corporations. Judge Rubenstein has written several articles and papers and lectured on the policies and licensing procedures of the Nuclear Regulatory Commission.

SCHINK, DAVID R. B.A., Pomona College (1952); M.S., University of California, Los Angeles (1953); M.S., Stanford University (1958); Ph.D., University of California, San Diego (1962). Dr. Schink has been a part-time member of the Panel since 1974. Currently a professor of oceanography and formerly the Associate Dean of the College of Geosciences at Texas A&M University, Dr. Schink has written monographs and professional papers on marine geochemistry, silicon, radium, radon, and early digenesis. Dr. Schink has also held teaching and research positions at the Palo Alto Laboratory, Teledyne Isotopes, the University of Rhode Island, Scripps Institute of Oceanography, and Stanford University. In addition, Dr. Schink has served on several advisory panels for the National Science Foundation and the United Nations.

SHON, FREDERICK J. B.S., Columbia University. Judge Shon has been a full-time member of the Panel since 1972 and currently serves as its Deputy Chief Administrative Judge (Technical). Before his appointment to the Panel, Judge Shon held management positions with the Atomic Energy Commission, and worked as a physicist with the Lawrence Radiation Laboratory and several corporations within the nuclear industry. Judge Shon has also served as a consultant on reactor safety to the Spanish and Danish Atomic Energy Commissions, and taught nuclear engineering at the University of California at Berkeley.

SMITH, IVAN W. Pre-Law, Ohio State University, Mexico City College, Kent State University (1946–48); J.D., Wm. McKinley School of Law (1952). Judge Smith served the Panel as Chief Administrative Law Judge from 1978 through 1992, and he has been a full-time member of the Panel since 1975. Before his appointment to the Panel, Judge Smith served as an Administrative Law Judge for the Social Security Administration and as a trial attorney in the Antitrust Division of the Federal Trade Commission. He also served as a county prosecutor, Deputy Director of the Ohio Department of Liquor Control, and engaged in the private practice of law.

TIDEY, GEORGE FRANCIS. B.A., University of Virginia (1980); M.D., University of Virginia (1984). Dr. Tidey was appointed to the Panel as a part-time member in 1990. He is currently an assistant professor in obstetrics and gynecology at the University of Texas Medical School. He taught in the same field at George Washington University and is engaged in a private practice in these areas. Dr. Tidey has coauthored several articles on female fertility. He is a member of the American College of Obstetrics and Gynecology, the American Fertility Society, and the American Medical Association.

WOLFE, SHELDON J. A.B., Harvard University (1942); LL.B., Georgetown University (1956). Judge Wolfe was a full-time member of the Panel from 1976 to 1988, when he assumed part-time status. He remained a part-time member until his retirement from the Panel in June 1994. Before his appointment to the Panel, Judge Wolfe was a partner in Coal Mines Equipment Sales Company of Terre Haute, Indiana, an attorney with the Civil Aeronautics Board, and, for 20 years, a trial attorney with the Civil Division of the U.S. Department of Justice.

APPENDIX D
SELECTED ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS
October 1, 1992 to September 30, 1994

ADVANCED MEDICAL SYSTEMS, INC. (One Factory Row, Geneva, Ohio 44041)

Memorandum and Order, LBP-92-36, 36 NRC 366 (December 14, 1992)

Memorandum and Order, LBP-93-26, 38 NRC 329 (December 14, 1993)

Order, LBP-94-10, 39 NRC 91 (March 31, 1994)

BABCOCK AND WILCOX (Apollo, Pennsylvania Fuel Fabrication Facility)

Memorandum and Order, LBP-92-31, 36 NRC 255 (November 12, 1992)

Memorandum and Order, LBP-93-35, 36 NRC 355 (December 10, 1992)

Memorandum and Order, LBP-93-4, 37 NRC 72, (February 5, 1993)

BABCOCK AND WILCOX COMPANY (Pennsylvania Nuclear Services

Operations, Parks Township, Pennsylvania)

Memorandum and Order, LBP-94-4, 39 NRC 47 (February 2, 1994)

Memorandum and Order, LBP-94-12, 39 NRC 215 (April 22, 1994)

BOSTON EDISON COMPANY, (Pilgrim Nuclear Power Station)

Memorandum and Order, LBP-93-19, 38 NRC 128 (September 13, 1993)

CAMEO DIAGNOSTIC CENTRE, INC.

Memorandum and Order, LBP-94-13, 39 NRC 249 (May 4, 1994)

CHEMETRON CORPORATION (Bert Avenue, Harvard Avenue, and McGean-Rohco Sites, Newburgh Heights and Cuyahoga Heights, Ohio)

Memorandum and Order, LBP-94-20, 40 NRC 17 (July 7, 1994)

Memorandum and Order, LBP-94-30, 40 NRC 135 (September 1, 1994)

CLEVELAND ELECTRIC ILLUMINATING COMPANY and TOLEDO EDISON

COMPANY (Perry Nuclear Power Plant, Unit 1; Davis-Besse Nuclear Power Station, Unit 1)

Decision, LBP-92-32, 36 NRC 269 (November 18, 1992)

GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION, et al. (Three Mile Island Nuclear Station, Unit 2)

Memorandum and Order, LBP-92-29, 36 NRC 225 (October 5, 1992

Memorandum and Order, LBP-92-30, 36 NRC 227 (October 16, 1992)

GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2)

Memorandum and Order, LBP-92-38, 36 NRC 394 (December 24, 1992)

Memorandum and Order, LBP-93-5, 37 NRC 96 (February 18, 1993)

Memorandum and Order, LBP-93-8, 37 NRC 292 (April 21, 1993)

Memorandum and Order, LBP-93-11, 37 NRC 469 (June 24, 1993)

Memorandum and Order, LBP-93-15, 38 NRC 20 (July 21, 1993)

Memorandum and Order, LBP-93-18, 38 NRC 121 (September 8, 1993)

Memorandum and Order, LBP-93-21, 38 NRC 143 (September 24, 1993)

Memorandum and Order, LBP-93-22, 38 NRC 189 (November 17, 1993)

Memorandum and Order, LBP-94-6, 39 NRC 105 (March 3, 1994)

Memorandum and Order, LBP-94-14, 39 NRC 251 (May 20, 1994)

Memorandum and Order, LBP-94-15, 39 NRC 254 (May 23, 1994)

Memorandum and Order, LBP-94-16, 39 NRC 257 (May 25, 1994)

Memorandum and Order, LBP-94-22, 40 NRC 37, (July 28, 1994)

Memorandum and Order, LBP-94-24, 40 NRC 83 (August 18, 1994)

Memorandum and Order, LBP-94-26, 40 NRC 93 (August 22, 1994)

Memorandum and Order, LBP-94-27, 40 NRC 103 (August 26, 1994)

Memorandum and Order, LBP-94-31, 40 NRC 137 (September 9, 1994)

GEO-TECH ASSOCIATES, INC. (Geo-Tech Laboratories, 43 South Avenue, Fanwood, New Jersey 07023)

Memorandum and Order LBP-92-33, 36 NRC 312 (November 18, 1992)

Memorandum and Order, LBP-93-2, 37 NRC 61 (February 1, 1993)

GULF STATES UTILITIES COMPANY, ET AL. (River Bend Station, Unit 1)

Memorandum and Order, LBP-94-3, 39 NRC 31 (January 27, 1994)

INDIANA REGIONAL CANCER CENTER

Memorandum and Order, LBP-94-21, 40 NRC 22 (July 12, 1994)

INDIANA UNIVERSITY SCHOOL OF MEDICINE (Indianapolis, Indiana)

Memorandum and Order, LBP-94-28, 40 NRC 117 (August 29, 1994)

INNOVATIVE WEAPONRY, INC. (Albuquerque, New Mexico)

Memorandum and Order, LBP-94-1, 39 NRC 9 (January 11, 1994)

LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center)

Memorandum and Order, LBP 93-3, 37 NRC 64 (February 2, 1993)

Memorandum and Order, LBP 94-11, 39 NRC 205 (April 5, 1994)

NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power

Station, Unit 2)

Decision and Order, LBP-93-12, 38 NRC 5 (July 9, 1993)

NUCLEAR SUPPORT SERVICES, INC.

Memorandum and Order, LBP-94-25, 40 NRC 88 (August 18, 1994)

OHIO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1)

Decision, LBP-92-32, 36 NRC 269 (November 18, 1992)

ONCOLOGY SERVICES CORPORATION, Harrisburg, Pennsylvania

Memorandum and Order, LBP-93-6, 37 NRC 207 (March 26, 1993)

Memorandum and Order, LBP-93-10, 37 NRC 455 (June 23, 1993)

Memorandum and Order, LBP-93-20, 38 NRC 130 (September 21, 1993)

Memorandum and Order, LBP-94-2, 39 NRC 11 (January 24, 1994)

Memorandum and Order, LBP-94-29, 40 NRC 123 (August 31, 1994)

PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power

Plant, Units 1 and 2)

Prehearing Conference Order, LBP-93-1, 37 NRC 5 (January 21, 1993)

Prehearing Conference Order, LBP-93-9, 37 NRC 433 (June 17, 1993)

APPENDIX E
MAJOR FEDERAL STATUTES AND REGULATIONS RELEVANT TO ASLBP ADJUDICATIONS

Federal Statutes

1. The Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq., Pub.L. 83-703, 68 STAT. 919.

2. The Energy Reorganization Act of 1974, as amended, 42 U.S.C. 201-401, Pub.L 93-438, 88 STAT. 1233.

3. Uranium Mill Tailings Radiation Control Act of 1978, as amended, 42 U.S.C. 7901 et seq., Pub.L. 95-604, 92 STAT. 3021.

4. Administrative Procedure Act, 5 U.S.C. 551-559.

5. Transportation Safety Act of 1974, 49 U.S.C. 1801 et seq., Pub.L. 93-633, 88 STAT. 2156.

6. National Environmental Policy Act of 1969, as amended, Pub.L. 91-190, 83 STAT. 852.

7. Clean Air Act Amendments of 1977, Pub.L. 95-95, 91 STAT. 685.

8. Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101 et seq., Pub.L. 97-425, 96 STAT. 2201.

Regulations

Title 10, Code of Federal Regulations (26 Parts):

Part 0, Conduct of Employees

Part 2, Rules of Practice for Domestic Licensing Proceedings

Part 19, Notices, Instructions, and Reports to Workers; Inspections

Part 20, Standards for Protection Against Radiation

Part 21, Reporting of Defects and Noncompliance

Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material

Part 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material

Part 33, Specific Domestic Licenses of Broad Scope for Byproduct Material

Part 34, Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations

Part 35, Medical Use of Byproduct Material

Part 39, Licenses and Radiation Safety Requirements for Well Logging

Part 40, Domestic Licensing of Source Material

Part 50, Domestic Licensing of Production and Utilization Facilities

Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions

Part 53, Criteria and Procedures for Determining Adequacy of Available Spent Nuclear Fuel Storage Capacity

Part 55, Operators' Licenses

Part 60, Disposal of High-Level Radioactive Wastes Geologic Repositories

Part 61, Licensing Requirements for Land Disposal of Radioactive Waste

Part 70, Domestic Licensing of Special Nuclear Material

Part 71, Packaging and Transportation of Radioactive Material

Part 72, Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI)

Part 73, Material Control and Accounting of Special Nuclear Materials

Part 100, Reactor Site Criteria

Part 140, Financial Protection Requirements and Indemnity Agreements

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In Fiscal Year 1993, the Atomic Safety and Licensing Board Panel ("the Panel") handled 30 proceedings. In Fiscal Year 1994, the Panel handled 36 proceedings. The cases addressed issues in the construction, operation, and maintenance of commercial nuclear power reactors and other activities requiring a license from the Nuclear Regulatory Commission. This report sets out the Panel's caseload during the year and summarizes, highlights, and analyzes how the wide-ranging issues raised in those proceedings were addressed by the Panel's judges and licensing boards.

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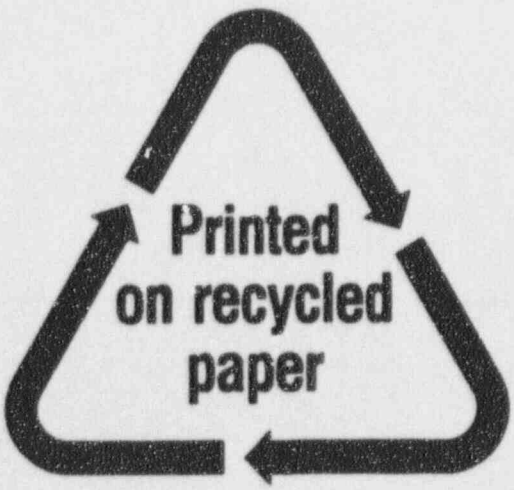

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