

**UNITED STATES
NUCLEAR REGULATORY COMMISSION STAFF
PRACTICE AND PROCEDURE DIGEST**

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UNITED STATES NUCLEAR REGULATORY COMMISSION STAFF
PRACTICE AND PROCEDURE DIGEST

(Includes Commission, Appeal Board, and Licensing Board
Decisions issued from July 1, 1972 through December 31, 1981.)

PREFACE

This edition of the NRC Staff Practice and Procedure Digest contains a digest of a number of Commission, Atomic Safety and Licensing Appeal Board and Atomic Safety and Licensing Board decisions issued during the period from July 1, 1972 to December 31, 1981 interpreting the NRC's Rules of Practice in 10 CFR Part 2. This edition replaces earlier editions and supplements and includes appropriate changes reflecting the amendments to the Rules of Practice effective December 31, 1981.

The Practice and Procedure Digest was originally prepared by attorneys in the NRC's Office of the Executive Legal Director as an internal research tool. Because of its proven usefulness to these attorneys, it was decided that it might also prove useful to members of the public. Accordingly, the decision was made to publish the Digest and subsequent editions thereof. This edition of the Digest was prepared by attorneys from Aspen Systems Corporation pursuant to Contract number 14-82-448.

Persons using this Digest are placed on notice that it may not be used as an authoritative citation in support of any position before the Commission or any of its adjudicatory tribunals. Persons using this Digest are also placed on notice that it is intended for use only as an initial research tool, that it may, and likely does, contain errors, including errors in analyses and interpretation of decisions, and that the user should not rely on the Digest analyses and interpretations but must read, analyze and rely on the user's own analysis of the actual Commission, Appeal Board and Licensing Board decisions cited. Further, neither the United States, the Nuclear Regulatory Commission, Aspen Systems Corporation, nor any of their employees makes any expressed or implied warranty or assumes liability or responsibility for the accuracy, completeness or usefulness of any material presented in the Digest.

The Digest is roughly structured in accordance with the chronological sequence of the nuclear facility licensing process as set forth in Appendix A to 10 CFR Part 2. Those decisions which did not fit into that structure are dealt with in a section on "general matters." Where appropriate, particular decisions are indexed under more than one heading. Some topical headings contain no decision citations or discussion. It is anticipated that future supplements to the Digest will utilize these headings.

This edition of the Digest will be supplemented on a periodic basis. The supplements will be prepared in the form of replacement pages.

We hope that the Digest will prove to be as useful to the members of the public as it has been to the members of the Office of the Executive Legal Director. We would appreciate any comments or suggestions from the users of the Digest which would serve to improve its usefulness.

Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission

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PROCEDURAL CONSIDERATIONS

1.0 APPLICATION FOR LICENSE/PERMIT

1.1 Applicants

All co-owners of a nuclear power plant must be co-applicants for NRC licenses for the facility. To hold otherwise could place a cloud on significant areas of the NRC's regulatory authority and is not consistent with the safety considerations with which Congress was primarily concerned in the Atomic Energy Act. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 200-201 (1978). The Appeal Board's decision in Marble Hill thus overrules the Licensing Board's holding to the contrary in Omaha Public Power District (Fort Calhoun Station, Unit 2), LBP-77-5, 5 NRC 437 (1977).

1.2 Renewal Applications

Applications for a renewal of a license may be filed with the NRC. 10 CFR § 2.109 provides that where an application for renewal is filed at least 30 days prior to the expiration of an existing license authorizing activities of a continuing nature, the existing license will not be deemed to expire until the renewal application has been finally determined.

1.3 Applications for Early Site Review

The Commission's regulations in 10 CFR Part 2 have been amended to provide for an adjudicatory early site review. See 10 CFR §§ 2.101(a-1), 2.600 to 2.606. These early site review procedures, which differ in both form and effect from those of Appendix Q to 10 CFR Part 50, are designed to result in the issuance of a partial initial decision with regard to site suitability matters chosen by the applicant.

An applicant who seeks early site review is not required to own the proposed power plant site. The real test for deciding on early site review is whether or not the applicant can produce the information required by regulation and necessary for an effective hearing. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1136 (1981).

The Commission's early site review regulations do not require that the applicant have a "firm plan" to construct a plant at the site, but rather are meant to provide an opportunity to resolve siting issues in advance of any substantial commitment of resources. 10 CFR § 2.101(a-1), §§ 2.600 et seq. Philadelphia

Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 975-976 (1981).

Three years after the Licensing Board sanctioned a limited work authorization (LWA) and before applicant had proceeded with any construction activity, applicant indicated it wanted to amend its construction permit application to focus only on site suitability issues. The Appeal Board adopted applicant's suggestion to "vacate without prejudice" the decisions of the Licensing Board sanctioning the LWA. The Appeal Board remanded the cause for proceedings deemed appropriate by the Licensing Board upon formal receipt of an early site approval application. Delmarva Power & Light Company (Summit Power Station, Units 1 and 2), ALAB-516, 9 NRC 5, 6 (1979).

1.4 Form of Application for Construction Permit/Operating License

1.4.1 Form of Application for Initial License/Permit

Regulations permit the filing of an application in three parts: Antitrust Information; SAR; and ER (10 CFR § 2.101). The application is initially treated as a "tendered application" pending a preliminary Staff review for completeness. 10 CFR § 2.101(a)(2).

1.4.2 Form of Renewal Application for License/Permit

(RESERVED)

1.5 Contents of Application

1.5.1 Incomplete Applications

The determination as to whether an application is sufficiently complete for docketing is for the Staff, rather than an adjudicatory board, to make. New England Power Co., et al. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 280 (1978).

1.5.2 Material False Statements in Applications

Under Section 186 of the Atomic Energy Act of 1954 (42 U.S.C. § 2236), a license or permit may be revoked for material false statements in the application.

In Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-324, 3 NRC 347 (1976), the Appeal Board held that:

- (1) A statement may be "false" within the meaning of Section 186 even if it is made without knowledge of its falsity - i.e., scienter is not a necessary element of a false statement under Section 186.

- (2) Information is material under Section 186 if it would have a natural tendency or capability to influence the decision of the person or body to whom it is to be submitted - i.e., the information is material if a reasonable Staff member would consider it in reaching a conclusion. The information need not be relied upon in fact.

In Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), CLI-76-22, 4 NRC 480 (1976), the Commission affirmed the Appeal Board's rulings supra and, in addition, held that silence (omissions) as to material facts regarding issues of major importance to licensing decisions is included in the Section 186 phrase "material false statement" since such an interpretation will effectuate the health and safety purposes of the Act. Thus, the sanctions of Section 186 apply not only to affirmative statements but to omissions of material facts important to health and safety.

1.6 Docketing of License/Permit Application

If the application is found to be complete, a docket number will be assigned and the applicant and other appropriate officials notified. 10 CFR § 2.101(a)(3).

1.7 Notice of License/Permit Application

1.7.1 Publication of Notice in Federal Register

In Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 & 2), ALAB-445, 6 NRC 865 (1977), it was held that, while 10 CFR § 2.104(a) requires that notice of hearing initiating a construction permit proceeding be published in the Federal Register at least 30 days prior to commencement of hearing, it does not require that such notice establish the time, place and date for all phases of the evidentiary hearings. However, in an unpublished opinion issued on December 12, 1977, the Federal District Court for the Northern District of Mississippi held that the interpretation of the notice requirements by the Appeal Board in Yellow Creek was erroneous and that at least 30 days prior public notice of the time, place and date of hearing must be provided.

One may be charged with notice of matters published in the Federal Register. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7 (1980). (Note - The Appeal Board expressly declined to reach the question of whether the Federal Register notice binded the petitioners to its terms. Id. at 10).

There appears to be no requirement that the rights of interested local governmental bodies to be made parties

to a proceeding be spelled out in the notice of opportunity for hearing. Thus, a notice of opportunity for hearing is not defective simply because it fails to state the right of an interested governmental body to participate in a proceeding. Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 585 (1978).

1.7.2 Amended Notice After Addition of New Owners

(RESERVED)

1.7.3 Notice on License Renewal

(RESERVED)

1.8 Staff Review of License/Permit Application

An ASLB has ruled that the Staff has a right to continue to meet privately with parties even though a hearing has been noticed, and that, while an ASLB has supervisory authority over Staff actions that are part of the hearing process, it has no such authority with regard to the Staff's review process. Northeast Nuclear Energy Co. (Montague Nuclear Power Station, Units 1 & 2), LBP-75-19, 1 NRC 436 (1975).

Note that 10 CFR § 2.102 explicitly provides that the Staff may request any one party to a proceeding to confer informally with the Staff during the Staff's review of an application.

Adjudicatory boards lack the power to direct the Staff in the performance of its independent responsibilities and, under the Commission's regulatory scheme, boards cannot direct the Staff to suspend review of an application, preparation of an environmental impact statement or work, studies or analyses being conducted or planned as part of the Staff's evaluation of an application. New England Power Co., et al. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 278-79 (1978).

It is up to the Staff to decide its priorities in the review of applications. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-581, 11 NRC 233, 238 (1980), modified, CLI-80-12, 11 NRC 514, 517 (1980). However, where a Licensing Board finds that the Staff cannot demonstrate a reasonable cause for its delay in submitting environmental statements, the Board may issue a ruling noting the unjustified failure to meet a publication schedule and then proceed to hear other matters or suspend proceedings until the Staff files the necessary documents. The Board, sua sponte or on motion of one of the parties, may refer the ruling to the Appeal Board. If the Appeal Board affirms, it would certify the matter to the Commission. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 207 (1978).

One aspect of the NRC role in regulating nuclear power plants is to provide criteria forming the engineering baseline against which licensee system designs, including component specifications, are judged for adequacy. It has not been the Staff's practice to certify that any particular components are qualified for nuclear service, but, rather, it independently reviews designs and analyses, qualification documentation and quality assurance programs of licensees to determine adequacy. This review approach is consistent with the NRC's responsibilities under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.). Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 426 (1978).

A Staff review of an application is an aid to the Commission in determining if a hearing is needed in the public interest. Without the Staff's expert judgment the Commission probably cannot reach an informed judgment on the need for a hearing in the public interest. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-581, 11 NRC 233, 235 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

1.9 Withdrawal of Application for License/Permit

10 CFR § 2.107(a) provides, in part, that:

(t)he Commission...may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

While Section 2.107 is phrased primarily in terms of requests for withdrawal of an application by an applicant, the Commission itself has entertained such requests made by other parties to a construction permit proceeding, Consumers Power Company (Quanicasse Plant, Units 1 & 2), CLI-74-29, 8 AEC 10 (1974), and has indicated that such a request is normally to be directed to, and ruled upon by, the Atomic Safety and Licensing Board presiding in the proceeding. Consumers Power Company (Quanicasse Plant, Units 1 & 2), CLI-74-37, 8 AEC 627, n.1 (1974). Thus, it appears that a Licensing Board has the authority, under 10 CFR § 2.107, to consider a motion to compel withdrawal of an application filed by a party other than the applicant.

With regard to design changes affecting an application, where there is a fairly substantial change in design not reflected in the application, the remedy is not summary judgment against the applicant, nor is withdrawal and subsequent refiling of the application necessarily required. Rather, an amendment of the application is appropriate. Public Service Co. of N.H. (Seabrook Station, Units 1 & 2), LBP-74-36, 7 AEC 877 (1974).

Following a request to withdraw an application the Board may dismiss the case "without prejudice," signifying that no disposition on the merits was made; or "with prejudice," suggesting otherwise. (10 CFR § 2.107(a), 10 CFR § 2.721(d)). A dismissal with prejudice requires some showing of harm to either a party or the public interest in general and requires careful consideration of the circumstances, giving due regard to the legitimate interests of all parties. It is well settled that the prospect of a second lawsuit or another application does not provide the requisite quantum of legal harm to warrant dismissal with prejudice.

Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132, 1135 (1981); Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 973, 978-979 (1981).

A Licensing Board has substantial leeway in defining the circumstances in which an application may be withdrawn (10 CFR § 2.107(a)), but the Board may not abuse this discretion by acting in an arbitrary fashion. The withdrawal terms set by the Board must bear a rational relationship to the conduct and legal harm at which they are aimed. Fulton, supra, at 974.

The Commission has the authority to condition the withdrawal of a license application on such terms as it thinks just (10 CFR § 2.107(a)). However, dismissal with prejudice is a severe sanction which should be reserved for those unusual situations which involve substantial prejudice to the opposing party or to the public interest in general. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132-1133 (1981).

The applicant for a license bears the cost of Staff work performed for its benefit, whether or not it withdraws its application prior to fruition. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1137 (1981).

Where an applicant abandons its construction of a nuclear facility and requests that the construction permit proceeding be terminated prior to resolution of issues raised on appeal from the initial decision authorizing construction, fundamental fairness dictates that termination of the proceedings be accompanied by a vacation of the initial decision on the ground of mootness. Rochester Gas and Electric Corporation, et al. (Sterling Power Project, Nuclear Unit 1), ALAB-596, 11 NRC 867, 869 (1980).

1.10 Abandonment of Application for License/Permit

When the applicant has abandoned any intention to build a facility, it is within the Licensing Board's power to dismiss the construction permit application. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-605, 12 NRC 153, 154 (1980).

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2.0 PREHEARING MATTERS

(SEE 3.3)

2.1 Scheduling of Hearings

(SEE 3.3.1 to 3.3.5.2)

2.2 Necessity of Hearing

Once a notice of opportunity for hearing has been published and a request for a hearing has been submitted, the decision as to whether a hearing is to be held no longer rests with the Staff but instead is transferred to the Commission or an adjudicatory tribunal designated to preside in the proceeding. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-26, 12 NRC 367, 371 (1980).

Where complainants were denied a hearing after they had alleged a failure of the Director to take stronger action, the Appeal Board, in upholding the denial, noted that the Director's decision in no way restricted the authority of the ASLB to further restrict or even deny the license for operation of the facility. Further, it was not grounds for a hearing that, if a hearing was not immediately held on the Director's decision, the money spent on the plant would later influence the Licensing Board's decision. Houston Lighting and Power Company (South Texas Project, Units 1 & 2), CLI-80-32, 12 NRC 281, 288-290 (1980).

2.3 Location of Hearing

2.3.1 Public Interest Requirements Affecting Hearing Location

(RESERVED)

2.3.2 Convenience of Litigants Affecting Hearing Location

(SEE 3.3.5.2)

2.4 Issues for Hearing

(SEE 3.4 to 3.4.6)

2.5 Notice of Hearing

2.5.1 Contents of Notice of Hearing

Operating license proceedings start with the notice of proposed action (10 CFR § 2.105) and are separate from prior proceedings. Thus, a Licensing Board in a construction permit hearing may not order that certain issues be tried at the OL proceeding. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), CLI-80-12, 11 NRC 514, 517 (1980).

A Licensing Board does not have the power to explore matters beyond those which are embraced by the notice of hearing for the particular proceeding. This is a holding of general applicability. Portland General Electric Company (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-290 n.6 (1979). Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-171 (1976). See also Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980); Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 565 (1980).

A notice of hearing must correspond to the agency's statutory authority over a given matter; it cannot confer or broaden that jurisdiction to matters expressly proscribed by law. Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), ALAB-661, 14 NRC 1117, 1123 (1981).

2.5.2 Adequacy of Notice of Hearing

One receiving filings in a proceeding is charged with reading and knowing matters therein which might affect his rights. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 13 (1980).

Where an original notice of hearing is too narrowly drawn, a requirement in a subsequent notice that those who now seek to intervene state that they did not intervene before because of limitations in the original notice was not improper. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 10 (1980).

2.5.3 Publication of Notice of Hearing in Federal Register

In Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 & 2), ALAB-45, 6 NRC 865 (1977), it was held that, while 10 CFR § 2.104(a) requires that notice of hearing initiating a construction permit proceeding be published in the Federal Register at least 30 days prior to commencement of hearing, it does not require that such notice establish time, place and date for all phases of the evidentiary hearings. However, in an unpublished opinion issued on December 12, 1977, the Federal District Court for the Northern District of Mississippi held that the interpretation of the notice requirements by the Appeal Board in Yellow Creek was erroneous and that at least 30 days prior public notice of the time, place and date of hearing must be provided.

The Licensing Board rejected Petitioner's argument that "mere notice in the Federal Register ... is inadequate notice" The Federal Register Act expressly provides that such publication constitutes notice to "all persons residing within the States of the Union" (44 U.S.C. 1508). See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). See also Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631 (1975); Florida Power and Light Company (Turkey Point Nuclear Generating Units 3 and 4), LBP-79-21, 10 NRC 183, 191-92 (1979).

In an operating license amendment proceeding, the Licensing Board ruled that the law required the NRC to publish once in the Federal Register notice of its intention to act on the application for amendment to the operating license. Turkey Point, *supra*, LBP-79-21, 10 NRC at 192.

Publication in Federal Register of conditions on intervention is notice as to all of those conditions, and one cannot excuse a failure to meet those conditions by a claimed lack of knowledge. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 10 (1980).

2.5.4 Requirement to Renotify

(RESERVED)

2.6 Prehearing Conferences

Prehearing conference matters are governed generally by 10 CFR §§ 2.751a, 2.752.

There are several types of prehearing conferences, each of which serves a different purpose. For a discussion of the types of prehearing conferences and of the purposes of such conferences, see Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 76 (1978).

The purposes of a general prehearing conference, in general, are set out in 10 CFR § 2.752(a). Such a prehearing conference should be held within 60 days after completion of discovery. 10 CFR § 2.752(a). "Special" prehearing conferences, provided for by 10 CFR § 2.751a and applicable only to contested proceedings, may be utilized to consider the sufficiency of petitions to intervene and of issues raised by intervenors. Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973).

Where a party has an objection to the scheduling of the prehearing phase of a proceeding, he must lodge such objection promptly. Late requests for changes in scheduling will not be countenanced absent extraordinary unexpected circumstances. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Units 1, 2 & 3), ALAB-377, 5 NRC 430 (1977).

A party seeking to be excused from participation in a prehearing conference should present its justification in a request filed before the date of the conference. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187, 191 (1978).

2.6.1 Transcripts of Prehearing Conferences

Prehearing conferences may be stenographically reported. 10 CFR §§ 2.751a(c), 2.752(b).

2.6.2 Special Prehearing Conferences

Special prehearing conferences are covered by 10 CFR § 2.751a. Such prehearing conferences:

- (a) are required in contested proceedings only, 10 CFR § 2.751a, n.1a;
- (b) will usually be held within 90 days of the issuance of notice of hearing or such other time as the Commission or presiding officer may deem appropriate, 10 CFR § 2.751a(a);
- (c) will be utilized to rule on petitions to intervene unless this has already been done by a previous Licensing Board appointed for that purpose. Cf., Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973);
- (d) may be utilized to exclude certain issues raised by petitions to intervene, the adequacy of which was not ruled upon when the petition was allowed, Duquesne Light Co., ALAB-109 supra;
- (e) may be used to establish a schedule for further actions in the proceeding, to direct further informal conferences, and to establish other courses of action, as set forth in 10 CFR § 2.751a(a) and (b), to expedite the proceeding.

2.6.3 Prehearing Conference Order

2.6.3.1 Effect of Prehearing Conference Order

A prehearing conference order may describe action taken at the conference, schedule further actions, describe stipulations agreed to, identify key issues, provide for discovery and the like. The order should finalize the issues to be considered, 10 CFR Part 2, Appendix A, ¶ II(c), and will control the subsequent course of proceedings unless modified for cause. 10 CFR §§ 2.751a(d), 2.752(c).

2.6.3.2 Objections to Prehearing Conference Order

Objections to the prehearing conference order may be filed by parties other than the Staff within 5 days after service of the order and by the Staff within 10 days after service. 10 CFR §§ 2.751a(d), 2.752(c). Parties may not file replies to such objections unless the Board so directs. Id.

2.6.3.3 Appeal from Prehearing Conference Order

Since a prehearing conference order is interlocutory in nature, it is not generally appealable except with regard to matters for which interlocutory appeal is provided. In this vein that portion of a prehearing conference order which grants or wholly denies a petition for leave to intervene is appealable under 10 CFR § 2.714a. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424 (1973).

The action of a Licensing Board in provisionally ordering a hearing and in preliminarily ruling on petitions for leave to intervene is not appealable under 10 CFR § 2.714a in a situation where the Board cannot rule on contentions and the need for an evidentiary hearing until after the special prehearing conference required under 10 CFR § 2.751a and where the petitioner denied intervention may qualify on refiling. Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 280 (1978).

2.7 Conference Calls

Both prior to the start of a hearing and sometimes during recesses thereof, it may become necessary for the Board to communicate quickly with the parties. In this vein, the practice has grown up of using telephone conference calls. The Appeal Board has indicated that such calls should not be utilized unless all parties participate except in the case of the most dire necessity. Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-313, 3 NRC 94, 96 (1976). If any rulings are made, the Licensing Board must make and enter a written order reflecting

the ruling directly thereafter. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-334, 3 NRC 809, 814-815 (1976).

Where a party informs an adjudicatory board that it is not interested in a matter to be discussed in a conference call between the board and the other litigants, that party cannot later complain that it was not consulted or included in the conference call. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 269 at n.63 (1978).

2.8 Prehearing Motions

2.8.1 Prehearing Motions Challenging ASLB Composition

Disqualification of adjudicatory board members is covered generally by 10 CFR § 2.704.

In Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-101, 6 AEC 60 (1973), the Appeal Board listed the circumstances under which a board member is subject to disqualification. Those circumstances include situations in which:

- (1) the board member has a direct, personal, substantial pecuniary interest in the results of the case;
- (2) the board member has a personal bias against a participant;
- (3) the board member has served in a prosecutory or investigative role with regard to the same facts as are in issue;
- (4) the board member has prejudged factual -- as distinguished from legal or policy -- issues;
- (5) the board member has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues.

A litigant may move for disqualification of any board member who, by word or deed, has manifested a conflict of interest or a bias covered by the above listing.

2.8.1.1 Contents of Motion Challenging ASLB Composition

In Duquesne Light Co. (Beaver Valley Power Station, Units 1 & 2), ALAB-172, 7 AEC 42 (1974), the Appeal Board summarized the requirements for disqualification motions as follows:

- (1) motions must be accompanied by affidavits establishing a basis for the charge;
- (2) motions must be filed in a timely manner, citing, Consumers Power Co., ALAB-101, supra, Commonwealth Edison Co. (LaSalle County Nuclear Power Station, Units 1 & 2), CLI-73-8, 6 AEC 169 at n.1 (1973);
- (3) motions for disqualification, as with all other motions, must be served on all parties or their attorneys, citing, 10 CFR §§ 2.701(b), 2.730(a).

The requirement of an affidavit must be met even if the basis for the motion is founded on matters of public record. The Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-225, 8 AEC 379 (1974).

2.8.1.2 Evidence of Bias in Challenges to ASLB Composition

Although no specific guidelines can be set as to the type or quantum of evidence sufficient to support a disqualification motion, it is clear that the mere fact that a Board issued a large number of unfavorable or even erroneous rulings with respect to a given party is not evidence of bias. To establish bias, something more must be shown than that the presiding officials decided matters incorrectly; to be wrong is not necessarily to be partisan. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 246 (1974).

Nor is an alleged institutional bias sufficient for disqualification. Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 & 2), ALAB-164, 6 AEC 1143 (1973).

2.8.1.3 Waiver of Challenges to ASLB Composition

If a party has reason to believe that there are grounds for disqualification, he must raise the question at the earliest possible moment. Failure to move for disqualification as soon as the information giving rise to such a claim comes to light amounts to a waiver of the objection. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 385 (1974); Northern Indiana Public Service Co., ALAB-224, supra; Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-101, 6 AEC 60, 64 (1973); Public Service Electric & Gas Co. (Atlantic Nuclear Generating Station, Units 1 & 2), LBP-78-5, 7 NRC 147, 149 (1978).

2.9 Intervention

2.9.1 General Policy on Intervention

The general attitude of the Appeal Panel is that public participation through intervention is a positive factor in the licensing process and that intervenors perform a valuable function and are to be complimented and encouraged. See, e.g., Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-256, 1 NRC 10, 18 at n.9 (1975); Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Unit 2), ALAB-243, 8 AEC 850, 853 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-229, 8 AEC 425 (1974); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222 (1974).

2.9.2 Intervenor's Need for Counsel

There is no requirement that an intervenor be represented by counsel in NRC proceedings. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975). As a rule, pro se petitioners will be held to less rigid standards for pleading, although a totally deficient petition will be rejected. Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487 (1973).

While there is no requirement that an intervenor be represented by counsel in NRC proceedings, there are some indications that the regulations do not contemplate representation of a party by a non-lawyer and that any party who does not appear pro se must be represented by a lawyer. See 10 CFR § 2.713(a); Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-474, 7 NRC 746, 748 (1978); Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-440, 6 NRC 642 at 643, n.3 (1977); Virginia Electric & Power Company (North Anna Power Station, Units 1 & 2), Licensing Board Order of October 8, 1976 (unpublished). As the Three Mile Island and Cherokee cases cited amply demonstrate, however, any requirement that only lawyers appear in a representative capacity is usually waived, either explicitly or implicitly, as a matter of course.

Insofar as organizations are concerned, 10 CFR § 2.713(a) clearly limits representation to either an attorney or a member, and it can logically be read as precluding representation by an attorney and a member at the same time. But it does not appear to bar representation by a member throughout a proceeding if, at some earlier time during the proceeding, an attorney has made an appearance for the organization.

Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station), LBP-79-17, 9 NRC 723, 724 (1979).

2.9.3 Petitions to Intervene

Intervention is covered generally in 10 CFR §§ 2.714, 2.714a.

In the first instance, the decision as to whether to grant or deny a petition to intervene or a request for a hearing lies with the Licensing Board. Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Units 1 & 2), CLI-73-16, 6 AEC 391 (1973).

In past operating license cases, petitions to intervene were sometimes considered and ruled upon by an ASLB especially appointed for that purpose and a separate ASLB conducted separate proceedings if intervention were permitted. Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-400, 5 NRC 1175, 1177-1178 (1977). In construction permit cases, a single ASLB usually performs both tasks. See Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424 at n.2 (1973).

In ruling on a petition to intervene, the Licensing Board must consider, *inter alia*, the nature of petitioner's right under the Atomic Energy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial or other interest in the proceeding, and the possible effect of any Order which may be entered in the proceeding on the petitioner's interests. 10 CFR § 2.714(d); Washington Public Power Supply System (WPPSS Nuclear Projects No. 3 and No. 5), LBP-77-16, 5 NRC 650 (1977).

An intervention petition must, under 10 CFR § 2.714(a)(2), set forth with particularity certain factors regarding the petitioner's interest in the proceeding and address the criteria set forth in 10 CFR § 2.714(d). Florida Power and Light Co. (Turkey Point Plant, Units 3 and 4), CLI-81-31, 14 NRC 959, 960 (1981); Consumers Power Co. (Big Rock Point Plant), CLI-81-32, 14 NRC 962, 963 (1981).

The ASLB must make specific determinations as to whether the petition is proper and meets the requirements for intervention and must articulate in reasonable detail the basis for its determination. Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 1), ALAB-105, 6 AEC 181 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-104, 6 AEC 179 (1973).

Assuming that the requisite personal interest of the intervenor is shown, if the ASLB determines that there is present at least one contention which meets applicable requirements,

intervention will be permitted. The ASLB has no duty to consider additional contentions for the purpose of determining whether intervention should be permitted. Mississippi Power & Light Co., ALAB-130 *supra* at 6 AEC 424; Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 (1973); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973). Although 10 CFR § 2.714 has been amended with regard to the time for filing contentions, the "one good contention" rule remains. 10 CFR § 2.714(b).

Pro se petitioners will be held to less rigid standards of clarity and precision with regard to the petition to intervene. Nevertheless, a totally deficient petition will be rejected. Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487, 489 (1973).

In NRC proceedings in which a hearing is not mandatory but depends upon the filing of a successful intervention petition, an "intervention" Licensing Board has authority only to pass upon the intervention petition. If the petition is granted, thus giving rise to a full hearing, a second Licensing Board, which may or may not be composed of the same members as the first Board, is established to conduct the hearing. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 73 (1978). See also Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-30 A, 14 NRC 364, 366 (1981), *citing*, Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit No. 1), ALAB-400, 5 NRC 1175 (1977).

2.9.3.1 Pleading Requirements

Under 10 CFR § 2.714, a petition to intervene must:

- (1) be in writing;
- (2) identify the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene;
- (3) set forth with particularity the interest of the petitioner in the matter, the manner in which that interest may be affected by the proceeding, and the reasons why the petitioner should be permitted to intervene with particular reference to the petitioner's right to be made a party under the Atomic Energy Act, the nature and extent of petitioner's property, financial or other interest in the proceeding, and the possible effect of any order entered in the proceeding on petitioner's interest.

In addition, prior to the first prehearing conference, the petitioner must file a supplement to his petition to intervene which sets forth the contentions the petitioner seeks to have litigated and the basis for each contention set forth with reasonable specificity. 10 CFR § 2.714(b). Illinois Power Co., (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737 (1981). Where a contention is made up of a general allegation which, standing alone, would not be admissible under 10 CFR § 2.714(b), plus one or more alleged bases for the contention set forth with reasonable specificity, the matters in controversy raised by each such contention are limited in scope to the specific alleged basis or bases set forth in the contention. Clinton Power Station, *supra* at 1737.

In general, these elements have been construed as requiring the petitioner to show:

- (a) that he has a personal interest in the matter (e.g., residence in proximity to the reactor - see Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188 (1973);
- (b) how that interest may be adversely affected;
- (c) the specific contentions as to which the petitioner desires to participate.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-73-10, 6 AEC 173 (1973); Florida Power and Light Co. (Turkey Point Plant, Units 3 and 4), CLI-81-31, 14 NRC 959, 960 (1981), citing, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station Units 1 and 2), CLI 80-10, 11 NRC 438 (1980); Consumers Power Co. (Big Rock Point Plant), CLI-81-32, 14 NRC 962, 963 (1981).

In BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974), the Court of Appeals for the District of Columbia Circuit upheld various aspects of 10 CFR § 2.714, including the requirement that contentions be specified, and the requirement that the basis for contentions be set forth.

Petitions drawn by counsel experienced in NRC practice must exhibit a high degree of specificity. In contrast, Licensing Boards are to be lenient in this respect for petitions drawn *pro se* or by counsel new to the field or to the bar. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station), ALAB-279, 1 NRC 559, 576-577 (1975). For a more recent case acknowledging that a *pro se* petitioner for intervention should not be held to the same standards of clarity and precision to which a lawyer might reasonably be expected

to adhere in the petition to intervene, see Wisconsin Public Service Corporation, et al. (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 82 (1978).

Although a totally deficient pleading may not be justified on the basis that it was prepared without the assistance of counsel, a pro se petitioner is not "to be held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere." Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973), cited in Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 546 (1980).

A petitioner is not permitted to incorporate massive documents by reference as the basis for, or a statement of, his contentions. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 216 (1976).

A petition to intervene which seeks to raise antitrust contentions must comply with the requirements of 10 CFR § 2.714 and must also set forth with particularity:

- (1) facts which describe a situation inconsistent with the antitrust laws or their underlying policies;
- (2) facts which describe the existence of a meaningful nexus between the activities under the nuclear license and the aforementioned anticompetitive "situation";
- (3) the specific relief sought, including whether, how and to what extent any license conditions imposed by the attorney general fail to provide the requested relief.

Wolf Creek, ALAB-279 supra; see also Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 32 (1981).

Petitions to intervene must initially specify the "aspect or aspects" of the subject matter of the proceeding as to which the petitioner wishes to intervene. An "aspect" is broader than a "contention" but narrower than a general reference to the NRC's operating statutes. Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 278 (1978).

Under 10 CFR § 2.714 it is no longer necessary for petitioners for intervention to advance at least one viable contention when initially filing a petition to intervene. The petition may later be supplemented to include contentions. There is no single date when the petition must be supplemented. Pursuant to CFR § 2.714(b), the supplement

may be submitted without leave of the presiding officer 15 days prior to the special prehearing conference or, if none is held, the first prehearing conference. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 74 (1978).

Where an original notice of hearing is overly narrowly drawn, a requirement that those who subsequently seek to intervene state that they did not intervene before because of limitations in the original notice was not an abuse of discretion. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 10 (1980).

The petition of an organization to intervene must show that the person signing it has been authorized by the organization to do so. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979).

2.9.3.2 Defects in Pleadings

Although the requirements of 10 CFR § 2.714 must ultimately be met, the Appeal Panel has made it clear that every benefit of the doubt should be given to the potential intervenor in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects. As such, petitioners will usually be permitted to amend petitions containing curable defects. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-146, 6 AEC 631 (1973).

A Licensing Board itself has no duty to recast contentions offered by a petitioner to make them acceptable under the regulations. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 406 (1974).

Intervention petitions and requests for hearing cannot properly raise antitrust issues and health and safety issues in the same proceedings. Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 32 (1981).

2.9.3.3 Time Limits/Late Petitions

2.9.3.3.1 Time for Filing Intervention Petitions

Petitions to intervene or requests for hearing must be filed not later than the time specified in the notice for hearing or as provided by the Commission, the presiding officer or the Licensing Board designated to rule on petitions and/or requests for hearing, or as provided in 10 CFR § 2.102(d)(3) (with regard to antitrust matters).

A Licensing Board did not abuse its discretion in shortening the time to file contentions where there were many intervenors. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 13 (1980).

2.9.3.3.2 Sufficiency of Notice of Time Limits on Intervention

Although the Appeal Board has stated that it would leave open the question as to whether Federal Register notice without more is adequate to put a potential intervenor on notice for filing intervention petitions, Pennsylvania Power Light Co. (Susquehanna Steam Electric Station, Units 1 & 2), ALAB-148, 6 AEC 642, 643 at n.2 (1973), the Board tacitly assumed that such notice was sufficient in Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 & 2), ALAB-341, 4 NRC 95 (1976) (claims by petitioner that there was a "press blackout" and that he was unaware of Commission rules requiring timely intervention will not excuse untimely petition for leave to intervene).

2.9.3.3.3 Consideration of Untimely Petitions to Intervene

10 CFR § 2.714(a) provides that nontimely petitions to intervene or requests for hearing will not be considered absent a determination that the petition or request should be granted based upon a balancing of the following factors:

- (1) good cause, if any, for failure to file on time;
- (2) the availability of other means for protecting the petitioner's interests;
- (3) the extent to which petitioner's participation might reasonably assist in developing a sound record;
- (4) the extent to which the petitioner's interest will be represented by existing parties; and
- (5) the extent to which petitioner's participation will broaden the issues or delay the proceeding.

Amendments to Section 2.714 make it clear that a showing of good cause for the untimeliness of a petition is only one factor to be considered and balanced. Prior to these amendments, the "good cause" factor was given special treatment, although a showing of good cause would not relieve a Licensing Board of its obligation to consider the other factors. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460 (1977); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 22 (1977); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612 (1977). In addition, it has

been held that even if a petitioner fails to establish good cause for the untimely petition, the other factors must be examined, Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631 (1975), although the burden of justifying intervention on the basis of the other factors is considered to be greater when the petitioner fails to show good cause. Nuclear Fuel Services, Inc., et al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975); USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976); Virginia Electric & Power Co. (North Anna Station, Units 1 & 2), ALAB-289, 1 NRC 395, 398 (1975). A satisfactory explanation for failure to file on time does not automatically warrant the acceptance of a late filed intervention petition. The additional four factors specified under 10 CFR § 2.714(a) must also be considered. However, where a late filing of an intervention petition has been satisfactorily explained, a much smaller demonstration with regard to the other factors of 10 CFR § 2.714(a) is necessary than would otherwise be the case. Wisconsin Public Service Corporation, et al. (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 83 (1978).

The five factors listed in 10 CFR § 2.714(a) are to be considered in determining whether to allow late intervention. Newly acquired standing by moving to the vicinity of a plant is not alone enough to justify belated intervention. Nor does being articulate show a contribution can be made in developing the record. Other parties having the same interest weigh against allowing late intervention. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 241 (1980). The first factor of those specified in 10 CFR § 2.714(a) is whether there exists "good cause, if any, for the failure to file on time." Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Power Station), ALAB-595, 11 NRC 860, 862 (1980). In considering the "good cause" factor, the Appeal Board pointed out that a strong excuse for lateness will attenuate the showing necessary on the other factors of 10 CFR § 2.714. It added that the 1978 amendment of the language of § 2.714, far from altering this substantive principle, regarding excuse for lateness, merely codified it. Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-523, 9 NRC 58, 63 (1979). See also Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 22 (1977), affirmed, CLI-78-12, 7 NRC 939 (1978).

Although a concrete definition as to what constitutes "good cause" has not been established, certain excuses for delay have been held to be insufficient to justify late filing. For example, in Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), LBP-74-63, 8 AEC 330, aff'd, ALAB-238,

8 AEC 656 (1974), it was held that neither the fact that the corporate citizens' group seeking to intervene was not chartered prior to the cutoff date for filing, nor the fact that the applicant changed its application by dropping one of the two units it intended to build, gave good cause for late filing. Similarly, claims by a petitioner that there was a "press blackout" and that he was unaware of the Commission's rules requiring timely intervention will not excuse an untimely petition for leave to intervene. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 & 2), ALAB-341, 4 NRC 95 (1976), nor will failure to read the Federal Register. South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420, 423 (1981), citing, New England Power and Light Co. (NEP Units 1 and 2), LBP-78-18, 7 NRC 932, 933-934 (1978). The showing of good cause is required even though a petitioner seeks to substitute itself for another party. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 796 (1977).

Licensing Boards and Appeal Boards have both considered various excuses to determine whether they constitute "good cause." Newly-acquired organizational existence does not constitute good cause for delay in seeking intervention. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979), cited in Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570 (1980) and South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420, 423 (1981). Nor does preoccupation with other matters afford a basis for excusing a nontimely petition to intervene. Poor judgment or imprudence is not good cause for late filing. Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 and 2), LBP-79-16, 9 NRC 711, 714 (1979). The Appeal Board did not accept as an excuse for late intervention the claim that petitioner, a college organization, could not meet an August petition deadline because most of its members were away from school during the summer and hence unaware of developments in the case. Such a consideration does not relieve an organization from making the necessary arrangements to insure that its interest is protected in its members' absence. On the other hand, new regulatory developments and the availability of new information may constitute good cause for delay in seeking intervention. Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 148-149 (1979). See also Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 572-573 (1980).

Confusing and misleading letters from the Staff to a prospective pro se petitioner for intervention, and failure of the Staff to respond in a timely fashion to certain communications from such a petitioner, constitute a strong showing of good cause for an untimely petition. Wisconsin Public Service Corporation, et al. (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 81-82 (1978).

A petitioner's claim that it was lulled into inaction because it relied upon the State, which later withdrew, to represent its interests does not constitute good cause for an untimely petition. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 796 (1977). A petitioner who has relied upon a State participating pursuant to 10 CFR § 2.715(c) to represent her interests in a proceeding cannot rely on her dissatisfaction with the State's performance as a valid excuse for a late-filed intervention petition where no claim is made that the State undertook to represent her interests specifically, as opposed to the public interest generally. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-440, 6 NRC 642 (1977). See also South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420, 423 (1981). Nor will an explanation that full-time domestic and other responsibilities was the reason for filing an intervention petition almost three years late suffice. Cherokee, supra.

With regard to the second factor -- other means to protect petitioner's interest -- the question is not whether other parties will adequately protect the interest of the petitioner, but whether there are other available means whereby the petitioner can itself protect its interest. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631 (1975).

The suggestion that an organization could adequately protect its interest by submitting a limited appearance statement gives insufficient regard to the value of participational rights enjoyed by parties -- including the entitlement to present evidence and to engage in cross-examination. Similarly, assertions that the organization might adequately protect its interest by making witnesses available to a successful petitioner or by transmitting information in its possession to appropriate State and local officials are without merit. Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150, n.7 (1979).

As to the third factor with regard to "assistance in developing the record," a late petitioner placing heavy reliance on this factor and claiming that it has substantial technical

expertise in this regard should present a bill of particulars in support of such a claim. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-476, 7 NRC 759, 764 (1978). At the same time, it is not necessary that a petitioner have some specialized education, relevant experience or ability to offer qualified experts for a favorable finding on this factor to be made. South Carolina Electric & Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), LBP-78-6, 7 NRC 209, 212-213 (1978).

With regard to the fourth factor of 10 CFR § 2.714(a), the extent to which petitioner's interest will be represented by existing parties, the fact that a successful petitioner has advanced a contention concededly akin to that of a late petitioner does not necessarily mean that the successful petitioner is both willing and able to represent the late petitioner's interest. Duke Power Company (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150 (1979).

The Licensing Board in Florida Power and Light Company (Turkey Point Nuclear Generating Units 3 and 4), LBP-79-21, 10 NRC 183, 195 (1979) has expressed the view that NRC practice has failed to provide a clearcut answer to the question of whether the fourth factor, the extent to which the petitioner's interest will be represented by existing parties, is applicable when there are no intervening parties and no petitioners other than the latecomer, and a hearing will not be held if the late petitioner is denied leave to intervene. The Licensing Board reviewed past Licensing Board decisions on this question:

- (1) In St. Lucie and Turkey Point the Licensing Board decided that the fourth factor was not directly applicable, noting that without the petitioner's admission there would be no other party to protect petitioner's interest. Florida Power and Light Company (St. Lucie Plants, Units 1 and 2 and Turkey Point, Units 3 and 4), LBP-77-23, 5 NRC 789, 800 (1977).
- (2) In Virgil C. Summer the Licensing Board acknowledged uncertainty as to the applicability of factor four, but indicated that if the factor were applicable it would be given no weight because of the particular circumstances of that case. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-78-6, 7 NRC 209, 213-214 (1978).
- (3) In Kewaunee, the Board concluded that petitioners' interest would not be represented absent a hearing and decided that the fourth factor weighed in favor of

admitting them as intervenors. Wisconsin Public Service Corp. (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 84 (1978).

The Licensing Board ultimately ruled that the Commission intended that all five factors of 10 CFR § 2.714(a) should be balanced in every case involving an untimely petition. Florida Power and Light Company (Turkey Point Nuclear Generating Units 3 and 4), LBP-79-21, 10 NRC 183, 195 (1979). The Board also ruled that in the circumstances where denial of a late petition would result in no hearing and no parties to protect the petitioner's interest, the question, "To what extent will Petitioners' interest be represented by existing parties?" must be answered, "None." The fourth factor therefore, was held to weigh in favor of the late petitioners. Id.

In balancing the factors in 10 CFR § 2.714(a), the Licensing Board may take into account the petitioner's governmental nature as it affects the extent to which petitioner's interest will be represented by existing parties (fourth factor of 10 CFR § 2.714(a)), although the petitioner's governmental status in and of itself will not excuse untimely petitions to intervene. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20 (1976).

With respect to the fifth factor, the extent to which a late petitioner's participation would delay a proceeding, the Appeal Board in Puget Sound Power and Light Company, et al. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 NRC 162, 172 (1979), assessed this factor, as of the time of the Appeal Board's hearing, not as of the time the petitioners filed their petition. A person who attempts to intervene three and a half years after the petition deadline has no right to assume that his intervention will go unchallenged; rather, he has every right to assume that objections will be made and that the appellate process might be invoked. Skagit, supra. at 172-173.

The fifth factor includes only that delay which can be attributed directly to the tardiness of the petition. Jamesport, supra, ALAB-292, 2 NRC 631; South Carolina Electric and Gas Co., et al. (Virgil C. Sumner Nuclear Station, Unit I), LBP-81-11, 13 NRC 420, 425 (1981). While this factor is particularly significant, it is not dispositive. USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976). In considering the factor of delay, the magnitude of threatened delay must be weighed since not every delay is intolerable. Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 & 2), LBP-77-9, 5 NRC 474 (1977). In addition, in deciding whether petitioners' participation would broaden the issues or delay the proceeding, it is proper for the Licensing Board to consider that the

petitioners agreed to allow issuance of the construction permit before their antitrust contentions were heard, thereby eliminating any need to hold up plant construction pending resolution of those contentions. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 23 (1977).

An untimely intervention petition need not introduce an entirely new subject matter in order to "broaden the issues" for the purposes of 10 CFR § 2.714(a); expansion of issues already admitted to the proceeding also qualifies. South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 891 (1981).

The mere fact that a late petitioner will not cause additional delay or a broadening of the issue does not mean that an untimely petition should necessarily be granted. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 798 (1977). However, from the standpoint of precluding intervention, the delay factor is extremely important and the later the petition to intervene, the more likely it is that the petitioner's participation will result in delay. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB 476, 7 NRC 759, 762 (1978).

Where no good excuse is tendered for the tardiness, the petitioner's demonstration on the other factors must be particularly strong. (Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-431, 6 NRC 460, 462 (1977) and cases there cited). In the instance of a very late petition, the strength or weakness of the tendered justification may thus prove crucial. The greater the tardiness, the greater the likelihood that the addition of a new party will delay the proceeding -- e.g., by occasioning the re-litigation of issues already tried. Although the delay factor may not be conclusive, it is an especially weighty one. (Project Management Corporation (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 394-395 (1976). Puget Sound Power & Light Company, et al. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-552, 10 NRC 1, 5 (1979).

The permissive grant of intervention petitions inexcusably filed long after the prescribed deadline would pose a clear and unacceptable threat to the integrity of the entire adjudicatory process. Although Section 2.714(c) of the Rules of Practice may not shut the door firmly against unjustifiably late petitions, it does reflect the expectation that, absent demonstrable good cause for the late filing, so an individual interested in the outcome of a particular proceeding will act to protect his interest within the established time limits. Skagit, supra, at 172-173.

Licensing Boards have very broad discretion in their approach to the balancing process required under 10 CFR § 2.714(a). Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976). Given this wide latitude with regard to untimely petitions to intervene, a Licensing Board has the discretion to permit intervention, even though an acceptable excuse for the untimely filing is not forthcoming, if other considerations warrant its doing so. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 3, 22 (1977).

In evaluating intervention petitions to determine whether the requisite specificity exists, whether there has been an adequate delineation of the basis for the contentions, and whether the issue sought to be raised are cognizable in an individual licensing proceeding, Licensing Boards will not appraise the merits of any of the assertions contained in the petition. But when considering untimely petitions, Licensing Boards are required to assess whether the petitioner has made a substantial showing of good cause for failure to file on time. In doing so, Boards must necessarily consider the merits of claims going to that issue. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 948-949 (1978).

Non-parties, participating under 10 CFR § 2.715(c), need not comply with the requirements of 10 CFR § 2.714 that mandate that intervenors either file their contentions in a timely fashion or show cause for their late intervention. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 688 (1981).

The key policy considerations for barring late intervenors is one of fairness, viz., "the public interest in the timely and orderly conduct of our proceedings." Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 648-49 (1979), citing, Nuclear Fuel Services, Inc., (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

A Licensing Board has no latitude to admit a new party, i.e., an "eleventh hour" intervenor, to a proceeding as the hearing date approaches in circumstances where: (1) the extreme tardiness in seeking intervention is unjustified; (2) the certain or likely consequence would be prejudice to other parties as well as delaying the progress of the proceeding, particularly attributable to the broadening of issues; and (3) the substantiality of the contribution to the development of the record which might be made by that party is problematic. South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-643, 13 NRC 898, 900 (1981).

2.9.3.3.4 Appeals from Rulings on Late Intervention

Two considerations play key roles in Appeal Board deliberations on appeals from rulings on untimely intervention. The first is the Commission's admonition in Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975), that 10 CFR § 2.714(a) was purposely drafted with the idea of "giving the Licensing Boards broad discretion in the circumstances of individual cases." Consequently, an Appeal Board is free to reverse a decision granting a tardy intervention petition only where it can fairly be said that the Licensing Board's action was an abuse of the discretion conferred by Section 2.714(a). Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976). The second consideration flows from the principle that the propriety of the Board's action must be measured against the backdrop of the record made by the parties before it. Accordingly, on review the Appeal Board must generally credit the facts recounted in the papers supporting the petition to intervene to the extent that they deal with the merits of the issues. Insofar as the facts relate to the excuse for untimely filing, where they are not controverted by opposing affidavits they must be taken as true. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 13 (1977). In view of all of this, the chances of overturning a Licensing Board's finding that intervention, although late, would be valuable are slight. See, e.g., Pacific Gas & Electric Co. (Diablo Canyon Nuclear Plant, Units 1 & 2), ALAB-223, 8 AEC 241 (1974).

In a decision vacating a Licensing Board's grant of late intervention because the grant was based on improper criteria, the Appeal Board refused to examine whether the petitioner had met the regulatory requirements for intervention (i.e., 10 CFR § 2.714). Puget Sound Power & Light Company, et al., (Skagit Nuclear Power Project, Units 1 and 2), ALAB-523, 9 NRC 58, 63-64 (1979), petition for review denied, Puget Sound Power & Light Co. (Skagit Nuclear Project, Units 1 and 2), unreported, (January 16, 1980).

Appeal Boards may closely scrutinize factual and legal components of the analysis underlying the Licensing Board's conclusion in reviewing Board decisions on untimely intervention petitions. South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Plant, Unit 1), ALAB-642, 13 NRC 881, 885 (1981).

It is for the Licensing Boards to make the initial assessment of how late intervention petitions fare in light of the intervention criteria. Skagit, supra, at 63.

2.9.3.3.5 Mootness of Petitions to Intervene

Where the Commission was in the process of ruling on an untimely petition to intervene, when the applicant moved to amend its application and conclude the proceeding, the petition to intervene was dismissed as moot. Puget Sound Power and Light Company, et al. (Skagit Nuclear Power Project, Units 1 and 2), CLI-80-34, 12 NRC 407, 408 (1980).

2.9.3.4 Amendment of Petition Expanding Scope of Intervention

In order to expand the scope of a previously filed petition to intervene, an intervenor carries the burden of persuading the Licensing Board that the information upon which the expansion is based: (a) was objectively unavailable at the time the original petition was filed, and (b) had it been available, the petition's scope would have been broader. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), LBP-73-31, 6 AEC 717, appeal dismissed as interlocutory, ALAB-168, 6 AEC 1155 (1973).

2.9.3.5 Withdrawal of Petition to Intervene

Voluntary withdrawal of a petition to intervene is without prejudice to reinstate the petition, although reinstatement can only be done on a showing of good cause. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), LBP-73-41, 6 AEC 1057 (1973).

2.9.3.6 Intervention in Antitrust Proceedings

In addition to meeting the requirements of 10 CFR § 2.714, a petitioner seeking to intervene in an antitrust proceeding must:

- (1) describe the situation allegedly inconsistent with the antitrust laws which is the basis for intervention;
- (2) describe how that situation conflicts with the policies underlying the Sherman, Clayton or Federal Trade Commission Acts;
- (3) describe how that situation would be created or maintained by activities under the proposed license;
- (4) identify the relief sought; and
- (5) explain why the relief sought fails to be satisfied by license conditions proposed by the Department of Justice.

Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 32 (1981) (and cases cited therein).

Note that for antitrust intervention, Catawba implies that the interest of a ratepayer or consumer of electricity may be within the zone of interests protected by Section 105 of the Atomic Energy Act. The petitioner, however, must still demonstrate that an injury to its interests would be the proximate result of anticompetitive activities by the applicant or licensee and such injury must be more than remote and tenuous. Id. at 13 NRC 30-32.

When neither the Attorney General nor the NRC Staff has discerned antitrust problems warranting review under Section 105c, potential antitrust problems must be shown with reasonable clarity to justify granting a petition that would lead to protracted antitrust litigation involving a pro se petitioner. Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), LBP-78-13, 7 NRC 583, 595 (1978).

Although Section 105 of the Atomic Energy Act encourages petitioners to voice their antitrust claims early in the licensing process, reasonable late requests for antitrust review are not precluded so long as they are made concurrent with licensing. Licensing Boards must have discretion to consider individual claims in a way which does justice to all of the policies which underlie Section 105c and the strength of particular claims justifying late intervention. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

Late requests for antitrust review hearings may be entertained in the period between the filing of an application for a construction permit -- the time when the advice of the Attorney General is sought -- and its issuance. However, as the time for issuance of the construction permit draws closer, Licensing Boards should scrutinize more closely and carefully the petitioner's claims of good cause. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978). The criteria of 10 CFR § 2.714 for late petitioners are as appropriate for evaluation of late antitrust petitions as in health, safety and environmental licensing, but Section 2.714 criteria should be more stringently applied to late antitrust petitions, particularly in assessing the good cause factor, Id. Where an antitrust petition is so late that relief will divert from the licensee needed and difficult-to-replace power, the Licensing Board may shape any relief granted to meet this problem. Id.

Where a late petition for intervention in an antitrust proceeding is involved, the special factors set forth within 10 CFR § 2.714(a)(1) must be balanced and applied before petitions may be granted; the test becomes increasingly vigorous as time passes. Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), LBP-81-28, 14 NRC 333, 338, 342 (1981).

2.9.4 Interest and Standing for Intervention

Both the Atomic Energy Act of 1954, as amended, and the Commission's regulations permit intervention only by a "person whose interest may be affected." The term "person" in this context includes corporate environmental groups which may represent members of the group provided that such members have an interest which will be affected. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-322, 3 NRC 328 (1976). Standing to intervene as a matter of right does not hinge upon a petitioner's potential contribution to the decisionmaking process. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976). Nevertheless, a petitioner's potential contribution has a definite bearing on "discretionary intervention." See Section 2.9.4.2. infra.

In Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804 (1976), the Appeal Board certified the following questions to the Commission:

- (1) Should standing in NRC proceedings be governed by "judicial" standards?
- (2) If no "right" to intervene exists under whatever standing rules are found to be applicable, what degree of discretion exists in a Board to admit a petitioner anyway?

The Commission's response to the certified question is contained in Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610 (1976). Therein, the Commission ruled that judicial concepts of standing should be applied by adjudicatory boards in determining whether a petitioner is entitled to intervene as of right under Section 189 of the Atomic Energy Act. As to the second question referred by the Appeal Board, the Commission held that Licensing Boards may, as a matter of discretion, grant intervention in domestic licensing cases to petitioners who are not entitled to intervene as of right under judicial standing doctrines but who may, nevertheless, make some contribution to the proceeding.

Standing to intervene, unlike the factual merits of contentions, may appropriately be the subject of an evidentiary inquiry before intervention is granted. Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 277 at n.1 (1978).

"There is no question that, in an operating license proceeding, the question of a potential intervenor's standing is a significant one. For if no petitioner for intervention can satisfactorily demonstrate standing, it is likely

that no hearing will be held." Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 582 (1978).

2.9.4.1 Judicial Standing to Intervene

2.9.4.1.1 "Injury-In-Fact" and "Zone of Interest" Tests for Standing to Intervene

Although the Commission's Pebble Springs ruling (CLI-76-27, 4 NRC 610) permits discretionary intervention in certain limited circumstances, it stresses that, as a general rule, the propriety of intervention is to be examined in the light of judicial standing principles. The judicial principles referred to are those set forth in Sierra Club v. Morton, 405 U.S. 727 (1972); Barlow v. Collins, 397 U.S. 159 (1970); and Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970). Such standards require a showing that (1) the action being challenged could cause injury-in-fact to the person seeking to establish standing, and (2) such injury is arguably within the zone of interests protected by the statute governing the proceeding. Consumers Power Co. (Palisades Nuclear Power Facility), LBP-81-26, 14 NRC 247, 250 (1981), citing Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980); Wisconsin Electric Power Co. (Point Beach, Unit 1), CLI-80-38, 12 NRC 547 (1980); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976).

With respect to "zone of interest," the Appeal Board, in Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98, 103 at n.6 (1976), rejected the contention that the Atomic Energy Act includes a "party aggrieved" provision which would require for standing purposes simply a showing of injury-in-fact. The Commission agreed with this analysis in its Pebble Springs decision. As such, zone of interest requirements are not met simply by invoking the Atomic Energy Act but must be satisfied by other means. The following should be noted with regard to "zone of interest" requirements:

- (1) The directness of a petitioner's connection with a facility bears upon the sufficiency of its allegations of injury-in-fact, but not upon whether its interests fall within the zone of interest which Congress was protecting or regulating. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976).
- (2) The Atomic Energy Act and its implementing regulations do not confer standing but rather require an additional showing that interests sought to be protected arguably

fall within the zone of interests protected or regulated by the Act. Virginia Electric & Power Co., ALAB-342 supra; accord, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610 (1976).

- (3) While potential loss of business reputation is a cognizable "injury-in-fact," an interest in protecting business reputation and avoiding possible damage claims is not arguably within the zone of interest which the Act seeks to protect or regulate. Virginia Electric & Power Co., ALAB-342, supra (business reputation of reactor vessel component fabricator clearly would be injured if components failed during operation; however, fabricator's interest in protecting his reputation by intervening in hearing on adequacy of vessel supports was not within the zone of interests sought to be protected by the Atomic Energy Act).
- (4) The economic interest of a ratepayer is not sufficient to allow standing to intervene as a matter of right since concern about rates is not within the scope of interests sought to be protected by the Atomic Energy Act. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1420-1421 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977); Public Service Co. of Oklahoma, et al. (Black Fox Nuclear Power Station, Units 1 & 2), LBP-77-17; 5 NRC 657 (1977). Nor is such interest within the zone of interests protected by the National Environmental Policy Act. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804 (1976).
- (5) A person's interest as a taxpayer does not fall within the zone of interests sought to be protected by either the Atomic Energy Act or the National Environmental Policy Act. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418 at 1421 (1977).
- (6) Economic injury gives standing under the National Environmental Policy Act only if it is environmentally related. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977). See also Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631, 640 (1975).

The test is a cognizable interest that might be adversely affected by one or another outcome of the proceeding.

No interest is to be presumed. There must be a concrete demonstration that harm could flow from a result of the proceeding. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

For antitrust purposes, the interest of a ratepayer or consumer of electricity is not necessarily beyond the zone of interests protected by Section 105 of the Atomic Energy Act. However, the petitioner must still demonstrate that an injury to its economic interests as a ratepayer would be the proximate result of anticompetitive activities by the licensee. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-13, 7 NRC 583, 592-593 (1978).

Antitrust considerations to one side, neither the Atomic Energy Act nor the National Environmental Policy Act includes in its "zone of interests" the purely economic personal concerns of a member/ratepayer of a cooperative that purchases power from a prospective facility co-owner. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474-475 (1978).

Nor is a union's admittedly economic interest in maintaining contractually protected employment rights an interest that is within the "zone of interests" protected by the Atomic Energy Act; it therefore cannot serve as a basis to request a hearing as a matter of right under Section 189a. Consumers Power Co., supra at 251.

For an amendment authorizing transfer of 20% of the ownership of a facility, allegations that a petitioner would "receive" only 80% of the electricity produced by the plant rather than the 100% "assumed in the 'NEPA balance'" were insufficient to give standing as a matter of right because it was an economic injury outside the zone of interests to be protected and the NEPA cost/benefit analysis considers the overall benefits to society rather than benefits to an isolated portion. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 390-90, aff'd, ALAB-470, 7 NRC 473 (1978).

The Commission applies judicial tests of "injury-in-fact" and "arguably within the zone of interest" to determine standing. "Injury" as a premise to standing must come from an action, in contrast to failure to take an action. One who claims that an Order in an enforcement action should have provided for more extensive relief does not show injury from relief granted and thus does not have standing to contest the order. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

To establish the requisite "injury-in-fact" for standing, a petitioner must have a "real stake" in the outcome, that is, a genuine, actual, or direct stake, but not necessarily a substantial stake in the outcome. An organization meets this requirement where it has identified one of its members who possesses the requisite standing. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-448 (1979).

A petitioner who supports an application must, of course, show the potential for injury-in-fact to its interests before intervention can be granted. Such a petitioner must particularize a specific injury that it or its members would or might sustain should the application it supports be denied or should the license it supports be burdened with conditions or restrictions. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal site), ALAB-473, 7 NRC 737, 743 (1978).

A petitioner may base its standing upon a showing that his or her residence, or that of its members, is within the geographical zone that might be affected by an accidental release of fission products. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443 (1979). See also Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979). Close proximity has always been deemed enough standing alone, to establish the requisite interest" for intervention. In such a case the petitioner does not have to show that his concerns are well-founded in fact, as such concerns are addressed when the merits of the case are reached. Distances of as much as 50 miles have been held to fall within this zone. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

Although residence within 50 miles is not an explicit requirement for intervention by right, that limit is consistent with precedent. Without a showing that a plant has a far greater than ordinary potential to injure outside a 50 mile limit, a person has a weak claim to the protection of a full adjudicatory proceeding; rulemaking or lobbying Congress are available to protect public interests of a general nature. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 178-179 (1981).

A statement of asserted injury which is insufficient to found a valid contention may well be adequate to provide a basis for standing. Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979).

Failure to produce an environmental impact statement in circumstances where one is required has been held to constitute injury - indeed, irreparable injury. Palisades, supra, at 115-116. Persons residing within the close proximity to the locus of a proposed action constitute the very class which an impact statement is intended to benefit. Palisades, supra, at 116.

2.9.4.1.2 Standing of Organizations to Intervene

A party may intervene as of right only when he asserts his own interests under either the Atomic Energy Act or NEPA, and not when he asserts interests of third persons. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977). Commission practice requires each party to separately establish standing. 10 CFR § 2.714. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981). An organization may meet the injury-in-fact test for standing in one of two ways. It may demonstrate an effect upon its organizational interest, or it may allege that its members, or any of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justifiable case had the members themselves brought suit. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646 (1979); Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 112-113 (1979). Thus, a corporate environmental group has standing to intervene and represent members who have an interest which will be affected. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-322, 3 NRC 328 (1976). Note, however, that a member's mere "interest in the problem" without a showing that the member will be affected is insufficient to give the organization standing. Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976). In this vein, for national environmental groups, standing is derived from injury-in-fact to individual members. South Texas, supra, at 647, citing, Sierra Club v. Morton 405 U.S. 727 (1972). There is a presumption of standing where an organization raises safety issues on behalf of a member or members residing in close proximity to a plant. Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979).

For a recent case holding that a petitioner cannot assert the rights of third parties as a basis for intervention, see Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387, aff'd, ALAB-470, 7 NRC 473 (1978) (mother attempted to assert the rights of her son who attended medical school near a proposed facility).

"[I]t is clear that an organization may establish its standing through the interest of its members; but, to do so, it must identify specifically the name and address of at least one affected member who wishes to be represented by the organization." Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978).

Where an organization is to be represented in an NRC proceeding by one of its members, the member must demonstrate authorization by that organization to represent it. Fermi, supra, at 8 NRC 583.

To establish the requisite "injury-in-fact" for standing, a petitioner must have a "real stake" in the outcome, a genuine, actual, or direct stake, but not necessarily a substantial stake in the outcome. An organization meets this requirement where it has identified one of its members who possesses the requisite standing. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-448 (1979).

An organization seeking to obtain standing in a representative capacity must demonstrate that a member has in fact authorized such representation. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 444 (1979), aff'd, ALAB-549, 9 NRC 644 (1979); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979); Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 113 (1979).

Absent express authorization, an organization which is a party to an NRC proceeding may not represent persons other than its own members. Since there are no Commission regulations allowing parties to participate as private attorneys general, an organization acting as an intervenor may not claim to represent the public interest in general in addition to representing the specialized interests of its members. In this vein, a trade association of home heating oil dealers cannot be deemed to represent the interests of employees and customers of the dealers. Similarly, an organization of residents living near a proposed plant site cannot be deemed to represent the interests of other residents who are not members. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481 (1977).

An organization has sufficiently demonstrated its standing to intervene if its petition is signed by a ranking official of the organization who himself has the requisite personal interest to support the intervention. An organization seeking intervention need not demonstrate that its membership had voted to seek intervention on the matter raised by a

submitted contention, and had authorized the author of the intervention petition to represent the organization. Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979).

An organization cannot meet the "interest" requirement for standing by acquiring a new member considerably after the deadline for filing of intervention petitions who meets the "interest" requirement, but who has not established good cause for the out-of-time filing. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBF-79-7, 9 NRC 330, 335 (1979). The organization cannot in this situation amend its original pleading to show the interest of the new member; the Licensing Board has interpreted 10 CFR § 2.714(a)(3) to permit amendment of a petition relative to interest only by those individuals who have made a timely filing and are merely particularizing how their interests may be affected. WPPSS, supra, at 336.

2.9.4.1.3 Standing to Intervene in Export Licensing Cases

In Edlow International Co., CLI-76-6, 3 NRC 563 (1976), the Commission dealt with the question as to whether the Natural Resources Defense Council and the Sierra Club could intervene as of right and demand a hearing in an export licensing case. The case involved the export of fuel to India for the Tarapur project. The petitioners contended that at least one member of the Sierra Club and several members of NRDC lived in India and thus would be subject to any hazards created by the reactor.

In rejecting the argument that there was a right to intervene, the Commission stated:

If petitioners allege a concrete and direct injury their claim of standing is not impaired merely because similar harm is suffered by many others. However, if petitioners' 'asserted harm is a "generalized grievance" shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction'. 3 NRC at 576.

The Commission held that the alleged interests were de minimis (3 NRC at 575), noting that, while in domestic licensing cases claims of risk that were somewhat remote have been recognized as forming a basis for intervention, Section 189(a) of the Act (42 U.S.C. § 2239(a)) would not be given such a broadly permissive reading (3 NRC at 571) in export licensing cases.

Consistent with its decision in Edlow International Co., CLI-76-6, 3 NRC 563 (1976), the Commission has held that a

petitioner is not entitled to intervene as a matter of right where its petition raises abstract issues relating to the conduct of U.S. foreign policy and protection of the national security. The petitioner must establish that it will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. In the Matter of Ten Applications, CLI-77-24, 6 NRC 525, 531 (1977). Nevertheless, the Commission may, in its discretion, direct further public proceedings if it determines that such proceedings would be in the public interest even though the petitioner has not established a right under Section 189 of the Atomic Energy Act to intervene or demand a public hearing. Id. at 532.

The contention that a major Federal action would have a significant environmental impact on a foreign nation is not cognizable under NEPA, and cannot support intervention. Babcock & Wilcox (Application for Considerations of Facility Export License), CLI-77-18, 5 NRC 1332, 1348 (1977).

Judicial precedents will be relied on in deciding issues of standing to intervene in export licensing. Westinghouse Electric Corp. (Export to South Korea) CLI-80-30, 12 NRC 253, 258 (1980).

Institutional interests in disseminating information and educating the public do not establish a claim of right under Section 189a of the Atomic Energy Act for purposes of standing because it would not constitute an interest affected by the proceeding. There must be a causal nexus between the refusal to allow standing and the inability to disseminate information Id. at 259.

2.9.4.1.4 Standing to Intervene in Specific Factual Situations

Residence within 30-40 miles of the plant site has been held to be sufficient to show the requisite interest in raising safety questions. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-146, 6 AEC 631, 633-634 (1973); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372, n.6 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 190, 193, reconsid. den., ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973). Similarly, a person whose base of normal, everyday activities is within 25 miles of a nuclear facility can fairly be presumed to have an interest which might be affected by reactor construction and/or operation. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222, 226 (1974). Moreover, persons who allege that they use an area whose recreational benefits may be diminished by a nuclear facility have been found to possess an adequate interest

to allow intervention. Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-73-10, 6 AEC 173 (1973). On the other hand, it is proper for a Board to dismiss an intervention petition where the intervenor changes residence to an area not in the proximity of the reactor and totally fails to assume any significant participatory role in the proceeding. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-358, 4 NRC 558 (1976).

A petitioner who resides far from a facility cannot acquire standing to intervene by asserting the interests of a third party who will be near the facility but who is not a minor or otherwise under a legal disability which would preclude his own participation. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 at n.1 (1978).

"A petitioner may base its standing upon a showing that his or her residence, or that of its members, is 'within the geographical zone that might be affected by an accidental release of fission products.' Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 371 n.6 (1973)." Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979). Distances of as much as 50 miles have been held to fall within this zone. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977) (50 miles); Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 193 (1973) (40 miles); Fermi, supra (35 miles).

The Licensing Board refused to allow intervention on the basis of the possibility of petitioners' consuming produce, meat products, or fish originating within 50 miles of the site. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336 (1979).

A petitioner owning and renting out farmland 10 to 15 miles from the site and visiting the farm occasionally was held not to meet standing requirements. WPPSS, supra, at 336-338.

One living 26 miles from a plant cannot claim, without more, that his aesthetic interests are harmed. Conjectural interests do not provide a basis for standing. Nor does economic harm or one's status as a ratepayer provide a basis for standing. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242, 243 n.8 (1980).

The fact that the petitioner is an intervenor with respect to the same issue in another proceeding does not give him

standing to intervene for the purpose of protecting himself from adverse precedent in the proceeding in question. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Power Station, Units 1, 2 & 3), ALAB-304, 3 NRC 1, 4 (1976).

For the views of various Appeal Board members on whether a petitioner has the requisite interest where he has an economic interest which competes with nuclear power in generating electricity, see the three opinions in Long Island Lighting Co. (Jamesport Nuclear Power Station), ALAB-292, 2 NRC 631 (1975).

A petitioner who supports an application must, of course, show the potential for injury-in-fact to its interests before intervention can be granted. Such a petitioner must particularize a specific injury that it or its members would or might sustain should the application it supports be denied or should the license it supports be burdened with conditions or restrictions. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

In a license amendment proceeding to allow two electric cooperatives to become co-owners of a nuclear plant, interests of a petitioner which stemmed from membership in the cooperative ("loss of equity," "threat of bankruptcy," "higher rates," "cost of replacement power," or "loss of property taxes") were insufficient to support standing as a matter of right. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386, aff'd, ALAB-470, 7 NRC 473 (1978).

Those persons who would have standing to intervene in new construction permit hearings, which would be required if good cause could not be shown for an extension of an existing construction permit, would have standing to intervene in [extension proceedings] to show that no good cause existed and, consequently, that new construction permit hearings would be required to complete construction. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), LBP-80-22, 12 NRC 191, 195, affirmed, ALAB-619, 12 NRC 558, 563-565 (1980).

Economic injury to ratepayers is not sufficient to confer standing upon state Commissions to challenge proposed license revocation because such injury results from termination of the project and not Commission "action," and because such injury cannot be redressed by favorable Commission action. Northern States Power Company (Tyrone Energy Park, Unit 1), CLI-80-36, 12 NRC 523, 526-527 (1980) (views of Chairman Ahearn and Commissioner Hendrie).

A statement of asserted injury which is insufficient to found a valid contention may well be adequate to provide a basis for standing. Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979).

Failure to produce an environmental impact statement in circumstances where one is required has been held to constitute injury - indeed, irreparable injury. Palisades, supra, at 115-116. Persons residing within the close proximity to the locus of a proposed action constitute the very class which an impact statement is intended to benefit, Palisades, supra, at 116.

2.9.4.2 Discretionary Intervention

Although a petitioner may lack standing to intervene as of right under judicial standing concepts, he may nevertheless be admitted to the proceeding in the Licensing Board's discretion. In determining whether discretionary intervention should be permitted, the Commission has indicated that the Licensing Board should be guided by the following factors, among others:

(a) Weighing in favor of allowing intervention --

- (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention --

- (4) The availability of other means whereby petitioner's interest will be protected.
- (5) The extent to which the petitioner's interest will be represented by existing parties.
- (6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Portland General Electric Co., et al. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 616 (1976). See also Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981). The discretionary intervention doctrine comes into play only in circumstances where standing to intervene as a matter of right has not

been established. Duke Power Company (Oconee Nuclear Station and McGuire Nuclear Station), ALAB-528, 9 NRC 146, 148 n.3 (1979).

The primary factor to be considered is the significance of the contribution that a petitioner might make. Pebble Springs, supra. Thus, foremost among the factors listed above is whether the intervention would likely produce a valuable contribution to the NRC's decisionmaking process on a significant safety or environmental issue appropriately addressed in the proceeding in question. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418 (1977). See also Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 475 at n.2 (1978). The need for a strong showing as to potential contribution is especially pressing in an operating license proceeding where no petitioners have established standing as of right and where, absent such a showing, no hearing would be held. Watts Bar, supra at 5 NRC 1422.

For a case in which the Commission's discretionary intervention rule was applied, see Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-363, 4 NRC 631 (1976), where, despite petitioner's lack of judicial standing, intervention was permitted based upon petitioner's demonstration of the potential significant contribution it could make on substantial issues of law and fact not otherwise raised or presented and a showing of the importance and immediacy of those issues.

For discretionary intervention, the burden of convincing the Licensing Board that a petitioner could make a valuable contribution lies with the petitioner. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978). Considerations in determining the petitioner's ability to contribute to development of a sound record include:

- (1) a petitioner's showing of significant ability to contribute on substantial issues of law or fact which will not be otherwise properly raised or presented;
- (2) the specificity of such ability to contribute on those substantial issues of law or fact;
- (3) justification of time spent on considering the substantial issues of law or fact;
- (4) provision of additional testimony, particular expertise, or expert assistance;
- (5) specialized education or pertinent experience.

Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 33 (1981) (and cases cited therein). Where a petitioner failed to respond to a Licensing Board order seeking clarification following presentation of evidence casting shadow on his purported qualifications, the Board was entitled to conclude that a petitioner would not help to create a sound record, and that the veracity of his other statements were suspect, leading to denial of his petition. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-70-10, 9 NRC 439, 457-458 (1979).

As to the second and third factors to be considered with regard to discretionary intervention (the nature and extent of property, financial or other interests in the proceeding and the possible effect any order might have on the petitioner's interest), interests which do not establish a right to intervention because they are not within the "zone of interests" to be protected by the Commission should not be considered as positive factors for the purposes of granting discretionary intervention. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 388, aff'd, ALAB-470, 7 NRC 473 (1978).

The Commission has broad discretion to allow intervention where it is not a matter of right. Such intervention will not be granted where conditions have already been imposed on a licensee, and no useful purpose will be served by that intervention. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 442 (1980).

2.9.5 Contentions of Intervenors

Contentions constitute the method by which the parties to a licensing proceeding frame issues under NRC practice, similar to the use of pleadings in their judicial counterparts. Such contentions may be amended or refined as a result of additional information gained by discovery. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-25, 14 NRC 241, 243 (1981).

The Licensing Board may limit the time for the filing of contentions to less than that normally allotted by the rules, 10 CFR § 2.714(a)(3) and (b), so that all participants know before they arrive at the special prehearing conference, what position the proponents of the plant are taking on the various contentions. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 523 (1979).

2.9.5.1 Pleading Requirements for Contentions

In BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974), the U.S. Court of Appeals for the D.C. Circuit upheld, in part, the pleading requirements of 10 CFR § 2.714 governing petitions to intervene. Specifically, the Court ruled that:

- (a) the requirement that contentions be specified does not violate Section 189(a) of the Act; and
- (b) the requirement for a basis for contentions is valid.

A petitioner who satisfies the interest requirement will be granted intervention if he states at least one contention within the scope of the proceeding with a proper factual basis. The Licensing Board has no duty to consider additional contentions for the purpose of determining the propriety of intervention once it has found that at least one good contention is stated. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424 (1973); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 (1973); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973); Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 220 (1976). Although these cases predate amendments to 10 CFR § 2.714, those amendments retain, and in fact specifically recite, the "one good contention rule." See also Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1) CLI-81-25, 14 NRC 616, 622 (1981).

Since a mandatory hearing is not required at the operating license stage, Licensing Boards should "take the utmost care" to assure that the "one good contention rule" is met in such a situation because, absent successful intervention, no hearing need be held. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976). See also Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222, 226 at n. 10 (1974).

Note that a State participating as an "interested State" under 10 CFR § 2.715(c) need not set forth in advance any affirmative contentions of its own. Project Management Corporation et al. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392-393 (1976).

The degree of specificity with which the basis for a contention must be alleged initially involves the exercise of judgment on a case-by-case basis. In passing on the admissibility of a contention, the Licensing Board need not reach the merits of the contention nor

need the petition detail the evidence which will be offered in support of each contention. Nevertheless, it is incumbent upon intervenors to frame their contentions with sufficient preciseness to show that the issues raised are within the scope of the proceeding. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 687-688 (1980), quoting, Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

Originality of framing contentions is not a pleading requirement. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 689 (1980).

Extraneous matters such as preservation of rights, statements of intervention, and directives for interpretation which accompany an intervenor's list of contentions will be disregarded as contrary to the Commission's Rules of Practice. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 689-690 (1980).

It is not essential that pleadings of contentions be technically perfect. The Licensing Board would be reluctant to deny intervention on the basis of skill of pleading where it appears that the petitioner has identified interests which may be affected by a proceeding. Houston Lighting and Power Company (South Texas Projects, Units 1 and 2), ALAB-549, 9 NRC 644, 650 (1979).

It is neither Congressional nor Commission policy to exclude parties because the niceties of pleading were imperfectly observed. Sounder practice is to decide issues on their merits, not to avoid them on technicalities. Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 116-117 (1979).

A Licensing Board did not abuse its discretion in shortening the time to file contentions where there were many intervenors. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 12-13 (1980).

2.9.5.2 Requirement of Oath from Intervenors

Amendments to 10 CFR § 2.714, effective on May 26, 1978, eliminated the requirement that petitions to intervene be filed under oath.

2.9.5.3 Requirement of Contentions for Purposes of Admitting Petitioner as a Party

10 CFR § 2.714 requires that there be some basis for the contentions set forth in the supplement to the petition to intervene and that the contentions themselves be set forth with particularity. In deciding whether these criteria are met, Licensing Boards are not to decide whether the proposed contentions are meritorious. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-183, 7 AEC 210, 216 (1974); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973). Section 2.714 does not require the petition to detail the evidence which will be offered in support of each contention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 426 (1973).

For a petitioner who supports a license application, all that need be initially asserted to fulfill the contention requirement of 10 CFR § 2.714 is that the application is meritorious and should be granted. After contentions opposing the license application have been set forth, however, the Licensing Board is free to require intervenors supporting the application to take a position on those contentions. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 at n.5 (1978).

Where intervenors have been consolidated, it is not necessary that a contention or contentions be identified to any one of the intervening parties, so long as there is at least one contention admitted per intervenor. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 687 (1981).

Despite the fact that a petitioner need not plead evidence in setting forth the basis for its contentions, some sort of minimal basis indicating the potential validity of the contention is required. Thus, for example, allegations that an amendment permitting a cooperative to become a co-owner of a nuclear plant will increase the possibility that nuclear waste will be stored in the cooperative's service area, and that demand for the nuclear facility in that service area will be stimulated are too remote and speculative to be considered as possible effects of the amendment proceeding. Consequently such allegations will not establish a petitioner's right to intervene. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386-387, aff'd, ALAB-470, 7 NRC 473 (1978).

The obligation to establish the actual existence of some factual support for the particular assertions that petitioners for intervention have advanced as the basis for their contentions need not be undertaken as a precondition to a board's acceptance of a contention for the limited purpose of determining whether to allow intervention under 10 CFR § 2.714. Rather, that obligation arises solely (1) in response to a subsequent motion of another party seeking to dispose of the contention summarily under 10 CFR § 2.749 for want of a genuine issue of material fact; or (2) in the absence of such a motion, at the evidentiary hearing itself. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 547-551 (1980).

Prior to entertaining any suggestion that a contention not be admitted, the proponent of the contention must be given some chance to be heard in response. The petitioners cannot be required to have anticipated in the contentions themselves the possible arguments their opponents might raise as grounds for denying admission of those proffered contentions. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 525 (1979).

Although the Rules of Practice do not explicitly provide for the filing of either objections to contentions or motions to dismiss them, each presiding board must fashion a fair procedure for dealing with such objections to contentions as are filed. The cardinal rule of fairness is that each side must be heard. Allens Creek, *supra*, 11 NRC at 524.

2.9.5.4 Material Used in Support of Contentions

While it may be true that the important document in evaluating the adequacy of an agency's environmental review is the agency's final impact statement, a petitioner for intervention may look to the Applicant's Environmental Report for factual material in support of a proposed contention. Pennsylvania Power & Light Company, et al., (Susquehanna Steam Electric Station, Units 1 and 2), LB^D-79-6, 9 NRC 291, 303 (1979).

2.9.5.5 Timeliness of Submission of Contentions

Not later than 15 days before a special prehearing conference or, where no special prehearing conference is held, 15 days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his petition to intervene which must include a list of his contentions. Additional time for filing the supplement may be granted

based upon a balancing of the factors listed in 10 CFR § 2.714(a)(1). 10 CFR § 2.714(b).

In considering the extent to which the petitioner had shown good cause for filing supplements out-of-time, the Licensing Board recognized that the petitioner was appearing pro se until just before the special prehearing conference. Petitioner's early performance need not adhere rigidly to the Commission's standards and, in this situation, the Board would not weigh the good cause factor as heavily as it might otherwise. Florida Power and Light Company (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-79-21, 10 NRC 183, 190 (1979).

In considering the admissibility of late-filed contentions, the Licensing Board must balance the five factors specified in 10 CFR § 2.714(a) for dealing with nontimely filings. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-22, 10 NRC 213, 214 (1979).

With respect to the second factor of 10 CFR § 2.714(a) (availability of other means of protecting late petitioners' interest) and the fourth factor (the extent to which late petitioners' interest will be represented by existing parties), the Applicants in Zimmer, supra at 215, claimed that the Staff would represent the public interest and by inference, late petitioners' interest as well. The Licensing Board ruled that although the Staff clearly represents the public interest, it cannot be expected to pursue all issues with the same diligence as an intervenor would pursue its own issue. Moreover, unless an issue was raised in a proceeding, the Staff would not attempt to resolve the issue in an adjudicatory context. Applicants' reliance on the Staff review gave inadequate consideration to the value of a party's pursuing the participational rights afforded it in an adjudicatory hearing. Zimmer, supra at 215.

Late contentions filed by a city did not overlap a contention of another intervenor which had already been accepted in the proceeding. The representative of a private party cannot be expected to represent adequately the presumably broader interests represented by a governmental body. Zimmer, supra at 216 n.4, citing, Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

2.9.5.6 Contentions Challenging Regulations

The assertion of a claim in an adjudicatory proceeding that a regulation is invalid is barred as a matter of law. Metropolitan Edison Co. et al. (Three Mile Island Nuclear Station, Unit 2). ALAB-456, 7 NRC 63, 65 (1978). Contentions challenging the validity of NRC regulations

are inadmissible under the provisions of 10 CFR § 2.758. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 692-693 (1980).

Under 10 CFR § 2.758, the Commission has withheld jurisdiction from Licensing Boards to entertain attacks on the validity of Commission regulations in individual licensing proceedings except in certain "special circumstances." Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79, 88-89 (1974). 10 CFR § 2.758 sets out those special circumstances which an intervenor must show to be applicable before a contention attacking the regulations will be admissible. Further, 10 CFR § 2.758 provides for certification to the Commission of the question of whether a rule or regulation of the Commission should be waived in a particular adjudicatory proceeding where an adjudicatory board determines that, as a result of special circumstances, a prima facie showing has been made that application of the rule in a particular way would not serve the purposes for which the rule was adopted and, accordingly, that a waiver should be authorized. Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 584-585 (1978).

2.9.5.7 Contentions Involving Generic Issues

Licensing Boards should not accept in individual licensing cases any contentions which are or are about to become the subject of general rulemaking. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 816 (1981). They appear to be permitted to accept "generic issues" which are not and are not about to become the subject of rulemaking, however. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79 (1974). In order for a party or interested State to introduce such an issue into a proceeding, it must do more than present a list of generic technical issues being studied by the Staff or point to newly issued Regulatory Guides on a subject. There must be a nexus established between the generic issue and the particular permit or application in question. To establish such a nexus, it must be shown that (1) the generic issue has safety significance for the particular reactor under review, and (2) the fashion in which the application deals with the matter is unsatisfactory or the shortterm solution offered to the problem under study is inadequate. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 773 (1977).

A brief suspension of consideration of a contention will not be continued when it no longer appears likely that the Commission is about to issue a proposed rule on the matter

which was the subject of the contention. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant 1, Units 1 and 2), LBP-81-42, 14 NRC 842, 846-847 (1981).

While a Licensing Board should not accept contentions that are or are about to become the subject of general rulemaking, where a contention has long since been admitted and is still pending when notice of rulemaking is published, the intent of the Commission determines whether litigation of that contention should be undertaken. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-51, 14 NRC 896, 898 (1981), citing, Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79 (1974).

Contentions which constitute a general attack upon the methods used by the NRC Staff to insure compliance with regulations, without raising any issues specifically related to matters under construction, are not appropriate for resolution in a particular licensing proceeding. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 690 (1980).

2.9.5.8 Contentions Challenging Absent or Incomplete Documents

At the contention formulation stage of the proceeding, an intervenor may plead the absence or inadequacy of documents or responses which have not yet been made available to the parties. The contention may be admitted subject to later refinement and specification when the additional information has been furnished or the relevant documents have been filed. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683 (1980). Note, however, that the absence of licensing documents does not justify admission of contentions which do not meet the basis and specificity requirements of 10 CFR § 2.714. That is, a non-specific contention may not be admitted, subject to later specification, even though licensing documents that would provide the basis for a specific contention are unavailable. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC ____ (August 19, 1982), vacated in part on other grounds, CLI-83-19, 17 NRC ____ (June 30, 1983).

2.9.5.9 Contentions re Adequacy of Security Plan

The adequacy of a nuclear facility's physical security plan may be a proper subject for challenge by intervenors in an operating license proceeding. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2), CLI-80-24, 11 NRC 775, 777 (1980); Consolidated

Edison Company (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 949 (1974).

2.9.5.10 Defective Contentions

Where contentions are defective, for whatever reason, Licensing Boards have no duty to recast them to make them acceptable under 10 CFR § 2.714. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 406 (1974). However, although a Licensing Board is not required to recast contentions to make them acceptable, it also is not precluded from doing so. Pennsylvania Power & Light Company, et. al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 295-296 (1979).

2.9.5.11 Discovery to Frame Contentions

A petitioner is not entitled to discovery to assist him in framing the contentions in his petition to intervene. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 192, reconsid. den., ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973).

2.9.5.12 Stipulations on Contentions

(RESERVED)

2.9.5.13 Appeals of Rulings on Contentions

Appellate review of a Licensing Board ruling rejecting some but not all of a party's contentions is available only at the end of the case. Northern States Power Co. (Tyrone Energy Park, Unit 1), ALAB-492, 8 NRC 251, 252 (1978).

2.9.6 Conditions on Grants of Intervention

10 CFR § 2.714(e) empowers a Licensing Board to condition an order granting intervention on such terms as may serve the purposes of restricting duplicative or repetitive evidence and of having common interests represented by a single spokesman. 10 CFR § 2.715a deals with the general authority to consolidate parties in construction permit or operating license proceedings. In a license amendment proceeding, there is no good reason why the provisions of Section 2.715a cannot be looked to in exercising the power granted by Section 2.714(e), which section applies to all adjudicatory proceedings. Duke Power Company (Oconee Nuclear Station and McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150 n.9 (1979).

2.9.7 Appeals of Rulings on Intervention

The regulations contain a special provision allowing an interlocutory appeal from a Licensing Board order on petitions to intervene. The appellant must file a notice to appeal and supporting brief within 10 days after service of the Licensing Board's order. 10 CFR § 2.714a. Other parties may file briefs in support of or in opposition to the appeal within 10 days of service of the appeal.

It is settled under the Commission's Rules of Practice that a petitioner for intervention may not take an interlocutory appeal from Licensing Board action on his petition unless that action constituted an outright denial of the petition. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 384 (1979). A petitioner may appeal only if the Licensing Board has denied the petition in its entirety, *i.e.*, -- has refused the petitioner entry into the case. A petitioner may not appeal an order admitting petitioner but denying certain contentions. 10 CFR § 2.714(b); Power Authority of the State of New York (Greene County Nuclear Plant), ALAB-434, 6 NRC 471 (1977); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-329, 3 NRC 607 (1976); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-302, 2 NRC 856 (1975); Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-286, 2 NRC 213 (1975); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-273, 1 NRC 492, 494 (1975); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-269, 1 NRC 411 (1975); Philadelphia Electric Co. (Fulton Engineering Station, Units 1 & 2), ALAB-206, 7 AEC 841 (1974).

A Licensing Board's failure, after a reasonable length of time, to rule on a petition to intervene is tantamount to a denial of the petition. Where the failure of the Licensing Board to act is both unjustified and prejudicial, the petitioner may seek interlocutory review of the Licensing Board's delay under 10 CFR § 2.714a, which provides for interlocutory review of denials of petitions to intervene. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977).

A State seeking to participate as an "interested State" under 10 CFR § 2.715(c) may appeal an order barring such participation. However, the State's special status does not confer any right to seek review of an order which allows the State to participate but excludes an issue which it seeks to raise. Gulf States Utilities Co.

(River Bend Station, Units 1 & 2), ALAB-329, 3 NRC 607 (1976).

The Applicant, the Staff and any party other than the petitioner can appeal an intervention order only on the ground that the petition should have been denied in whole. 10 CFR § 2.714a(c). An appeal from an intervention order carries with it a mandatory briefing requirement. Failure to file a brief will result in dismissal of the appeal. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-140, 6 AEC 575 (1973).

For a reaffirmation of the established rule that an appeal concerning an intervention petition must await the ultimate grant or denial of that petition, see Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-586, 11 NRC 472 (1980); Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-472, 7 NRC 570, 571 (1978). In this vein, a Licensing Board order which determines that petitioner has met the "interest" requirement for intervention and that mitigating factors overcome the untimeliness of the petition but does not rule on whether petitioner has met the "contentions" requirement is not a final disposition of the petition to intervene. Cincinnati Gas & Electric Company (William H. Zimmer Nuclear Power Station), ALAB-595, 11 NRC 860, 864 (1980); Greenwood Energy Center, *supra*.

Similarly, the action of a Licensing Board in provisionally ordering a hearing and preliminarily ruling on petitions for leave to intervene is not appealable under 10 CFR § 2.714a in a situation where the Board cannot rule on contentions and the need for an evidentiary hearing until after the special prehearing conference required under 10 CFR § 2.751a and where the petitioners denied intervention may qualify on refiling. Consumers Power Company (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 280 (1978).

While the regulations do not explicitly provide for Commission review of decisions on intervention, the Commission has entertained appeals in this regard and review by the Commission apparently may be sought. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939 (1978).

With regard to briefing on appeals, 10 CFR § 2.714a does not authorize an appellant to file a brief in reply to parties' briefs in opposition to the appeal. Rather, leave to file a reply brief must be obtained. Nuclear Engineering Co. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, at 745, n.9 (1978).

2.9.7.1 Standards for Reversal of Rulings on Intervention

A Licensing Board has wide latitude to permit the amendment of defective petitions prior to the issuance of its final order on intervention. The Board's decision to allow such amendment will not be disturbed on appeal absent a showing of gross abuse of discretion. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 194 (1973).

A Licensing Board's determination as to the "personal interest" of a petitioner will be reversed only if it is irrational. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973); Prairie Island, supra.

Similarly, a Licensing Board's determination that good cause exists for untimely filing will be reversed only for an abuse of discretion. USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976); Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-329, 3 NRC 607 (1976).

The principle that Licensing Board determinations on the sufficiency of allegations of affected interest will not be overturned unless irrational presupposes that the appropriate legal standard for determining the "personal interest" of a petitioner has been invoked. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 57 n.5 (1979).

2.9.8 Reinstatement of Intervenor After Withdrawal

A voluntary withdrawal of intervention is "without prejudice" in that it does not constitute a legal bar to the later reinstatement of the intervention upon the intervenor's showing of good cause. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), LBP-73-41, 6 AEC 1057 (1973). The factors to be considered in the good cause determination are generally the same as those considered under 10 CFR § 2.714(a) with primary emphasis on the delay of the proceeding, prejudice to other parties and adequate protection of the intervenor's interests. Grand Gulf, supra.

2.9.9 Rights of Intervenor at Hearing

2.9.9.1 Burden of Proof

An intervenor has the burden of going forward with respect to issues raised by his contentions. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163, 191 (1975); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 388-89 (1974). For a more detailed discussion, see Section 3.7.2.

2.9.9.2 Presentation of Evidence

2.9.9.2.1 Affirmative Presentation by Intervenor/Participants

An intervenor may not adduce affirmative evidence on an issue not raised by him unless and until he amends his contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 869 at n.17, reconsid. den., ALAB-252, 8 AEC 1175 (1974), aff'd, CLI-75-1, 1 NRC 1 (1975). This rule does not apply to an interested State participating under 10 CFR § 2.715(c). Such a State may produce evidence on issues not raised by it. Project Management Corp., et al. (Clinch River Breeder Reactor), ALAB-354, 4 NRC 383, 392-393 (1976).

2.9.9.2.2 Consolidation of Intervenor Presentations

A Licensing Board, in permitting intervention, may consolidate intervenors for the purpose of restricting duplicative or repetitive evidence and argument. 10 CFR § 2.714(e). In addition, parties with substantially similar interests and contentions may be ordered to consolidate their presentation of evidence, cross-examination and participation in general pursuant to 10 CFR § 2.715a. An order consolidating the participation of one party with the others may not be appealed prior to the conclusion of the proceeding. Portland General Electric Co., et al. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308-309 (1978).

Where intervenors have filed consolidated briefs they may be treated as a consolidated party; one intervenor may be appointed lead intervenor for purposes of coordinating responses to discovery, but discovery requests should be served on each party intervenor. It is not necessary that a contention or contentions be identified to any one of the intervening parties, so long as there is at least one contention admitted per intervenor. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 687 (1981).

The Commission has issued a policy statement relating to consolidation of intervenors and the conduct of licensing proceedings. Pursuant to that Commission guidance, consolidation should not be ordered when it will prejudice the rights of any intervenor; however, in all appropriate cases, single, lead intervenors should be designated to present evidence, conduct cross-examination, submit briefs, and propose findings of fact, conclusions of law, and argument. Except where other intervenors' interests will be prejudiced or upon a showing that the record will be incomplete, those activities should not be performed by such other intervenors. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981).

2.9.9.3 Cross-Examination by Intervenors

An intervenor may engage in cross-examination of witnesses dealing with issues not raised by him if the intervenor has a discernible interest in resolution of those issues. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-75-1, 1 NRC 1 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 867-868 (1974). Licensing Boards must carefully restrict and monitor such cross-examination, however, to avoid repetition. Prairie Island, CLI-75-1 supra.

In general, the intervenor's cross-examination may not be used to expand the number or boundaries of contested issues. Prairie Island, ALAB-244 supra. For a further discussion, see Section 3.13.1.

2.9.9.4 Intervenors' Right to File Proposed Findings

An intervenor may file proposed findings with respect to all issues whether or not raised by his own contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974). A Board in its discretion may refuse to rule on an issue in its initial decision if the party raising the issue has not filed proposed findings of fact and conclusions of law. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

2.9.9.5 Attendance at/Participation in Prehearing Conferences/Hearings

An intervenor seeking to be excused from a prehearing conference should file a request to this effect before the conference date. Such a request should present the justification for not attending. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-488,

8 NRC 187, 190-91 (1978). For a discussion of a party's duty to attend hearings, see Section 3.6.

Where an intervenor indicates its intention not to participate in the evidentiary hearing, the intervenor may be held in default and its admitted contentions dismissed although the Licensing Board will review those contentions to assure that they do not raise serious matters that must be considered. Boston Edison Co., et al. (Pilgrim Nuclear Generating Station, Unit 2), LRP-76-7, 3 NRC 156, 157 (1976).

2.9.9.6 Pleadings and Documents of Intervenors

An intervenor may not disregard an adjudicatory board's direction to file a memorandum without first seeking leave of the board. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187 (1978).

2.9.10 Cost of Intervention

2.9.10.1 Financial Assistance to Intervenors

The question of funding of intervenors' participation was addressed by the Commission in Nuclear Regulatory Commission (Financial Assistance to Participants in Commission Proceedings), CLI-76-23, 4 NRC 494 (1976). Therein, the Commission stated that it would not provide funding for participants in licensing, enforcement or antitrust proceedings and that it also would not provide such funding for participants in rule-making proceedings as a general proposition, although it would attempt to provide funds for qualified GESMO participants.

Part of the basis for the Commission's determination was an opinion issued by the Comptroller General. Noting that the Commission lacks express statutory authority to provide funds, the opinion stated that the Commission might nevertheless provide funds to a participant if the Commission determines that: (1) it cannot make the necessary licensing or rulemaking determinations unless financial assistance is extended to the participant who requires it; and (2) the funded participation is "essential" to the Commission's disposition of the issues. The Commission found that it could not make these determinations with respect to participants in licensing, enforcement, antitrust and general rulemaking proceedings. On the other hand, due to the singular importance of the GESMO proceedings, the Commission would seek to provide financial assistance to GESMO participants who applied by a specified deadline and who qualified for such assistance.

Subsequent to CLI-76-23, the Comptroller General issued an opinion on funding of intervenors in FDA proceedings. That ruling was a major shift from the opinion issued by the Comptroller General in the NRC case in that the test set out therein was not whether intervention was "essential" but whether it could "reasonably be expected to contribute substantially to a full and fair determination" of the pending matter.

In 1976, the Comptroller General issued two decisions in which he held that "funding of intervenors in the absence of specific Congressional authorization was permissible where participation by the intervenor is required by statute or intervention is necessary to assure adequate representation of opposing points of view and the intervenor is indigent or otherwise unable to bear the financial cost of participation." However, this position was overruled by the Second Circuit Court of Appeals, which held that an agency could not fund participants in its proceedings without a specific grant of authority from the Congress. Greene County Planning Board v. FPC, 559 F.2d 1227 (2d Cir. 1977), petition for certiorari filed, 46 U.S.L.W. (December 27, 1977) (No. 77-481). On this basis, in part, funding for intervenors was denied in Exxon Nuclear Company, Inc., et al. (Low Enriched Uranium Exports to EURATOM Member Nations), CLI-77-31, 6 NRC 849 (1977).

The Commission is in favor of funding intervenors but Congress has precluded such funding for fiscal year 1980. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-80-19, 11 NRC 700 and CLI-80-20, 11 NRC 705 (1980). Authorization acts for subsequent fiscal years have explicitly prohibited NRC from utilizing appropriated monies to fund intervenors.

A claim for funding by intervenor for past participation is precluded because the Commission has determined not to initiate a program to provide funding for intervenors. Puerto Rico Power Authority (North Coast Nuclear Plant, Unit 1), LBP-80-15, 11 NRC 765, 767-768 (1980).

Some financial assistance was made available to intervenors for procedural matters, such as free transcripts in adjudicatory proceedings on an application for a license or an amendment thereto in prior Commission rules. 10 CFR §§ 2.708(d), 2.712(f) and 2.750(c). (45 Fed. Reg. 49535, July 25, 1980). Those rules have since been amended so that procedural financial assistance is not now available.

Prior to the short-lived NRC policy of providing free transcripts to intervenors, at least one Licensing Board ordered that transcripts be provided free of charge to intervenors. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), Docket No. 50-409 (FTOL Proceeding) (Unpublished decision issued July 8, 1980).

2.9.10.2 Intervenor's Witnesses

The Appeal Board has indicated that where an intervenor would call a witness but for the intervenor's financial inability to do so, the Licensing Board may call the witness as a Board witness and authorize NRC payment of the usual witness fees and expenses. The decision to take such action is a matter of Licensing Board discretion which should be exercised with circumspection. If the Board calls such a witness as its own, it should limit cross-examination to the scope of the direct examination. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-382, 5 NRC 603, 607-608 (1977).

2.9.11 Appeals by Intervenor

An intervenor may seek appellate redress on all issues whether or not those issues were raised by his own contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974).

2.9.12 Intervention in Remanded Proceedings

The Licensing Board was "manifestly correct" in rejecting a petition requesting intervention in a remanded proceeding where the scope of the remanded proceeding had been limited by the Commission, and the petition for intervention dealt with matters outside that scope. The Licensing Board had limited jurisdiction in the proceeding and could consider only what had been remanded to it. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant Units 1-4), ALAB-526, 9 NRC 122, 124, n.3 (1979).

2.10 Nonparty Participation - Limited Appearance and Interested States

2.10.1 Limited Appearances in NRC Adjudicatory Proceedings

Although limited appearers are not parties to any proceeding, statements by limited appearers can serve to alert the Licensing Board and the parties to areas in which evidence may need to be adduced. Iowa Electric Light & Power Co., et al. (Duane Arnold

Energy Center), ALAB-108, 6 AEC 195, 196 at n.4 (1973).

2.10.1.1 Requirements for Limited Appearance

The requirements for becoming a limited appearer are set out in 10 CFR § 2.715. Based upon that section, the requirements for limited appearances are generally within the discretion of the presiding officer in the proceeding. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616,623 (1981).

2.10.1.2 Scope/Limitations of Limited Appearances

Under 10 CFR § 2.715(a), the role of a limited appearer is restricted to making oral or written statements of his position on the issues within such limits and on such conditions as the Board may fix.

A limited appearance statement is not evidence and need only be taken into account by the Licensing Board to the extent that it may alert the Board or parties to areas in which evidence may need to be adduced. Iowa Electric Light & Power Co., et al., ALAB-108 supra (dictum).

A person who makes a limited appearance before a Licensing Board may not appeal from that Board's decision. Metropolitan Edison Company et al. (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

2.10.2 Participation by Nonparty Interested States

Under 10 CFR § 2.715(c), an interested State may participate in a proceeding even though it is not a party. In this context, the Board must afford a representative of the interested State the opportunity to introduce evidence, interrogate witnesses and advise the Commission. In so doing, the interested State need not take a position on any of the issues. Even though a State has submitted contentions and intervened under 10 CFR § 2.714, it may participate as an "interested State" under 10 CFR § 2.715(c) on issues in the proceeding not raised by its own contentions. USECDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976). In addition, a State participating as an interested State may appeal an adjudicatory board's decision so that an interested State participating under 10 CFR § 2.715(c) constitutes the sole exception to the normal rule that a nonparty to a proceeding may not appeal from the decision in that proceeding. Metropolitan Edison Co. et al. (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

Section 274(1) of the Atomic Energy Act confers a right to participate in licensing proceedings on the State of location for the subject facility. However, 10 CFR § 2.715(c) of the Commission's Rules of Practice extends an opportunity to participate not merely to the State in which a facility will be located, but also to those other States that demonstrate an interest cognizable under Section 2.715(c). Exxon Nuclear Company, Inc. (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873 (1977). See, e.g., Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-74-32, 8 AEC 217 (1974).

Although a State seeking to participate as an "interested State" under Section 2.715(c) need not state contentions, once in the proceeding it must comply with all the procedural rules and is subject to the same requirements as parties appearing before the Board. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977). Nevertheless, the Commission has emphasized that the participation of an interested sovereign State, as a full party or otherwise, is always desirable in the NRC licensing process. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-77-25, 6 NRC 535 (1977). A State's participation may be so important that the State's desire to be a party to Commission review may be one factor to consider in determining whether the State should be permitted to participate in the Commission review, even though the State has not fully complied with the requirements for such participation. Id.

10 CFR § 2.715(c) has been amended to include counties and municipalities and agencies thereof as governmental entities in addition to States which may participate in NRC adjudicatory proceedings as "interested" government bodies.

Section 2.715(c) was also amended to more clearly delineate the participation rights of "interested" government bodies. As amended, this section provides that "interested" government bodies may introduce evidence, interrogate witnesses, advise the Commission without taking a position on any issue, file proposed findings, appeal the Licensing Board's decision, and seek review by the Commission.

Although a State has a statutory right to a reasonable opportunity to participate in NRC proceedings, it may not seek to appeal on issues it did not participate in below, or seek remand of those issues. However, the State is given an opportunity to file a brief

amicus curiae. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-583, 11 NRC 447 (1980).

A late decision by the Governor of a State to participate as representative of an interested State can be granted, but Governor must take proceeding as he finds it. He cannot complain of rulings made or procedural arrangements settled prior to his participation. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-600, 12 NRC 3, 8 (1980).

2.11 Discovery

2.11.1 Time for Discovery

Under 10 CFR § 2.740(b)(1), there can be no formal discovery prior to the special prehearing conference provided for in Section 2.751a. In any event, a potential intervenor has no right to seek discovery prior to filing his petition to intervene. Wisconsin Electric Power Co. (Koshkonong Nuclear Plant, Units 1 & 2), CLI-74-45, 8 AEC 928 (1974); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, reconsid. den., ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973). See also, BPI v. AEC, 502 F.2d 424, 428-29 (D.C. Cir. 1974). Once an intervenor has been admitted, formal discovery is limited to matters in controversy which have been admitted. 10 CFR § 2.740(b)(1).

A Licensing Board denied an applicant's motion for leave to commence limited discovery against persons who had filed petitions to intervene (at that point, nonparties). The Board entertained substantial doubt as to its authority to order the requested discovery, but denied the motion specifically because it found no necessity to follow that course of action. The Board discussed at length the law relating to the prohibition found in 10 CFR § 2.740(b)(1) against discovery beginning prior to the prehearing conference provided for in 10 CFR § 2.751a. Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 577-584 (1978).

Applicants are entitled to prompt discovery concerning the bases of contentions, since a good deal of information is already available from the FSAR and other documents early in the course of the proceeding. Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-30-A, 14 NRC 364, 369 (1981).

Under 10 CFR § 2.740(b)(1), discovery is ordinarily to be completed before the prehearing conference held pursuant

to 10 CFR § 2.752, absent good cause shown. The fact that a party did not engage in prehearing discovery to obtain an expert witness' "backup" calculations does not preclude a request at trial for such information but the Licensing Board may take into account the delay in deciding to grant such a last minute request. Illinois Power Co. (Clinton Power Station, Units 1 & 2), ALAB-340, 4 NRC 27 (1976). The fact that late intervention has been permitted should not disrupt established discovery schedules since a tardy petitioner with no good excuse must take the proceeding as he finds it. Nuclear Fuel Services, Inc., et al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975).

Though the period for discovery may have long since terminated, a party may obtain discovery in order to support a motion to reopen a hearing provided that the party demonstrates with particularity that discovery would enable it to produce the needed materials. Vermont Yankee Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 524 (1973).

The question of Board management of discovery was addressed by the Commission in its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455-456, (1981). The Commission stated that in virtually all cases individual Boards should schedule an initial conference with the parties to set a general discovery schedule immediately after contentions have been admitted.

2.11.2 Discovery Rules

In general, the discovery rules as between all parties except the Staff follow the form of the Federal Rules of Civil Procedure. The legal authorities and court decisions pertaining to Rule 26 of the Federal Rules of Civil Procedure provide appropriate guidelines for interpreting NRC discovery rules. Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), LRP-77-13, 5 NRC 489 (1977).

In modern administrative and legal practice, including NRC practice, pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing or trial. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LRP-81-25, 14 NRC 241, 243 (1981); Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

A party may seek discovery of another party without the necessity of Licensing Board intervention. Where, however,

discovery of a nonparty is sought (other than by deposition), the party must request the issuance of a subpoena under Section 2.720. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 690 (1979).

Applicants are entitled to discovery against intervenors in order to obtain the information necessary for Applicant to meet its burden of proof. This does not amount to shifting the burden of proof to intervenors. Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 & 2), ALAB-613, 12 NRC 317, 338 (1980).

Intervenor may not directly seek settlement papers of the Applicant through discovery. Rule 408 of the Federal Rules of Evidence provides that offers of settlement and conduct and statements made in the course of settlement negotiations are not admissible to prove the validity of a claim. 10 CFR § 2.759 states a policy encouraging settlement of contested proceedings and requires all parties and boards to try to carry out the settlement policy. Requiring a party to produce its settlement documents because they are settlement documents would be inconsistent with this policy. Florida Power & Light Company (St. Lucie Plant, Unit No. 2), LBP-79-4, 9 NRC 164, 183-184 (1979).

2.11.2.1 Construction of Discovery Rules

For discovery between parties other than the Staff, the discovery rules are to be construed very liberally. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240 (1974); Illinois Power Co. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1742 (1981).

Where a provision of the NRC discovery rules is similar or analogous to one of the Federal rules, judicial interpretations of that Federal rule can serve as guidance for interpreting the particular NRC rule. Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 581 (1978).

2.11.2.2 Scope of Discovery

The test as to whether particular matters are discoverable is one of "general relevancy." This test will be easily satisfied unless it is clear that the evidence sought can have no possible bearing on the issues. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240 (1974). A party seeking discovery after the discovery period is over, however, must meet a higher standard of relevance. Toledo Edison Co.

(Davis-Besse Nuclear Power Station, Units 1, 2 & 3), LRP-75-8, 3 NRC 199, 201 (1976). While the "general relevancy" test is fairly liberal, it does not permit the discovery of material far beyond the scope of issues to be considered in a proceeding. Thus, parties may obtain discovery only of information which is relevant to the controverted subject matter of the proceeding, as identified in the prehearing order, or which is likely to lead to the discovery of admissible evidence. This rule applies as much to Part 70 licenses for special nuclear material as to Part 50 licenses for construction of utilization facilities. Allied General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489 (1977). Moreover, while the scope of discovery is rather broad, requests phrased in terms of "all documents..." are not favored. Illinois Power Co. (Clinton Nuclear Station, Units 1 & 2), ALAB-340, 4 NRC 27 (1976).

In general, the discovery tools are the same as or similar to those provided for by the Federal Rules of Civil Procedure. The Commission's regulations permit depositions and requests for production of documents between intervenors and applicants without leave of the Commission and without any showing of good cause (10 CFR §§ 2.740a, 2.741). The regulations (10 CFR § 2.740b) specifically provide for interrogatories similar to those addressed by Rule 33 of the Federal Rules, although such interrogatories are not available for use against nonparties. The scope of discovery under the Commission's Rules of Practice is similar to discovery under the Federal Rules of Civil Procedure. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit I), LRP-7820, 7 NRC 1038, 1040 (1978).

Since written answers to interrogatories under oath as provided by 10 CFR §2.740(b) are binding upon a party and may be used in the same manner as depositions, the authority of the person signing the answers to, in fact, provide such answers may be ascertained through discovery. Statements of counsel in briefs or arguments are not sufficient to establish this authority. Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1045 (1978).

If a party has insufficient information to answer interrogatories, a statement to that effect fulfills its obligation to respond. If the party subsequently obtains additional information, it must supplement its earlier response to include such newly acquired information, 10 CFR § 2.740(c). Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-80-18, 11 NRC 906, 911 (1980).

To determine subject matter relevance for discovery purposes, it is first necessary to examine the issue involved. In an antitrust proceeding, a discovery request will not be denied where the interrogatories are relevant only to proposed antitrust license conditions and not to whether a situation inconsistent with the antitrust laws exists. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LRP-78-20, 7 NRC 1038, 1040 (1978).

At least one Licensing Board has held that, in the proper circumstances, a party's right to take the deposition of another party's expert witness may be made contingent upon the payment of expert witness fees by the party seeking to take the deposition. Public Service Co. of Oklahoma, et al. (Black Fox, Units 1 & 2), LRP-77-18, 5 NRC 671, 673 (1977).

The Licensing Board, as provided by 10 CFR § 2.740(c) and 10 CFR § 2.740(d), may and should, when not inconsistent with fairness to all parties, limit the extent or control the sequence of discovery to prevent undue delay or imposition of an undue burden on any party. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-148 (1979).

2.11.2.3 Requests for Discovery During Hearing

Requests for background documents from a witness, to supply answers to cross-examination questions which the witness is unable to answer, cannot be denied solely because the material had not been previously requested through discovery. However, it can be denied where the request will cause significant delay in the hearing and the information sought has been substantially supplied through other testimony. Illinois Power Co. (Clinton Nuclear Station, Units 1 & 2), ALAB-340, 4 NRC 27 (1976).

2.11.2.4 Privileged Matter

As under the Federal Rules of Civil Procedure, privileged or confidential material may be protected from discovery under Commission regulations. To obtain a protective order (10 CFR § 2.740(c)), it must be demonstrated that:

- (1) the information in question is of a type customarily held in confidence by its originator;
- (2) there is a rational basis for having customarily held it in confidence;

(3) it has, in fact, been kept in confidence; and

(4) it is not found in public sources.

Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976). See also Section 6.23.3.

Drafts of canned testimony not yet filed by a party are not subject to discovery. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LRP-75-28, 1 NRC 513, 514 (1975).

Security plans are not "classified," and are discoverable in accordance with the provisions of 10 CFR § 2.790(d). However, they are sensitive documents and are not to be made available to the public at large. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-410, 5 NRC 1398, 1402 (1977). In order to discover such plans, (1) the moving party must demonstrate that the plan or a portion of it is relevant to the party's contentions; (2) the release of the plant security plan must usually be subject to a protective order; and (3) no witness may review the plan until he is first qualified as an expert with sufficient competence to evaluate it. Id. Only those portions of a security plan which are both relevant and necessary for the litigation of a party's contentions are subject to discovery. Id. at 1405.

An interrogatory seeking the identity and professional qualifications of persons relied upon by intervenors to review, analyze and study contentions and issues in a proceeding and to provide the bases for contentions is proper discovery. Such information is not privileged and is not a part of an attorney's work product even though the intervenor's attorney solicited the views and analyses of the persons involved and has the sole knowledge of their identity. General Electric Company (Vallecitos Nuclear Center, General Electric Test Reactor), LRP-78-33, 8 NRC 461, 464-468 (1978).

The Government enjoys a privilege to withhold from disclosure the identity of persons furnishing information about violations of law to officers charged with enforcing the law. Rovario v. United States, 353 U.S. 53, 59 (1957), cited in Houston Power and Lighting Co., et al. South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 473 (1981). This applies not only in criminal but also civil cases, In re United States, 565 F.2d 19, 21 (1977), cert. denied sub nom. Hell v. Socialist Workers Party, 436 U.S. 962 (1978), and in Commission proceedings as well, Northern States Power Co. (Monticello Plant, Unit 1), ALAB-16, 4

AEC 435, affirmed by the Commission, 4 AEC 440 (1970); 10 CFR §§ 2.744(d), 2.790(a)(7); and is embodied in FOIA, 5 USC 552(b)(7)(D). The privilege is not absolute; where an informer's identity is 1) relevant and helpful to the defense of an accused, or 2) essential to a fair determination of a cause (Rovario, supra) it must yield. However, the Appeal Board reversed a Licensing Board's order to the Staff to reveal the names of confidential informants (subject to a protective order) to intervenors as an abuse of discretion, where the Appeal Board found that the burden to obtain the names of such informants is not met by intervenor's speculation that identification might be of some assistance to them. To require disclosure in such a case would contravene NRC policy in that it might jeopardize the likelihood of receiving future similar reports. South Texas, supra.

FOIA does not establish new government privileges against discovery. Consumers Power Company (Palisades Nuclear Power Facility), ALJ-80-1, 12 NRC 117, 121 (1980).

The Commission's rules on discovery have incorporated the exemptions contained in the FOIA. Id.

Section 2.790 of the rules of practice is the NRC's promulgation in obedience to the Freedom of Information Act. Id. at 120. The Commission, in adopting the standards of Exemption 5, and "necessary to a proper decision" as its document privilege standard under 10 CFR § 2.744(d), has adopted traditional work product/executive privilege exemptions from disclosure. Id. at 123. The government is no less entitled to normal privilege than is any other party in civil litigation. Id. at 127.

2.11.2.5 Protective Orders

In using protected information, "those subject to the protective order may not corroborate the accuracy (or inaccuracy) of outside information by using protected information gained through the hearing process." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, 6 (1980).

An affidavit in support of a corporation's request for a protective order is insufficient where it does not establish the basis for the affiant's personal knowledge (if any) respecting the basis for the protective order -- that is, the policies and practices of the corporation with regard to preserving the confidentiality of information said to be proprietary in nature. The Board might well disregard the affidavit entirely on the ground that it is not shown to have been executed by a qualified individual. While it may not be necessary to have the chief executive officer of the company serve as affiant, there is ample

warrant to require that facts pertaining to management policies and practices be presented by an official who is in a position to attest to those policies and practices (and the reasons for them) from personal knowledge. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-555, 10 NRC 23, 28 (1979). In North Anna, the Appeal Board granted a protective order request but explicitly declined to find that the corporation requesting the order had met its burden of showing that the information in question was proprietary and entitled to protection from public disclosure under the standards set forth in Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976). No party had objected to the order, and the Appeal Board granted the order in the interest of obtaining the requested information without untoward further delay. However, its action should not be taken as precedent for future cases in which relief might be sought from an adjudicatory board based upon affidavits containing deficiencies as described above. North Anna, supra, at 28.

2.11.2.6 Work Product

In the absence of unusual circumstances, a corporate party cannot immunize itself from otherwise proper discovery merely by using lawyers to make file searches for information required to answer an interrogatory. Houston Lighting & Power Company (South Texas Project, Units 1 & 2), LRP-79-5, 9 NRC 193, 195 (1979).

Drafts of testimony are not covered by the attorney work product privilege. Consumers Power Co. (Midland Plants, Units 1 and 2), LRP-81-63, 14 NRC 1768, 1793-1794 (1981).

2.11.2.7 Updating Discovery Responses

The requirements for updating discovery responses are set forth in 10 CFR § 2.740(e). Generally, a response that was accurate and complete when made need not be updated to include later acquired information with certain exceptions set forth in Section 2.740(e). Of course, an adjudicatory board may impose the duty of supplement responses beyond that required by the regulations. 10 CFR § 2.740(e)(3).

2.11.2.8 Interrogatories

Interrogatories must have at least general relevancy, for discovery purposes, to the matter in controversy. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LRP-81-25, 14 NRC 241, 243 (1981).

Interrogatories will not be rejected solely on the number of questions. Pennsylvania Power & Light Company (Susquehanna

Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 330-335 (1980). However, Licensing Boards may limit the number of interrogatories in accordance with the Commission's rules. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455-456 (1981).

2.11.3 Discovery Against the Staff

Discovery against the Staff is on a different footing than discovery in general. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96, 97-98 (1981); Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980). Discovery against the NRC Staff is not governed by the general rules but, instead, is governed by special provisions of the regulations. See, e.g., 10 CFR §§ 2.740 (f)(3), 2.740a(j) and 2.741(e). Special provisions for discovery against the Staff are contained in 10 CFR § 2.720(h)(2)(i) (depositions); § 2.720(h)(2)(ii) (interrogatories); §§ 2.744, 2.790 (production of records and documents).

Depositions of named NRC Staff members may be required only upon a showing of exceptional circumstances. Consumers Power Co. (Midland Plant, Units 1 and 2), LRP-81-4, 13 NRC 216 (1981); 10 CFR § 2.720(h)(2). Factors considered in such a showing include whether: disclosure of the information is necessary to a proper decision in the proceeding; the information is not reasonably obtainable from another source; there is a need to expedite the proceeding. Id. at 223, citing, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-74-16, 7 AEC 313 (1974).

According to provisions of 10 CFR § 2.720, interrogatories against the Staff may be enforced only upon a showing that the answers to be produced are necessary to a proper decision in the proceeding. Consumers Power Company (Palisades Nuclear Power Facility), ALJ-80-1, 12 NRC 117, 119 (1980).

Document requests against the Staff must be enforced where relevancy has been demonstrated unless production of the document is exempt under 10 CFR § 2.790. In that case, and only then, must it be demonstrated that disclosure is necessary to a proper decision in the matter. Palisades, supra.

2.11.4 Responses to Discovery Requests

It is an adequate response to any discovery request to state that the information or document requested is available in public compilations and to provide suffi-

cient information to locate the material requested. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-148 (1979).

An applicant is entitled to prompt answers to interrogatories inquiring into the factual bases for contentions and evidentiary support for them, since intervenors are not permitted to make skeletal contentions and keep the bases for them secret. Commonwealth Edison Corp. (Byron Station, Units 1 and 2), LBP-81-52, 14 NRC 901, 903 (1981); citing, Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAR-613, 12 NRC 317 (1980).

10 CFR § 2.740(b)(1) provides in part that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding ... including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

Answers to interrogatories or requests for documents which do not comply with this provision are inadequate. Illinois Power Co., et al. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737-1738 (1981).

Where intervenors have filed consolidated briefs they may be treated as a consolidated party; one intervenor may be appointed lead intervenor for purposes of coordinating responses to discovery, but discovery requests should be served on each party intervenor. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LRP-81-35, 14 NRC 682, 687-688 (1981).

The involvement of a party's attorneys in litigation or other professional business does not excuse noncompliance with, nor extend deadlines for compliance with, discovery requests or other rules of practice, and is an inadequate response to a motion to compel discovery. Commonwealth Edison Co. (Byron Station, Units 1 and 2), LRP-81-30-A, 14 NRC 364, 373 (1981).

2.11.5 Compelling Discovery

Discovery can be compelled where the person against whom discovery is sought resists (See 10 CFR § 2.740(f)). Subpoenas may also issue pursuant to 10 CFR § 2.720.

In the first instance, no one appears to be immune from an order compelling discovery. The ACRS, for example, has been ordered to provide materials which it declined to provide voluntarily. Virginia Electric Power Co. (North Anna Power Station, Units 1 & 2), CLI-74-16, 7 AEC 313 (1974). Nevertheless, where discovery is resisted by a nonparty (discovery against nonparties impliedly permitted under language of 10 CFR §§ 2.720(f), 2.740(c)), a greater showing of relevance and materiality appears to be necessary, and a party seeking discovery must show that:

- (1) information sought is otherwise unavailable; and
- (2) he has minimized the burden to be placed on the nonparty.

Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-122, 6 AEC 322 (1973); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-118, 6 AEC 263 (1973). Moreover, Licensing Boards have, on occasion, shown reluctance to enforce the discovery rules to the letter against intervenors. See, e.g., Gulf States Utilities Co. (River Bend Station, Units 1 & 2), LRP-74-74, 8 AEC 669 (1974).

Section 2.740 of the NRC's Rules of Practice, under which subpoenas are issued, is not founded upon the Commission's general rulemaking powers; rather, it rests upon the specific authority to issue subpoenas duces tecum contained in Section 161(c) of the Atomic Energy Act. Therefore, the rule of FMC v. Anglo-Canadian Shipping Company, 335 F.2d 255 (9th Cir., 1964) that agency discovery rules cannot be founded on general rulemaking powers does not come into play. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 694 (1979).

The information sought by an administrative subpoena need only be "reasonably relevant" to the inquiry at hand. Stanislaus, supra, at 695.

Subpoenas must be issued in good faith, and pursuant to legitimate agency investigation. Metropolitan Edison Company (Three Mile Island, Unit 2), CLI-80-22, 11 NRC 724, 729 (1980).

The referral of matters to the Department of Justice for criminal proceedings, which are separate and distinct from matters covered by subpoenas issued by Director of Office of Inspection and Enforcement, does not bar Commission from pursuing its general health and safety and civil enforcement responsibilities through issuance of subpoena. Section 161(c) of AEA, 42 U.S.C. § 2201(c). Metropolitan Edison Company (Three Mile Island, Unit 1), CLI-80-22, 11 NRC 724, 725 (1980).

10 CFR § 2.720(a) contemplates ex parte applications for the issuance of subpoenas. Although the Chairman of the Licensing Board "may require a showing of general relevance of the testimony or evidence sought," he is not obligated to do so. The matter of relevance can be entirely deferred until such time as a motion to quash or modify the subpoena raises the question of relevance. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 698 n.22 (1979).

Section 2.720(f) of the Rules of Practice specifically provides that a Licensing Board may condition the denial of a motion to quash or modify a subpoena duces tecum "on just and reasonable terms." That phrase is expansive enough in reach to allow the imposition of a condition that the subpoenaed person or company be reimbursed for document production costs. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 698-699 (1979).

Generally, document production costs will not be awarded unless they are found to be not reasonably incident to the conduct of a respondent's business. Stanislaus, supra, at 702.

Under 10 CFR § 2.740 and § 2.740b, the presiding officer of a proceeding will rule upon motions to compel discovery which set forth the questions contained in the interrogatories, the responses of the party upon whom they were served, and arguments in support of the motion to compel discovery. An evasive or incomplete answer or response to an interrogatory shall be treated as a failure to answer or respond. Houston Light & Power Company (South Texas Project, Units 1 and 2), LBP-79-5, 9 NRC 193, 194-195 (1979).

Specific objections must be made to the alleged inadequacy of discrete responses. South Texas, supra, at 195.

2.11.5.1 Compelling Discovery From ACRS and ACRS Consultants

Although 10 CFR § 2.720 does not explicitly cover consultants for advisory boards like the Advisory Committee on Reactor Safeguards (ACRS), it may fairly be read to include them where they have served in that capacity. Therefore, a party seeking to subpoena consultants to the ACRS may do so but must show the existence of exceptional circumstances before the subpoenas will be issued. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-519, 9 NRC 42, 42 n.2 (1979).

2.11.5.2 Sanctions for Failure to Comply with Discovery Orders

10 CFR § 2.707 authorizes the presiding officer to impose various sanctions on a party for its failure to, among other things, comply with a discovery order. Those sanctions

include a finding of facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order.

Pursuant to 10 CFR § 2.707, an intervenor can be dismissed from the proceeding for its failure to comply with discovery orders. Northern States Power Co., et al. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298 (1977); Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975); Public Service Electric & Gas Co. (Atlantic Generating Station, Units 1 & 2), LBP-75-62, 2 NRC 702 (1975).

A licensee's motion for sanctions against an intervenor for failure to comply with discovery requests poses a three part consideration: (1) due process for the licensee; (2) due process for the intervenor; and (3) an overriding consideration of the public interest in a complete evidentiary record. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), LBP-80-17, 11 NRC 893, 897 (1980).

2.11.6 Appeals of Discovery Rulings

A Licensing Board order granting discovery against a third party is a final order and may be appealed; an order denying such discovery is interlocutory and an appeal is not permitted. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-122, 6 AEC 322 (1973); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-116, 6 AEC 258 (1973).

A discovery order entered against a nonparty is a final order and thus is appealable. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 686 n.1 (1979).

Where a nonparty desires to appeal a discovery order against him, the proper procedure is for such person to enter a special appearance before the Licensing Board and then appeal to the Appeal Board. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-311, 3 NRC 85 (1976).

To establish reversible error from the curtailment of discovery procedures, a party must demonstrate that such curtailment made it impossible to obtain crucial evidence. Implicit in such a showing is proof that more diligent discovery was impossible. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-303, 2 NRC 858, 869 (1975). The Appeal Board has refused to review a discovery ruling referred to it by a Licensing Board when the Board below did not explain why it believed Appeal Board involvement was necessary, where the losing party had not indicated that it was unduly burdened by the ruling

and where the ruling was not novel. Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-438, 6 NRC 638 (1977). The aggrieved party must make a strong showing that the impact of the discovery order upon that party or upon the public interest is indeed "unusual." Id.

Questions about the scope of discovery concern matters which are particularly within a trial board's competence and appellate review of such rulings is usually best conducted at the end of case. Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 321 (1980).

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3.0 HEARINGS

3.1 Licensing Board

3.1.1 General Role of Licensing Board

The general role of the Licensing Board is outlined in Appendix A to Part 2 of 10 CFR. In contested construction permit proceedings, the Board must make a determination as to the issues set out in 10 CFR Part 2, Appendix A, § VI(c)(1) and (3) as well as any issues raised by the parties. In an uncontested CP proceeding, the Board must make the determinations listed in 10 CFR Part 2, Appendix A, § VI(c)(2) and (3).

In operating licensing proceedings as to radiological safety matters, the Board is to decide those issues put in controversy by the parties (10 CFR Part 2, Appendix A, § VIII(b)). In addition, the Board must require evidence and resolution of any significant safety matter of which it becomes aware regardless of whether the parties choose to put the matter in controversy. 10 CFR Part 2, Appendix A, § VIII(b). See also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520 at 524-25 (1973); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 362 (1973).

Normally, the Licensing Board is charged with compiling a factual record in a proceeding, analyzing the record, and making a determination based upon the record. The Commission will assume these functions of the Licensing Board only in extraordinary circumstances. Washington Public Power Supply System (WPSS Nuclear Project Nos. 3 & 5), CLI-77-11, 5 NRC 719, 722 (1977).

A Licensing Board is not required to do independent research or conduct de novo review of an application in a contested proceeding, but may rely upon uncontradicted Staff and Applicant evidence. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 334-35 (1973); Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, (1972), aff'd, UCS v. AEC, 499 F.2d 1069 (D.C. Cir. 1974).

A Licensing Board is not merely an evidence gathering body. Rather, it has the responsibility for appraising ab initio the record developed before it and for formulating the agency's initial decision based on that appraisal. Wisconsin Electric Power Co., et al. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 322 (1972).

Where a matter has been considered by the Commission, it may not be reconsidered by a Board. Commission precedent must be followed. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 463-65 (1980).

Licensing Boards are capable of fairly judging a matter on a full record, even where the Commission has expressed tentative views. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4-5 (1980).

A Licensing Board may conduct separate hearings on environmental, and radiological health and safety issues. Absent persuasive reasons against segmentation, contentions raising environmental questions need not be heard at the health and safety stage of a proceeding notwithstanding the fact they may involve public health and safety considerations. Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-80-18, 11 NRC 906, 908 (1980).

3.1.2 Powers/Duties of Licensing Board

3.1.2.1 Scope of Jurisdiction of Licensing Board

A Licensing Board has only the jurisdiction and power which the NRC delegates to it. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-316, 3 NRC 167 (1976). Nevertheless, it has the power in the first instance to rule on the scope of its jurisdiction when it is challenged. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-321, 3 NRC 293, 298 (1976), aff'd, CLI-77-1, 5 NRC 1 (1977).

Absent special circumstances, a Licensing Board may consider ab initio whether it has power to grant relief that has been specifically sought of it. Every tribunal possesses inherent rights and duties to determine in the first instance its own jurisdiction. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-591, 11 NRC 741, 742 (1980).

A Licensing Board's jurisdiction is defined by the Commission's notice of hearing. Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980); Northern Indiana Public Service Company, (Railly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 565 (1980); Cincinnati Gas and Electric Company, et al. (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 298 (1979).

The five notices and orders by which authority may be delegated to a Licensing Board include an order to show cause (10 CFR § 2.202); an order calling for a hearing on imposition of civil penalties (10 CFR § 2.205(e)); a notice of hearing on an application for which a hearing must be provided (10 CFR § 2.104); a notice of opportunity for a hearing on an application not covered by 10 CFR § 2.104 (10 CFR § 2.105); and notice of opportunity for a hearing on antitrust matters (10 CFR § 2.102(d)(3)).

Where certain issues sought to be raised by an intervenor are not fairly within the scope of the issues for the proceeding as set forth in the Commission's notice of hearing, such additional issues are beyond the jurisdiction of the Licensing Board to decide. Union Electric Co. (Callaway Plant, Units 1 & 2), LRP-78-31, 8 NRC 366, 370-71 (1978).

A Licensing Board's power in a license amendment proceeding is limited by the scope of the proceeding. Thus, in considering an amendment to transfer part ownership of a facility, a Licensing Board held that questions concerning the legality of transferring some ownership interest in advance of Commission action on the amendment was outside its jurisdiction and should be pursued under the provisions of 10 CFR Part 2, subpart B (dealing with enforcement) instead. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386 (1978).

A hearing is not mandatory on an operating license, but where a Board is convened it may look at all serious matters it deems merit further exploration. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-580, 11 NRC 227, 229-231 (1980). Where a Licensing Board has jurisdiction to consider an issue, a party to a proceeding before that Board must first seek relief from the Board; if the Licensing Board is clearly without jurisdiction, there is no need to present the matter to it for decision. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443, 446 (1981), citing, Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-79-5, 9 NRC 607 (1979).

A Licensing Board must carry out the instructions of the Appeal Board as long as those instructions are not countermanded by the Commission. Licensing Boards have no authority to pass judgment on the soundness of the rulings and instructions of a reviewing appellate tribunal. South Carolina Electric and Gas Co. (Virgil E. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1150 (1981).

An adjudicatory board does not have jurisdiction to reopen a record with respect to an issue when finality has attached to the resolution of that issue. This conclusion is not altered by the fact that the board has another discrete issue pending before it. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 695 (1978).

If a Licensing Board believes that circumstances warrant reopening the record for receipt of additional evidence, it has discretion to take that course of action. Where the Board was faced with an insufficient record for summary disposition, and knew of a document which had not been introduced into evidence which would support summary disposition, it was not improper to request submission of the document in support of a motion for summary disposition. Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 752 (1977).

3.1.2.1.1 Authority in Construction Permit Proceedings
Distinguished from Authority in Operating License Proceedings

A Licensing Board's powers are not coextensive with that of the Commission, but are based solely on delegations expressed or necessarily implied in regulation or in other Commission direction. A Licensing Board is not delegated authority to and cannot order a hearing in the public interest under 10 CFR § 2.104 (a). The notice constituting a construction permit Licensing Board does not provide a basis for it to order a hearing on whether an operating license should be granted. A construction permit Licensing Board's jurisdiction will usually terminate before an operating license application is filed. Thus, it probably never could be delegated authority to determine whether a hearing on the operating license application is needed in the public interest. Similarly, the general authority of a Licensing Board to condition permits or licenses provides no basis for it to initiate other adjudicatory proceedings. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18 (1980); reconsidered, ALAB-581, 11 NRC 233 (1980); modified, CLI-80-12, 11 NRC 514 (1980).

A Licensing Board is limited in the types of actions it may take in a construction permit proceeding. Although it may impose conditions on the granting of a construction permit, it may not require the applicant to submit a different application. In a review of alternate sites, for example, a Licensing Board is not authorized to suggest or select preferable alternate sites or to require the applicant to

reapply for a construction permit at a specified new site. The Board may only accept or reject the site proposed in the application or accept it with certain conditions. Given the limited number of appropriate responses to a construction permit application, a Licensing Board should deny a construction permit on the grounds of availability of preferable alternate sites only when the alternate site is obviously superior to the proposed site. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977).

In operating license proceedings, as distinguished from those involving construction permits, the role of NRC adjudicatory boards is quite limited insofar as uncontested matters are concerned. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 247 (1978).

In Houston Lighting & Power Co., et al. (South Texas Project, Units 1 & 2), ALAB-381, 5 NRC 582, 589-91 (1977), the Appeal Board determined that a second Licensing Board, constituted after an initial decision in a construction permit proceeding had been issued and the jurisdiction of the original Licensing Board had terminated, lacks authority to grant a petition for untimely intervention unless specifically delegated this authority by the Commission's regulations or one of the five notices or orders discussed in Section 3.1.2.1., *supra*. The Appeal Board reasoned that Commission regulations providing for the automatic termination of the jurisdiction of the original Licensing Board revealed a policy for reasonable, timely termination of litigation. This policy would be frustrated if the second Licensing Board could, merely by its creation, reactivate and "inherit" the expired authority of the original Board. Since a Licensing Board has no independent authority to initiate adjudicatory proceedings (*Id.* at 592), and since the requisite authority was neither "inherited" nor specifically granted the second Board, that Board lacked authority to grant an untimely petition for intervention. Thus, the mere designation of a Licensing Board to entertain a petition does not in itself confer the requisite authority to grant the petition. See Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-389, 5 NRC 727 (1977). As a corollary, a Licensing Board cannot order a hearing in the absence of a pending construction permit or operating license proceeding, or some other proceeding which might arise upon the issuance of one of the five notices or orders listed above. Houston Lighting & Power Co., supra at 592; Florida Power & Light Co. (St. Lucie Plant, Units 1 & 2) (Turkey Point, Units 3 & 4), LBP-77-23, 5 NRC 789 (1977). A

Licensing Board is vested with the power to dismiss an application with prejudice. See 10 CFR §§ 2.107(a), 2.721(d). Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 974 (1981).

3.1.2.2 Scope of Authority to Rule on Petitions and Motions

Merely by having been constituted, a Licensing Board has authority to entertain petitions (10 CFR § 2.714(a)). To grant a petition, however, the Licensing Board must have been given the requisite authority specifically, either under Commission regulations or through one of the five notices or orders issued in relation to the proceeding in question.

A 10 CFR Part 70 materials license is an "order" which under 10 CFR § 2.717(b) may be "modified" by a Licensing Board delegated authority to consider a 10 CFR Part 50 operating license. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 228 (1979).

Licensing Boards lack authority to consider a motion for an Order to Show Cause pursuant to 10 CFR §§ 2.202 and 2.206. Puerto Rico Electric Power Authority (North Coast Nuclear Plant Unit 1), LBP-80-15, 11 NRC 765, 767 (1980).

Licensing Boards also lack authority to consider claims for damages. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), LBP-80-15, 11 NRC 765, 767 (1980).

In NRC proceedings in which a hearing is not mandatory but depends on the filing of a successful intervention petition, an "intervention" Licensing Board has authority only to pass upon intervention petitions. If a petition is granted, thus giving rise to a full hearing, a second Licensing Board, which may or may not be composed of the same members as the first Board, is established to conduct the hearing. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 73 (1978); Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-30-A, 14 NRC 364, 366 (1981). Thus, an "intervention" hearing board established solely for the purpose of passing on petitions to intervene does not have the additional authority to proceed beyond that assignment and to entertain filings going to the merits of matters in controversy between the petitioners and the applicant. Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-400, 5 NRC 1175, 1177-78 (1977). An "intervention" board cannot, for example, rule on motions for summary disposition. Stanislaus, 5 NRC at 1177-1178.

A Licensing Board may entertain a request for declaratory relief. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station), ALAB-321, 3 NRC 293, 298 (1976), aff'd, CLI-77-1, 5 NRC 1 (1977). This power stems from the fact that the Commission itself may grant declaratory relief under the APA, 5 U.S.C. § 554(e), and delegate that power to presiding officers. 5 U.S.C. § 556(c)(9). Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station), CLI-77-1, 5 NRC 1 (1977). In this vein, Licensing Boards have the authority to issue declaratory orders to terminate a controversy or remove uncertainty. Washington Public Power Supply System (WPPSS Nuclear Projects 3 & 5), LBP-77-15, 5 NRC 643 (1977).

A Licensing Board established for an operating license proceeding has authority to consider materials license questions where matters regarding a materials license bear on issues in the operating license application. Cincinnati Gas and Electric Company, et al. (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 228 (1979).

If a Licensing Board determines that a participation agreement prohibiting the flow of electricity in interstate commerce is inconsistent with the antitrust laws, the Board may impose license conditions despite a Federal court injunction prohibiting participant from violating the agreement. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-27, 10 NRC 563, 577 (1979).

The power to grant an exemption from the regulations has not been delegated to Licensing Boards and such Boards, therefore, lack the authority to grant exemptions. Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Units 2 & 3), LBP-77-35, 5 NRC 1290, 1291 (1977).

3.1.2.3 Authority of Licensing Board to Raise Sua Sponte Issues

A Licensing Board has the power to raise sua sponte any significant environmental or safety issue in operating license hearings, although this power should be used sparingly in OL cases. 10 CFR § 2.760a; Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Plant, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976). The Board's independent responsibilities under NEPA may require it to raise environmental issues not raised by a party. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-380, 5 NRC 572 (1977).

Pursuant to 10 CFR § 2.760a and the Commission's Memorandum dated June 30, 1981, a Licensing Board may raise a safety issue sua sponte when sufficient evidence of a serious safety matter has been presented that would prompt reasonable minds to inquire further. Very specific findings are not required since they could cause prejudgment problems. The Board need only give its reasons for raising the problem. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LRP-81-36, 14 NRC 691, 697 (1981).

Nevertheless, a Licensing Board's inherent power to shape the course of a proceeding should not be confused with its limited authority under 10 CFR § 2.760a to shape the issues of the proceeding. The latter is not a substitute for or a means to accomplish the former. Sua sponte authority is not a case management tool. Accordingly, the apparent need to expedite a procedure or monitor the Staff's progress in identifying and/or evaluating potential safety or environmental issues are not factors that authorize a Board to exercise its sua sponte authority. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111, 1113 (1981).

3.1.2.4 Expedited Proceedings; Timing of Rulings

Licensing Boards have broad discretion regarding the appropriate time for ruling on petitions and motions filed with them. Absent clear prejudice to the petitioner from a Licensing Board's deferral of a decision on a pending motion, an Appeal Board is constrained from taking any action since the standard of review of a Licensing Board's deferral of action is whether such deferral is a clear abuse of discretion. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977).

A Licensing Board has authority under 10 CFR § 2.711(a) to extend or lessen the times provided in the Rules for taking any action. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 13 (1980).

Under extraordinary circumstances, it is appropriate for the Licensing Board to address questions to an applicant even before formal action has been completed concerning admission of an intervenor into a license amendment proceeding. These questions need not be considered sua sponte issues requiring notification of the Commission. The Board may also authorize a variety of special filings in order to expedite a proceeding and may even grant petitioners the right to utilize discovery even before they are admitted as parties. However, special sensitivity must be shown to intervenor's procedural rights when the cause for haste in

a proceeding was a voluntary decision by the applicant concerning both the timing and content of its request for a license amendment. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-39, 14 NRC 819, 821, 824 (1981); LBP-81-55, 14 NRC 1017 (1981).

Under exceptional circumstances, Board questions may precede discovery by the parties. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-44, 14 NRC 850, 851 (1981).

When time pressures cause special difficulties for intervenors, discovery against intervenors may be restricted in order to prevent interference with their preparation for a hearing. A presiding officer has discretionary power to authorize specially tailored proceedings in the interest of expedition. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-46, 14 NRC 862, 863 (1981).

When quick action is required on a license amendment, it is appropriate to interpret petitioner's safety concerns broadly and to admit a single broad contention that will permit wide-ranging discovery within the limited time without the need to decide repeated motions for late filing of new contentions. But the contentions must still relate to the license amendment which is requested. Petitioner may not challenge the safety of activities already permitted under the license. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-45, 14 NRC 853, 860 (1981).

3.1.2.5 Licensing Board's Relationship with the NRC Staff

A Licensing Board may not delegate its obligation to decide issues to the Staff. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-298, 2 NRC 730, 737 (1975).

In a construction permit proceeding, the Licensing Board has a duty to assure that the NRC Staff's review was adequate even as to matters which are uncontested. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 774 (1977). In this vein, a more recent case reiterating the rule that a Licensing Board may not delegate its obligation to decide significant issues to the NRC Staff is Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Stations Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978).

A Licensing Board does not have the power, under 10 CFR § 2.718 or any other regulation, to direct the Staff in the performance of its independent responsibilities. New England Power Co. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 279-80 (1978).

The docketing and review activities of the Staff are not under the supervision of the Licensing Board. Only in the most unusual circumstances should a Licensing Board interfere in the review activities of the Staff. Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), LBP-79-23, 10 NRC 220, 223-24 (1979).

The decision whether to approve a plan for construction during the period in which certain design engineering and construction management, and possibly construction responsibilities, are being transferred from one contractor to another is initially within the province of the NRC Staff. But because of the safety significance of the work to be performed, and its clear bearing on whether, or on what terms, a project should be licensed, and on the resolution of certain existing contentions, consideration of the adequacy of, and controls to be exercised by, the Applicants and NRC Staff over such work falls well within the jurisdiction of the Licensing Board. Houston Light and Power Co. (South Texas Projects, Units 1 and 2), LBP-81-54, 14 NRC 918, 919-20 (1981).

Adjudicatory boards do not possess the authority to direct the holding of hearings following the issuance of a construction permit, nor have boards been delegated the authority to direct the Staff in the performance of its administrative functions. Adjudicatory boards concerned about the conduct of the Staff's functions should bring the matter to the Commission's attention or certify the matter to the Commission. As part of its inherent supervisory authority, the Commission has the authority to direct the Staff's performance of administrative functions, even over matters in adjudication. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514, 516-517 (1980).

Ordinarily, Licensing Boards should not decide whether a given action significantly affects the environment without the record support provided by the Staff's environmental review. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 330 (1981).

Where the Licensing Board finds that the Staff cannot demonstrate a reasonable cause for its delay in submitting environmental statements, the Board may issue a ruling noting the unjustified failure to meet a publication schedule and then proceed to hear other matters or suspend proceedings

until the Staff files the necessary documents. The Board, sua sponte or on motion of one of the parties, may refer the ruling to the Appeal Board. If the Appeal Board affirms, it would certify the matter to the Commission. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 207 (1978).

A Licensing Board should not call upon independent consultants to supplement an adjudicatory record except in that most extraordinary situation in which it is demonstrated that the Board cannot otherwise reach an informed decision on the issue involved. Part 2 of 10 CFR and Appendix A both give the Staff a dominant role in assessing the radiological health and safety aspects of facilities involved in licensing proceedings. Before an adjudicatory board resorts to outside experts of their own, they should give the NRC Staff every opportunity to explain, correct and supplement its testimony. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1146, 1156 (1981).

After an order authorizing the issuance of a construction permit has become final agency action, and prior to the commencement of any adjudicatory proceeding on any operating license application, the exclusive regulatory power with regard to the facility lies with the Staff. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-381, 5 NRC 582 (1977). Under such circumstances, an adjudicatory board has no authority with regard to the facility or the Staff's regulation of it. In the same vein, after a full-term, full power operating license has been issued and the order authorizing it has become final agency action, no further jurisdiction over the license lies with any adjudicatory board. Portland General Electric Co., et. al. (Trojan Nuclear Plant), ALAB-451, 6 NRC 889, 891 at n.3 (1977); Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 (1977); The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386, aff'd, ALAB-470, 7 NRC 473 (1978).

3.1.2.6 Licensing Board's Relationship with Other Agencies

The requirements of State law are for State bodies to determine, and are beyond the jurisdiction of NRC adjudicatory bodies. Northern States Power Company, et al. (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 748 (1977). In this case, the Wisconsin Public Service Commission decided that some of the applicants were "foreign corporations" and could not construct the Tyrone facility. Although the

Appeal Board would not question the State's ruling, it remanded the case to reconsider financial and technical qualifications in light of the changes in legal relationships of the co-applicants that resulted from the State determination.

A Licensing Board does not have jurisdiction in a construction permit proceeding under the Atomic Energy Act to review the decision of the Rural Electrification Administration to guarantee a construction loan to a part owner of the facility being reviewed. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 267-68 (1978).

3.1.2.7 Conduct of Hearing by Licensing Board

The presiding officer has the duty to conduct a fair and impartial hearing, to maintain order and to take appropriate action to avoid delay. Specific powers of the presiding officer are set forth in 10 CFR § 2.718. While the Licensing Board has broad discretion as to the manner in which a hearing is conducted, any actions pursuant to that discretion must be supported by a record that indicates that such action was based on a consideration of discretionary factors. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 356 (1978).

The scope of cross-examination and the parties that may engage in it in particular circumstances are matters of Licensing Board discretion. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 316 (1978).

A Commission-ordered discretionary proceeding before a Licensing Board held to resolve issues designated by the Commission, although adjudicatory in form, was not an "on-the-record" proceeding within the meaning of the AEA. Therefore, in admitting and formulating contentions and subissues and determining order of presentation, the Board would not be bound by 10 CFR Part 2. As to all other matters, 10 CFR Part 2 would control. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2), Power Authority of the State of N.Y. (Indian Point, Unit 3), CLI-81-1, 13 NRC 1, 5, at n.4 (1981), clarified, CLI-81-23, 14 NRC 610, 611 (1981).

In order that a proper record is compiled on all matters in controversy, as well as sua sponte issues raised by it, a hearing board has the right and responsibility to take an active role in the examination of witnesses. South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 893 (1981).

The Commission has issued a Statement of Policy on the Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981), which provides guidance to Licensing Boards on the timely completion of proceedings while ensuring a full and fair record. Specific areas addressed include: scheduling of proceedings; consolidation of intervenors; negotiations by parties; discovery; settlement conferences; timely rulings; summary disposition; devices to expedite party presentations, such as pre-filed testimony outlines; round-table expert witness testimony; filing of proposed findings of fact and conclusions of law; and scheduling to allow prompt issuance of an initial decision in cases where construction has been completed.

The Commission also outlined examples of sanctions a Licensing Board may impose on a participant in a proceeding who fails to meet its obligations. A Board can warn the offending party that its conduct will not be tolerated in the future, refuse to consider a filing by that party, deny the right to cross-examine or present evidence, dismiss one or more of its contentions, impose sanctions on its counsel, or in severe cases dismiss the party from the proceeding. In selecting a sanction, a Board should consider the relative importance of the unmet obligation, potential for harm to other parties or the orderly course of the proceedings, whether the occurrence is part of a pattern of behavior, the importance of any safety or environmental concerns raised by the party, and all of the circumstances (13 NRC 452 at 454).

3.1.3 Quorum Requirements for Licensing Board Hearing

In Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-222, 8 AEC 229 (1974), the Appeal Board attempted to establish elaborate rules to be followed before a Licensing Board may sit with a quorum only, despite the fact that 10 CFR § 2.721(d) requires only a chairman and one technical member to be present. The Appeal Board's ruling in ALAB-222 was reviewed by the Commission in CLI-74-35, 8 AEC 374 (1974). There, the Commission held that hearings by quorum are permitted according to the terms of 10 CFR § 2.721(d) and that inflexible guidelines for invoking the quorum rule are inappropriate. At the same time, the Commission indicated that quorum hearings should be avoided wherever practicable and that absence of a Licensing Board member must be explained on the record (8 AEC 374 at 376).

3.1.4 Disqualification of a Licensing Board Member

3.1.4.1 Motion to Disqualify Adjudicatory Board Member

The general requirements for motions to disqualify are discussed in Duquesne Light Co. (Beaver Valley Power Station, Units 1 & 2), ALAB-172, 7 AEC 42 (1974). Based on that discussion and on cases dealing with related matters:

- (1) all disqualification motions must be timely filed. Commonwealth Edison Co. (LaSalle County Nuclear Power Station, Units 1 & 2), CLI-73-8, 6 AEC 169 (1973); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-101, 6 AEC 60 (1973). In particular, any question of bias of a Licensing Board member must be raised at the earliest possible time or it is waived. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 384-386 (1974); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 247 (1974).
- (2) a disqualification motion must be accompanied by an affidavit establishing the basis for the charge, even if founded on matters of public record. Detroit Edison Co. (Greenwood Energy Center), ALAB-225, 8 AEC 379 (1974).
- (3) a disqualification motion, as with all other motions, must be served on all parties or their attorneys. 10 CFR §§ 2.701(b), 2.730(a).

Disqualification of a Licensing Board member, either on his own motion or on motion of a party, is addressed in 10 CFR § 2.704. Strict compliance with Section 2.704(c) is required. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-630, 13 NRC 84, 86 (1981). In those cases where a party's motion for disqualification of a Board member is denied and the Board member does not recuse himself, Section 2.704(c) explicitly requires that the Licensing Board refer the matter to the Appeal Board or the Commission. Allens Creek, *supra* at 13 NRC 86; Nuclear Engineering Co. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-494, 8 NRC 299, 301 at n.3 (1978).

The Appeal Board has stressed that a party moving for disqualification of a Licensing Board member has a manifest duty to be most particular in establishing the foundation for its charge as well as to adhere scrupulously to the affidavit requirement of 10 CFR § 2.704(c). Dairyland Power Cooperative (La Crosse Boiling Water Reactor), ALAB-497, 8 NRC 312, 313 (1978).

Nevertheless, as to the affidavit requirement, the Appeal Board has held that the movant's failure to file a supporting affidavit is not crucial where the motion to disqualify is founded on a fact to which the Licensing Board itself had called attention and is particularly narrow thereby obviating the need to reduce the likelihood of an irresponsible attack on the Board member in question through use of an affidavit. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-494, 8 NRC 299, 301 at n.3 (1978).

An intervenor's status as a party to a proceeding does not of itself give it standing to move for disqualification of a Licensing Board member on another group's behalf. Puget Sound Power and Light Company, et al. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 32-33 (1979).

A challenged member of an Appeal Board must first be given an opportunity to disqualify himself, before the Commission will act. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-80-9, 11 NRC 436 (1980).

3.1.4.2 Grounds for Disqualification of Adjudicatory Board Member

The aforementioned rules (3.1.4.1) with respect to motions to disqualify apply, of course, where the motion is based on the assertion that a Board member is biased. Although a Board member or the entire Board will be disqualified if bias is shown, the mere fact that a Board issued a large number of unfavorable or even erroneous rulings with respect to a particular party is not evidence of bias against that party. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 246 (1974). Rulings and findings made in the course of a proceeding are not in themselves sufficient reasons to believe that a tribunal is biased for or against a party. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plants, Units 1 & 2), ALAB-644, 13 NRC 903, 923 (1981).

Licensing Boards are capable of fairly judging a matter on a full record, even where the Commission has expressed tentative views. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4-5 (1980).

Standing alone, the failure of an adjudicatory tribunal to decide questions before it with suitable promptness scarcely allow an inference that the tribunal (or a member thereof) harbors a personal prejudice against one litigant or another. Puget Sound Power and Light Company, et al. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 34 (1979).

The disqualification of a Licensing Board member may not be obtained on the ground that he or she committed error in the course of the proceeding at bar or some earlier proceeding. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), ALAB-614, 12 NRC 347, 348-49 (1980).

In the absence of bias, an Appeal Board member who participated as an adjudicator in a construction permit proceeding for a facility is not required to disqualify himself from participating as an adjudicator in the operating license proceeding for the same facility. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-11, 11 NRC 511 (1980).

An administrative trier of fact is subject to disqualification if:

- (1) he has a direct, personal, substantial pecuniary interest in a result;
- (2) he has a personal bias against a participant;
- (3) he has served in a prosecutive or investigative role with regard to the same facts as are in issue;
- (4) he has prejudged factual - as distinguished from legal or policy-issues; or
- (5) he has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues.

Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-494, 8 NRC 299, 301 (1978).

Membership in a national professional organization does not perforce disqualify a person from adjudicating a matter to which a local chapter of the organization is a party. Sheffield at 8 NRC 302.

3.1.4.3 Improperly Influencing an Adjudicatory Board Decision

Where a Licensing Board has been subjected to an attempt to improperly influence the content or timing of its deci-

sion, the Board is duty-bound to call attention to that fact promptly on its own initiative. On the other hand, a Licensing Board which has not been subjected to attempts at improper influence need not investigate allegations that such attempts were contemplated or promised. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 102 (1977).

3.1.5 Resignation of a Licensing Board Member

The Administrative Procedure Act requirement that the official who presides at the reception of evidence must make the recommended or initial decision (5 U.S.C. § 554(d)) includes an exception for the circumstance in which that official becomes "unavailable to the agency." When a Licensing Board member resigns from the Commission, he becomes "unavailable" (10 CFR § 2.704(d)). Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 101 (1977). Resignation of a Board member during a proceeding is not, of itself, grounds for declaring a mistrial and starting the proceedings anew. Id. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33 (1977) was affirmed generally and on the point cited herein in New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87 (1st Cir. 1978).

"Unavailability" of a Licensing Board member is dealt with generally in 10 CFR § 2.704(d).

3.2 Export Licensing Hearings

3.2.1 Scope of Export Licensing Hearings

The export licensing process is an inappropriate forum to consider generic safety questions posed by nuclear power plants. Under the Atomic Energy Act, as amended by the Nuclear Non-Proliferation Act of 1978, the Commission, in making its export licensing determinations, will consider non-proliferation and safeguards concerns, and not foreign health and safety matters. Westinghouse Electric Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 260-61 (1980); General Electric Co., et al. (Exports to Taiwan), CLI-81-2, 13 NRC 67, 71 (1981).

3.3 Hearing Scheduling Matters

3.3.1 Scheduling of Hearings

An ASLB may not schedule a hearing for a time when it is known that a technical member will be unavailable for more than one half of one day unless there is no reasonable alternative to such scheduling. Commonwealth Edison Co.

(Zion Station, Units 1 & 2), ALAB-222, 8 AEC 229, 238 (1974).

Otherwise, an ASLR has general authority to regulate the course of a licensing proceeding and may schedule hearings on specific issues pending related developments on other issues. Public Service Co. of Indiana Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-371, 5 NRC 409 (1977). In deciding whether early hearings should be held on specific issues, the Board should consider:

- (1) the likelihood that early findings would retain their validity;
- (2) the advantage to the public interest and to the litigants in having early, though possibly, inconclusive, resolution of certain issues;
- (3) the extent to which early hearings on certain issues might occasion prejudice to one or more litigants, particularly in the event that such issues were later reopened because of supervening developments.

Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539 (1975).
 Accord: Allied-General Nuclear Services et al. (Barnwell Nuclear Fuel Plant Separation Facility), ALAB-296, 2 NRC 671 (1975).

As a general rule, scheduling is a matter of Licensing Board discretion which will not be interfered with absent a "truly exceptional situation". Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-295, 2 NRC 668 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-293, 2 NRC 660 (1975).

Where the Licensing Board finds that the Staff cannot demonstrate a reasonable cause for its delay in submitting environmental statements, the Board may issue a ruling noting the unjustified failure to meet a publication schedule and then proceed to hear other matters or suspend proceedings until the Staff files the necessary documents. The Board, sua sponte or on motion of one of the parties, may refer the ruling to the Appeal Board. If the Appeal Board affirms, it would certify the matter to the Commission, Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 207 (1978).

While a hearing is required on a construction permit application, operating license hearings can only be triggered by petitions to intervene, or a Commission finding that such a hearing would be in the public interest.

Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 26 (1980), modified, CLI-80-12, 11 NRC 514 (1980). Licensing Boards have no independent authority to initiate adjudicatory proceedings without prior action of some other component of the Commission. 10 CFR §2.104(a) does not provide authority to a Licensing Board considering a construction permit application to order a hearing on the yet to be filed operating license application. Shearon Harris, supra, ALAB-577, 11 NRC 18, 27-28 (1980), modified, CLI-80-12, 11 NRC 514 (1980). Section 2.104(a) of the Commission's Rules of Practice contemplates determination of a need for a hearing in the public interest on an operating license, only after application for such a license is made. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 27-28 (1980); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-581, 11 NRC 233 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

3.3.1.1 Public Interest Requirements re Hearing Schedule

In matters of scheduling, the paramount consideration is the public interest. The public interest is usually served by as rapid a decision as is possible consistent with everyone's opportunity to be heard. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539 (1975).

Findings under 10 CFR § 2.104(a) on a need for a public hearing on an application for an operating license in the public interest cannot be made until after such application is filed. Such finding must be based on the application and all information then available. While the Commission can determine that a hearing on an operating license is needed in the public interest, a Licensing Board could not. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 26-28 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

3.3.1.2 Convenience of Litigants re Hearing Schedule

Although the convenience of litigants is entitled to recognition, it cannot be dispositive on questions of scheduling. Allied General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 684-685 (1975); Potomac Electric Power Co. (Douglas Point Nuclear Generating Stations, Units 1 & 2), ALAB-277, 1 NRC 539 (1975).

Nevertheless, ASLB action in keeping to its schedule despite intervenors' assertions that they were unable to prepare for cross-examination or to attend the hearing because of a need to prepare briefs in a related matter in the U.S. Court of Appeals has been held to be an error requiring reopening of the hearing. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-249, 8 AEC 980 (1974).

3.3.1.3 Adjourned Hearings

(RESERVED)

3.3.2 Postponement of Hearings

3.3.2.1 Factors Considered in Hearing Postponement

Where there is no immediate need for the license sought, the ASLB decision as to whether to go forward with hearings or postpone them should be guided by the three factors listed in the Douglas Point case; namely:

- (1) the likelihood that findings would retain their validity;
- (2) the advantage to the public and to litigants in having early, though possibly inconclusive, resolution;
- (3) the possible prejudice arising from an early hearing.

Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539 (1975).

The fact that a party has failed to retain counsel in a timely manner is not grounds for seeking a delay in the commencement of hearings. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813, 816 (1975).

3.3.2.2 Effect of Plant Deferral on Hearing Postponement

The deferral of a plant which has been noticed for hearing does not necessarily mean that hearings should be postponed. At the same time, an ASLB does have authority to adjust discovery and hearing schedules in response to such deferral. Wisconsin Electric Power Co. (Koshkonong Nuclear Power Plant, Units 1 & 2), CLI-75-2, 1 NRC 39 (1975). Note also that the adjudicatory early site review procedures set forth in 10 CFR Part 2 provide a means by which separate, early hearings may be held on site suitability matters despite the fact that the proposed plant and related construction permit proceedings have been deferred.

3.3.2.3 Sudden Absence of ASLB Member at Hearing

When there is a sudden absence of a technical member, consideration of hearing postponement must be made, and if time permits, the parties' views must be solicited before a postponement decision is rendered. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-222, 8 AEC 229 (1974).

Note that in Commonwealth Edison Co. (Zion Station, Units 1 & 2), CLI-74-35, 8 AEC 374 (1974), the Commission reviewed ALAB-222. While the Commission was not in total agreement with the Appeal Board's setting of inflexible guidelines for invoking the quorum rule, it agreed in principle with the Appeal Board's view that all three ASLB members must participate to the maximum extent possible in evidentiary hearings. As such, it appears that the above guidance from ALAB-222 remains in effect.

3.3.2.4 Time Extensions for Case Preparation Before Hearing

In view of the disparity between the Staff and applicant on the one hand and intervenors on the other with regard to the time available for review and case preparation, the Appeal Panel is solicitous of intervenors' desires for additional time for case preparation. See, e.g., Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-212, 7 AEC 986, 992-93 (1974). At the same time, a party's failure to have as yet retained counsel does not provide grounds for seeking a delay in proceedings. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LPB-75-67, 2 NRC 813 (1975). Moreover, a party must make a timely request for additional time to prepare its case; otherwise, it may waive its right to complain. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 188-89 (1978).

The Appeal Board granted Staff's request for an extension of a deadline for filing written testimony but called the matter to the attention of the Commission, which has supervisory authority over the Staff. In granting the extension, made as a result of the Staff's inability to meet the earlier deadline due to assignment of Staff to Three Mile Island related matters, the Board rejected the intervenor's suggestion that it hold a hearing to determine the reasons for, and reasonableness of, the extension request. Florida Power and Light Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-553, 10 NRC 12 (1979).

Where time extensions have been granted, the original time period is not material to a determination as to whether due process has been observed. Virginia Electric & Power Co.

(North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 467 (1980).

3.3.3 Scheduling Disagreements Among Parties

Parties must lodge promptly any objections they may have to the scheduling of the prehearing phase of a proceeding. Late requests for changes in scheduling will not be countenanced absent extraordinary unexpected circumstances. Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), ALAB-377, 5 NRC 430 (1977).

3.3.4 Appeals of Hearing Date Rulings

As a general rule, scheduling is a matter of ASLB discretion. As such, Appeal Boards are disinclined to interfere with scheduling decisions absent a "truly exceptional situation" which warrants ASLAB interlocutory consideration. Public Service Co. of N.H. (Seabrook Station, Units 1 & 2), ALAB-295, 2 NRC 668 (1975); Public Service Co. of N.H. (Seabrook Station, Units 1 & 2), ALAB-293, 2 NRC 660 (1975). Since the responsibility for conduct of the hearing rests with the presiding officer pursuant to 5 U.S.C. § 556(c) and 10 CFR § 2.718, the Appeal Board is reluctant to examine a Licensing Board's scheduling decision except where there is a claim that such decision constituted an abuse of discretion and amounted to a denial of procedural due process. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 188 (1978).

With regard to claims of insufficient time to prepare for a hearing, even if a party is correct in its assertion that the Staff received an initial time advantage in preparing testimony as a result of scheduling, it must make a reasonable effort to have the procedural error corrected (by requesting additional time to respond) and not wait to use the error as grounds for appeal if the party disagrees with the decision on the merits. A party is entitled to a fair hearing, not a perfect one. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 188-89 (1978).

Although, absent special circumstances, the Appeal Board will generally review Licensing Board scheduling determinations only where confronted with a claim of deprivation of due process, the Appeal Board may, on occasion, review a Licensing Board scheduling matter when that scheduling appears to be based on the Licensing Board's misapprehension of an Appeal Board directive. See, e.g., Consumers Power Co. (Midland Plant, Units 1 & 2), ALA3-468, 7 NRC 464, 468 (1978).

3.3.5 Location of Hearing

(RESERVED)

3.3.5.1 Public Interest Requirements re Hearing Location

(RESERVED)

3.3.5.2 Convenience of Litigants Affecting Hearing Location

As a matter of policy, most evidentiary hearings in NRC proceedings are conducted in the general vicinity of the site of the facility involved. In generic matters, however, when the hearing encompasses distinct, geographically separated facilities and no relationship exists between the highly technical questions to be heard and the particular features of those facilities or their sites, the governing consideration in determining the place of hearing should be the convenience of the participants in the hearing. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-566, 10 NRC 527, 530-531 (1979).

3.3.6 Consolidation of Hearings

Consolidation of hearings is covered generally by 10 CFR § 2.716.

Consolidation is primarily discretionary with the Boards involved. Taking into account the familiarity of the Licensing Boards with the issues most likely to bear on a consolidation motion, the Commission will interpose its judgment in consolidation cases only in the most unusual circumstances. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-26, 4 NRC 608 (1976).

Only parties to a Commission licensing proceeding may be consolidated. Petitioners who are not admitted as parties may not be consolidated for the purposes of participation as a single party. 10 CFR § 2.715a; Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981).

Under 10 CFR § 2.716, Consolidation is permitted if found to be conducive to the proper dispatch of the Board's business and to the ends of justice. Dairyland Power Cooperative (La Crosse Boiling Water Reactor, Operating License and Show Cause), LBP-81-31, 14 NRC 375, 377 (1981).

The Commission may in its own discretion order the consolidation of two or more export licensing proceedings, and may utilize 10 CFR § 2.716 as guidance for deciding whether or not to take such action. Edlow International

Co. (Agent for the Government of India on Application to Export Special Nuclear Materials), CLI-77-16, 5 NRC 1327, 1328-1329 (1977). Note, however, that persons who are not parties to either of two adjudicatory proceedings have no standing to have those proceedings consolidated under Section 2.716. Id. at 1328. Where proceedings on two separate applications are consolidated, the Commission may explicitly reserve the right to act upon the applications at different times. Edlow International Co. (Agent for the Government of India on Application to Export Special Nuclear Materials), CLI-78-4, 7 NRC 311, 312 (1978).

3.3.7 In Camera Hearings

No reason exists for an in camera hearing on security grounds where there is no showing of some incremental gain in security from keeping the information secret. Duke Power Co. (Amendment to Materials License SNM-1773, Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), CLI-80-3, 11 NRC 185, 186 (1980).

Procedure for in camera hearings are discussed. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1 & 2), ALAB-580, 11 NRC 227 (1980).

Following issuance of a protective order enabling an intervenor to obtain useful information, a Board can defer ruling on objections concerning the public's right to know until after the merits of the case are considered; if an intervenor has difficulties due to failure to participate in in camera sessions, these cannot affect the Board's ruling on the merits. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017, 1025 (1981).

3.4 Issues for Hearing

The judgment of a Licensing Board with regard to what is or is not in controversy in a proceeding being conducted by it is entitled to great respect. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-419, 6 NRC 3, 6 (1977).

A Licensing Board does not have the power to explore matters beyond those which are embraced by the notice of hearing for the particular proceeding. This is a holding of general applicability. Portland General Electric Company (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979); Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). See also Northern Indiana Public Service Company, (Bailly Generating Station, Nuclear-1), ALAB-619, 12 NRC 558, 565 (1980); Commonwealth

Edison Company (Zion Station, Units 1 & 2), ALAB-616, 12 NRC 419, 426 (1980).

The issue of management capability to operate a facility is better determined at the time of the operating license application, than years in advance on the basis of preliminary plans. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

Findings under 10 CFR § 2.104(a) on a need for a public hearing on issues involved in an application for an operating license cannot be made until after such application is filed. Such finding must be based on the application and information then available. Carolina Power & Light Co. (Shearon Harris Nuclear Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

Since the Appendix I (of 10 CFR 50) rule itself does not specify health effects, and there is no evidence that the purpose of the Appendix I rulemaking was to determine generally health effects from Appendix I releases, it follows that health effects of Appendix I releases must be litigable in individual licensing proceedings. Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 276 (1980).

Upon certification the Commission held that in view of the fact that the TMI accident resulted in generation of hydrogen gas in excess of hydrogen generation design basis assumptions of 10 CFR § 50.44, hydrogen gas control could be properly litigated under Part 100. Under Part 100, hydrogen control measures beyond those required by 10 CFR § 50.44 would be required if it is determined that there is a credible loss-of-coolant accident scenario entailing hydrogen generation, hydrogen combustion, containment breach or leaking, and offsite radiation doses in excess of Part 100 guidelines values. Metropolitan Edison Company (Three Mile Island, Unit No. 1), CLI-80-16, 11 NRC 674, 675 (1980).

3.4.1 Intervenor's Contentions - Admissibility at Hearing

Contentions are like Federal court complaints; before any decision that a contention should not be entertained, the proponent of the contention must be given some chance to be heard in response. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71, 73 (1981), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521 (1979).

10 CFR § 2.714 sets forth the criteria by which ASLBs are to judge the admissibility of contentions. Pursuant to that regulation, a contention is acceptable as an issue

in controversy if some basis is provided for the contention and the basis is set forth with particularity. In passing on the admissibility of a contention, a Licensing Board is not to consider the merits of the contention itself. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-182, 7 AEC 210, 216 (1974); Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973); Illinois Power Co., et al. (Clinton Power Station, Units 1 and 2), LBP-81-15, 13 NRC 708, 711 (1981). Although amendments to the Commission's Rules of Practice with regard to intervention have affected the time as to which contentions must be filed, the amended rules retain the requirement that the basis for contentions be set forth with reasonable specificity. 10 CFR § 2.714(b).

General fears or criticisms of past practices of the nuclear industry or the applicant are not appropriate bases for contentions unless there is reason to suspect the specific procedures or safety-related tests used in a proposed demonstration program which requires a license amendment. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017, 1026 (1981).

When the Board requires an applicant and the Staff to file briefs concerning the admissibility of contentions, intervenor must give reasons or authority for rejecting arguments presented in the required briefs. In ruling on admissibility, the Licensing Board should not reach the merits and should not require the introduction of underlying evidence, provided that the basis for the contention is identified with reasonable specificity. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 181-83 (1981).

Whether or not a basis for contentions has been established must be decided by considering the contentions in the context of the entire record of the case up to the time the contentions are filed. Thus, when an application for a license amendment is itself incomplete, the standard for the admission of contentions is lowered, because it is easier for petitioners to have reasons for believing that the application has not demonstrated the safety of the proposed procedures for which an amendment is sought. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-45, 14 NRC 853 (1981).

Where the only NEPA matters in controversy are legal contentions that there has been a failure to comply with NEPA and 10 CFR Part 51, the Board may rule on the contentions without further evidentiary hearings, making use of the existing evidentiary record and additional material of which it can take official notice. Metropolitan Edison Co. (Three Mile

Island Nuclear Station, Unit 1), LBP-81-60, 14 NRC 1724, 1728 (1981).

When considering admission of new intervenor contentions based on new regulatory requirements, the Licensing Board must find a "nexus" between the new requirements and the particular facility involved in the proceeding, and that the contentions raise significant issues. The new contentions need not be solely related to contentions previously admitted, but may address themselves to the new requirements imposed. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226, 233-34 (1981).

3.4.2 Issues Not Raised by Parties

A Licensing Board may, on its own motion, explore issues which the parties themselves have not placed in controversy. 10 CFR § 2.760a; Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976). This power, however, is not a license to conduct fishing expeditions and, in operating license proceedings, should be exercised sparingly and only in extraordinary circumstances where the Board concludes that a serious safety or environmental issue remains. Consolidated Edison Co. of N.Y. (Indian Point Nuclear Generating Station, Unit 3), CLI-74-28, 8 AEC 7 (1974); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614, 615 (1981). The Commission's Consolidated Edison ruling has been incorporated into the regulations at 10 CFR § 2.760a. When a Licensing Board in an operating license proceeding considers issues which might be deemed to be raised sua sponte by the Board, it should transmit copies of the order raising such issues to the Commission and General Counsel in accordance with the Secretary's memo of June 30, 1981. Houston Lighting and Power Co., et al. (South Texas Project, Units 1 and 2), LBP-81-54, 14 NRC 918, 922-923 (1981).

The Licensing Board may be alerted to such serious issues not raised by the parties through the statements of those making limited appearances. See Iowa Electric Light & Power Co. (Duane Arnold Energy Center), ALAB-108, 6 AEC 195, 196 at fn.4 (1973).

Pursuant to authority granted under 10 CFR § 2.760a, the presiding officer may examine matters not put into controversy by the parties only where he or she determines that a serious safety, environmental or common defense and security matter exists. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Unit 1 and 2), CLI-81-24, 14 NRC 614, 615 (1981).

The Commission has directed that when a Licensing Board or an Appeal Board raises an issue sua sponte in an operating license proceeding, it must issue a separate order making the requisite findings, briefly state its reasons for raising the issue, and forward a copy of the order to the OGC and the Commission. Comanche Peak, CLI-81-24, supra.

A Licensing Board may raise a safety issue sua sponte when sufficient evidence of a serious safety matter has been presented that reasonable minds could inquire further. Very specific findings are not required since they could cause prejudgment problems. The Board need only give its reasons for raising the problem. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-81-36, 14 NRC 691, 697 (1981).

In an operating license proceeding where a hearing is convened as a result of intervention, the Licensing Board will resolve all issues raised by the parties and any issues which it raises sua sponte. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976). The decision as to all other matters which need to be considered prior to issuance of the operating license is the responsibility of the NRC Staff alone. Indian Point, 3 NRC 188 at 190; Portland General Electric Co. (Trojan Nuclear Plant), ALAB-181, 7 AEC 207, 209 at fn.7 (1974). Once the Licensing Board has resolved all contested issues and any sua sponte issues, the NRC staff then has the power to decide if any other matters need to be considered prior to the issuance of an operating license. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-23, 14 NRC 159 (1981). The mere acceptance of a contention does not justify a Board's assuming that a serious safety, environmental, or common defense and security matter exists or otherwise relieve it of the obligation under 10 CFR § 2.760a to affirmatively determine that such a situation exists. Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111, 1114 (1981).

In a construction permit proceeding, the Licensing Board has a duty to assure that the NRC Staff's review, was adequate even as to matters which are uncontested. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 774 (1977).

3.4.3 Issues Not Addressed by a Party

The fact that the Staff may be estopped from asserting a position does not affect a Board's independent responsibility to consider the issue involved. Southern California

Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383 (1975).

An adjudicatory board's examination of unresolved generic safety issues, not put into controversy by the parties, is necessarily limited to whether the Staff's approach is plausible, and the whether explanations given for support of continued safe operation of the facility are sufficient on their face. Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), ALAB-620, 12 NRC 574, 577 (1980).

The parties must be given an opportunity, at oral hearing or by written pleadings, to produce relevant evidence concerning abuses of Commission regulations and adjudicatory process, but if a party fails to formally tender such evidence, the Licensing Board should not engage in its own independent and selective search of the record. Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 978 (1981).

3.4.4 Separate Hearings on Special Issues

Pursuant to a Licensing Board's general power to regulate the course of a hearing under 10 CFR § 2.718, such Boards have the authority to consider, either on their own or at a party's request, a particular issue separately from and prior to other issues that must be decided in a proceeding. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539, 544 (1975). See also 10 CFR Part 2, Appendix A, ¶ I(c)(1).

The Appeal Board's holding in Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975), that any early findings made by a Licensing Board, in circumstances where the applicant had disclosed an intent to postpone construction for several years, would be open to reconsideration "only if supervening developments or newly available evidence so warrant", does not support a later Licensing Board's action in imposing a similar limitation on the right to raise issues which were not encompassed by the early findings. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 386-387 (1979), reconsid. denied, ALAB-539, 9 NRC 422 (1979).

3.4.5 Construction Permit Extension Proceedings

Intervenors in a construction permit extension proceeding may only litigate those issues that (1) arise from the reasons assigned to the requested extension, and (2)

cannot abide the operating license proceeding. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), LBP-80-31, 12 NRC 699, 701 (1980).

Contentions having no discernible relationship to the construction permit extension are inadmissible in a permit extension proceeding; a show-cause proceeding under 10 CFR § 2.206 is the exclusive remedy. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), LBP-81-6, 13 NRC 253, 254 (1981), citing, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558 (1980).

3.4.6 Export Licensing Proceedings Issues

The export licensing process is an inappropriate forum to consider generic safety questions posed by nuclear power plants. Under the Atomic Energy Act, as amended by the Nuclear Non-proliferation Act of 1978, the Commission in making its export licensing determinations focuses on non-proliferation and safeguards concerns, and not on foreign health and safety matters. Westinghouse Electric Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 260-261 (1980). General Electric Co., et al. (Exports to Taiwan), CLI-81-2, 13 NRC 67, 71 (1981). (See also 6.29.2)

3.5 Summary Disposition

In Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-182, 7 AEC 210, 217 (1974), the Appeal Board found that summary disposition, governed by 10 CFR § 2.749, was analogous to and had a judicial counterpart in Rule 56 of the Federal Rules of Civil Procedure which authorizes the filing of a motion for summary judgment. Subsequent decisions of Licensing Boards have analogized 10 CFR § 2.749 to Rule 56 to the extent that the Rule applied in the cases in question. See, e.g., Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-573, 10 NRC 775, 787 at n.51 (1978); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), LBP-75-10, 1 NRC 246, 247 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-74-36, 7 AEC 877, 878 (1974). (See also 5.8.5)

Under the concept of summary disposition (or summary judgment), the motion is granted only where the movant is entitled to judgment as a matter of law, where it is quite clear what the truth is and where there is no genuine issue of material fact that remains for trial. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 & 3), LBP-73-29, 6 AEC 682, 688 (1973). A contention will not be summarily dismissed where the Licensing Board determines that there still exist controverted issues of material fact. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), LBP-81-34, 14 NRC 637, 640-41 (1981). Section 2.749, like Rule 56, is a pro-

cedural device to be used as part of a screening mechanism for eliminating unnecessary consideration of assertions which do not involve factual controversy. Use of summary disposition to resolve tenuous issues raised in petitions to intervene has been encouraged by the Commission and the Appeal Board. See, e.g., Northern States Power Co. (Prairie Island Nuclear Generating

Plant, Units 1 & 2), CLI-73-12, 6 AEC 241, 242 (1973); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 77 (1981); Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424-25 (1973); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 246 (1973); Pennsylvania Power and Light Co., et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981). If the issue is demonstrably insubstantial, it should be decided pursuant to summary disposition procedures to avoid unnecessary and possibly time-consuming hearings. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-81-48, 14 NRC 877, 883 (1981), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980).

On its face, 10 CFR § 2.749 provides a remedy only with regard to matters which have not already been the subject of an evidentiary hearing in the proceedings at bar, but which are susceptible of final resolution on the papers submitted by the parties in advance of any such hearing. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-554, 10 NRC 15, 19 (1979).

3.5.1 Use of Summary Disposition

3.5.1.1 Construction Permit Hearings

While, as a general rule, summary disposition can be granted in nearly any proceeding as to nearly any matter for which there is no general issue of material fact, there is an exception under NRC Practice. In construction permit hearings, summary disposition may not be used to determine the ultimate issue as to whether the CP will be granted. 10 CFR § 2.749(d). See Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), LBP-80-15, 11 NRC 765, 767 (1980).

3.5.1.2 Amendments to Existing Licenses

Summary disposition may be used in license amendment proceedings where a hearing is held with respect to the amendment. Boston Edison Co. (Pilgrim Nuclear Station, Unit 1), ALAB-191, 7 AEC 417 (1974). See, e.g., Public Services Electronic and Gas Co. (Salem Nuclear

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Generating Station, Unit 1), LBP-79-14, 9 NRC 557, 566-567 (1979).

3.5.2 Motions for Summary Disposition

Under the Rules of Practice, 10 CFR Part 2, a motion for summary disposition should be granted if the Licensing Board determines, with respect to the question at issue, that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. 10 CFR § 2.749(d).

3.5.2.1 Time For Filing Motions for Summary Disposition

A motion for summary disposition shall be filed within such time as may be established by the presiding officer. 10 CFR § 2.749(a).

A Licensing Board convened solely to rule on petitions to intervene lacks the jurisdiction to consider filings going to the merits of the controversy. Consequently, such a Board cannot entertain motions for summary disposition. Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-400, 5 NRC 1175, 1177-78 (1977). The filing of such motions must, therefore, await the appointment of a hearing board.

3.5.2.2 Time for Filing Response to Summary Disposition Motion

The ambiguity in the provisions of 10 CFR § 2.749, when considered in light of the requirements of 10 CFR § 2.730, with regard to the time for filing responses to motions for summary disposition (see Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-75-9, 1 NRC 243, 244 (1975)) has been removed by amendments, to Section 2.749. Section 2.749(a), as amended, requires that responses to motions for summary disposition be filed within 20 days after service of the motion.

3.5.2.3 Contents of Motions/Responses (Summary Disposition)

The general requirements as to contents of motions for summary disposition and responses thereto are set out in 10 CFR § 2.749.

A grant of summary disposition is proper where the pleadings and affidavits on file "show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." 10 CFR § 2.749(d). Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), ALAB-660, 14 NRC 987, 1003 (1981), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451 (1980).

All material facts set forth in the motion and not adequately controverted by the response are deemed to be admitted. 10 CFR § 2.749(a). A party opposing the motion may not rely on a simple denial of material facts stated by the movant but must set forth specific facts showing that there is a genuine issue. 10 CFR § 2.749(b). Where a party opposing the motion is unable to file affidavits in opposition in the time available, he may file an affidavit showing good reasons for his inability to make a timely response in which case the board may refuse summary disposition or grant a continuance to permit proper affidavits to be prepared. 10 CFR § 2.749(c).

As to affidavits in support of a motion for a summary disposition, a document submitted with a verified letter in which the attestation states that the person is "duly authorized to execute and file this information on behalf of the applicants" is not sufficient to make the document admissible into evidence pursuant to § 2.749(b). An affidavit must be submitted by a person to show he is competent to testify to all matters discussed in the document. Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 755 (1977).

Movant's papers which are insufficient to show an absence of an issue of fact, cannot premise a grant of summary judgment. Similarly, a response to motion for summary judgment must have a statement of material facts. Mere allegations and denials will not suffice, but there must be a showing of genuine issues of fact. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 78 (1981); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451 (1980); Pennsylvania Power and Light Co., et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981); 10 CFR § 2.749(b).

3.5.3 Summary Disposition Rules

By and large, the rules and standards established by the courts for granting or denying a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will be applied by Licensing Boards in their consideration

of motions for summary disposition under 10 CFR § 2.749. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-182, 7 AEC 210, 217 (1974).

Based on judicial interpretations of Rule 56, the burden of proof with respect to summary disposition is upon the movant who must demonstrate the absence of any genuine issue of material fact. J. Moore, Federal Practice, Vol. 6, Ch. 56, para. 56.15(3) (2nd ed. 1966). To meet this burden, the movant must eliminate any real doubt as to the existence of any genuine issue of material fact. Poller v. Columbia Broadcasting Co., Inc., 368 U.S. 464 (1962); Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627 (1954); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-81-48, 14 NRC 877, 883 (1981). The record and affidavits supporting and opposing the motion must be viewed in the light most favorable to the party opposing the motion. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-74-36, 7 AEC 877 (1974) and cases cited therein at pp. 878-879. The opposing party need not show that he would prevail on the issues but only that there are genuine issues to be tried. American Manufacturers Mut. Ins. Co. v. American Broadcasting - Paramount Theaters, Inc., 388 F.2d 272, 280 (2d Cir. 1967). The fact that the party opposing summary disposition failed to submit evidence controverting the disposition does not mean that the motion must be granted. The proponent of the motion must still meet his burden of proof to establish the absence of a genuine issue of material fact. Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 753-754 (1977); Pennsylvania Power and Light Co., et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981).

Where the existing record is insufficient to allow summary disposition, it is not improper for a Licensing Board to request submission of additional documents which it knows would support summary disposition and to consider such documents in reaching a decision on a summary disposition motion. Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 752 (1977).

When summary disposition is requested before discovery is completed, the Board may deny the request either upon a showing of the existence of a genuine issue of material fact or upon a showing that there is good reason for the Board to defer judgment until after specific discovery requests are made and answered. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017, 1021 (1981).

In an operating license proceeding, where significant health and safety or environmental issues are involved, a Licensing Board should grant a motion for summary disposition only if it is convinced from the material filed that the public health and safety or the environment will be satisfactorily protected. Cincinnati Gas and Electric, et al. (William H. Zimmer Nuclear Station), LBP-81-2, 13 NRC 36, 40-41 (1981), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741 (1977); 10 CFR §2.760a.

In an operating license proceeding, summary disposition on safety issues should not be considered or granted until after the Staff's Safety Evaluation Report and the ACRS letter have been issued. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), LRP-77-20, 5 NRC 680, 681 (1977).

An answer filed in response to a summary disposition motion, in support of the motion, was not considered by the Licensing Board because 10 CFR § 2.749 provided only for answers "opposing the motion." Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), LBP-79-14, 9 NRC 557 (1979). Subsequently, the holding in Salem, supra, was rendered invalid by a change to 10 CFR § 2.749(a) which specifically permits responses in support of, as well as in opposition to, motions for summary disposition. 45 Fed. Reg. 8919 (Oct. 17, 1980).

3.5.4 Content of Summary Disposition Order

In granting summary judgment, the Licensing Board should set forth the legal and factual bases for its action. Where it has not, the Appeal Board will examine the record and see if there are any genuine issues. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 453, n.4 (1980).

3.5.5 Appeals from Rulings on Summary Disposition

As is the case under Rule 56 of the Federal Rules, a denial of a motion for summary disposition is interlocutory and, therefore, not appealable. Louisiana Power & Light Co. (Waterford Steam Electric Generating Station, Unit 3), ALAB-220, 8 AEC 93 (1974). This applies as well to denials of partial summary disposition. Waterford, cited in Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC 550, 551 (1981). An order granting summary disposition of an intervenor's sole contention is not interlocutory since the consequence is intervenor's dismissal from the proceeding. As such, it

is appealable. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 77 at n.2 (1981). An order summarily dismissing some, but not all, of an intervenor's contentions which does not have the effect of dismissing the intervenor from the proceeding is interlocutory in nature and appeal must await the issuance of an initial decision. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-736, 18 NRC 165 (1983).

Where a Licensing Board has not set forth the legal and factual basis for its action on a summary judgment motion, the Appeal Board will examine the record to see if there are any genuine issues. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 453, n.4 (1980).

3.6 Attendance at and Participation in Hearings

An intervenor may not step in and out of participation in a particular issue at will. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-288, 2 NRC 390, 393 (1975). According to one Licensing Board, an intervenor who raises an issue and then refuses to actively participate in the hearing may lose his right to appeal the Licensing Board's decision. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-76-7, 3 NRC 156 (1976). A party's total failure to assume a significant participational role in a proceeding (e.g., his failure to appear at hearings and to file proposed findings), at least in combination with other factors militating against his being retained as a party, will, upon motion of another party, result in his dismissal from the proceeding. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-358, 4 NRC 558, 560 (1976).

A party who decides not to attend all hearing sessions does so at his own peril. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), 2 CCH Nuclear Reg. Rep. para. 30,091 (Aug. 5, 1976). If an intervenor "walks out," it is nevertheless proper for the Licensing Board to proceed in his absence. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 251 (1975); 10 CFR § 2.707(b). The best practice in such a situation is for the Board to make thorough inquiry as to the issues raised by the absent intervenor despite his absence. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-242, 8 AEC 847, 849 (1974).

A party seeking to be excused from participation in a prehearing conference should present its justification in a request presented before the date of the conference. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187, 191 (1978).

Where an intervenor indicates its intention not to participate in the evidentiary hearing, the intervenor may be held in default and its admitted contentions dismissed although the Licensing Board will review those contentions to assure that they do not raise serious matters that must be considered. Boston Edison

Co., et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-76-7, 3 NRC 156, 157 (1976).

Where an issue is remanded to the Licensing Board and a party did not previously participate in consideration of that issue, submitting no contentions, evidence or proposed findings on it and taking no exceptions to the Licensing Board's disposition of it, the Licensing Board is fully justified in excluding that party from participation in the remanded hearing on that issue. Status as a party does not carry with it a license to step in and out of consideration of issues at will. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 268-69 (1978).

3.7 Burden and Means of Proof

Under Commission practice, the applicant for a construction permit or operating license always has the ultimate burden of proof. 10 CFR § 2.732. The degree to which he must persuade the board (burden of persuasion) should depend upon the gravity of the matters in controversy. Virginia Electric & Power Company (North Anna Power Station, Units 1, 2, 3 & 4), ALAB-256, 1 NRC 10, 17 at n.18 (1975).

There is some authority to the effect that in show cause proceedings for modification of a construction permit, the burden of going forward is on the Staff or intervenor who is seeking the modification since such party is the "proponent of an order." Consumers Power Company (Midland Plant, Units 1 & 2), LBP-74-54, 8 AEC 112 (1974).

With respect to motions, the moving party has the burden of proving that the motion should be granted and he must present information tending to show that allegations in support of his motion are true. Consolidated Edison Co. of N.Y., Inc., et al. (Indian Point Station, Units 1, 2 & 3), CLI-77-2, 5 NRC 13 (1977).

The general rule that the applicant carries the burden of proof does not apply with regard to alternate site considerations. For alternate sites, the burden of proof is on the Staff and the applicant's evidence in this regard cannot substitute for an inadequate analysis by the Staff. Boston Edison Co., et al. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 794 (1978).

3.7.1 Duties of Applicant/Licensee

The NRC is dependent upon all of its licensees for accurate and timely information. The Licensee must have a detailed knowledge of the quality of installed plant equipment. Petition for Emergency and Remedial Action, CLI-80-21, 11 NRC 707, 712 (1980).

The ultimate burden of persuasion rests with applicant and with NRC Staff to extent Staff supports the applicant's position. Parties saddled with this burden typically proceed first and then have the right to rebut the case presented by their adversaries. Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-566, 10 NRC 527, 529 (1979).

3.7.2 Intervenor's Contentions - Burden and Means of Proof

It has long been held that an intervenor has the burden of going forward, either by direct evidence or by cross-examination, as to issues raised by his contentions. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163, 191 (1975); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1008, reconsid. den., ALAB-166, 6 AEC 1148 (1973), remanded on other gnds., CLI-74-2, 7 AEC 2, aff'd, ALAB-175, 7 AEC 62 (1974); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 345 (1973).

This requirement has, on occasion, been questioned by the courts in those situations in which the information is in the hands of the Staff and/or applicant. See, e.g., York Committee for a Safe Environment v. NRC, 527 F.2d 812 at n.12 (D.C. Cir. 1975).

The scope of the "burden of going forward" rule has also been questioned by the courts. In Aeschliman v. NRC, 547 F.2d 622, 628 (D.C. Cir. 1976), the Court of Appeals indicated that an intervenor, in commenting on a draft EIS, need only bring sufficient attention to an issue "to stimulate the Commission's consideration of it" in order to trigger a requirement that the NRC consider whether the issue should receive detailed treatment in an EIS. The court stated that this test does not support the imposition of the burden of an affirmative evidentiary showing. Id. at n.13. Aeschliman was reversed in this regard by the U.S. Supreme Court in York v. Yankee Nuclear Power Corp. v. N.R.D.C., 435 U.S. 599 (1978). Therein, the Court held that it is "incumbent upon intervenor who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions." Id. at 553. The Court found that the NRC's use of "a threshold test," requiring intervenors to make a "showing sufficient to require reasonable minds to inquire further," w. , well within the agency's discretion Id. at 554.

While the outlines of an intervenor's burdens with respect to its contentions may not be fully defined at this point,

it is clear that the Commission's rules do not preclude an intervenor from building its case defensively, on the basis of cross-examination. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 356 (1978); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 389 (1974); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-137, 6 AEC 491, 504-505 (1973).

The "threshold test," restored by the Supreme Court in Vermont Yankee Nuclear Power Corp. v. N.R.D.C., 435 U.S. 519 (1978), goes only to the matter of the showing necessary to initiate an inquiry into a specific alternative which an intervenor (or prospective intervenor) thinks should be explored, and not to the placement of the burden of proof once such an inquiry actually has been undertaken in an adjudicatory context. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 489 at n.8 (1978).

3.7.3 Specific Issues - Means of Proof

3.7.3.1 Exclusion Area Controls

The applicant must demonstrate constant total control of the entire exclusion area except for roads and waterways. As to those, only a showing of post-accident control is necessary. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383, 393-395 (1975). Note also that in certain situations there may be very narrow stretches of land (e.g., a narrow strand of beach below the mean high tide line) the lack of total control of which might readily be viewed as de minimus. Where such a de minimus situation exists, strict application of the constant total control requirements may be inappropriate. Id. at 394-395.

3.7.3.2 Need for Facility

NEPA implicitly requires that a proposed facility exhibit some benefit to justify its construction or licensing. In the case of a nuclear power plant, the plant arguably has no benefit unless it is needed. Thus, a showing of need for the facility is apparently required to justify the licensing thereof. This need can be demonstrated either by a showing that there is a need for additional generating capacity to produce needed power or by a showing that the nuclear plant is needed as a substitute for plants that burn fossil fuels that are in short supply. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-254, 1 NRC 347, 353-354 (1975). See also Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 327 (1978). A plant may

also be justified on the basis that it is needed to replace scarce natural gas as an ultimate energy resource ("i.e., to satisfy residential and business energy requirements now being directly met by natural gas"). Wolf Creek, 7 NRC at 327. In evaluating a utility's load forecast, "the most that can be required is that the forecast be a reasonable one in the light of what is ascertainable at the time made." Wolf Creek, 7 NRC at 328. Because of the uncertainty involved in predicting future demand and the serious consequences of not having generating capacity available when needed, an isolated forecast which is appreciably lower than all others in the record may be accepted only if the Board finds that the isolated forecast is the only forecast which "rests on firm ground." Wolf Creek, 7 NRC at 332.

Prior to recent rule changes precluding the consideration of need for power in operating license adjudications, it was held that a change in the need for power at the operating license stage, must be sufficiently extensive to offset the environmental and economic costs of construction before it may be raised as a viable contention. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 684 (1981). Under the recent rule changes, need for power now may be litigated in operating license proceedings only if it is shown, pursuant to 10 CFR § 2.758, that special circumstances warrant waiver of the rules prohibiting litigation of need for power.

The substitution theory, whereby the need for a nuclear power facility is based on the need to substitute nuclear-generated power for that produced using fossil fuels, has been upheld as providing an adequate basis on which to establish need for the facility. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 97-98 (1st Cir. 1978).

Considerable weight should be accorded the electrical demand forecast of a State utilities commission that is responsible by law for providing current analyses of probable electrical demand growth and which has conducted public hearings on the subject. A party may have the opportunity to challenge the analysis of such commission. Nevertheless, where the evidence does not show that such analysis is seriously defective or rests on a fatally flawed foundation, no abdication of NRC responsibilities under NEPA results from according conclusive effect to such a forecast. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-490, 8 NRC 234, 240-241 (1978).

The U.S. Supreme Court has noted that there is little doubt that under the Atomic Energy Act of 1954 (AEA), State public utility commissions or similar bodies are empowered to make the initial decision regarding the need for power. Vermont

Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978). But this Commission's responsibilities regarding need for power have their primary roots in NEPA rather than the AEA. NEPA does not foreclose the placement of heavy reliance on the judgment of local regulatory bodies charged with the duty of insuring that the utilities within their jurisdiction fulfill the legal obligations to meet customer demands. Rochester Gas and Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 388-9 (1978).

3.7.3.3 Burden and Means of Proof in Interim Licensing Suspension Cases

Several cases have set forth the requirements as to burden of proof and burden of going forward in interim licensing suspension cases. These rulings were promulgated in the context of the Commission's General Statement of Policy on the Uranium Fuel Cycle (41 Fed. Reg. 34707, Aug. 16, 1976) but presumably would be applicable in similar contexts that may arise in the future.

In a motion by intervenors for suspension of a construction permit in such a situation, the applicant for the CP has the burden of proof. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 NRC 235 (1976); Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-346, 4 NRC 214 (1976). An applicant faced with such a motion stands in jeopardy of having the motion summarily granted where he does not make an evidentiary showing or even address the relevant factors bearing on the propriety of suspension in his response to the motion. Id. The applicant also has the burden of going forward with evidence. Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-348, 4 NRC 225 (1976). This burden of going forward is not triggered by a motion to suspend a CP which fails to state any reason which might support the grant of the motion. Id. On the other hand, the Board's duty to entertain the motion and the applicant's duty to go forward is triggered where the motion contains supporting reasons "sufficient to require reasonable minds to inquire further." Id.

3.7.3.4 Availability of Uranium Supply

In considering the extent of uranium resources, a Board should not restrict itself to established resources which have already been discovered and evaluated in terms of economic feasibility but should consider, in addition, "probable" uranium resources which will likely be available over the next 40 years. The Board should also consider the total number of reactors "currently in operation, under construction, and on order" rather than the number reasonably expected to be operational in the time

period under consideration since future reactors will not be licensed unless there is sufficient fuel for them as well as previously licensed reactors. Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 323-25 (1978). See also Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977) and ALAB-317, 3 NRC 175 (1976).

In order to establish the availability of an uranium supply, a construction permit applicant need not demonstrate that it has a long-term contract for fuel. Union Electric Company (Callaway Plant, Units 1 & 2), ALAB-347, 4 NRC 216, 222 (1976).

3.7.3.5 Environmental Costs

3.7.3.5.1 Cost of Withdrawing Farmland from Production

The environmental cost of withdrawing farmland is "deemed to be the costs of the generation (if necessary) of an equal amount of production on other land." Kansas Gas and Electric Company, et. al. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 335 (1978). The Appeal Board has specifically rejected the analytical approach in which the lost productivity is compared to available national cropland resources as "an 'empty ritual' with a predetermined result" since this approach will always lead to the conclusion that withdrawal will have an insignificant impact. Id. (See also 6.15.6.1.1)

3.7.3.6 Alternate Sites Under NEPA

To establish that no suggested alternative site is "obviously superior" to the proposed site, there must be either (1) an adequate evidentiary showing that the alternative sites should be generically rejected or (2) sufficient evidence for informed comparisons between the proposed site and individual alternatives. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 498 (1978).

3.7.3.7 Management Capability

Areas of inquiry to determine if a utility is capable of operating a facility are outlined in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-5, 11 NRC 408 (1980); Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18 (1980), reconsidered, ALAB-581, 11 NRC 233 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

3.8 Burden of Persuasion (Degree of Proof)

The burden of persuasion (degree to which a party must convince the Board) should be influenced by the "gravity" of the matter in controversy. Virginia Electric & Power Co. (North Anna Power Station, Units 1, 2, 3 & 4), ALAB-256, 1 NRC 10, 17 at n.18 (1975).

3.8.1 Environmental Effects Under NEPA

It is not necessary that environmental effects be demonstrated with certainty. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184, 1191-1192 (1975).

3.9 Stipulations

10 CFR § 2.753 permits stipulation as to facts in a licensing proceeding. Such stipulations are generally encouraged. See, e.g., Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-74-2, 7 AEC 2, 3 at n.1 (1974). However, in the NEPA context, Licensing Boards retain an independent obligation to assure that NEPA is complied with and its policies protected despite stipulations to that effect. Consolidated Edison Co. of N.Y. (Indian Point Nuclear Generating Station, Unit 3), CLI-75-14, 2 NRC 835, 838 (1975).

3.10 Official Notice of Facts

Under 10 CFR § 2.743(i), official notice may be taken of any fact of which U.S. Courts may take judicial notice. In addition, Licensing Boards may take official notice of any scientific or technical fact within the knowledge of the NRC as an expert body. In any event, parties must have the opportunity to controvert facts which have been officially noticed.

Pursuant to this regulation, Licensing Appeal Boards have taken official notice of such matters as:

- (1) a statement in a letter from the AEC's General Manager that future releases of radioactivity from a particular reactor would not exceed the lowest limit established for all reactors at the same site. Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 2), LBP-74-25, 7 AEC 711, 733 (1974).
- (2) Commission records, letters from applicants and materials on file in the Public Document Room to establish the facts with regard to the Ginna fuel problem as that problem related to an appeal in another case. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2), ALAB-75, 5 AEC 309, 310 (1972);

- (3) portions of a hearing record in another Commission proceeding involving the same parties and a similar facility design. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), LBP-74-5, 7 AEC 82, 92 (1974);
- (4) a statement, set forth in a pleading filed by a party in another Commission proceeding, of AEC responses to interrogatories propounded in a court case to which the agency was a party. Duke Power Co., LBP-74-5 supra 7 AEC at 96;
- (5) Staff reports and WASH documents. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), LBP-74-22, 7 AEC 659, 667 (1974);
- (6) ACRS letters on file in the Public Document Room. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 332 (1973);
- (7) the existence of an applicant's Federal Water Pollution Control Act Section 401 certificate. Washington Public Power Supply System (Hanford No. 2 Nuclear Power Plant), ALAB-113, 6 AEC 251, 252 (1973).

In most of these cases, the basis for taking official notice was that the document or material noticed was within the knowledge of the Commission as an expert body or was a part of the public records of the Commission (See, e.g., cases cited in items 1, 2, 3, 5 and 6 supra).

In the same vein, it would appear that nothing would preclude a Licensing Board from taking official notice of reports and documents filed with the agency by regulated parties, provided that parties to the proceeding are given adequate opportunity to controvert the matter as to which official notice is taken. See, e.g., Market Street Ry v. Railroad Commission of California, 324 U.S. 548, 562 (1945) (agency's decision based in part on officially noticed monthly operating reports filed with agency by party); State of Wisconsin v. FPC, 201 F.2d 183, 186 (1952), cert. den., 345 U.S. 934 (1953) (regulatory agency can and should take official notice of reports filed with it by regulated company).

10 CFR § 2.743(i) requires that the parties be informed of the precise facts as to which official notice will be taken and be given the opportunity to controvert those facts. Moreover, it is clear that official notice applies to facts, not opinions or conclusions. Consequently, it is improper to take official notice of opinions and conclusions. Niagara Mohawk Power Corp. (Nine Mile Point, Unit 2), LBP-74-26, 7 AEC 758, 760 (1974). While official notice is appropriate as to background facts or facts relating only indirectly to the issues, it is inappropriate

as to facts directly and specifically at issue in a proceeding. K. Davis, Administrative Law Treatise, § 15.08.

3.11 Evidence

10 CFR § 2.743 generally delineates the types and forms of evidence which will be accepted and, in some cases must be submitted in NRC licensing proceedings.

Generally, testimony is to be pre-filed in writing before the hearing. Pre-filed testimony must be served on the other parties at least 15 days in advance of the hearing at which it will be presented, though the presiding officer may permit introduction of testimony not so served either with the consent of all parties present or after they have had a reasonable chance to examine it. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B), ALAB-367, 5 NRC 92 (1977). Note, however, that where the proffering party gives an exhibit to the other parties the night before the hearing and then alters it over objection at the hearing the following day, it is error to admit such evidence since the objecting parties had no reasonable opportunity to examine it. Id.

3.11.1 Rules of Evidence

3.11.1.1 Admissibility of Evidence

Evidence is admissible if it is relevant, material, reliable and not repetitious. 10 CFR § 2.743(c).

Under this standard, the application for a permit or license is admissible upon authentication. Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 369 (1972), aff'd sub. nom., Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1094 (D.C. Cir. 1974).

A determination on materiality will precede the admission of an exhibit into evidence, but this is not an ironclad requirement in administrative proceedings in which no jury is involved. The determinations of materiality could be safely left to a later date without prejudicing the interests of any new party. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-520, 9 NRC 48, 50 n.2 (1979).

3.11.1.1.1 Admissibility of Hearsay Evidence

Hearsay evidence is generally admissible in administrative proceedings. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-355, 4 NRC 397 (1976). There is still a requirement, however, that the hearsay evidence be reliable. For example, a statement by an unknown expert to a non-

expert witness which such witness proffers as substantive evidence is unreliable and, therefore, inadmissible. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B), ALAB-367, 5 NRC 92 (1977).

3.11.1.2 Hypothetical Questions

Hypothetical questions may be propounded to a witness. Such questions are proper and become a part of the record, however, only to the extent that they include facts which are supported by the evidence or which the evidence tends to prove. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-334, 3 NRC 809, 828-29 (1976).

3.11.1.3 Reliance on Scientific Treatises, Newspapers, Periodicals

An expert may rely on scientific treatises and articles despite the fact that they are, by their very nature, hearsay. Illinois Power Co. (Clinton Power Station, Units 1 & 2), ALAB-340, 4 NRC 27 (1976). The Appeal Board in Clinton left open the question as to whether an expert could similarly rely on newspapers and other periodicals.

3.11.1.4 Off-the-Record Comments

Obviously, nothing can be treated as evidence which has not been introduced and admitted as such. In this vein, off-the-record ex parte communications carry no weight in adjudicatory proceedings and cannot be treated as evidence. Public Service Co., of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 191 (1978).

3.11.1.5 Presumptions and Inferences

When a party has relevant evidence within his control which he fails to produce, it may be inferred that such evidence is unfavorable to him. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 498 (1978).

3.11.1.6 Government Documents

NRC adjudicatory boards may follow Rule 902 of the Federal Rules of Evidence, waiving the need for extrinsic evidence of authenticity as a precondition to admitting official government documents to allow into evidence government documents. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-520, 9 NRC 48, 49 (1979).

3.11.2 Status of ACRS Letters

Section 182(b) of the Atomic Energy Act of 1954 and 10 CFR § 2.743(g) of the Commission's Rules of Practice require that the ACRS letter be proffered and received into evidence. However, because the ACRS is not subject to cross-examination, the ACRS letter cannot be admitted for the truth of its contents, nor may it provide the basis for any findings where the proceeding in which it is offered is a contested one. Arkansas Power & Light Co. (Arkansas Nuclear-1, Unit 2), ALAB-94, 6 AEC 25, 32 (1973).

3.11.3 Presentation of Evidence by Intervenors

An intervenor may not adduce affirmative evidence on an issue that he has not raised himself unless and until he amends his contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 869 at n.17 (1974). Nevertheless, an intervenor may cross-examine a witness on those portions of his testimony which relate to matters that have been placed in controversy by any party to the proceeding as long as the intervenor has a discernible interest in the resolution of the particular matter. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-75-1, 1 NRC 1 (1975), affirming ALAB-244, 8 AEC 857, 867-888 (1974).

3.11.4 Evidentiary Objections

Objections to particular evidence or the manner of presentation thereof must be made in a timely fashion. Failure to object to evidence bars the subsequent taking of exceptions to its admission. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-335, 3 NRC 830, 842 at n.26 (1976). To preserve a claim of error on an evidentiary ruling, a party must interpose its objection and the basis therefore clearly and affirmatively. If a party appears to acquiesce in an adverse ruling and does not insist clearly on the right to introduce evidence, the Appeal Board will not find that the evidence was improperly excluded. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 362 at n.90 (1978).

3.12 Witnesses at Hearing

Because of the complex nature of the subject matter in NRC hearings, witness panels are often utilized. It is recognized in such a procedure that no one member of the panel will possess the variety of skills and experience necessary to permit him to endorse and explain the entire testimony. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-379, 5 NRC 565, 569 (1977).

The testimony and opinion of a witness who claims no personal knowledge of, or expertise in, a particular aspect of the subject matter of his testimony will not be accorded the weight given testimony on that question from an expert witness reporting results of careful and deliberate measurements. Public Service Electric & Gas Company, et al. (Hope Creek Generating Station, Units 1 & 2), LBP-78-15, 7 NRC 642, 647 at n.8 (1978).

Prepared testimony should be the work and words of the witness, not his counsel--although the counsel may suggest clarification or omissions of totally irrelevant material. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-81-63, 14 NRC 1768, 1799 (1981).

Where technical issues are being discussed, Licensing Boards are encouraged during rebuttal and surrebuttal to put opposing witnesses on the stand simultaneously so they may respond immediately on an opposing witness' answer to a question. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

3.12.1 Compelling Appearance of Witness

10 CFR § 2.720 provides that, pursuant to proper application by a party, a Licensing Board may compel the attendance and testimony of a witness by the issuance of a subpoena.

The Rules of Practice preclude a Licensing Board from declining to issue a subpoena on any basis other than that the testimony sought lacks "general relevance." In ruling on a request for a subpoena, the Board is specifically prohibited from attempting "to determine the admissibility of evidence." 10 CFR § 2.720(a); Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 93 (1977).

3.12.1.1 NRC Staff as Witnesses

The provisions of 10 CFR § 2.720(a)-(g) for compelling attendance and testimony do not apply to NRC Commissioners or Staff. 10 CFR § 2.720(h). Nevertheless, once a Staff witness has appeared, he may be recalled and compelled to testify further, despite the provisions of 10 CFR § 2.720(h), if it is established that there is a need for the additional testimony on the subject matter. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 391 (1974).

3.12.1.2 ACRS Members as Witnesses

Members of the ACRS are not subject to examination in an adjudicatory proceeding with regard to the contents of an ACRS Report. Gulf States Utilities Co. (River Bend Sta-

tion, Units 1 and 2), ALAB-444, 6 NRC 760, 766 at n.10 (1977).

The Appeal Board, at intervenors' request, directed that certain consultants to the ACRS appear as witnesses in the proceeding before the Board. Such an appearance was proper under the circumstances of the case, since the ACRS consultants had testified via subpoena at the licensing board level at intervenors request. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-604, 12 NRC 149, 150-51 (1980).

3.12.2 Sequestration of Witnesses

In Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-379, 5 NRC 565 (1977), the Appeal Board considered a Staff request for discretionary review of a Licensing Board ruling which excluded prospective Staff witnesses from the hearing room while other witnesses testified. The Appeal Board noted that while sequestration orders must be granted as a matter of right in Federal district court cases, NRC adjudicatory proceedings are clearly different in that direct testimony is generally pre-filed in writing. As such, all potential witnesses know in advance the basic positions to be taken by other witnesses. In this situation, the value of sequestration is reduced. Moreover, the highly technical and complex nature of NRC proceedings often demands that counsel have the aid of expert assistance during cross-examination of other parties' witnesses.

In view of these considerations, the Appeal Board held that sequestration is only proper where there is some countervailing purpose which it could serve. The Board found no such purpose in this case, but in fact, found that sequestration here threatened to impede full development of the record. As such, the Licensing Board's order was overturned. The Appeal Board also noted that there may be grounds to distinguish between Staff witnesses and other witnesses with respect to sequestration, with the Staff being less subject to sequestration than other witnesses, depending on the circumstances.

3.12.3 Board Witnesses

The Appeal Board has indicated that where an intervenor would call a witness but for the intervenor's financial inability to do so, the Licensing Board may call the witness as a Board witness and authorize NRC payment of the usual witness fees and expenses. The decision to take such action is a matter of Licensing Board discretion which should be exercised with circumspection. If the Board calls such a witness as its own, it should limit cross-examination to the scope of the direct examination. Consumers Power Co.

(Midland Plant, Units 1 & 2), ALAB-382, 5 NRC 603, 607-08 (1977).

In the interest of a complete record, the Appeal Board may order the Staff to submit written testimony from a "knowledgeable witness" on a particular issue in a proceeding. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-607, 12 NRC 165, 167 (1980).

A Licensing Board should not call upon independent consultants to supplement an adjudicatory record except in that most extraordinary situation in which it is demonstrated that the Board cannot otherwise reach an informed decision on the issue involved. Part 2 of 10 CFR and Appendix A both give the Staff a dominant role in assessing the radiological health and safety aspects of facilities involved in licensing proceedings. Before an adjudicatory board resorts to outside experts of their own, they should give the NRC Staff every opportunity to explain, correct and supplement its testimony. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1146, 1156 (1981).

3.12.4 Expert Witnesses

When the qualifications of an expert witness are challenged, the party sponsoring the witness has the burden of demonstrating his expertise. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1405 (1977). The qualifications of the expert should be established by showing either academic training or relevant experience or some combination of the two. Pacific Gas and Electric Company, (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-78-36, 8 NRC 567, 570 (1978). As to academic training, such training that bears no particular relationship to the matters for which an individual is proposed as an expert witness is insufficient, standing alone, to qualify the individual as an expert witness on such matters. Diablo Canyon, LBP-78-36, 8 NRC at 571. In addition, the fact that a proposed expert witness was accepted as an expert on the subject matter by another Licensing Board in a separate proceeding does not necessarily mean that a subsequent Board will accept the witness as an expert. Diablo Canyon, LBP-78-36, 8 NRC at 572.

It is not acceptable for an expert witness to state his ultimate conclusions on a crucial aspect of the issue being tried, and then to profess an inability--for whatever reason--to provide the foundation for them to the decision maker and litigants. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-555, 10 NRC 23, 26 (1979).

A witness testifying to the results of an analysis need not have at hand every piece of datum utilized in performing that analysis. In this area, a rule of reason must be applied. It is not unreasonable, however, to insist that, where the outcome on a clearly defined and substantial safety or environmental issue may hinge upon the acceptance or rejection of an expert conclusion resting in turn upon a performed analysis, the witness make available (either in his prepared testimony or on the stand) sufficient information pertaining to the details of the analysis to permit the correctness of the conclusion to be evaluated. North Anna, supra, at 27.

3.12.4.1 Fees for Expert Witnesses

Commission regulations provide for expert witness fees in connection with depositions (10 CFR § 2.740(h)) and for subpoenaed witnesses (10 CFR § 2.720(d)). Although these regulations specify that the fees will be those "paid to witnesses in the district courts of the United States," there had been some uncertainty as to whether the fees referred to were the statutory fees of 28 U.S.C. § 1821 or the expert witness fees of Rule 26 of the Federal Rules of Civil Procedure. In Public Service Co. of Oklahoma, et al. (Black Fox, Units 1 and 2), LBP-77-18, 5 NRC 671 (1977), the Licensing Board ruled that the fees referred to in the regulations were the statutory fees. The Board suggested that payment of expert witness fees is especially appropriate when the witness was secured because of his experience and when the witness' expert opinions would be explored during the deposition or testimony. The Board relied on 10 CFR § 2.270(f), which permits conditioning denial of a motion to quash subpoenas on compliance with certain terms and conditions which could include payment of witness fees, and on 10 CFR § 2.740(c), which provides for orders requiring compliance with terms and conditions, including payment of witness fees, prior to deposition.

3.13 Cross-Examination

3.13.1 Cross-Examination By Intervenors

An intervenor may cross-examine a witness on those portions of his testimony which relate to matters that have been placed in controversy by any party to the proceeding, as long as the intervenor has a discernible interest in the resolution of the particular matter. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-75-1, 1 NRC 1 (1975), affirming ALAB-244, 8 AEC 857 (1974). In the case of a reopened proceeding, permissible inquiry through cross-examination necessarily extends to every matter within the reach of the testimony submitted by the applicants and accepted by the Board. Public Service

Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 24 (1977).

It is error to preclude cross-examination on the ground that intervenors have the burden of proving the validity of their contentions through their own witnesses since it is clear that intervenors may build their case "defensively" through cross-examination. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 356 (1978).

Calculations underlying a mathematical estimate which is in controversy are clearly relevant since they may reveal errors in the computation of that estimate. Hartsville, ALAB-463, 7 NRC at 355-56. A Licensing Board might be justified in denying a motion to require production of such calculations to aid cross-examination on the estimate as a matter of discretion in regulating the course of the hearing. See, e.g., Illinois Power Co. (Clinton Power Station, Units 1 & 2), ALAB-340, 4 NRC 27, 32-36 (1976). However, an Appeal Board will not affirm a decision to cut off cross-examination on the basis that it was within the proper limits of a Licensing Board's discretion when the record does not indicate that the Licensing Board considered this discretionary basis. Hartsville, ALAB-463, 7 NRC 356.

An intervenor's cross-examination may not be used to expand the number or scope of contested issues. Prairie Island, ALAB-244, 8 AEC 857, 867. To assure that cross-examination does not expand the boundaries of issues, a Licensing Board may:

- (1) require in advance that an intervenor indicate what it will attempt to establish on cross-examination;
- (2) limit cross-examination if the Board determines that it will be of no value for development of a full record on the issues;
- (3) halt cross-examination which makes no contribution to development of a record on the issues; and
- (4) consolidate intervenors for purposes of cross-examination on the same point where it is appropriate to do so in accordance with the provisions of 10 CFR § 2.715a.

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-252, 8 AEC 1175, aff'd, CLI-75-1, 1 NRC 1 (1975).

While an intervenor has a right to cross-examine on any issue in which he has a discernible interest, the Licensing Board has a duty to monitor and restrict such

cross-examination to avoid repetition. CLI-75-1 supra, 1 NRC 1. The Board is explicitly authorized to take the necessary and proper measures to prevent argumentative, repetitious or cumulative cross-examination, and the Board may properly limit cross-examination which is merely repetitive. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977); Prairie Island, supra, ALAB-244, 8 AEC 857, 868. Moreover, cross-examination must be strictly limited to the scope of the direct examination. Prairie Island, CLI-75-1, 1 NRC 1 and ALAB-244, 8 AEC 857 at 867. As a general proposition, no party has a right to unfettered or unlimited cross-examination and cross-examination may not be carried to unreasonable lengths. The test is whether the information sought is necessary for a full and true disclosure of the facts. Prairie Island supra, ALAB-244, 8 AEC 857, 869 at n.16. This limitation applies equally to cross-examination on issues raised sua sponte by the Licensing Board in an operating license proceeding. Id. at 8 AEC 869.

The scope of cross-examination and the parties that may engage in it in particular circumstances are matters of Licensing Board discretion. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 316 (1978).

Unnecessary cross-examination may be limited by a Licensing Board, in its discretion, to expedite the orderly presentation of each party's case. Cross-examination plans (submitted to the Board alone) are encouraged, as are trial briefs and pre-filed testimony outlines. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

3.13.2 Cross-Examination by Experts

The rules of practice permit a party to have its cross-examination of others performed by individuals with technical expertise in the subject matter of the cross-examination provided that the proposed interrogator is shown to meet the requirements set forth in 10 CFR § 2.633(a). An expert interrogator need not meet the same standard of expertise as an expert witness. The standard for interrogators under 10 CFR § 2.733(a) is that the individual "is qualified by scientific training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination or cross-examination." The Regents of the University of California (UCLA Research Reactor), LBP-81-29, 14 NRC 353, 354-55 (1981).

3.13.3 Inability to Cross-Examine as Grounds to Reopen

Where a Licensing Board holds to its hearing schedule despite a claim by an intervenor that he is unable to prepare for the cross-examination of witnesses because of scheduling problems, the proceeding will be reopened to allow the intervenor to cross-examine witnesses. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1) ALAB-249, 8 AEC 980 (1974).

3.14 Record of Hearing

3.14.1 Supplementing Hearing Record by Affidavits

Appeal Boards will not permit gaps in the record to be filled by affidavit where the issue is technical and complex. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-284, 2 NRC 197, 205-206 (1975).

There is no significance to the content of affidavits which do not disclose the identity of individuals making statements in the affidavit. Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-525, 9 NRC 111, 114 (1979).

3.14.2 Reopening Hearing Record

If a Licensing Board believes that circumstances warrant reopening the record for receipt of additional evidence, it has discretion to take that course of action. Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741 (1977). It may do so, for example, in order to receive additional documents in support of motion for summary disposition where the existing record is insufficient. Id. at 752. For a discussion of reopening, see Section 4.4.

3.14.3 Material Not Contained in Hearing Record

Adjudicatory decisions must be supported by evidence properly in the record. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-580, 11 NRC 227, 230 (1980). Neither the Licensing Board nor the Appeal Board may base a decision on factual material which has not been introduced into evidence. However, if extra-record material raises an issue of possible importance to matters such as public health, the Appeal Board may examine it. If this examination creates a serious doubt about the decision reached by the Licensing Board, the Appeal Board may order that the record be reopened for the taking of supplementary evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B &

28), ALAB-463, 7 NRC 341, 351-352 (1978).

Whether or not proffered affidavits would leave the Licensing Board's result unchanged, simple equity precludes the Appeal Board from reopening the record in aid of intervenors' apparent desire to attack the decision below on fresh grounds. Where the presentation of new matter to supplement the record is untimely, its possible significance to the outcome of the proceeding is of no moment, at least where the issue to which it relates is devoid of grave public health and safety or environmental implications. Puerto Rico Electric Power Authority (North Coast Nuclear Power Plant, Unit 1), ALAB-648, 14 NRC 34, 38-39 (1981), citing, Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974); and Hartsville, supra.

3.15 Interlocutory Review via Directed Certification

As a general rule, interlocutory appeals during a pending proceeding are not permitted. 10 CFR § 2.730(f). However, a party may seek interlocutory review by filing a petition for certification as to any question deserving early dispositive resolution. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478, 482-83 (1975). The issues that may be certified are not limited to those that have not yet been considered and ruled upon by the presiding Licensing Board. Id. In fact, the Appeal Board will be disinclined to direct certification unless and until the Licensing Board has been given a reasonable opportunity to decide the issue itself. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-297, 2 NRC 727 (1975). An exception to this rule will be made in compelling circumstances where, for example, there is an emergency situation requiring an immediate, final determination of the issue. Id. The practice of simultaneously seeking interlocutory appellate review of grievances by way of directed certification and Licensing Board reconsideration of the same rulings is disfavored. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-630, 13 NRC 84, 85 (1981).

To obtain certification for an interlocutory review, the party seeking it must show that, without such certification, the public interest will suffer or unusual delay or expense will be encountered. 10 CFR § 2.730(f); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478 (1975). This showing is not made merely by a demonstration that a Licensing Board promulgated an interlocutory, non-appealable pronouncement at variance with previous rulings of other boards, unless some special circumstance makes immediate elimination of the decisional conflict imperative. Id.

Developments occurring subsequent to the filing of a motion for directed certification to the Appeal Board may strip the question raised in the motion for certification of an essential ingredient and, therefore, constitute grounds for denial of the motion. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-419, 6 NRC 3, 6 (1977).

Appeal Boards undertake discretionary interlocutory review of a Licensing Board ruling only where such ruling either (1) threatens the party adversely affected by it with immediate and serious irreparable impact which as a practical matter, could not be alleviated by a later appeal or (2) affects the basic structure of the proceeding in a pervasive or unusual manner. Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 & 2), ALAB-572, 10 NRC 693, 694 (1979). The Appeal Boards' certification authority was not intended to be applied to a mixed question of law and fact in which the factual element was predominant. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

The Commission's Rules of Practice, 10 CFR § 2.714a, prohibit a person from taking an interlocutory appeal from an order entered on his intervention petition unless that order has the effect of denying the petition in its entirety. Texas Utilities Generating Company, et al. (Comanche Peak Steam Electric Station, Units 1 & 2), ALAB-621, 12 NRC 578, 579 (1980).

3.16 Licensing Board Findings

The findings of a Licensing Board must be supported by reliable, probative and substantial evidence in the record. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184 (1975). It is well settled that the possibility that inconsistent or even contrary views could be drawn if the views of an opposing party's experts were accepted does not prevent the Licensing Board's findings from being supported by substantial evidence. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-303, 2 NRC 858, 866 (1975).

A Licensing Board is free to decide a case on a theory different from that on which it was tried but when it does so, it has a concomitant obligation to bring this fact to the attention of the parties before it and to afford them a fair opportunity to present argument, and where appropriate, evidence. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 55-56 (1978); Niagara Mohawk Power Co. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 354 (1975). Note that as to a Licensing Board's findings, the Appeal Board has authority to make factual findings on the basis of record evidence which are different from those reached

by a Licensing Board and can issue supplementary findings of its own. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 42 (1977). The Appeal Board decision can be based on grounds completely foreign to those relied upon by the Licensing Board so long as the parties had a sufficient opportunity to address those new grounds with argument and/or evidence. Id. In any event, neither the Licensing Board nor the Appeal Board may base a decision on factual material which has not been introduced into evidence. Otherwise, other parties would be deprived of the opportunity to impeach the evidence through cross-examination or to refute it with other evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 351-52 (1978).

The Board's initial decision should contain record citations to support the findings. Virginia Electric & Power Co. (North Anna Power Station, Units 1, 2, 3, & 4), ALAB-256, 1 NRC 10, 14 at n. 8 (1975). Despite the fact that a number of older cases have held that a Licensing Board is not required to rule specifically on each finding proposed by the parties (see Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 369 (1972), aff'd sub nom., Union of Concerned Scientists v. AEC, 449 F.2d 1069 (D.C. Cir 1974); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 321 (1972)), the Appeal Board has indicated that a Licensing Board must clearly state the basis for its decision and, in particular, state reasons for rejecting certain evidence in reaching the decision. Public Service Co. of N.H., et al. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33 (1977). While the Seabrook Appeal Board found that the deficiencies in the initial decision were not so serious as to require reversal, especially in view of the fact that the Appeal Board itself can make findings of fact where necessary, the Appeal Board made it clear that a Licensing Board's blatant failure to follow the Appeal Board's direction in this regard is ground for reversal of the Licensing Board's decision.

Notwithstanding its authority to do so, the Appeal Board will normally be reluctant to search the record to determine whether it included sufficient information to support conclusions for which the Licensing Board failed to provide adequate justification. A remand, very possibly accompanied by an outright vacation of the result reached below, would be the usual course where the Licensing Board's decision does not adequately support the conclusions reached therein. Seabrook, supra, 6 NRC 33 at 42. Note, however, that in at least one case the Appeal Board did search the record where (1) the Licensing Board's decision preceded the Appeal Board's decision in Seabrook which clearly established this policy and (2) it did not take an extended period of time for the Appeal Board to conduct its own evaluation. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B), ALAB-463, 7 NRC 341, 368 (1978).

The Appeal Board's admonition that Licensing Boards must clearly set forth the basis for their decisions applies to a Board's determination with respect to alternatives under NEPA. Thus, although a Licensing Board may utilize its expertise in selecting between alternatives, some explanation is necessary. Otherwise, the requirement of the Administrative Procedure Act that conclusions be founded upon substantial evidence and based on reasoned findings "become[s] lost in the haze of so-called expertise." Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 66 (1977).

When evidence is presented to the Licensing Board in response to an Appeal Board instruction that a matter is to be investigated, the Licensing Board is obligated to make findings and issue a ruling on the matter. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 341, 368 (1978).

In Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 492 (1978), the Appeal Board reiterated that the bases for decisions must be set forth in detail, noting that, in carrying out its NEPA responsibilities, an agency "must go beyond mere assertions and indicate its basis for them so that the end product is" an informed and adequately explained judgment.

Licensing Boards have an obligation "to articulate in reasonable detail the basis for [their] determination." A substantial failure of the Licensing Board in this regard can result in the matter being remanded for reconsideration and a full explication of the reasons underlying whatever result that Board might reach upon such reconsideration. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406, 410-412 (1978).

The fact that a Licensing Board poses questions requiring that evidence be produced at the hearing in response to those questions does not create an inviolate duty on the part of the Board to make findings specifically addressing the subject matter of the questions. Portland General Electric Company, et al. (Trojan Nuclear Plant), LBP-78-32, 8 NRC 413, 416 (1978).

A Licensing Board decision which rests significant findings on expert opinion not susceptible of being tested on examination of the witness is a fit candidate for reversal. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-555, 10 NRC 23, 26 (1979).

Licensing Boards passing on construction permit applications must be satisfied that requirements for an operating license, including those involving management capability, can be met by the applicant at the time such license is sought. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1,

2, 3 & 4), ALAB-577, 11 NRC 18, 26-28 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

Where evidence may have been introduced by intervenors in an operating license proceeding, but the construction permit Licensing Board made no explicit findings with regard to those matters, and at the construction permit stage the proceeding was not contested, the operating license Licensing Board will decline to treat the construction permit Licensing Board's general findings as an implicit resolution of matters raised by intervenors. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LRP-79-1, 9 NRC 73, 79 n.6 (1979).

Rulings and findings made in the course of a proceeding are not in themselves sufficient reasons to believe that a tribunal is biased for or against a party. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 923 (1981).

3.16.1 Independent Calculations by Licensing Board

A Board is free to draw conclusions by applying known engineering principles to and making mathematical calculations from facts in the record whether or not any witness purported to attempt this exercise. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-229, 8 AEC 425, 437, rev. on other gnds., CLI-74-40, 8 AEC 809 (1974). Based on the teachings of Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 66 (1977), however, the Board must adequately explain the basis for its conclusions.

3.17 Res Judicata and Collateral Estoppel

Although the judicially developed doctrine of res judicata is not fully applicable in administrative proceedings, the considerations of fairness to parties and conservation of resources embodied in this doctrine are relevant. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 27 (1978), citing, Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), CLI-77-13, 5 NRC 1303, 1321 (1977).

Thus, as a general rule, it appears that res judicata principles may be applied, where appropriate, in NRC adjudicatory proceedings. Consistent with those principles, res judicata does not apply when the foundation for a proposed action arises after the prior ruling advanced as the basis for res judicata or when the party seeking to employ the doctrine had the benefit, when he obtained the prior ruling, of a more favorable standard as to burden of proof than is now available to him. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 NRC 235 (1976).

Principles of collateral estoppel, like those of res judicata, may be applied in administrative adjudicatory proceedings. U.S. v. Utah Construction and Mining Co., 384, U.S. 394, 421-22 (1966); Toledo Edison Co., et al. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-378, 5 NRC 557 (1977); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, remanded on other grounds, CLI-74-12, 7 AEC 203 (1974). Collateral estoppel precludes relitigation of issues of law or fact which have been finally adjudicated by a tribunal of competent jurisdiction. Toledo Edison Co., supra; Alabama Power Co., supra.

The application of collateral estoppel does not hinge on the correctness of the decision or interlocutory ruling of the first tribunal. Moore's Federal Practice, ¶¶ 0.405[1] and [4.1] at 629, 634-37 (2d ed. 1974); Toledo Edison Co., supra. It is enough that the tribunal had jurisdiction to render the decision, that the prior judgment was rendered on the merits, that the cause of action was the same, and that the party against whom the doctrine is asserted was a party to the earlier litigation or in privity with such a party. Toledo Edison Co., supra. Participants in a proceeding cannot be held bound by the record adduced in another proceeding to which they were not parties. Philadelphia Electric Co., et al. (Peach Bottom Station, Units 2 and 3), Metropolitan Edison Co., et al. (Three Mile Island Station, Unit 2), Public Service Electric and Gas Co. (Hope Creek Station, Units 1 and 2), ALAB-640, 13 NRC 487, 543 (1981). Conversely, that parties to the former action were not joined to the second action does not prevent application of the principle. Dreyfus v. First National Bank of Chicago, 424 F.2d 1171, 1175, (7th Cir. 1970), cert. denied, 400 U.S. 832 (1970); Hummel v. Equitable Assurance Society, 151 F.2d 994, 996 (7th Cir. 1945); Toledo Edison Co., supra. Where circumstances have changed (as to context or law, burden of proof or material facts) from when the issues were formerly litigated or where public interest calls for relitigation of issues, neither collateral estoppel nor res judicata applies. Alabama Power Co., supra; Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), LBP-77-20, 5 NRC 680 (1977). Furthermore, under neither principle does a judicial decision become binding on an administrative agency if the legislature granted primary authority to decide the substantive issue in question to the administrative agency. 2 Davis, Administrative Law Treatise, § 18.12 at pp. 627-28. Cf.: US v. Radio Corp. of America, 358, U.S. 334, 347-52 (1959). Where application of collateral estoppel would not affect the Commission's ability to control its internal proceedings, however, a prior court decision may be binding on the NRC. Toledo Edison Co., supra.

In appropriate circumstances, the doctrines of res judicata and collateral estoppel which are found in the judicial setting are equally present in administrative adjudication. One exception is the existence of broad public policy considerations

on special public interest factors which would outweigh the reasons underlying the doctrines, Houston Lighting & Power Co., et al. (South Texas Project, Units 1 & 2), LBP-79-27, 10 NRC 563, 574-575 (1979).

There is no basis under the Atomic Energy Act or NRC rules for excluding safety questions at the operating license stage on the basis of their consideration at the construction permit stage. The only exception is where the same party tries to raise the same question at both the construction permit and operating license stages; principles of res judicata and collateral estoppel then come into play. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 464 (1979).

A party countering a motion for summary judgment based on res judicata need only recite the facts found in the other proceedings, and need not independently support those "facts." Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-575, 11 NRC 14, 15 n.3 (1980).

Collateral estoppel requires presence of at least four elements in order to be given effect: (1) the issue sought to be precluded must be same as that involved in the prior action, (2) the issue must have been actually litigated, (3) the issue must have been determined by a valid and final judgment, and (4) the determination must have been essential to the prior judgment. Houston Lighting & Power Co., et al. (South Texas Project, Units 1 & 2), LBP-79-27, 10 NRC 563, 566 (1979).

The doctrine of collateral estoppel traditionally applies only when the parties in the case were also parties (or their privies) in the previous case. A limited extension of that doctrine permits "offensive" collateral estoppel, i.e., the claim by a person not a party to previous litigation that an issue had already been fully litigated against the defendant and that the defendant should be held to the previous decision because he has already had his day in court, Parklane Hosiery Co., Inc., v. Leo M. Shore, 439 U.S. 322 (1979). At least one Licensing Board has held that, in operating license proceedings, estoppel may also be applied defensively, to preclude an intervenor who was not a party from raising issues litigated in the construction permit proceeding. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 199-201 (1981). This would not appear to be wholly consistent with the Appeal Board's ruling in ALAB-640, supra, 13 NRC 487, 543.

Where the legal standards of two statutes are significantly different, the decision of issues under one statute does not give rise to collateral estoppel in litigation of similar issues under a different statute. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), LBP-29-27, 10 NRC 563, 571 (1979).

The Commission will give effect to factual findings of Federal courts and sister agencies when those findings are part of a final judgment, even when the party seeking estoppel effect was not a party to the initial litigation. Although the application of collateral estoppel would be denied if a party could have easily joined in the prior litigation, the Commission will apply collateral estoppel even though it is alleged that a party could have joined in, if the prior litigation was a complex antitrust case. Furthermore, FERC determinations about the applicability of antitrust laws are sufficiently similar to Commission determinations to be entitled to collateral estoppel effect. Even a shift in the burden of persuasion does not exclude the application of collateral estoppel when it is apparent that the FERC opinion did not arrive at its antitrust conclusions because of the burden of persuasion. On the other hand, the decision of a Federal district court on a summary judgment motion is not a final judgment entitled to collateral estoppel effect, particularly when the court did not fully explain the grounds for its opinion and when its decision was issued after the hearing board had already begun studying the record and had formed factual conclusions which were not adequately addressed in the district court's opinion. Florida Power and Light Co. (St. Lucie Plant, Unit 2), LBP-81-58, 14 NRC 1167, 1173-80, 1189-90 (1981).

Summary disposition may be denied on the basis of res judicata and collateral estoppel. Houston Lighting & Power Co., et al. (South Texas Project, Units 1 & 2), ALAB-575, 11 NRC 14 (1980), affirming LBP-79-27, 10 NRC 563 (1979).

3.18 Termination of Proceedings

3.18.1 Procedures for Termination

Termination of adjudicatory proceedings on a construction permit application should be accomplished by a motion filed by applicant's counsel with those tribunals having present jurisdiction over the proceeding. A letter by a lay official to the Commission when the Licensing Board has jurisdiction over the matter is not enough. Toledo Edison Company, et al. (Davis-Besse Nuclear Power Station, Units 2 and 3), ALAB-622, 12 NRC 667, 668-9 (1980).

3.18.2 Post-Termination Authority of Commission

10 CFR § 2.107(a) expressly empowers Licensing Boards to impose conditions upon the withdrawal of a permit or license application after the issuance of a notice of hearing. Davis-Besse, Units 2 and 3, supra, at 669, n.2 (1980).

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4.0 POST HEARING MATTERS

4.1 Settlements and Stipulations

10 CFR § 2.759 expressly provides, and the Commission stresses, that the fair and reasonable settlement of contested initial licensing proceedings is encouraged. Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279, 283 (1979). This was reiterated in the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 456 (1981).

4.2 Proposed Findings

Each party to a proceeding may file proposed findings of fact and conclusions of law with the Licensing Board. Despite the fact that a number of older cases have held that a Licensing Board is not required to rule specifically on each finding proposed by the parties (see Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 369 (1972), aff'd sub nom., Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974); Wisconsin Electric Power Co. (Point Beach Nuclear Power Station, Unit 2), ALAB-78, 5 AEC 319, 321 (1972)), the Appeal Board has indicated that a Licensing Board must clearly state the basis for its decision and, in particular, state reasons for rejecting certain evidence in reaching the decision. Public Service Co. of N.H., et al. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33 (1977).

10 CFR § 2.754(c) requires that a party's proposed findings of fact and conclusions of law be confined to the material issues of fact and law presented on the record. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981).

4.2.1 Intervenor's Right to File Proposed Findings

An intervenor may file proposed findings with respect to all issues whether or not raised by his own contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974).

4.2.2 Failure to File Proposed Findings

The Appeal Board is not required to review exceptions made by a party who has failed to file proposed findings on the issues with respect to which the exceptions are taken. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-289, 2 NRC 3, 4 at n.2 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 964 (1974).

A Licensing Board in its discretion may refuse to rule on an issue in its initial decision if the party raising the issue has not filed proposed findings of fact and conclusions of law. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

4.3 Initial Decisions

After the hearing has been concluded and proposed findings have been filed by the parties, the Licensing Board will issue its initial decision. This decision can conceivably constitute the ultimate agency decision on the matter addressed in the hearing provided that it is not modified by subsequent Appeal Board and/or Commission review. Under recent amendments to 10 CFR § 2.764, the Licensing Board's decision authorizing issuance of an operating license is to be considered automatically stayed until the Commission completes a sua sponte review to determine whether to stay the decision. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-647, 14 NRC 27, 29 (1981). (Prior to the amendment, an initial decision authorizing issuance of a construction permit (or operating license) was effective when issued, unless stayed. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 170 (1978). Such decisions were presumptively valid and, unless or until they were stayed or overturned by appropriate authority, were entitled to full recognition. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-423, 6 NRC 115, 117 (1977)).

On November 5, 1979, the Commission amended its Rules of Practice adding to 10 CFR Part 2 an Appendix B (44 Fed. Reg. 65050; November 9, 1979), which temporarily suspended the operation of 10 CFR § 2.764 and provided that Licensing Board decisions "shall not become effective until the Appeal Board and Commission actions outlined [in the Appendix] have taken place." On May 28, 1981, 10 CFR § 2.764 was amended to incorporate the provisions of Appendix B.

In relevant part, 10 CFR § 2.764 now provides for Appeal Board review, within 60 days of any Licensing Board decision that would otherwise authorize licensing action, of any stay motions timely filed. If none are filed, the Appeal Board is to conduct a sua sponte review and decide whether a stay is warranted. In so deciding the Appeal Board is to be guided by 10 CFR § 2.788, and in addition give attention to whether issuance of the license or permit prior to full administrative review might: (1) create novel safety or environmental issues in light of the TMI accident; or (2) prejudice review of significant safety or environmental issues. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-626, 13 NRC 17, 18 (1981). In McGuire, the Appeal Board found that an unpublished Licensing Board order authorizing fuel loading, initial criticality, and zero-power physics testing was an order authorizing "licensing action" within the ambit of (then) Appendix B (now Section 2.764). In contrast,

a partial initial decision in a construction permit proceeding which addressed all matters except emergency planning and TMI-2 related issues (on which evidentiary hearings were yet to be held) was not considered a decision providing the underpinning of "licensing action." Boston Edison Co., et al. (Pilgrim Nuclear Station, Unit 2), ALAB-632, 13 NRC 91, 92 (1981).

The findings and initial decision of the Licensing Board must be supported by reliable, probative and substantial evidence on the record. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254 8 AEC 1184, 1187 (1975). The initial decision must contain record citations to support the findings. Virginia Electric & Power Co. (North Anna Power Station, Units 1, 2, 3 & 4), ALAB-256, 1 NRC 10, 14 at n.18 (1975). Of course, a Licensing Board's decision cannot be based on factual material that has not been introduced and admitted into evidence. Otherwise the parties would be deprived of the opportunity to impeach the evidence through cross-examination or to rebut it with other evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1R, & 2R), ALAB-463, 7 NRC 341, 351-52 (1978).

Licensing Boards have a general duty to insure that initial decisions contain a sufficient exposition of any ruling on a contested issue of law or fact to enable the parties and a reviewing Appeal Board to readily apprehend the foundation of the ruling. This is not a mere procedural nicety but it is a necessity if the Appeal Board is to efficiently carry out its review responsibility. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 10-11 (1976); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-104, 6 AEC 179 at n.2 (1973).

Clarity of the basis for the initial decision is important. In circumstances where a Licensing Board bases its ruling on an important issue on considerations other than those pressed upon it by the litigants themselves, there is especially good reason why the foundation for that ruling should be articulated in reasonable detail. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408, 414 (1976). When resort is made to technical language which a layman could not be expected to readily understand, there is an obligation on the part of the opinion writer to make clear the precise significance of what is being said in terms of what is being decided. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), ALAB-336, 4 NRC 3 (1976).

The requirement that a Licensing Board clearly delineate the basis for its initial decision was emphasized by the Appeal Board in Public Service Co. of N.H., et al. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33 (1977). Therein, the Appeal Board stressed that the Licensing Board must sufficiently inform a party of the disposition of its contentions and must, at a minimum, explain why it rejected reasonable and apparently reliable evidence contrary to the Board's findings.

Thus, a prior Licensing Board ruling in Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-7, 5 NRC 452 (1977), to the effect that a Board need not justify its findings by discounting proffered testimony as unreliable appears to be in error insofar as it is contrary to the Appeal Board's guidance in Seabrook. Although normally the Appeal Board is disinclined to examine the record to determine whether there is support for conclusions which the Licensing Board failed to justify, it evaluated evidence in one case because (1) the Licensing Board's decision preceded the Appeal Board's decision in Seabrook which clearly established this policy, and (2) it did not take much time for the Appeal Board to conduct its own evaluation. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 368 (1978).

In certain circumstances, time may not permit a Licensing Board to prepare and issue its detailed opinion. In this situation, one approach is for the Licensing Board to reach its conclusion and make a ruling based on the evidentiary record and to issue a subsequent detailed decision as time permits. The Appeal Board tacitly approved this approach in Public Service Electric & Gas Co., et al. (Hope Creek Generating Station, Units 1 & 2), ALAB-460, 7 NRC 204 (1978). This approach has been followed by the Commission in the GESMO proceeding. See Mixed Oxide Fuel, CLI-78-10, 7 NRC 711 (1978).

It is the right and duty of a Licensing Board to include in its decision all determinations of matters on an appraisal of the record before it. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 30 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

A Licensing Board has authority to condition a permit or license to require measures in plant construction or operation in the interests of safety or the environment. However, a Licensing Board considering a construction permit application cannot determine an operating license adjudicatory hearing will be necessary in the public interest on management capability when considering a construction permit application. It lacks the factual basis to do so, since the facts may change before the operating license is sought. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-577, 11 NRC 18, 26-30 (1980), reconsidered, ALAB-581, 11 NRC 233 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

The sanctioning of a construction permit does not make automatic the later issuance of a license to operate. The Board directed that certain issues addressed in the construction permit proceedings be reassessed by the Staff and the applicant at the operating license review stage. Public Service Electric and Gas Company, Atlantic City Electric Company (Hope Creek Generating Station, Units 1 and 2), ALAB-518, 9 NRC 14, 37 (1979).

4.3.1 Reconsideration of Initial Decision

A Licensing Board has inherent power to entertain and grant a motion to reconsider an initial decision. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-235, 8 AEC 645, 646 (1974). (SEE ALSO 4.5)

An authorized, timely-filed petition for reconsideration before the trial tribunal may work to toll the time period under 10 CFR § 2.762(a) for filing an appeal. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-659, 14 NRC 983, 985 (1981).

4.4 Reopening Hearings

Hearings may be reopened, in appropriate situations, either upon motion of any party or sua sponte. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973). Sua sponte reopening is required when a Board becomes aware, from any source, of a significant unresolved safety issue, Vermont Yankee, supra, or of possible major changes in facts material to the resolution of major environmental issues. Commonwealth Edison Co. (LaSalle County Nuclear Station, Units 1 & 2), ALAB-153, 6 AEC 821 (1973). Where factual disclosures to the Appeal Board reveal a need for further development of an evidentiary record, it may order that the record be reopened for the taking of supplementary evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 352 (1978). For reopening the record, the new evidence to be presented need not always be so significant that it would alter the Board's findings or conclusions when the taking of new evidence can be accomplished with little or no burden upon the parties. To exclude otherwise competent evidence because the Board's conclusions may be unchanged would not always satisfy the requirement that a record suitable for review be preserved (10 CFR § 2.756). Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83, 85 (1978). An Appeal Board might be sympathetic to a motion to reopen a hearing if documents appended to an appellate brief constituted newly discovered evidence and tended to show that significant testimony in the record was false. Toledo Edison Co. and Cleveland Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3); (Perry Nuclear Power Plant, Units 1 and 2), ALAB-430, 6 NRC 457 (1977).

New regulatory requirements may establish good cause for reopening a record or admitting new contentions on matters related to the new requirement. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226, 233 (1981).

Where a record is reopened for further development of the evidence, all parties are entitled to an opportunity to test the

new evidence and participate fully in the resolution of the issues involved. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2) ALAB-355, 3 NRC 830 (1976). Permissible inquiry through cross-examination at a reopened hearing necessarily extends to every matter within the reach of the testimony submitted by the applicants and accepted by the Board. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 94 (1977).

A Licensing Board lacks the power to reopen a proceeding once final agency action has been taken, and it may not effectively "reopen" a proceeding by independently initiating a new adjudicatory proceeding. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-381, 5 NRC 582 (1977).

The Appeal Board dismissed for want of jurisdiction a motion to reopen hearings in a proceeding in which the Appeal Board had issued a final decision, followed by the Commission's election not to review that decision. The Commission's decision represented the agency's final action, thus ending the Appeal Board's authority over the cause. The Appeal Board referred the matter to the Director of Nuclear Reactor Regulation because, under the circumstances, he had the discretionary authority to grant the relief sought subject to Commission review. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-530, 9 NRC 261, 262 (1979).

4.4.1 Motions to Reopen Hearing

A motion to reopen the hearing can be filed by any party to the proceeding. The motion need not be supported by an affidavit and the movant is free to rely on, for example, Staff-applicant correspondence to establish the existence of a newly discovered issue. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973).

As is well settled, the proponent of a motion to reopen the record has a heavy burden to bear. Kansas Gas & Electric Company, et al. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-359, 4 NRC 619, 620 (1976).

4.4.1.1 Time for Filing Motion to Reopen Hearing

A motion to reopen may be filed and the Licensing Board may entertain it at any time prior to issuance of the full initial decision. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-86, 5 AEC 376 (1972). Where a motion to reopen was mailed before the Licensing Board rendered the final decision but was received by the Board after the decision, the Board denied the motion on

grounds that it lacked jurisdiction to take any action. The Appeal Board implied that this may be incorrect (referring to 10 CFR § 2.712(d)(3) concerning service by mail), but did not reach the jurisdictional question since the motion was properly denied on the merits. Northern States Power Company, et al. (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 374 at n.4 (1978).

Point Beach, supra, does not establish an ironclad rule with respect to timing of the motion. In deciding whether to reopen, the Licensing Board will consider both the timing of the motion and the safety significance of the matter which has been raised. The motion will be denied if it is untimely and the matter raised is insignificant. The motion may be denied, even if timely, if the matter raised is not grave or significant. If the matter is of great significance to public or plant safety, the motion could be granted even if it was not made in a timely manner. As such, the controlling consideration is the seriousness of the issue raised. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); Vermont Yankee, ALAB-126, 6 AEC 393 (1973); Vermont Yankee, ALAB-124, 6 AEC 365 (1973). When timeliness is a factor, it is to be judged from the date of discovery of the new issue.

The Vermont Yankee tests for reopening the evidentiary record are only partially applicable where reopening the record is the Board's sua sponte action. The Board has broader responsibilities than do adversary parties, and the timeliness test of Vermont Yankee does not apply to the Board with the same force as it does to parties. Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83, 85 (1978).

Where jurisdiction terminated on all but a few issues, a Board may not entertain new issues unrelated to those over which it retains jurisdiction, even where there are supervening developments. The Board has no jurisdiction to consider such matters. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-579, 11 NRC 223, 225-226 (1980).

4.4.1.2 Contents of Motion to Reopen Hearing

(RESERVED)

4.4.2 Grounds for Reopening Hearing

A decision as to whether to reopen a hearing will be made on the basis of the motion and the filings in opposition thereto, all of which amount to a "mini record." Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 523 (1973), reconsid. den.,

ALAB-141, 6 AEC 576. The hearing must be reopened whenever a "significant", unresolved safety question is involved. Vermont Yankee, ALAB-138 *supra*; Vermont Yankee, ALAB-124, 6 AEC 358, 365 at n.10 (1973). The same "significance test" applies when an environmental issue is involved. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404 (1975); Commonwealth Edison Co. (LaSalle County Nuclear Station, Units 1 & 2), ALAB-153, 6 AEC 821 (1973). (See also 3.13.3).

Matters to be considered in determining whether to reopen an evidentiary record at the request of a party, as set forth in Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520 (1973), are whether the matters sought to be addressed on the reopened record could have been raised earlier, whether such matters require further evidence for their resolution, and what the seriousness or gravity of such matters is. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83 (1978). As a general proposition, a hearing should not be reopened merely because some detail involving plant construction or operation has been changed. Rather, to reopen the record at the request of a party, it must usually be established that a different result would have been reached initially had the material to be introduced on reopening been considered. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974). In fact, an Appeal Board has stated that, after a decision has been rendered, a dissatisfied litigant who seeks to persuade an adjudicatory tribunal to reopen the record "because some new circumstance has arisen, some new trend has been observed or some new fact discovered" has a difficult burden to bear. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-359, 4 NRC 619, 620 (1976). At the same time, new regulatory requirements may establish good cause for reopening a record or admitting new contentions on matters related to the new requirement. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226, 233 (1981).

In certain instances the record may be reopened, even though the new evidence to be received might not be so significant as to alter the original findings or conclusions, where the new evidence can be received with little or no burden upon the parties. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83, 85 (1978). Reopening has also been ordered where the changed circumstances involved a hotly

contested issue. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-74-39, 8 AEC 631 (1974). Moreover, considerations of fairness and of affording a party a proper opportunity to ventilate the issues sometimes dictate that a hearing be reopened. For example, where a Licensing Board maintained its hearing schedule despite an intervenor's assertion that he was unable to attend the hearing and prepare for cross-examination, the Appeal Board held that the hearing must be reopened to allow the intervenor to conduct cross-examination of certain witnesses. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-249, 8 AEC 980 (1974).

The proponent of a motion to reopen the record bears a heavy burden. Normally, the motion must be timely and addressed to a significant issue. If an initial decision has been rendered on the issue, it must appear that reopening the record may materially alter the result. Where a motion to reopen the record is untimely without good cause, the movant must demonstrate not only that the issue is significant but also that the public interest demands that the issue be further explored. Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 21 (1978).

The criteria for reopening the record govern each issue for which reopening is sought; the fortuitous circumstance that a proceeding has been or will be reopened on other issues is not significant. Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 22 (1978).

In order to reopen a licensing proceeding, an intervenor must show a change in material fact which warrants litigation anew. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-79-10, 10 NRC 675, 677 (1979).

Whether to reopen a record in order to consider new evidence turns on the appraisal of several factors: (1) Is the motion timely? (2) Does it address significant safety or environmental issues? (3) Might a different result have been reached had the newly proffered material been considered initially? Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980).

A motion to reopen an administrative record may rest on evidence that came into existence after the hearing closed. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 at n.6 (1980).

Evidence of a continuing effort to improve reactor safety does not necessarily warrant reopening a record. Diablo Canyon, supra, at 887.

Repetition of arguments previously presented does not present a basis for reconsideration. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5 (1980). Nor do generalized assertions to the effect that "more evidence is needed." Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 63 (1981).

Long range forecasts of future electric power demands are especially uncertain as they are affected by trends in usage, increasing rates, demographic changes, industrial growth or decline, and the general state of economy. These factors exist even beyond the uncertainty that inheres to demand forecasts: assumptions on continued use from historical data, range of years considered, the area considered, and extrapolations from usage in residential, commercial, and industrial sectors. The general rule applicable to cases involving differences or changes in demand forecasts is stated in Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 352-69 (1975). Accordingly, a possible one-year slip in construction schedule was clearly within the margin of uncertainty, and intervenors had failed to present information of the type or substance likely to have an effect on the need-for-power issue such as to warrant relitigation. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), CLI-79-5, 9 NRC 607, 609-10 (1979).

4.4.3 Reopening Construction Permit Hearings to Address New Generic Issues

Construction permit hearings should not be reopened upon discovery of a generic safety concern where such generic concern can be properly addressed and considered at the operating license stage. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404 (1975).

4.4.4 Discovery to Obtain Information to Support Reopening of Hearing

Though the period for discovery may have long since terminated, a party may obtain discovery in order to support a motion to reopen a hearing provided that party demonstrates with particularity that discovery would enable it to produce the needed materials. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 524 (1973).

4.5 Motions to Reconsider

In certain instances, for example, where a party attempts to appeal an interlocutory ruling, a Licensing Board can properly treat the appeal as a motion to the Licensing Board itself to reconsider its ruling. Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-370, 5 NRC 131 (1977).

The Appeal Board has indicated that a motion to it to reconsider a prior decision will be denied where the Appeal Board is left with the conviction that what confronts it is not in reality an elaboration upon, or refinement of, arguments previously advanced, but instead is an entirely new thesis. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977).

A party may not raise, in a petition for reconsideration, a matter which was not contested before the Licensing Board or on appeal. Tennessee Valley Authority (Hartsville Plant, Units 1A, 2A, 1B, 2B), ALAB-467, 7 NRC 459, 462 (1978). In the same vein, a matter which was raised at the inception of a proceeding but was never pursued before the Licensing Board or the Appeal Board cannot be raised on a motion for reconsideration of the Appeal Board's decision. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-477, 7 NRC 766, 768 (1978).

Motions to reconsider an order should be associated with requests for reevaluation in light of elaboration on or refinement of arguments previously advanced; they are not the occasion for advancing an entirely new thesis. Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 790 (1981).

Where a party petitioning the Court of Appeals for review of a decision of the agency also petitions the agency to reconsider its decision and the Federal court stays its review pending the agency's disposition of the motion to reconsider, the Hobbs Act does not preclude the agency's reconsideration of the case. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 259 (1978).

Repetition of arguments previously presented does not present a basis for reconsideration. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5-6 (1980).

4.6 Sua Sponte Review by the Appeal Board

Although it does not usually do so in contested cases, the Appeal Board has the power to conduct a de novo review of the record sua sponte to make its own independent findings. Wisconsin Electric Power Co. (Point Beach Nuclear Power Station), ALAB-73,

5 AEC 297, 298 (1972). In uncontested and/or unappealed cases, the Appeal Board will always conduct a sua sponte review of safety and environmental issues. See, e.g., Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 803 (1981), citing, Washington Public Power Supply System, (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687 (1979); Cincinnati Gas & Electric Co. et al. (William H. Zimmer Nuclear Station), ALAB-79, 5 AEC 342 (1972); Detroit Edison Co. (Enrico Fermi Atomic Power Plant), ALAB-77, 5 AEC 315 (1972).

An Appeal Board may undertake sua sponte review either during the course of Licensing Board proceedings or after an initial decision has been issued. 10 CFR § 2.785; Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-374, 5 NRC 417 (1977).

Upon review sua sponte of a Licensing Board's initial decision authorizing facility operation, the Appeal Board will consider operational problems coming to light as a result of facility operation during the period of review only where the problems are extraordinary and have a bearing on whether an operating license should have been issued. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 (1977).

In any event, the following matters will not be reviewed sua sponte absent extraordinary circumstances:

- (1) Procedural irregularities. Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 1), ALAB-231, 8 AEC 633, 634 (1974);
- (2) Rulings on contentions. Washington Public Power Supply System (Nuclear Projects No. 1 & No. 4), ALAB-265, 1 NRC 374, 375 at n.1 (1975); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-242, 8 AEC 847, 848-849 (1974);
- (3) Purely economic issues posed in an antitrust proceeding. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-258, 1 NRC 45, 48 at n.6 (1975).

Appeal Board review will be routinely undertaken of any final disposition of a licensing proceeding founded upon substantive determinations of significant safety or environmental issues. Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, 12 NRC 301, 303-304 (1980).

The Appeal Board, on sua sponte review, has the authority to reject or modify the findings of the Licensing Board. Monticello, supra, at 304. As for the standards for an Appeal Board's reversal of a Licensing Board's findings of fact, see Section 5.7.3.

A case, when properly before the Appeal Board on sua sponte review, is not confined to those issues on which the Licensing Board made substantive findings. Issues not raised by parties may be considered. However, in operating license proceedings such issues may be considered only when serious safety, environmental or common defense and security matter exist. Monticello, supra, at 309.

In the course of its review of an initial decision in a construction permit proceeding, an Appeal Board is free to raise sua sponte issues which were neither presented to nor considered by the Licensing Board. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 707 (1979).

If the Appeal Board determines sua sponte more information is needed, it may take evidence to develop the record. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-578, 11 NRC 189 (1980).

The Appeal Board, in lieu of remand, may undertake the conduct of hearings in the interests of expedition. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-580, 11 NRC 227, 231 (1980).

4.7 Motions for Post-Judgment Relief

Post-judgment motions for relief are not favored by the regulations governing Commission review of Appeal Board decisions (10 CFR § 2.786(b)(7)) and will not normally be granted absent a showing of "extraordinary circumstances." Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-15, 8 NRC 1, 2 (1978).

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5.0 APPEALS

5.1 Right to Appeal

An appeal from a ruling or a decision is normally allowed if the appellant can establish that, in the final analysis, some discernible injury to it has been sustained as a consequence of the ruling. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-252, 8 AEC 1175, aff'd, CLI-75-1, 1 NRC 1 (1975).

There is no right to an administrative appeal on every factual finding. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 461 at n.5 (1978).

In normal circumstances, an appeal will lie only from unfavorable action taken by the Licensing Board, not from wording of a decision with which a party disagrees but which has no operative effect. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-482, 7 NRC 979, 980 (1978). For a more recent case in which the Appeal Board held that a party may not file exceptions to a decision if it is not aggrieved by the result, see Rochester Gas & Electric Corp., et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 393 (1978).

The right to appeal accrues only to a party who is aggrieved by the result reached below. Rochester Gas & Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 393 at n.21 (1978); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 914 (1981).

A prevailing party may defend a result on any ground presented in the record, including one rejected below, once the other side appeals. Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-573, 10 NRC 775, 789 (1979).

5.2 Who Can Appeal

The right to appeal is confined to participants (i.e., parties) in the proceeding before the Licensing Board. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-433, 6 NRC 469 (1977); Consolidated Edison Co. of N.Y. (Indian Point Station, Unit 2), ALAB-369, 5 NRC 129 (1977); Kansas Gas & Electric Co., et al. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-311, 3 NRC 85, 88 (1976); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-294, 2 NRC 663, 664 (1975); Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 & 2), ALAB-251, 8 AEC 993, 994 (1974); Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 & 2), ALAB-237, 8 AEC 654 (1974). Thus, with the single exception of a State which is participating under the "interested State" provisions of 10 CFR § 2.715(c), a nonparty to a proceeding may

not appeal from a Licensing Board's decision. Metropolitan Edison Co., et al. (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

Although an interested State is not a party to a proceeding in the traditional sense, the "participational opportunity" afforded to an interested State under 10 CFR § 2.715(c) includes the ability for an interested State to appeal from an initial decision. USERDA (Clinch River Breeder Reactor), ALAB-354, 4 NRC 383, 392 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-317, 3 NRC 175, 177-180 (1976).

In this vein, a person who makes a limited appearance before a Licensing Board is not a party and, therefore, may not appeal from the Board's decision. Metropolitan Edison Co., et al. (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

As to appeals by specific parties, the following should be noted:

- (1) A party satisfied with the result reached on an issue is normally precluded from appealing with respect to that issue, but he is free to challenge the reasoning used to reach the result in defending that result if another party appeals. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-282, 2 NRC 9, 10 at n.1 (1975). The prevailing party is free to urge any ground in defending the result, including grounds rejected by the Licensing Board. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 357 (1975).
- (2) A third party entering a special appearance to defend against discovery may appeal. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-311, 3 NRC 85, 87-88 (1976).
- (3) As to orders denying a petition to intervene, only the petitioner who has been excluded from the proceeding by the order may appeal. USERDA (Clinch River Breeder Reactor Plant), ALAB-345, 4 NRC 212 (1976). In such an appeal, other parties may file briefs in support of or opposition to the appeal. Id.
- (4) A party to a Licensing Board proceeding has no standing to press before an Appeal Board the grievances of other parties to the proceeding not represented by him. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-631, 13 NRC 87, 89 (1981), citing, Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30 (1979).

Third parties may file amicus briefs with respect to any appeal, even though such third parties could not prosecute the appeal themselves. Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 2), ALAB-369, 5 NRC 129 (1977); Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), ALAB-304, 3 NRC 1, 7 (1976). The Appeal Board in ALAB-304 implied that leave to file an amicus brief may be necessary. The procedure for filing an amicus brief, including the requirement to seek to file such brief, is now contained in 10 CFR § 2.715.

One seeking to appeal an issue must have participated and taken all timely steps to correct the error. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-583, 11 NRC 447 (1980).

The Commission has long construed its Rules of Practice to allow the Staff to appeal from initial decisions. 10 CFR § 2.762 explicitly treats the Staff as a party for purposes of filing exceptions. In the Matter of Radiation Technology, Inc., ALAB-567, 10 NRC 533, 547-548 (1979). Although a party generally may appeal only on a showing of discernible injury, the Staff may appeal on questions of precedential importance. A question of precedential importance is a ruling that would with probability be followed by other Boards facing similar questions. A question of precedential importance can involve a question of remedy. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 23-25 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

5.3 How to Appeal

The general rules as to the manner of taking an appeal are set out in 10 CFR § 2.762. An appeal is taken by the filing of exceptions within ten days after service of the initial decision. A supporting brief must be filed within 30 days after the exceptions have been filed, although the Staff has 40 days to file such a brief. Other parties may file supporting or opposing briefs in response within 30 days (40 days for the Staff) after the initial supporting brief of the appellant. See Sections 5.4 (Time for Filing Appeals), 5.9 (Perfecting Appeals), 5.10 (Briefs on Appeal) and 5.13 (Exceptions to Orders, Rulings, Initial Decisions, Partial Initial Decisions) for further discussion of these matters.

5.4 Time for Filing Appeals

As a general rule, only "final" actions are appealable. The test for "finality" for appeal purposes is essentially a practical one. For the most part, a Licensing Board's action is final when it either disposes of a major segment of a case or terminates a party's right to participate.

Rulings that do neither are interlocutory. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975).

Appeals from interlocutory orders issued by Licensing Boards must await the initial decision rendered by the Board at the end of the case. 10 CFR §§ 2.760 and 2.762; Cincinnati Gas and Electric Co. (William H. Zimmer Station), ALAB-633, 13 NRC 94 (1981), citing, Boston Edison Co. (Pilgrim Station, Unit 2), ALAB-269, 1 NRC 411 (1975).

In general, an immediately effective Licensing Board initial decision is a "final order," even though subject to appeal within the agency, unless its effectiveness has been administratively stayed pending the outcome of further Commission review. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 NRC 235 (1976). In other areas, an order granting discovery against a third party is "final" and appealable as of right. Kansas Gas & Electric Co., et al. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-311, 3 NRC 85, 87 (1976); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-122, 6 AEC 322 (1973). Similarly, a Licensing Board order on the issue of whether offsite activity can be engaged in prior to issuance of an LWA or a CP is appealable. Kansas Gas & Electric Co., et al. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-331, 3 NRC 771, 774 (1976). When a Licensing Board grants a Part 70 license to transport and store fuel assemblies during the course of an OL hearing, the decision is not interlocutory and is immediately appealable. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-76-1, 3 NRC 73, 74 (1976). Partial initial decisions which do not yet authorize construction activities nevertheless may be significant and, therefore, appealable as of right. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Units 1 & 2), ALAB-301, 2 NRC 853, 854 (1975). Similarly, a Licensing Board's decision authorizing issuance of an LWA and rejecting the applicant's claim that it is entitled to issuance of a construction permit is final for the purposes of appellate review. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 318 (1978).

A protracted withholding of action on request for relief may be treated as tantamount to a denial of the request and final action. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-117, 5 NRC 1442 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426, 428 (1977). At least in those instances where the delay involves a Licensing Board's failure to act on a petition to intervene, such a "denial" of the petition is appealable. Greenwood, supra.

As previously noted, an appeal is taken by the filing of exceptions within ten days after service of the initial decision. Licensing

Boards may not vary or extend the appeal periods provided for in the regulations. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-310, 3 NRC 33 (1976); Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 3), ALAB-281, 2 NRC 6 (1975). While a motion for a time extension may be filed with the Appeal Board and will sometimes be granted in complex cases, mere agreement among the parties is not sufficient to show good cause for an extension. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-154, 6 AEC 827 (1973).

The rules for filing exceptions also apply to exceptions to partial initial decisions. Once a partial initial decision is rendered, exceptions must be filed immediately in accordance with the regulations or the exceptions are waived. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-195, 7 AEC 455, 456 at n.2 (1974). See also Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Units 1 & 2), ALAB-301, 2 NRC 853, 854 (1975).

The time limits imposed in 10 CFR § 2.762(a) for filing appeal briefs refer to the date upon which the exceptions were actually filed and not to when they were originally due for filing prior to a time extension. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 125 (1977).

It is accepted appellate practice for the appeal period specified in 10 CFR § 2.762(a) to be tolled while the trial tribunal has before it an authorized and timely-filed petition for reconsideration of the decision or order in question. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-659, 14 NRC 983 (1981).

Pursuant to 10 CFR § 2.714a, an appeal concerning an intervention petition must await the ultimate grant or denial of that petition. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-472, 7 NRC 570, 571 (1978). A Licensing Board order which determines that petitioner has met the "interest" requirement for intervention and that mitigating factors outweigh the untimeliness of the petition but does not rule on whether petitioner has met the "contentions" requirement is not a final disposition of the petition seeking leave to intervene. Greenwood, supra, at 7 NRC 571.

The Appeal Board does not generally characterize its own decisions as final or not final for the purpose of review. Its opinion would only be advisory and the Appeal Board does not render advisory opinions in the absence of the most compelling considerations. The Office of the General Counsel may interpret 10 CFR §§ 2.770 and 2.771 (final decisions) pursuant to its mandate under 10 CFR § 1.32(f), and any party may request an interpretation of these regulations on finality if it so desires. Tennessee

Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 463 (1978).

Finality of a decision is usually determined by examining whether it disposes of at least a major segment of the case or terminates a party's right to participate. The general policy is to strictly enforce time limits for appeals following a final decision. However, where the lateness of filing was not due to a lack of diligence, but, rather, to a misapprehension about the finality of a Board decision, the Appeal Board will allow the appeal as a matter of discretion. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 159-160 (1980).

A petitioner's request that the denial of his intervention petition be overturned, treated as an appeal under 10 CFR § 2.714a, will be denied as untimely where it was filed almost 3 months after the issuance of a Licensing Board's order, especially in the absence of a showing of good cause for the failure to file an appeal on time. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-547, 9 NRC 638, 639 (1979).

5.5 Matters Considered on Appeal

Where a matter has been considered by the Commission, it may not be reconsidered by a Board. Commission precedent must be followed. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 463-465 (1980).

One may not appeal from an order delaying a ruling, when appeal will lie from the ruling itself. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-585, 11 NRC 469, 470 (1980).

Although a party generally may appeal only on a showing of discernible injury, the Staff may appeal on questions of precedential importance. A question of precedential importance is a ruling that would with probability be followed by other Boards facing similar questions. A question of precedential importance can involve a question of remedy. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 23-25 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

As a general rule, a party may seek appellate redress only on those parts of a decision or ruling which he can show will result in some discernible injury to himself. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-252, 8 AEC 1175, aff'd, CLI-75-1, 1 NRC 1 (1975). Within this rule, an intervenor can appeal as to all issues, whether or not raised by his or her own contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974).

There is some indication that a matter of recurring importance may be appealed in a particular case even though it may no longer be determinative in the case. However, if it is of insufficient general importance (for instance, whether existing guidelines concerning cross-examination were properly applied in an individual case), the Appeal Board will refuse to hear the appeal. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 316 (1978).

There is no right to an administrative appeal on every factual finding. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 461 at n.5 (1978).

In normal circumstances, an appeal will lie only from unfavorable action taken by the Licensing Board, not from wording of a decision with which a party disagrees but which has no operative effect. Duke Power Company (Cherokee Nuclear Stations, Units 1, 2 & 3), ALAB-482, 7 NRC 979, 980 (1978).

5.5.1 Issues Raised for the First Time on Appeal

Although the Appeal Board "might make an exception in the case of a serious substantive issue as to which a genuine problem has been demonstrated, (it) ordinarily will not entertain an issue raised for the first time on appeal." Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 348 (issues not raised in either proposed findings or exceptions to the initial decision). Thus, as a general rule, an appeal may be taken only as to matters or issues raised at the hearing. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981); Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 28 (1978); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-335, 3 NRC 830, 842 at n.26 (1976); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1021 (1973); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 343 (1973). The Appeal Board's disinclination to entertain an issue raised for the first time on appeal is particularly strong where the issue and factual averments underlying it could have been, but were not, timely put before the Licensing Board. Puerto Rico Electric Power Authority (North Coast Nuclear Power Plant, Unit 1), ALAB-648, 14 NRC 34 (1981).

Although the absence of an appeal does not deprive the Appeal Board of the right to review an issue contested before a Licensing Board, the Appeal Board must be judicious in taking up new matters not previously put in controversy. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 247 (1978).

An appeal may only be based on matters and arguments raised below. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980).

The jurisdiction of an Appeal Board to consider new matters arising during the course of its review of a Licensing Board decision does not hinge upon the nature of the proceeding. Rather, irrespective of whether a construction permit or an operating license is involved, the pivotal factor is the posture of the case and the degree of finality which has attached to the agency action which is in question. Where finality has attached to some but not all issues, Appeal Board jurisdiction to entertain new matters is dependent upon the existence of a reasonable nexus between those matters and the issues remaining before the Board. Virginia Electric & Power Company (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 707 (1979).

5.5.2 Effect on Appeal of Failure to File Proposed Findings

The Appeal Board is not required to review exceptions where no proposed findings and rulings were filed by the appellant on the issue with respect to which the exceptions are taken. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-280, 2 NRC 3, 4 at n.2 (1975). It is unclear whether failure to file proposed findings on an issue amounts to a total waiver of the right to appeal on that issue. For example, in Florida Power & Light Co., supra, the Appeal Board cited Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 333 (1973), in which it was stated that the failure to file proposed findings on an issue will be "taken into account" if the party later appeals that issue. (See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 864 (1974) to the same effect.) Thus, there is apparently some discretion in the Appeal Board to consider an appeal even though no proposed findings were filed by the appellant.

5.5.3 Matters Considered on Appeal of Ruling Allowing Late Intervention

One exception to the rule prohibiting interlocutory appeals is that a party opposing intervention may appeal an order admitting the intervenor. 10 CFR § 2.714a. See also Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20, 23 at n.7 (1976). However, since Licensing Boards have broad discretion in allowing late intervention, an Appeal Board's review of an order allowing late intervention is limited to determining whether that discretion has been abused. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98, 107 (1976); Public Service Co. of Indiana, Inc., ALAB-339, *supra*. The Appeal Board will look to the papers filed in the case and the uncontroverted facts set forth therein to determine if the Licensing Board abused its discretion. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8 (1977).

5.5.4 Consolidation of Appeals on Generic Issues

The Appeal Board consolidated and scheduled for hearing radon cases where intervenors are actively participating, and held the remaining cases in abeyance. Where the issues are largely generic, consolidation will result in a more manageable number of litigants, and relevant considerations will likely be raised in the first group of consolidated cases. Philadelphia Electric Co., (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-540, 9 NRC 428, 433 (1979), reconsid. denied, ALAB-546, 9 NRC 636 (1979).

5.6 Appeal Board Action

5.6.1 Role of Appeal Board

The Appeal Board's role is generally that of an appellate tribunal. For example, it will not police a licensee's compliance with license conditions, a matter suitable for the Commission's enforcement branch. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-356, 4 NRC 525 (1976).

The Appeal Board reviews all initial decisions and the record, regardless of whether exceptions have been filed. See, e.g., South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-114, 6 AEC 253 (1973); Cincinnati Gas & Electric Co. (William H. Zimmer Station), ALAB-79, 5 AEC 342 (1972). Where exceptions are filed, the Appeal Board is not limited

in its review to those exceptions. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 353, 361 (1973). Although it has the power to do so, the Appeal Board will not ordinarily conduct a de novo review of the record and make its own independent findings of fact since the Licensing Board is the basic fact-finder under Commission procedures. Wisconsin Electric Power Co. (Point Beach Nuclear Plant No. 2), ALAB-78, 5 AEC 319 (1972). Nevertheless, the Appeal Board, as part of its customary sua sponte review of an initial decision in the absence of an appeal, may examine independently and with care the totality of the evidence if the matter at hand is of an unusual character. Southern California Edison Company and San Diego Gas & Electric Company (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-432, 6 NRC 465 (1977). In addition, an Appeal Board has authority to make factual findings, on the basis of record evidence, which are different from those reached by a Licensing Board and can issue supplementary findings of its own. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 42 (1977). The Appeal Board decision can be based upon grounds completely foreign to those relied upon by the Licensing Board so long as the parties had a sufficient opportunity to address those new grounds with argument and, where appropriate, evidence. Id. However, notwithstanding its authority to do so, the Appeal Board will normally be reluctant to search the record to determine whether it included sufficient information to support conclusions for which the Licensing Board failed to provide adequate justification. A remand, very possibly accompanied by an outright vacation of the result reached below, would be the usual course where the Licensing Board's decision does not adequately support the conclusions reached therein. Public Service Co. of New Hampshire, ALAB-422 supra.

The Appeal Board is not subject to the jurisdictional limitations placed upon Federal courts by the "case or controversy" provision in Article III of the Constitution. Therefore, there is no insuperable barrier to the Appeal Board's rendition of an advisory opinion on issues which have been indisputably mooted by events occurring subsequent to a Licensing Board's decision. However, this course will not be embarked upon in the absence of the most compelling cause. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 54 (1978).

The Appeal Board, and the NRC in general, lacks the power to decide whether a civil penalty assessed against an applicant should be borne by the applicant's stock-

holders rather than its ratepayers. This is a matter to be determined by State regulatory agencies. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 198 (1978).

The division of jurisdiction between the Licensing Board and the Appeal Board has not been clearly established with respect to decisions which have been appealed. Nevertheless, it is clear that once a partial initial decision (PID) has been appealed, supervening factual developments relating to major safety issues considered in the PID should be raised before the Appeal Board, not the Licensing Board. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-383, 5 NRC 609 (1977).

The Appeal Board normally lacks jurisdiction to entertain motions seeking review only of actions of the Director of Nuclear Reactor Regulation; the Commission itself is the forum for such review. See 10 CFR § 2.206(c). Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-466, 7 NRC 457 (1978).

Although the absence of an appeal does not deprive the Appeal Board of the right to review an issue contested before a Licensing Board, the Appeal Board must be judicious in taking up new matters not previously put in controversy. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 247 (1978).

An Appeal Board has the authority to take evidence -- particularly in regard to limited matters as to which the record is incomplete. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 461 (1978).

When the time within which the Commission might have elected to review an Appeal Board decision expires, any residual jurisdiction retained by the Appeal Board expires. 10 CFR § 2.717(a). Washington Public Power Supply Systems, et al. (WPPSS Nuclear Project Nos. 3 and 5), ALAB-501, 8 NRC 381, 382 (1978).

An adjudicatory board does not have jurisdiction to reopen a record with respect to an issue when finality has attached to the resolution of that issue. This conclusion is not altered by the fact that the board has another discrete issue pending before it. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2) ALAB-513, 8 NRC 694, 695 (1978).

Appeal Board review will be routinely undertaken of any final disposition of a licensing proceeding that either was or had to be founded upon substantive determinations of significant safety or environmental issues. Washington Public Power System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687, 692 (1979), cited in Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 2 and 3), ALAB-652, 14 NRC 627, 628 (1981).

In the course of its review of an initial decision in a construction permit proceeding, an Appeal Board is free to sua sponte raise issues which were neither presented to nor considered by the Licensing Board. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 707 (1979).

If conditions on a license are invalid, the Appeal Board may either remand the matter or prescribe a remedy itself. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 31 (1980), reconsidered, ALAB-581, 11 NRC 233 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

Once an Appeal Board has wholly terminated its review of an initial decision -- whether it be a construction permit or an operating license proceeding -- its jurisdiction over the proceeding comes to an end. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 708 (1979).

5.6.2 Parties' Opportunity to be Heard on Appeal

On considering an issue on appeal, the Appeal Board should not act on the issue on the basis of the receipt of Staff views only without affording equal opportunity to other parties to express their views. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-76-14, 4 NRC 163 (1976); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), CLI-74-12, 7 AEC 203, 204 at n.3 (1974).

Requests for emergency relief which require adjudicatory boards to act without giving the parties who will be adversely affected a chance to be heard ought to be reserved for palpably meritorious cases and filed only for the most serious reasons. The Appeal Board will grant emergency relief without affording the adverse parties at least some opportunity to be heard in opposition only in the most extraordinary circumstances. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 780 at n.27 (1977).

5.6.3 Standards for Reversing Licensing Board on Findings of Fact

The Commission's regulations explicitly provide that the Commission or the Appeal Board has the authority to modify or set aside findings made by the Licensing Board. 10 CFR §§ 2.740(b), 2.785; Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 29 (1979).

In acting for the Commission, the Appeal Board need not accept every finding a Licensing Board makes and the Appeal Board will not apply the "clearly erroneous" test of Rule 52(a) of the Federal Rules of Civil Procedure, which governs appellate review of district court findings. But the Appeal Board is not free to disregard the fact that Licensing Boards are the Commission's primary fact-finding tribunals. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-303, 2 NRC 858, 867 (1975). In this regard, Appeal Boards are reluctant to make essentially basic environmental findings which did not receive Staff consideration in the FES or adequate attention at the Licensing Board hearing. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 & 2), ALAB-260, 1 NRC 51, 55 (1975).

Although an Appeal Board is not bound by the factual findings of the Licensing Board, until the Appeal Board can review the record itself or the appellant demonstrates the inadequacy of the Licensing Board's findings, those findings deserve the Appeal Board's respect. Toledo Edison Co., et al. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977).

In general, an Appeal Board has the right to reject or modify findings of a Licensing Board if, after giving the Licensing Board's decision the probative force it intrinsically commands, the Appeal Board is convinced that the record compels a different result. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 357 (1975); accord, Northern Indiana Public Service Co., ALAB-303 supra. The same standard applies even if the Appeal Board is conducting a review sua sponte. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 803 (1981). In fact, where the record will fairly sustain a result deemed "preferable" by the agency to the one selected by the Licensing Board, the agency may substitute its judgment for that of the lower Board. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977); Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-355, 4 NRC 397, 402-405 (1976). Nevertheless, a finding by a Licensing Board will not be

overturned simply because the Appeal Board might have reached a different result had it been the primary fact-finder. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184, 1187-1188 (1975); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 322 (1972). Moreover, the "substantial evidence" rule does not apply to the NRC's internal review process and hence does not control an Appeal Board's evaluation of Licensing Board decisions. Duke Power Co., ALAB-355 *supra*.

Notwithstanding its authority to do so, the Appeal Board will normally be reluctant to search the record to determine whether it included sufficient information to support conclusions for which the Licensing Board failed to provide adequate justification. A remand, very possibly accompanied by an outright vacation of the result reached below, would be the usual course where the Licensing Board's decision does not adequately support the conclusions reached therein. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 42 (1977). Thus, a Licensing Board's failure to clearly set forth the basis for its decision is ground for reversal.

On specific matters, a Licensing Board's determination as to a petitioner's "personal interest" will be reversed only if it is irrational. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 193 (1973). Where a Licensing Board has permitted a petitioner to amend his petition to cure defects prior to issuance of a final order, allowance of an opportunity to amend will not be distributed by the Appeal Board absent a showing of gross abuse of discretion. Northern States Power Co., ALAB-107 *supra*.

A determination of fact in an adjudicatory proceeding which is necessarily grounded wholly in a nonadversary presentation is not entitled to be accorded generic effect, even if the determination relates to a seemingly generic matter rather than to some specific aspect of the facility in question. Washington Public Power Supply System (WPPSS Nuclear Projects No. 3 & 5), ALAB-485, 7 NRC 986, 980 (1978).

Adjudicatory decisions must be supported by evidence properly in the record. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-580, 11 NRC 227, 230 (1980).

Where a Licensing Board imposes an incorrect remedy, an Appeal Board will search for a proper one. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4),

ALAB-581, 11 NRC 233, 234-235 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

5.6.4 Grounds for Immediate Suspension of Construction Permit by Appeal Board

The Appeal Board, ancillary to its appellate jurisdiction, has authority to suspend a decision authorizing issuance of a construction permit. Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-348, 4 NRC 225 (1976).

Immediate revocation or suspension of a construction permit, upon review of the issuance thereof, is appropriate if the Appeal Board finds deficiencies that:

- (a) pose a hazard during construction;
- (b) need to be corrected before further construction takes place;
- (c) are intractable; or
- (d) might result in significant environmental harm if construction is permitted to continue.

Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383, 401 (1975).

Whether a public utility commission's consent is required before construction contracts can be entered into and carried out is a question of State law. If the State authorities want to suspend construction pending the results of the public utility commission's review, it is their prerogative. But the Appeal Board will not suspend construction on the "strength of nothing more than potentiality of action adverse to the facility being taken by another agency" (citation omitted). Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 748 (1977).

5.6.5 Immediate Effectiveness of Appeal Board Decision

Decisions of Appeal Boards which are immediately effective are presumptively valid. Unless and until such a decision is stayed or overturned by the appropriate authority, it is entitled to full recognition. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-423, 6 NRC 115, 117 (1977).

Decisions and orders of an Appeal Board are immediately effective. Absent an Appeal Board's or the Commission's issuance of a stay, a Licensing Board is both entitled and duty-bound to carry out Appeal Board directives with suitable

dispatch. Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-597, 11 NRC 870, 873-874 (1980).

5.6.6 Effect of Appeal Board Affirmance as Precedent

If an Appeal Board affirms a Licensing Board decision as to which no exceptions have been filed without extended discussion, the Licensing Board's decision does not necessarily have the same precedential value as Appeal Board decisions. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-181, 7 AEC 207, 208 at n.4 (1974). Where no exceptions have been filed and the Appeal Board states that there is "no error requiring corrective action," the Appeal Board's affirmance of the Licensing Board's decision cannot be read as necessarily signifying approval of everything said by the Licensing Board. The inference cannot be drawn that the Appeal Board agrees with all the reasoning by which the Licensing Board justified its decision or with the Licensing Board's discussion of matters which do not have a direct bearing on the outcome. Id.

The Appeal Board does not give stare decisis effect to affirmation of Licensing Board conclusions on legal issues not brought to it by way of an appeal. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-482, 7 NRC 979, 981 at n.4 (1978).

5.6.6.1 Precedential Effect of Unpublished Opinions of Appeal Boards

Unless published in the official NRC reports, decisions and orders of Appeal Boards are usually not to be given precedential effect in other proceedings. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-592, 11 NRC 744, 745 (1980).

5.6.7 Disqualification of Appeal Board Member

In denying a petition to review a decision by an Appeal Board member who decided not to recuse himself, the Commission ruled that in the absence of bias, an Appeal Board member who participated as an adjudicator on appeal in a construction permit proceeding need not disqualify himself from participating as an adjudicator in the operating license proceeding for the same facility. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-11, 11 NRC 511, 512 (1980).

5.7 Stays Pending Appeal

Under 10 CFR § 2.764(f)(2), upon receipt of a Licensing Board's decision authorizing the issuance of an operating license, the Commission will determine, sua sponte, whether to stay the effectiveness of the decision. Criteria to be considered by

the Commission include, but are not limited to: the gravity of the substantive issue; the likelihood that it has been resolved incorrectly below; and the degree to which correct resolution of the issue would be prejudiced by operation pending review. Until the Commission speaks, the Licensing Board's decision is considered to be automatically stayed. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-647, 14 NRC 27 (1981).

A stay of the effectiveness of a Licensing Board decision pending appeal of that decision to the Appeal Board may be sought by the party appealing the decision. Such a stay is normally sought by written motion, although, in extraordinary circumstances, a stay ex parte may be granted. See, e.g., Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-192, 7 AEC 420 (1974). The movant may submit affidavits in support of his motion and opposing parties may file opposing affidavits and it is appropriate for the appellate tribunal to accept and consider such affidavits in ruling on the motion for a stay. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-356, 4 NRC 525 (1976). The party seeking a stay bears the burden of marshalling the evidence and making the arguments which demonstrate his entitlement to it. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 785 (1977).

In the past it has been held that, as a general rule, motions for stay of a Licensing Board action should be directed to the Licensing Board in the first instance. Under those earlier rulings, the Appeal Board made it clear that, while filing a motion for a stay with the Licensing Board is not a jurisdictional prerequisite to seeking a stay from the Appeal Board, Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-358, 4 NRC 10 (1976), the failure, without good cause, to first seek a stay from the Licensing Board is a factor which the Appeal Board may properly take into account in deciding whether it should itself grant the requested stay. See Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772 (1977); Public Service Co. of New Hampshire, ALAB-338 supra. See also Toledo Edison Co. (Davis-Besse Nuclear Power Plant), ALAB-25, 4 AEC 633, 634 (1971). More recently, however, amendments to 10 CFR § 2.788 on stays pending review have made it clear that a request for stay may be filed with either the Licensing Board or the Appeal Board. 10 CFR § 2.788(f).

An Appeal Board has the power to stay the effectiveness of conditions imposed in a construction permit without staying the effectiveness of the permit itself. Toledo Edison Co., et al. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977).

An Appeal Board may also entertain and grant a motion for a stay pending remand of a Licensing Board decision. See Public Service

Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503 (1977).

In addition to stays pending appeals to the Appeal Board, the Appeal Board itself will entertain requests for stays pending judicial review of its own decision. The Virginia Petroleum Jobbers criteria (these criteria have been incorporated into the regulations -- see Section 5.7.1 infra) for granting stays are applicable in such a situation. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 272 (1974).

A party aggrieved by an Appeal Board decision denying a stay should apply to the Commission for a stay under 10 CFR § 2.788(a), (h), rather than petition for review under 10 CFR § 2.786(b). Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 2), CLI-78-3, 7 NRC 307, 308 at n.2 (1978); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 30 at n.44 (1978). Under 10 CFR § 2.788(a), a party may move for a stay of an Appeal Board decision pending Commission review if such motion is filed within the period of time after service of the decision for which a stay is sought set forth in Section 2.788(a). Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, No. 2), ALAB-414, 5 NRC 1425, 1427 (1977). The date of service for purposes of computing the time for filing a stay motion under Section 2.788 is the date on which the Docketing and Service Branch of the Office of the Secretary of the Commission serves the order or decision. Id. at 5 NRC 1427-1428.

Despite its subordinate status, an Appeal Board is empowered by 10 CFR § 2.764(f)(2) to grant a 10 CFR § 2.788 stay without regard to what the Commission has done or might do in its sua sponte review. This power is granted at least in part because the factors that the Commission is to consider in making its 10 CFR § 2.764 determination do not coincide with the criteria set out for the Appeal Board in the Virginia Petroleum Jobbers case. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-647, 14 NRC 27, at 30, n.6 (1981).

5.7.1 Requirements for a Stay Pending Appeal

The Appeal Board has long held that a stay of an initial decision will be granted only upon a showing similar to that required for a preliminary injunction in the Federal courts. Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-81, 5 AEC 348 (1972). The test to be applied for such a showing is that laid down in Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-338, 4 NRC 10 (1976); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-221, 8 AEC 95, 96 (1974); Southern

California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-199, 7 AEC 478, 480 (1974); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-192, 7 AEC 420, 421 (1974). See also Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-647, 14 NRC 27 (1981); South Carolina Electric and Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-643, 13 NRC 898 (1981); Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-30, 14 NRC 357 (1981). Under this test, four factors are examined:

- (1) has the movant made a strong showing that it is likely to prevail upon the merits of its appeal;
- (2) has the movant shown that, without the requested relief, it will be irreparably injured;
- (3) would the issuance of a stay substantially harm other parties interested in the proceeding;
- (4) where does the public interest lie?

The Virginia Petroleum Jobbers criteria for granting a stay have been incorporated into the regulations at 10 CFR § 2.788(e). Since that section merely codifies long-standing agency practice which parallels that of the courts, Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458 7 NRC 155, 170 (1978), prior agency case law delineating the application of the Virginia Petroleum Jobbers criteria presumably remains applicable.

The Virginia Petroleum Jobbers rule applies not only to stays of initial decisions of Licensing Boards, but also to stays of Licensing Board proceedings in general, Allied General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671 (1975), and stays pending judicial review, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 272 (1974). In addition, the concept of a stay pending consideration by the Appeal Board of a petition for directed certification has been recognized. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-307, 3 NRC 17 (1976). The rule applies to stays of limited work authorizations, Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-437, 6 NRC 630 (1977), as well as to requests for emergency stays pending final disposition of a stay motion. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-404, 5 NRC 1185, 1186-89 (1977). The rule also applies to stays of implementation and enforcement of radiation protection standards. Environmental Radiation Protection Standards for Nuclear Power Operations, (40 CFR § 190), CLI-81-4, 13 NRC 298 (1981); Uranium Mill Licensing

Requirements (10 CFR Parts 30, 40, 70 and 150), CLI-81-9, 13 NRC 460, 463 (1981). It also applies to postponements of the effectiveness of a license amendment issued by the NRC Staff. In the case of a request for postponement of an amendment, the Commission has stated that a bare claim of an absolute right to a prior hearing on the issuance of a license amendment does not constitute a substantial showing of irreparable injury as required by 10 CFR § 2.788(e). Nuclear Fuel Services, Inc. and New York State Energy Research and Development Authority (Western New York Nuclear Service Center), CLI-81-29, 14 NRC 940 (1981).

Note that 10 CFR § 2.788 does not expressly deal with the matter of a stay pending remand of a proceeding to the Licensing Board. Prior to the promulgation of Section 2.788, the Commission held that the standards for issuance of a stay pending proceedings on remand are less stringent than those of the Virginia Petroleum Jobbers test. Public Service Co. of N.H. (Seabrook Station, Units 1, 2 & 3), CLI-77-8, 5 NRC 503 (1977). In this vein, the Commission ruled that the propriety of issuing a stay pending remand was to be determined on the basis of a traditional balance of equities and on consideration of possible prejudice to further actions resulting from the remand proceedings. Similarly, in Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772 (1977), the Appeal Board ruled that the criteria for a stay pending remand differ from those required for a stay pending appeal. Thus, it appears that the criteria set forth in 10 CFR § 2.788 may not apply to requests for stays pending remand. In this same vein, where a litigant who has prevailed on a judicial appeal of an NRC decision seeks a suspension of the effectiveness of the NRC decision pending remand, such a suspension is not controlled by the Virginia Petroleum Jobbers criteria but, instead, is dependent upon a balancing of all relevant equitable considerations. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 159-60 (1978). In such circumstances, the negative impact of the court's decision places a heavy burden of proof on those opposing the stay. Id. at 7 NRC 160.

Where the four factors set forth in 10 CFR § 2.788(e) are applicable, no single one of the factors is, of itself, necessarily dispositive. Rather, the strength or weakness of the movant's showing on a particular factor will determine how strong his showing on the other factors must be in order to justify the relief he seeks. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-338, 4 NRC 10 (1976); Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-30, 14 NRC 357 (1981). In any event, there should be more than a mere showing of the possibility of legal error by a Licensing

Board to warrant a stay. Philadelphia Electric Co., ALAB-221 *supra*; Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-158, 6 AEC 999 (1973). The establishment of grounds for appeal is not itself sufficient to justify a stay. Rather, there must be a strong probability that no ground will remain upon which the Licensing Board's action could be based. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977).

The factor which has proved most crucial in Appeal Board deliberations with regard to stays pending appeal is the question of irreparable injury to the movants if the stay is not granted. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795 (1981); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-437, 6 NRC 630, 632 (1977). See also Westinghouse Electronic Corp. (Exports to the Philippines), CLI-80-14, 11 NRC 631, 662 (1980). It is the established rule that a party is not ordinarily granted a stay of an administrative order without an appropriate showing of irreparable injury. *Id.*, quoting Permian Basin Area Rate Cases, 390 U.S. 747, 773 (1968). The irreparable injury requirement is not satisfied by some cost merely feared as liable to occur at some indefinite time in the future. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977). Nor are actual injuries, however substantial in terms of money, time and energy necessarily expended in the absence of a stay, sufficient to justify a stay if not irreparable. Davis-Besse, supra. Similarly, mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 779 (1977); Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separation Facility), ALAB-296, 2 NRC 671 (1975). Similarly, the expense of an administrative proceeding is usually not considered irreparable injury. Uranium Mill Licensing Requirements (10 CFR Parts 30, 40, 70, and 150), CLI-81-9, 13 NRC 460, 465 (1981), citing Meyers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938) and Hornblower and Weeks-Hemphill Noyes, Inc. v. Csaky, 427 F. Supp. 814 (S.D.N.Y. 1977).

The "level or degree of possibility of success" on the merits necessary to justify a stay will vary according to the tribunal's assessment of the other factors that must be considered in determining if a stay is warranted. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-437, 6 NRC 630, 632 (1977), citing Washington Metropolitan Area Transit Commission v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977). Where there

is no showing of irreparable injury absent a stay and the other factors do not favor the movant, an overwhelming showing of likelihood of success on the merits is required to obtain a stay. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-404, 5 NRC 1185, 1186-1189 (1977). See also Florida Power & Light Co., ALAB-415, 5 NRC 1435, 1437 (1977) to substantially the same effect.

To make a strong showing of likelihood of success on the merits, the movant must do more than list the possible grounds for reversal. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795 (1981).

On a motion for a stay, the burden of persuasion on the four factors of Virginia Petroleum Jobbers (now set forth in 10 CFR § 2.788) is on the movant. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 270 (1978); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795 (1981).

In Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-481, 7 NRC 807, 808 (1978), the Appeal Board stressed the importance of the irreparable injury requirement, stating that a party is not ordinarily granted a stay absent an appropriate showing of irreparable injury. Where a decision as to which a stay is sought does not allow the issuance of any licensing authorization and does not affect the status quo ante, the movant will not be injured by the decision and there is, quite simply, nothing for the Appeal Board to stay. Jamesport, supra.

The importance of a showing of irreparable injury absent a stay was stressed by the Appeal Board in Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC 527, 530 (1978), where the Appeal Board indicated that a stay application which does not even attempt to make a showing of irreparable injury is virtually assured of failure.

10 CFR § 2.788 confers the right to seek stay relief only upon those who have filed (or intend to file) a timely appeal from the decision or order sought to be stayed. Portland General Electric Company, et. al. (Trojan Nuclear Plant), ALAB-524, 9 NRC 65, 68-69 (1979).

5.7.2 Stays Pending Remand After Judicial Review

Where a litigant who has prevailed upon a judicial appeal of an NRC decision seeks a suspension of the effectiveness of the NRC decision pending remand, such a suspension is not

controlled by the Virginia Petroleum Jobbers criteria but, instead, is dependent upon a balancing of all relevant equitable considerations. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 159-60 (1978). In such circumstances, the negative impact of the court's decision places a heavy burden of proof on those opposing the stay. Id. at 7 NRC 160.

5.8 Specific Appealable Matters

5.8.1 Rulings on Intervention

NRC regulations contain a special provision (10 CFR § 2.714a) allowing an interlocutory appeal from a Licensing Board order on a petition for leave to intervene. Under 10 CFR § 2.714a(b), a petitioner may appeal such an order but only if the effect thereof is to deny the petition in its entirety -- i.e., to refuse petitioner entry into the case. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-586, 11 NRC 472, 473 (1980). Petitioner may not appeal an order admitting him as an intervenor but denying certain of his contentions. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-329, 3 NRC 607 (1976); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-302, 2 NRC 856 (1975); Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-286, 2 NRC 213 (1975); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-273, 1 NRC 492, 494 (1975); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-269, 1 NRC 411 (1975). Similarly, where a proceeding is divided into two segments for convenience purposes and a petitioner is barred from participation in one segment but not the other, that is not such a denial of participation as will allow an interlocutory appeal under 10 CFR § 2.714a. Gulf States Utilities Co., ALAB-329 supra.

A State participating as an "interested State" under 10 CFR § 2.715(c) may appeal an order barring such participation but it may not seek review of an order which permits the State to participate but excludes an issue which it seeks to raise. Gulf States Utilities Co., ALAB-329 supra.

Only the petitioner may appeal from an order denying it leave to intervene. USERDA (Clinch River Breeder Reactor Plant), ALAB-345, 4 NRC 212 (1976). Other parties may file briefs in support of or opposition to the appeal. Id. The Applicant, the NRC Staff or any other party may appeal an order granting a petition to intervene or request for a hearing in whole or in part, but only on the grounds that the petition or request should have been denied in whole. 10 CFR § 2.714(c).

A Licensing Board's failure, after a reasonable length of time, to rule on a petition to intervene is tantamount to a denial of the petition. Where the failure of the Licensing Board to act is both unjustified and prejudicial, the petitioner may seek interlocutory review of the Licensing Board's delay under 10 CFR § 2.714a. The Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977).

Pursuant to 10 CFR § 2.714a, an appeal concerning an intervention petition must await the ultimate grant or denial of that petition. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-472, 7 NRC 570, 571 (1978). The action of a Licensing Board in provisionally ordering a hearing and in preliminarily ruling on petitions for leave to intervene is not appealable under 10 CFR § 2.714a in a situation where the Board cannot rule on contentions and the need for an evidentiary hearing until after the special prehearing conference required under 10 CFR § 2.751a and where the petitioners denied intervention may qualify on refiling. Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 280 (1978). Similarly, a Licensing Board order which determines that petitioner has met the "interest" requirement for intervention and that mitigating factors outweigh the untimeliness of the petition but does not rule on whether petitioner has met the "contentions" requirement is not a final disposition of the petition seeking leave to intervene. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-472, 7 NRC 570, 571 (1978).

10 CFR § 2.714a does not authorize an appellant to file a brief in reply to parties' briefs in opposition to the appeal. Rather, leave to file a reply brief must be obtained. Nuclear Engineering Co. (Sheffield, Ill. Low-Level Waste Disposal Site), ALAB-473, 7 NRC 737, at 745, n.9 (1978).

Appellate review of a Licensing Board ruling rejecting some but not all of a party's contentions is available only at the end of the case. Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-492, 8 NRC 251, 252 (1978).

While the regulations do not explicitly provide for Commission review of decisions on intervention, the Commission has entertained appeals in this regard and review by the Commission apparently may be sought. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939 (1978).

Under settled practice, Appeal Boards do not on their own initiative review Licensing Board orders granting or denying intervention. If those affected do not deem themselves sufficiently aggrieved to appeal, there is no reason for

Appeal Boards to concern themselves. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687, 688 (1979).

5.8.2 Scheduling Orders

Since scheduling is a matter of Licensing Board discretion, the Appeal Boards generally will not interfere with scheduling decisions absent a "truly exceptional situation." Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 467 (1980); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-295, 2 NRC 668 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-293, 2 NRC 660 (1975); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 250 (1974). See also Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-344, 4 NRC 207, 209 (1976) (Appeal Board is reluctant to overturn or otherwise interfere with scheduling orders of Licensing Boards absent due process problems); and Houston Lighting and Power Co., et al. (South Texas Project, Units 1 and 2), ALAB-637, 13 NRC 367 (1981). (Appeal Board is loath to interfere with a Licensing Board's denial of a request to delay a proceeding where the Commission has ordered an expedited hearing; in such a case there must be a "compelling demonstration of a denial of due process or the threat of immediate and serious irreparable harm" to invoke discretionary review).

Although, absent special circumstances, the Appeal Board will generally review Licensing Board scheduling determinations only where confronted with a claim of deprivation of due process, the Appeal Board may, on occasion, review a Licensing Board scheduling matter when that scheduling appears to be based on the Licensing Board's misapprehension of an Appeal Board directive. See, e.g., Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-468, 7 NRC 464, 468 (1978).

Matters of scheduling rest peculiarly within the Licensing Board's discretion; the Appeal Board is reluctant to review scheduling orders, particularly when asked to do so on an interlocutory basis. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-541, 9 NRC 436, 438 (1979).

5.8.3 Discovery Rulings

5.8.3.1 Rulings on Discovery Against Nonparties

An order granting discovery against a nonparty is final and appealable by that nonparty as of right. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-122, 6 AEC 322 (1973). An order denying such discovery is wholly

interlocutory and an immediate appeal by the party seeking discovery is excluded by 10 CFR § 2.730(f). Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-116, 6 AEC 258 (1973).

5.8.3.2 Rulings Curtailing Discovery

In appropriate instances, an order curtailing discovery is appealable. To establish reversible error from curtailment of discovery procedures, a party must demonstrate that the action made it impossible to obtain crucial evidence, and implicit in such a showing is proof that more diligent discovery is impossible. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-303, 2 NRC 858, 869 (1975). Absent such circumstances, however, an order denying discovery, and discovery orders in general are not immediately appealable since they are interlocutory. Houston Lighting and Power Co., et al. (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 472 (1981); Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-370, 5 NRC 131 (1977).

5.8.4 Refusal to Compel Joinder of Parties

A Licensing Board's refusal to compel joinder of certain persons as parties to a proceeding is interlocutory in nature and, pursuant to 10 CFR § 2.730(f), is not immediately appealable. Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-370, 5 NRC 131 (1977).

5.8.4.1 Order Consolidating Parties

Just as an order denying consolidation is interlocutory, an order consolidating the participation of one party with others may not be appealed prior to the conclusion of the proceeding. Portland General Electric Company, et. al. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308, 309-310 (1978); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20, 23 (1976).

5.8.5 Order Denying Summary Disposition

As is the case under Rule 56 of the Federal Rules of Civil Procedure, an order denying a motion for summary disposition under 10 CFR § 2.749 is not immediately appealable. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 182), ALAB-641, 13 NRC 550 (1981); Louisiana Power & Light Co. (Waterford Steam Electric Generating Station, Unit 3), ALAB-220, 8 AEC 93 (1974). Similarly, a deferral of action on, or denial of, a motion for summary disposition does not fall within the bounds of the 10 CFR § 2.714a exception to the prohibition on interlocutory

appeals, and may not be appealed. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit No. 1), ALAB-400, 5 NRC 1175 (1977). (See also 3.5).

5.8.6 Procedural Irregularities

Absent extraordinary circumstances, an Appeal Board will not consider alleged procedural irregularities unless an appeal has been taken by a party whose rights may have been substantially affected by such irregularities. Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 1), ALAB-231, 8 AEC 633, 634 (1974).

5.8.7 Matters of Recurring Importance

There is some indication that a matter of recurring procedural importance may be appealed in a particular case even though it may no longer be determinative in that case. However, if it is of insufficient general importance (for instance, whether existing guidelines concerning cross-examination were properly applied in an individual case), the Appeal Board will refuse to hear the appeal. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 316 (1978).

5.8.8 Advisory Decisions on Trial Rulings

Advisory decisions on trial rulings which resulted in no discernible injury ordinarily will not be considered on appeal. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-157, 6 AEC 858 (1973).

5.8.9 Order on Pre-LWA Activities

A Licensing Board order on the issue of whether offsite activity can be undertaken in prior to the issuance of an LWA or a construction permit is immediately appealable as of right. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-331, 3 NRC 771, 774 (1976).

5.8.10 Partial Initial Decisions

Partial initial decisions which do not yet authorize construction activities still may be significant and, therefore, immediately appealable as of right. Duke Power Co. (Perkins Nuclear Station, Unit 1, 2, & 3), ALAB-597, 11 NRC 870, 871 (1980). Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Units 1 & 2), ALAB-301, 2 NRC 853, 854 (1975).

Although 10 CFR § 2.762(a), the sole provision in the Rules of Practice allowing appeals to the Appeal Board, refers

only to "initial decisions," a "partial initial decision" with regard to activities prior to the issuance of an LWA is an "initial decision" within the meaning of 10 CFR § 2.762(a), at least where the partial initial decision amounts to a final decision on the merits of the applicant's request for permission to do work prior to issuance of an LWA. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-331, 3 NRC 771 (1976).

5.8.11 Other Licensing Actions

When a Licensing Board, during the course of an operating license hearing, grants a Part 70 license to transport and store fuel assemblies, the decision is not interlocutory and is immediately appealable as of right. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-76-1, 3 NRC 73, 74 (1976).

5.8.12 Rulings on Civil Penalties

In a civil penalty case, an order by the Administrative Law Judge affirming the Director of Inspection and Enforcement's order imposing civil penalties on a licensee, but at the same time granting a request for a hearing to present facts to support mitigation of the amount of the penalty, is not appealable under 10 CFR § 2.762 because it is premature. An appeal at this point is foreclosed by 10 CFR § 2.730(f). Section 2.730(f) is a rule of general applicability governing civil penalty proceedings to the same extent as it does licensing proceedings. Pittsburgh-Des Moines Steel Co., ALAB-441, 6 NRC 725 (1977).

5.8.13 Evidentiary Rulings

While all evidentiary rulings are ultimately subject to exceptions and appeal at the end of the proceeding, not all such rulings are worthy of appeal. Some procedural and evidentiary errors almost invariably occur in lengthy hearings where the presiding officer must rule quickly. Only serious errors affecting substantial rights and which might have influenced improperly the outcome of the hearing merit exception and briefing on appeal. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835, 836 (1974).

For a discussion of the procedure necessary to preserve evidentiary rulings for appeal, see Section 3.11.4.

5.8.14 Director's Decision on Show Cause Petition

The Appeal Board normally lacks jurisdiction to entertain motions seeking review only of actions of the Director of Nuclear Reactor Regulation; the Commission itself is the

forum for such review. See 10 CFR § 2.206(c). Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-466, 7 NRC 457 (1978).

5.8.15 Findings of Fact

There is no right to an administrative appeal on every factual finding. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 461 at n.5 (1978).

5.9 Perfecting Appeals

Normally, Appeal Boards will not review or pass upon specific rulings (e.g., rulings with respect to contentions) in the absence of a properly perfected appeal by the injured party. Washington Public Power Supply System (Nuclear Projects No. 1 & No. 4), ALAB-265, 1 NRC 374 at n. 1 (1975); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-242, 8 AEC 847, 848-849 (1974). An appeal is perfected by the filing of exceptions with respect to the order or ruling as to which an appeal is sought.

While the Commission does not require the same precision in the filings of laymen that is demanded of lawyers, any party wishing to challenge some particular Licensing Board action must at least identify the order in question, indicate that he is appealing from it, and give some reason why he thinks it's erroneous. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978).

5.9.1 General Requirements for Appeals from Initial Decision

The general requirements for an appeal from an initial decision are set out in 10 CFR § 2.762. Section § 2.762(a) provides that such appeal is to be filed within ten days after service of the initial decision. Each exception must state concisely and without supporting argument, the error of fact or law which is being asserted and must identify the portion of the decision to which the exception is being addressed. 10 CFR § 2.762(a); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-409, 5 NRC 1391, 1393-1395 (1977). A brief in support of exceptions is to be filed within 30 days (40 days in the case of the Staff). 10 CFR § 2.762(a).

5.10 Briefs on Appeal

5.10.1 Necessity of Brief

In any appeal, the filing of a brief in support of the appeal is mandatory. The appellant's failure to file such a brief will result in dismissal of the entire appeal and

this rule applies even if the appellant is acting pro se. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-140, 6 AEC 575 (1973). When a supporting brief is filed, it must address all of the exceptions raised by the appellant. Exceptions not briefed will be disregarded by the Appeal Board in its consideration of the appeal. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 315 (1978); Florida Power & Light Co. (St. Lucie Nuclear Plant Unit 2), ALAB-435, 6 NRC 541 (1977); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977); Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-359, 4 NRC 619, 621 at n.1 (1976); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-355, 3 NRC 830, 832 at n.3 (1976); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-270, 1 NRC 473 (1975); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 382-383 (1974); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-207, 7 AEC 957 (1974).

Intervenors have a responsibility to structure their participation so that it is meaningful and alerts the agency to the intervenors' position and contentions. Salem, supra, 14 NRC at 50, citing, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553 (1978). Even parties who participate in NRC licensing proceedings pro se have an obligation to familiarize themselves with proper briefing format and with the Commission's Rules of Practice. Salem, supra, 14 NRC at 50, n.7.

5.10.2 Time for Submittal of Brief

10 CFR § 2.762 provides that briefs supporting an appeal must be filed within 30 days (40 days for the Staff) after filing of exceptions.

The time limits imposed in 10 CFR § 2.762(a) for filing briefs refer to the date upon which the exceptions were actually filed and not to when they were originally due to filing prior to a time extension. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 125 (1977).

It is not necessary for a party to bring to the Appeal Board's attention the fact that its adversary has not met prescribed time limits. Nor as a general rule will any useful purpose be served by filing a motion seeking to have an appeal dismissed because the appellant's brief was a few days late; the mailing of a brief on a Sunday or Monday which was due

for filing the prior Friday does not constitute substantial noncompliance within the meaning of 10 CFR § 2.762(e)[now § 2.762(f)], which would warrant dismissal, absent unique circumstances. Wolf Creek, supra.

If unable to meet the deadline for filing a brief in support of its exception to a Licensing Board's decision, a party is duty-bound to seek an extension of time sufficiently in advance of the deadline to enable an Appeal Board to act seasonably upon the application. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-568, 10 NRC 554, 555 (1979).

In the event of some late arising unforeseen development, a party may tender a document belatedly. As a rule, such a filing must be accompanied by a motion for leave to file out-of-time which satisfactorily explains not only the reasons for the lateness, but also why a motion for a time extension could not have been seasonably submitted, irrespective of the extent of the lateness. Wolf Creek, ALAB-424 supra. Apparently, however, the written explanation for the tardiness may be waived by the Appeal Board if, at a later date, the Board and parties are provided with an explanation which the Board finds to be satisfactory. Id. at 126.

5.10.2.1 Time Extensions for Brief

Motions to extend the time for briefing are not favored. In any event, such motions should be filed in such a manner as to reach the Appeal Board at least one day before the period sought to be extended expires. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-117, 6 AEC 261 (1973); Boston Edison Co. (Pilgrim Nuclear Station), ALAB-74, 5 AEC 308 (1972). An extension of briefing time which results in the rescheduling of an already calendared oral argument will not be granted absent extraordinary circumstances. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-144, 6 AEC 628 (1973).

5.10.2.2 Supplementary Briefs

A supplementary brief will not be accepted unless requested by the Appeal Board or accompanied by a motion for leave to file which sets forth reasons for the out-of-time filing. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-115, 6 AEC 257 (1973).

Material tendered by a party without leave of the Appeal Board, after oral argument has been held and an appeal has been submitted for decision, constitutes improper supplemental argument. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 321-322 (1981).

5.10.3 Contents of Brief

The brief must contain sufficient information and argument to allow the appellate tribunal to make an intelligent disposition of the issue raised by an exception. Duke Power Co. (Catawba Nuclear Station, units 1 & 2), ALAB-355, 4 NRC 397 (1976). A brief which does not contain such information is tantamount to an abandonment of the issue. Id.; Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-270, 1 NRC 473 (1975).

10 CFR § 2.762(a) requires that a brief be confined to a consideration of those exceptions which have been previously filed by the party and that it specify the precise portion of the record relied on in support of the assertion of error. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981).

The general requirements for the form of the brief in support of an appeal are set forth in 10 CFR § 2.762. Any brief which in form or content is not in substantial compliance with these requirements may be stricken either on motion of a party or on the Commission's own motion. 10 CFR § 2.762(f). For example, an appendix to a reply brief containing a lengthy legal argument will be stricken when the appendix is simply an attempt to exceed the page limitations set by the Appeal Board. Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3; Perry Nuclear Power Plant, Units 1 and 2), ALAB-430, 6 NRC 457 (1977).

Although the Commission's Rules of Practices do not specifically require that a brief include a statement of the facts of the case, those facts relevant to the appeal should be set forth. An Appeal Board has indicated that it would dismiss an appeal if the failure to include a statement of facts were not corrected. Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-388, 5 NRC 640 (1977). The statement of facts set forth in the brief on appeal should include an exposition of that portion of the procedural history of the case related to the issue or issues presented by the appeal. Public Service Electric and Gas Company, et al. (Hope Creek Generating Station, Units 1 and 2), ALAB-394, 5 NRC 769, 771 at n.2 (1977).

As was previously mentioned (Section 5.10.1), all exceptions must be briefed and those exceptions not addressed in the brief will be ignored by the Appeal Board. Exceptions may be grouped together for briefing. See, e.g., Florida Power & Light Co. (St. Lucie Nuclear Power Plant), ALAB-335, 3 NRC 830, 832 at n.3 (1976); Long Island Lighting

Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 832 (1973). Each exception must be limited to a single error of fact or law and must identify with particularity the portion of the decision, order or ruling to which the exception is addressed. Shoreham, ALAB-156 *supra*. All factual assertions in the brief must be supported by references to specific portions of the record. Consolidated Edison Co. of N.Y. (Indian Point Station, Unit 2), ALAB-159, 6 AEC 1001 (1973). All references to the record should appear in the appellate brief itself; it is inappropriate to incorporate into the brief by reference a document purporting to furnish the requisite citations. Kansas Gas & Electric Company, et al. (Wolf Creek Generating Plant, Unit 1), ALAB-424, 6 NRC 122, 127 (1977). Incorporation by reference in the brief of exceptions without any supporting record references or other authority violates both the letter and spirit of 10 CFR § 2.762. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977). A letter incorporating by reference a brief and proposed findings and conclusions filed with the Licensing Board does not satisfy the requirements for a brief on exceptions. Public Service Electric and Gas Company, et al. (Hope Creek Generating Station, Units 1 and 2), ALAB-394, 5 NRC 769 (1977).

Documents appended to an appellate brief will be stricken where they constitute an unauthorized attempt to supplement the record. However, if the documents were newly discovered evidence and tended to show that significant testimony in the record was false, the Appeal Board might be sympathetic to a motion to reopen the hearing. Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3); (Perry Nuclear Power Plant, Units 1 & 2), ALAB-430, 6 NRC 451 (1977).

Personal attacks on opposing counsel are not to be made in appellate briefs, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835, 837-838 (1974), and briefs which carry out personal attacks in an abrasive manner upon Licensing Board members will be stricken. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-121, 6 AEC 319 (1973).

10 CFR § 2.762 was recently amended to set a 70-page limit on appellate briefs. 10 CFR § 2.762(e). Established page limitations may not be exceeded without leave and may not be circumvented by use of "appendices" to the brief, Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-430, 6 NRC 457 (1977), although Section 2.762(e) does permit a request for enlargement of the page limitation on a showing of good cause filed at least seven days before the date on which the brief is due. Briefs longer than 10

pages must contain a table of contents with page references and a table of authorities with page references to citations of authority. 10 CFR § 2.762(c). The appellant's brief must contain a statement of the case with applicable procedural history. Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 & 2), ALAB-394, 5 NRC 769 (1977); Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-388, 5 NRC 640 (1977).

A permitted reply to an answer should only reply to opposing briefs and not raise new matters. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 243, n.4 (1980).

Exceptions will be dismissed if sufficient information is not provided to dispose of the arguments intelligently and thus are "impossible of resolution." Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-573, 10 NRC 775, 786 (1979).

5.10.3.1 Opposing Briefs

Briefs in opposition to the appeal should concentrate on the appellant's brief, not on the exceptions which had been filed. See Illinois Power Co. (Clinton Power Station, Units 1 & 2), ALAB-340, 4 NRC 2, 52 at n.39 (1976).

Reply briefs are due within 30 days of filing and service of the appellant's brief, or, in the case of the Staff, within 40 days. 10 CFR § 2.762(b). If service of appellant's brief is made by mail, add 5 days to these time periods. 10 CFR § 2.710.

5.10.4 Amicus Curiae Briefs

10 CFR § 2.715 has been amended to allow a nonparty to file a brief amicus curiae with regard to matters before the Appeal Board or the Commission. The nonparty must submit a motion seeking leave to file the brief and acceptance of the brief is a matter of discretion with the Appeal Board or Commission. 10 CFR § 2.715(d).

5.11 Oral Argument

5.11.1 Failure to Appear for Oral Argument

Failure to advise the Appeal Board of an intent not to appear at oral argument already calendared is discourteous and unprofessional and may result in dismissal of the appeal. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-337, 4 NRC 7 (1976).

5.11.2 Grounds for Postponement of Oral Argument

Postponement of an already calendared oral argument for conflict reasons will be granted only upon a motion setting out:

- (1) the date the conflict developed;
- (2) the efforts made to resolve it;
- (3) the availability of alternate counsel;
- (4) public and private interest considerations;
- (5) the positions of the other parties;
- (6) the proposed alternate date.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-165, 6 AEC 1145 (1973).

5.11.3 Oral Argument by Nonparties

Under 10 CFR § 2.715(d), a person who is not a party to a proceeding may be permitted to present oral argument to the Appeal Board or the Commission. A motion to participate in the oral argument must be filed and nonparty participation is at the discretion of the Appeal Board or the Commission.

5.12 Actions Similar to Appeals

5.12.1 Motions to Reconsider

Licensing Boards have the inherent power to entertain and grant a motion to reconsider an initial decision. Consolidated Edison Co. of N.Y. (Indian Point Station, Unit 3), ALAB-281, 2 NRC 6 (1975).

Similarly, Appeal Boards will entertain a petition for reconsideration. When such a petition is filed, no other party need respond absent a request by the Appeal Board to do so. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-166, 6 AEC 1148, 1150 at n.7 (1973). The practice followed by the Appeal Board, that it is unnecessary for a party to respond to a motion for reconsideration unless specifically requested to do so by the Board, is also applicable to requests for clarification of a prior decision. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-544, 9 NRC 630, 631 (1979).

The Appeal Board has indicated that a motion to it to reconsider a prior decision will be denied where the Appeal Board is left with the conviction that what confronts it is not in reality an elaboration upon, or refinement of, arguments previously advanced, but instead, is an entirely new thesis. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977).

The Commission's refusal to hear a discretionary appeal does not cut off the Appeal Board's right to reconsider a question in an appeal which is still pending before the Appeal Board. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 260 (1978).

Where a party petitioning the Court of Appeals for review of a decision of the agency also petitions the agency to reconsider its decision and the Federal court stays its review pending the agency's disposition of the motion to reconsider, the Hobbs Act does not preclude the agency's reconsideration of the case. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 259 (1978).

An Appeal Board may not reconsider a matter after it has lost jurisdiction. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-579, 11 NRC 223, 225-226 (1980).

5.12.2 Interlocutory Reviews

With the exception of an appeal from a total denial of a petition to intervene (10 CFR § 2.714a), there is no right to appeal any interlocutory ruling by a Licensing Board to an Appeal Board. 10 CFR § 2.730(f).

Thus, for example, a Licensing Board's rulings limiting contentions or discovery or requiring consolidation are not immediately appealable, though such rulings may be reviewed later by deferring appeals on them until the end of the case. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20 (1976). In the same vein see Houston Lighting and Power Co., et al. (South Texas Project, Units 1 and 2), ALAB-637, 13 NRC 367 (1981). Similarly, interlocutory appeals from Licensing Board rulings made during the course of a proceeding, such as the denial of a motion to dismiss the proceeding, are forbidden. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-433, 6 NRC 469 (1977).

The prohibition against interlocutory appeals set forth in 10 CFR § 2.730(f) is a rule of general applicability. It

applies to an interlocutory ruling of the Administrative Law Judge with respect to civil penalties just as it applies to rulings in licensing proceedings. Pittsburgh-Des Moines Steel Co., ALAB-441, 6 NRC 725 (1977).

It applies as well to an intervenor's "appeal" of a Licensing Board order rescinding any earlier orders or issuances granting procedural assistance to intervenors, following the suspension of the operation of 10 CFR § 2.750(c) upon which the assistance program was based. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-625, 13 NRC 13 (1981).

It is not the Appeal Board's role to monitor the numerous interlocutory rulings made by Licensing Boards. Thus, interlocutory appeals of such rulings rarely will be entertained. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406, 410 (1978).

Although interlocutory appeals are generally not permitted as a matter of right under the Rules of Practice, 10 CFR § 2.730(f), the Appeal Board may, as a matter of discretion, elect to entertain matters normally subject to appellate review at the end of a case when (and if) an appeal is taken from the Licensing Board's final decision, 10 CFR § 2.718(i) and § 2.785(b)(1). Discretionary review is granted only sparingly and only when a Licensing Board's action either (a) threatens the party adversely affected with immediate and serious irreparable harm that could not be remedied by a later appeal or (b) affects the basic structure of the proceeding in a pervasive or unusual manner. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140 (1981); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-635, 13 NRC 309, 310 (1981); Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 & 2), ALAB-593, 11 NRC 761 (1980).

5.12.2.1 Directed Certification of Questions for Interlocutory Review

The Commission's rules do not allow the Appeal Board to entertain interlocutory appeals, 10 CFR § 2.730(f). In extraordinary circumstances, however, the Appeal Board can review interlocutory rulings by a petition for directed certification pursuant to 10 CFR § 2.718(i). Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-541, 9 NRC 436, 437 (1979).

Despite the general prohibition against interlocutory review, the regulations provide that a party may ask a Licensing Board to certify a question to the Appeal Board without ruling on it. 10 CFR § 2.718(i). The regulations also allow a party to request that a Licensing Board refer a ruling on a motion to the Appeal Board under 10 CFR § 2.730(f). The Appeal Board has construed Section 2.718 as giving any party the right to seek interlocutory review by filing a petition for "directed certification" to the Appeal Board. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478, 482-483 (1973).

A party seeking certification under Section 2.718(i) must, at a minimum, establish that a referral under 10 CFR § 2.730(f) would have been proper -- i.e., that a failure to resolve the problem will cause the public interest to suffer or will result in unusual delay and expense. Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-361, 4 NRC 625 (1976); Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478, 483 (1975). Discretionary interlocutory review will be granted by the Appeal Board only when the ruling below either (1) threatened the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal, or (2) affected the basic structure of the proceeding in a pervasive or unusual matter. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-635, 13 NRC 309, 310 (1981); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1), ALAB-588, 11 NRC 533, 536 (1980); Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

Recent cases have delineated, to a certain extent, the requirements for directed certification as to specific issues and under particular circumstances. In this vein:

- (1) Directed certification will not be granted unless the Licensing Board below had a reasonable opportunity to consider the question as to which certification is sought. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-297, 2 NRC 727, 729 (1975). See also Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-330, 3 NRC 613, 618-619, rev'd in part sub nom., USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).
- (2) While it may not always be dispositive, one factor favoring directed certification is that the question or order for which certification is sought is one which

"must be reviewed now or not at all." Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408, 413 (1976), cited in Houston Lighting and Power Co., et al. (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 473 (1981).

- (3) A mere conflict between Licensing Boards on a particular question does not mean that directed certification as to that question will automatically be granted. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-371, 5 NRC 409 (1977); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478, 484-485 (1975).
- (4) The Appeal Board does not favor certification on the question as to whether a contention should have been admitted into the proceeding. Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-326, 3 NRC 406, reconsid. den., ALAB-330, 3 NRC 613, rev'd in part sub nom., USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).
- (5) Certification will not be directed to review rulings on objections to interrogatories. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-318, 3 NRC 186 (1976). Nor will certification be directed to review orders rejecting objections to discovery on grounds of privilege. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96 (1981); Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-300, 2 NRC 752, 769 (1975). In this vein, the Appeal Board has refused to review a discovery ruling referred to it by a Licensing Board where the Board below did not explain why it believed Appeal Board involvement was necessary, where the losing party had not indicated that it was unduly burdened by the ruling and where the ruling was not novel. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-438, 6 NRC 638 (1977). The aggrieved party must make a strong showing that the impact of the discovery order upon that party or upon the public interest is indeed "unusual." Midland Plant, supra.
- (6) As to rulings on evidence, certification will not be granted, absent exceptional circumstances, on questions of what evidence or how evidence will be admitted. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-630, 13 NRC 84 (1981); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406, 410 (1978); Power Authority of the State of New York (Green County Nuclear Power Plant), ALAB-439, 6 NRC 640 (1977); Toledo Edison Co. (Davis-Besse Nuclear

Power Station, Unit 1), ALAB-314, 3 NRC 98 (1976). In fact, the Appeal Board is generally disinclined to direct certification on rulings involving "garden-variety" evidentiary matters. See Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-353, 4 NRC 381 (1976). In Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-393, 5 NRC 767, 768 (1977), the Appeal Board reiterated that certification will not be granted to allow consideration of interlocutory evidentiary rulings, stating that, "it is simply not our role to monitor these matters on a day-to-day basis; were we to do so, 'we would have little time for anything else.'" (citations omitted)

- (7) The Appeal Board has denied certification under 10 CFR § 2.718(i) and rejected the Staff's position that a Licensing Board's ruling denying summary disposition of a part of a contention unwarrantedly expanded the scope of the issues and that the resulting necessity of trying these issues would cause unnecessary expense and delay. The Appeal Board found that the "immediate and irreparable harm" and "pervasive effect on the basic structure of the proceeding" alleged by the Staff in such a case was no different than that involved any time a litigant must go to hearing. Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC 550 (1981).

The Appeal Board's directed certification authority will be exercised "most sparingly." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-514, 8 NRC 697, 698 (1978); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406, 410 (1978).

5.12.2.1.1 Effect of Subsequent Developments on Motion to Certify

Developments occurring subsequent to the filing of a motion for directed certification to the Appeal Board may strip the question brought of an essential ingredient and, therefore, constitute grounds for denial of the motion. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-419, 6 NRC 3, 6 (1977).

5.12.2.1.2 Effect of Directed Certification on Uncertified Issues

The pendency of review by the Appeal Board pursuant to certification does not automatically result in a stay of

hearings on independent questions not intimately connected with the issue certified. See Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-374, 5 NRC 417 (1977).

5.12.3 Application to Commission for a Stay After Appeal Board's Denial of Stay

Where a party's request for a stay is denied by the Appeal Board, the party may apply to the Commission for a stay under 10 CFR § 2.788(a), (h). This, rather than a petition for review under 10 CFR § 2.786(b), is the appropriate route. Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit 2), CLI-78-3, 7 NRC 307, 308 (1978); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 30 at n.44 (1978). Thus, while such a request to the Commission may have the appearance of an appeal, it is not treated as such.

5.13 Exceptions to Orders, Rulings, Initial Decision, Partial Initial Decisions

As has been discussed, the vehicle for an appeal on any order, ruling or decision is the filing of an exception to the order, ruling or decision. Exceptions must be filed in a timely fashion and must be supported by a brief subsequently submitted to the appellate tribunal.

Exceptions should be filed only where a party is aggrieved by, or dissatisfied with, the action taken below and invokes appellate jurisdiction to change the result. Exceptions are unnecessary and inappropriate when a party seeks to appeal a decision whose ultimate result is in that party's favor. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 202 (1978).

Exceptions to an initial decision must be separately numbered and each exception must state concisely and without supporting augmentation the single error of fact or law asserted in that exception. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-409, 5 NRC 1391, 1393-95 (1977).

5.13.1 Time for Filing Exceptions

5.13.1.1 Exceptions to Initial and Partial Initial Decisions

Parties aggrieved by an initial decision or a partial decision must file and brief exceptions within the time limits set out in 10 CFR § 2.762. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-274, 1 NRC 497, 498 (1975). Failure to file the exceptions in a timely manner amounts to a waiver of the exceptions.

Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 392-93 (1974). The same rule applies to partial initial decisions and a party must file his exceptions thereto without waiting for the Licensing Board's disposition of the remainder of the proceeding. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-195, 7 AEC 455, 456 at n.2 (1974).

5.13.1.2 Variation in Time Limits on Exceptions

Only an Appeal Board may vary the time for taking exceptions from that set out in 10 CFR § 2.762; Licensing Boards have no power to do so. Consolidated Edison Co. of N.Y. (Indian Point Station, Unit 3), ALAB-281, 2 NRC 6 (1975). Of course, mere agreement of the parties to extend the time for the filing of exceptions is not sufficient to show good cause for such a time extension. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-154, 6 AEC 827 (1973).

5.13.2 Briefs on Exceptions

Briefs in support of exceptions must be filed under 10 CFR § 2.762. Failure to file a brief can result in dismissal of the appeal. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-270, 1 NRC 473 (1975). Those exceptions not addressed by the supporting brief may be disregarded by the Appeal Board. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-270, supra; Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-207, 7 AEC 957 (1974). Since failure to brief an exception makes it difficult for the Appeal Board to evaluate the exception and for the parties to respond, exceptions not briefed will generally be treated as waived. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 315 (1978).

Briefs in support of exceptions must specify the precise portion of the record relied upon in support of the assertion of error, 10 CFR § 2.762(a); Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 424 (1980).

5.13.3 Effect of Failure to File Proposed Findings

The Appeal Board is not required to review exceptions where no proposed findings and rulings were filed by the appellant on the issue with respect to which exceptions are taken. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-280, 2 NRC 3, 4 at n.2 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 864 (1974).

5.13.4 Motions to Strike Exceptions

A party may file a motion to strike an exception or brief which is not in substantial compliance with the provisions of § 2.762. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122 (1977); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-409, 5 NRC 1391, 1396-1397 (1977). Such a motion is also appropriate to exclude improper or scandalous exceptions. Hartsville, ALAB-409 supra. A motion to strike an exception is not appropriate, however, where an assessment of its validity requires more than minimal scrutiny of the underlying record. Id.

5.14 Certification to the Commission

Pursuant to 10 CFR § 2.785(d), an Appeal Board may certify to the Commission any major or novel question of policy, law or procedure which is properly before the Appeal Board. Such certification may be at the Appeal Board's discretion or at Commission direction.

The Appeal Board should exercise its authority to certify questions to the Commission sparingly. Absent a compelling reason, the Appeal Board will decline certification. Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-421, 6 NRC 25, 27 (1977).

Certification by the Appeal Board to the Commission is proper in a case involving novel Staff action that presents a major policy question relevant to a pending application, where Appeal Board members have diverging views, and the procedural rules preclude the parties themselves from petitioning for Commission review because the matter came before the Appeal Board itself on certification. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-500, 8 NRC 323, 325 (1978).

The Commission's Rules of Practice contemplate that requests for relief from Licensing Board actions (for example, in matters such as discovery) be delegated to the Appeal Board, which functions as the Commission's delegate for these matters. 10 CFR § 2.785. Absent extraordinary circumstances warranting Commission involvement, request for interlocutory review of Licensing Board rulings and other relief should be directed to the Appeal Board rather than to the Commission. 10 CFR §§ 2.730(f), 2.785. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), CLI-80-17, 11 NRC 678 (1980). In the context of initial review of Licensing Board actions, then, a certification to the Commission would go first to the Appeal Board under the specific delegation of 10 CFR § 2.785(b)(1).

Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 1), LBP-80-29, 12 NRC 581, 591 (1980).

Referral directly to the Commission by the Licensing Board will not be granted absent a strong reason for bypassing the Appeal Board. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-81-36, 14 NRC 691 (1981).

5.15 Review of Appeal Board Decisions

10 CFR § 2.786 has been modified to provide for an appeal to the Commission of an Appeal Board's decision. No appeal is permitted with respect to a decision or action on referral or certification under 10 CFR §§ 2.718(i) or 2.730(f). Section 2.786 sets forth in detail the requirements for an appeal to the Commission. 10 CFR § 2.786(b)(1) provides that a party may file a petition for review of an Appeal Board decision within 15 days after service of that decision. Consolidated Edison Co. of N.Y. (Indian Point Station, No. 2), ALAB-414, 5 NRC 1425, 1427 (1977).

The Commission's normal practice for review of Appeal Board decisions under 10 CFR § 2.786 applies even when an Appeal Board has conducted evidentiary hearings. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-21, 14 NRC 595, 596 (1981), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903 (1981); Virginia Electric Power Co. (North Anna Power Station, Units 1 and 2), ALAB-578, 11 NRC 189 (1980); Northern States Power Co. (Prairie Island Nuclear Generating Station, Units 1 and 2), ALAB-343, 4 NRC 169 (1976).

The selection of parties to a Commission review proceeding is clearly a matter of Commission discretion (10 CFR § 2.786(b)(6)). A major factor in the Commission decision is whether a party has actively sought or opposed Commission review. This factor helps reveal which parties are interested in Commission review and whether their participation would aid that review. Therefore, a party desiring to be heard in a Commission review proceeding should participate in the process by which the Commission determines whether to conduct a review. An interested State which seeks Commission review is subject to all the requirements which must be observed by other parties. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-77-25, 6 NRC 535 (1977).

Under 10 CFR § 2.786(a), the Commission may, on its own motion, review an Appeal Board decision. Under an earlier version of Section 2.786(a), the Commission held that it had no obligation to state its reasons for electing to review an Appeal Board decision. USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).

In this vein, since the Commission is responsible for all actions and policies of the NRC, the Commission has the

inherent authority to act upon or review sua sponte any matter before an NRC tribunal. To impose on the Commission, to the degree imposed on the judiciary, requirements of ripeness and exhaustion would be inappropriate since the Commission, as part of a regulatory agency, has a special responsibility to avoid unnecessary delay or excessive inquiry. Public Service Co. of N.H. (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 516 (1977). Although 10 CFR § 2.786(a) sets forth the type of issues for which, and situations in which, the Commission may direct certification of a record sua sponte prior to final action by a Licensing or Appeal Board below, it does not limit the Commission's inherent supervisory authority. Id. Nevertheless, as a general rule, the Commission does not sit to review factual determinations made by its subordinate panels.

When an issue is of obvious significance and is not fact-dependent, and when its present resolution could materially shorten the proceedings and guide the conduct of other pending proceedings, the Commission will generally dispose of the issue rather than remand it. Public Service Co. of N.H., supra, at 517.

Within 30 days of an Appeal Board decision, the Commission may review it. 10 CFR § 2.786(a); Washington Public Power Supply System, et al. (WPPSS Nuclear Project Nos. 3 and 5), ALAB-501, 8 NRC 381, 382 (1978). (Note that under 10 CFR § 2.772, the Commission may extend the time for review.)

Dicta of the Commission reflects its views, and is entitled to the Board's respect. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-577, 11 NRC 18 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

The expression of tentative conclusions upon the start of a proceeding does not disqualify the Commission from again considering the issue on a fuller record. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4 (1980).

5.15.1 Effect of Commission's Refusal to Entertain Appeal

The Commission's refusal to entertain a discretionary appeal does not indicate its view on the merits. Nor does it preclude the Appeal Board from reconsidering the matter as to which Commission review was sought where that matter is still pending before the Appeal Board. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 260 (1978).

5.15.2 Stays Pending Judicial Review of Appeal Board Decision

Appeal Boards will entertain requests for stays pending judicial review of their decisions and will apply the

Virginia Petroleum Jobbers criteria (see Section 5.7.1, supra) to determine if a stay is appropriate. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 272 (1974). The Commission itself will entertain requests for a stay pending judicial review and will apply the same criteria. Natural Resources Defense Council, CLI-76-2, 3 NRC 76 (1976).

Section 10(d) of the Administrative Procedure Act (5 U.S.C. 705) pertains to an agency's right to stay its own action pending judicial review of that action. It confers no freedom on an agency to postpone taking some action when the impetus for the action comes from a court directive. Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 783-84 (1977).

The Appeal Board suspended sua sponte its consideration of an issue in order to await the possibility of Supreme Court review of related issues, following the rendering of a decision by the First Circuit Court of Appeals, where certiorari had not yet been sought or ruled upon for such Supreme Court review. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-548, 9 NRC 640, 642 (1979).

5.15.3 Stays Pending Remand After Judicial Review

Where a litigant who has prevailed on a judicial appeal of an NRC decision seeks a suspension of the effectiveness of the NRC decision pending remand, such a suspension is not controlled by the Virginia Petroleum Jobbers criteria but, instead, is dependent upon a balancing of all relevant equitable considerations. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 159-160 (1978). In such circumstances the negative impact of the court's decision places a heavy burden of proof on those opposing the stay. Id. at 7 NRC 160.

5.16 Review of Commission Decisions

(RESERVED)

5.16.1 Review of Disqualification of a Commissioner

Determinations on the disqualification of a Commissioner reside exclusively in that Commissioner, and are not reviewable by the Commission. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2), Power Authority of the State of N.Y. (Indian Point, Unit 3), CLI-81-1, 13 NRC 1 (1981), clarified, CLI-81-23, 14 NRC 610 (1981); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-80-6, 11 NRC 411 (1980).

5.17 Reconsideration by the Commission

The Commission's ability to reconsider is inherent in the ability to decide in the first instance. The Commission has 60 days in which to reconsider an otherwise final decision, which is at the discretion of the Commission. Florida Power and Light Company (St. Lucie Nuclear Power Plant, Unit 2), CLI-80-41, 12 NRC 650, 652 (1980).

10 CFR § 2.771 provides that a party may file a petition for reconsideration of a final decision within 10 days after the date of that decision.

5.18 Jurisdiction of NRC to Consider Matters While Judicial Review is Pending

The NRC has jurisdiction to deal with supervening developments in a case which is pending before a court, at least where those developments do not bear directly on any question that will be considered by the court. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 NRC 235 (1976). There has been no definitive ruling as to whether the NRC has jurisdiction to consider matters which do bear directly on questions pending before a court. In any event, it is clear that the Appeal Board considers it inappropriate to do so, at least where the court has not specifically requested it, based on considerations of comity between the court and the agency. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-350, 4 NRC 365 (1976).

While the Appeal Board considers it inappropriate to consider matters bearing directly on questions pending before a court where it has not been directed to do so by the court, NRC must act promptly and constructively in effectuating the decisions of the courts. Upon issuance of the mandate, the court's decision becomes fully effective on the Commission, and it must proceed to implement it. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-395, 5 NRC 772, 783-784 (1977). Neither the filing nor the granting of a petition for Supreme Court certiorari operates as a stay, either with respect to the execution of the judgment below or of the mandate below by the lower courts. Id. at 781.

Where a party petitioning the Court of Appeals for review of the decision of the agency also petitions the agency to reconsider its decision and the Federal court stays its review pending the agency's disposition of the motion to reconsider, the Hobbs Act does not preclude the agency's reconsideration of the case. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 259 (1978).

5.19 Procedure on Remand

5.19.1 Jurisdiction of the Licensing Board on Remand

The question as to whether a Licensing Board, on remand, assumes its original plenary authority or, instead, is limited to consideration of only those issues specified by the Appeal Board in the remand order was, for some time, unresolved. See Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-389, 5 NRC 727 (1977). Of course, jurisdiction may be regained by a remand order of either the Commission or a court, issued during the course of review of the decision. Issues to be considered by the Board on remand would be shaped by that order. If the remand related to only one or more specific issues, the finality doctrine would foreclose a broadening of scope to embrace other discrete matters. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 708 (1979).

More recently, however, a Licensing Board was found to be "manifestly correct" in rejecting a petition requesting intervention in a remanded proceeding where the scope of the remanded proceeding had been limited by the Commission and the petition for intervention dealt with matters outside that scope. This establishes that a Licensing Board has limited jurisdiction in a remanded proceeding and may consider only what has been remanded to it. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 n.3 (1979).

Although an adjudicatory board to which matters have been remanded would normally have the authority to enter any order appropriate to the outcome of the remand, the Commission may, of course, reserve certain powers to itself, such as, for example, reinstatement of a construction permit suspended pending the remand. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-14, 7 NRC 952, 961 (1978).

Where the Commission remands an issue to a Licensing Board it is implicit that the Board is delegated the authority to prescribe warranted remedial action within the bounds of its general powers. However, it may not exceed these powers. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-577, 11 NRC 18, 29 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

5.19.2 Jurisdiction of the Appeal Board on Remand

(RESERVED)

5.19.3 Stays Pending Remand

10 CFR § 2.788 does not expressly deal with the matter of a stay pending remand of a proceeding to the Licensing Board. Prior to the promulgation of Section 2.788, the Commission held that the standards for issuance of a stay pending remand are less stringent than those of the Virginia Petroleum Jobbers test. Public Service Co. of N.H. (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977). In this vein, the Commission ruled that the propriety of issuing a stay pending remand was to be determined on the basis of a traditional balancing of equities and on consideration of possible prejudice to further actions resulting from the remand proceedings.

Where judicial review discloses inadequacies in an agency's environmental impact statement prepared in good faith, a stay of the underlying activity pending remand does not follow automatically. Whether the project need be stayed essentially must be decided on the basis of (1) traditional balancing of equities, and (2) consideration of any likely prejudice to further decisions that might be called for by the remand. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-395, 5 NRC 772, 784-85 (1977).

5.19.4 Participation of Parties in Remand Proceedings

Where an issue is remanded to the Licensing Board and a party did not previously participate in consideration of that issue, submitting no contentions, evidence or proposed findings on it and taking no exceptions to the Licensing Board's disposition of it, the Licensing Board is fully justified in excluding that party from participation in the remanded hearing on that issue. Status as a party does not carry with it a license to step in and out of consideration of issues at will. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 268-69 (1978).

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6.0 GENERAL MATTERS

6.1 Amendments to Existing Licenses and/or Construction Permits

General requirements and guidance for the amendment of an existing license or construction permit for production and utilization facilities are set out in 10 CFR §§ 50.90, 50.91.

In passing upon an application for an amendment to an operating license or construction permit, "the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate." 10 CFR § 50.91. These considerations are broadly identified in 10 CFR § 50.40. In essence, Section 50.40 requires that the Commission be persuaded, inter alia, that the application will comply with all applicable regulations, that the health and safety of the public will not be endangered, and that any applicable requirements of 10 CFR Part 51 (governing environmental protection) have been satisfied. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 44 (1978).

6.1.1 Staff Review of Proposed Amendments

(RESERVED)

6.1.2 Amendments to Research Reactor Licenses

(RESERVED)

6.1.3 Matters to be Considered in License Amendment Proceedings

6.1.3.1 Specific Matters Considered in License Amendment Proceedings

While the balancing of costs and benefits of a project is usually done in the context of an environmental impact statement prepared because the project will have significant environmental impacts, at least one court has implied that a cost-benefit analysis may be necessary for certain federal actions which, of themselves, do not have a significant environmental impact. Specifically, the court opined that an operating license amendment derating reactor power significantly could upset the original cost-benefit balance and, therefore, require that the cost-benefit balance for the facility be reevaluated. Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1084-85 (D.C. Cir. 1974).

Neither the Staff nor the Licensing Board need concern itself with the matter of the ultimate disposal of spent fuel; i.e., with the possibility that the pool will become an indefinite or permanent repository for its contents, in the evaluation of a proposed expansion of the capacity of a spent fuel pool. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 51 (1978).

A license amendment that does not involve, or result in, environmental impacts other than those previously considered and evaluated in prior initial decisions for the facility in question does not require the preparation and issuance of either an environmental impact statement or an environmental impact appraisal and negative declaration pursuant to 10 CFR § 51.5(b) and (c). Portland General Electric Company, et al. (Trojan Nuclear Plant), LBP-78-40, 8 NRC 717, 744-45 (1978), aff'd, ALAB-534, 9 NRC 287 (1979).

6.1.4 Hearing Requirements for License/Permit Amendments

The Atomic Energy Act of 1954, as amended, does not specifically require a mandatory hearing on the question as to whether an amendment to an existing license or permit should issue. At the same time, the Act and the regulations (10 CFR § 2.105(a)(3)) require that, where a proposed amendment involves "significant hazards considerations," the opportunity for a hearing on the amendment be provided prior to issuance of the amendment and that any hearing requested be held prior to issuance of the amendment. An opportunity for a hearing will also be provided on any other amendment as to which the Commission, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards determines that an opportunity for public hearing should be afforded. 10 CFR § 2.105(a)(6),(7).

A prior hearing is not required under Section 189a of the Atomic Energy Act, as amended, for Commission approval of a license amendment in situations where the NRC Staff makes a "no significant hazards consideration" finding. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 622-623 (1981).

A hearing can be requested on the application for a license amendment to reflect a change in ownership of a facility. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 80 (1977).

A license amendment may become immediately effective under 10 CFR § 2.204 without a prior hearing if the public health, safety or interest requires. Furthermore, there is no inherent contradiction between a finding that there is "no significant hazard" in a given case and a finding in the same case that latent conditions may potentially cause harm in the future thus justifying immediate effectiveness of an amendment permitting corrections. Nuclear Fuel Services Inc. and New York State Energy Research and Development Authority (Western New York Nuclear Service Center), CLI-81-29, 14 NRC 940, 942 (1981)

6.1.4.1 Notice of Hearing on License/Permit Amendments

(RESERVED)

6.1.4.2 Intervention on License/Permit Amendments

The requirements for intervention in license amendment proceedings are the same as the requirements for intervention in initial permit or license proceedings (see generally Section 2.9). The right to intervene is not limited to those persons who oppose the proposed amendment itself, but extends to those who raise related claims involving matters arising directly from the proposed amendment. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974).

Persons who would have standing to intervene in new construction permit hearings, which would be required if good cause could not be shown for the extension, have standing to intervene in construction extension proceedings to show that no good cause existed for extension and, consequently, new construction permit hearings would be required to complete construction. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), LBP-80-22, 12 NRC 191, 195 (1980).

6.1.4.3 Summary Disposition Procedures on License/Permit Amendments

Summary disposition procedures may be used in proceedings held upon requests for hearings on proposed amendments. Boston Edison Co. (Pilgrim Nuclear Station, Unit 1), ALAB-191, 7 AEC 417 (1974).

6.1.4.4 Matters Considered in Hearings on License Amendments

In considering an amendment to transfer part ownership of a facility, a Licensing Board held that questions concerning the legality of transferring some ownership interest in advance of the Commission action on the amendment was outside its jurisdiction and should be pursued under the provisions of 10 CFR Part 2, Subpart B (dealing with enforcement) instead. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386 (1978). The same Licensing Board also ruled that issues to be considered in such a transfer of ownership proceeding do not include questions of the financial qualifications of the original applicant or the technical qualification of any of the applicants. Enrico Fermi, 7 NRC 381, supra at 392.

With regard to environmental considerations in a proceeding on an application for license amendment, a Licensing Board should not:

...embark broadly upon a fresh assessment of the environmental issues which have already been thoroughly considered and which were decided in the initial decision. Rather, the Board's role in the environmental sphere will be limited to assuring itself that the ultimate NEPA conclusions reached in the initial decision are not significantly affected by such new developments

Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 393 (1978), citing, Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 415 (1975).

A license amendment that does not involve, or result in, environmental impacts other than those previously considered and evaluated in prior initial decisions for the facility in question does not require the preparation and issuance of either an environmental impact statement or environmental impact appraisal and negative declaration pursuant to 10 CFR § 51.5(b) and (c). Portland General Electric Company, et al. (Trojan Nuclear Plant), LBP-78-40, 8 NRC 717, 744-45 (1978), aff'd, ALAB-534, 9 NRC 287 (1979). For example, the need for power is not a cognizable issue in a license amendment proceeding where it has been addressed in previous construction permit and operating license proceedings. Trojan, 9 NRC 287, supra at 289, cited in Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-14, 13 NRC 677, 698 at n.49 (1981).

6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing

Although the usual procedure for amending an existing license involves a licensee's applying for the proposed amendment pursuant to 10 CFR § 50.90, this is not the sole and exclusive means for obtaining an amendment. For example, where the Commission orders a special hearing on particular issues before the Appeal Board, the licensee may seek, and the Appeal Board has jurisdiction to issue, an amendment to the license as long as the modification sought bears directly on the questions addressed in the hearing. In such a situation, the licensee need not follow the usual procedure for filing an application for an amendment under 10 CFR § 50.90. Consolidated Edison Co. of N.Y. (Indian Point Station, Units 1, 2 & 3), ALAB-357, 4 NRC 542 (1976), aff'd, CLI-77-2, 5 NRC 13 (1977). Moreover, the Appeal Board's authority to modify license conditions in such an instance is not limited by the inadequacies of the materials submitted by the parties; the Board may take such action as the public interest warrants. Id.

6.1.6 Facility Changes Without License Amendments

10 CFR § 50.59(a)(1) provides that changes may be made to a production or utilization facility without prior NRC approval where such changes do not involve an unreviewed safety question, as defined in Section 50.59(a)(2), or a change in technical specifications. The determination as to whether a proposed change requires prior NRC approval under Section 50.59 apparently rests with the licensee in the first instance.

Where a hearing on a proposed license amendment was pending and the licensee embarked on "preparatory work" related to the proposed amendment without prior authorization, the presiding Licensing Board denied an intervenor's request for a cease and desist order with regard to such work on the grounds that there was no showing that such work posed any immediate danger to the public health and safety or violated NEPA and that such work was done entirely at the licensee's risk. Portland General Electric Co. et al. (Trojan Nuclear Plant), LBP-77-69, 6 NRC 1179, 1184 (1977). Subsequently, the Appeal Board indicated that the intervenor's complaint in this regard might more appropriately have been directed, in the first instance, to the Staff under 10 CFR § 2.206, rather than to the Licensing Board. Portland General Electric Co. et al. (Trojan Nuclear Plant), ALAB-451, 6 NRC 889, 891 at n.3 (1977).

6.2 Amendments to License/Permit Applications

Three years after the Licensing Board sanctioned a limited work authorization (LWA) and before the applicant had proceeded with any construction activity, applicant indicated it wanted to amend its construction permit application to focus only on site suitability issues. The Appeal Board "vacate[d] without prejudice" the decisions of the Licensing Board sanctioning the LWA, and remanded the case for proceedings deemed appropriate by the Licensing Board upon formal receipt of an early site approval application. Delmarva Power & Light Company (Summit Power Station, Units 1 and 2), ALAB-516, 9 NRC 5 (1979).

6.3 Antitrust Considerations

Section 105(c)(6) of the Atomic Energy Act of 1954 indicates that nothing in the Act was intended to relieve any person from complying with the federal antitrust laws. This section does not authorize the NRC to institute antitrust proceedings against licensees, but does permit the Commission to impose conditions in a license as needed to ensure that activities under the license will not contribute to the creation or maintenance of an anti-competitive situation. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-7, 5 NRC 452 (1977). Note that reactors licensed as research and development facilities

under Section 104(b) of the Atomic Energy Act prior to the 1970 antitrust amendments are excluded from antitrust review. Florida Power & Light Co. (St. Lucie Plant, Unit 1; Turkey Point Plant, Units 3 & 4), ALAB-428, 6 NRC 221, 225 (1977); Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-323, 3 NRC 331 (1976).

The standard to be employed by the NRC is whether there is a "reasonable probability" that a situation inconsistent with the antitrust laws and the policies underlying those laws would be created or maintained by the unconditioned licensing of the facility. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), LBP-77-24, 5 NRC 804 (1977). The Commission's statutory obligation, pursuant to Section 105(c), is not limited to investigation of the effects of construction and operation of the facility to be licensed, but rather includes an evaluation of the relationship of the specific nuclear facility to the applicant's total system or power pool. Id. This threshold determination as to whether a situation inconsistent with the antitrust laws could arise from issuance of the proposed license does not involve balancing public interest factors such as public benefits from the activity in question, public convenience and necessity, or the desirability of competition. Only after the Commission determines that an anticompetitive situation exists or is likely to develop under a proposed license are such other factors considered. In exceptional cases, the NRC may issue the license, despite the possibility of an anticompetitive situation, if it determines that, on balance, issuance of the license would be in the public interest. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-385, 5 NRC 621, 632-633 (1977).

Under Section 105c of the Atomic Energy Act of 1954, a hearing on whether authorizing construction of a nuclear power facility "would create or maintain a situation inconsistent with the antitrust laws" is called for if the Attorney General so recommends or an interested party requests one and files a timely petition to intervene. When an antitrust hearing is convened, a permit to construct the project may not be awarded without the parties' consent until the proceedings are completed. Florida Power and Light Company (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 10 (1977).

One of the policies reflected in Section 105c of the Atomic Energy Act is that a government developed monopoly - like nuclear power electricity generation - should not be used to contravene the policies of the antitrust laws. Section 105c is a mechanism to allow smaller utilities, municipals and cooperatives access to the licensing process to pursue their interests in the event that larger utility applicants might use a government license to create or maintain an anticompetitive market position. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

When the Attorney General recommends an antitrust hearing on a license for a commercial nuclear facility, the NRC is required to conduct one. This is the clear implication of Section 105(c)(5) of the Atomic Energy Act. Where such a hearing is held, the Attorney General or his designee may participate as a party in connection with the subject matter of his advice. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), CLI-78-5, 7 NRC 397, 398 (1978). The Toledo Edison Company, et al. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3) and The Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-560, 10 NRC 265, 272 (1979).

In dealing with antitrust issues, the NRC's role is something more than that of a neutral forum for economic disputes between private parties. If an antitrust hearing is convened, it should encompass all significant antitrust implications of the license, not merely the complaints of private intervenors. If no one performs this function, the NRC Staff should assure that a complete picture is presented to Licensing Boards. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 949 (1978).

Where a license is found to create or maintain a situation inconsistent with the antitrust laws, the Commission may impose corrective conditions on the license rather than withhold it. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-13, 7 NRC 583, 597 (1978).

Only the NRC is empowered to make the initial determination under section 105(c) whether activities under the license would create or maintain a situation inconsistent with the antitrust laws, and if so what license conditions should be required as a remedy. Houston Lighting & Power Co., et al. (South Texas Project, Units 1 and 2), CLI-79-27, 10 NRC 563, 574 (1979).

In order to conduct a section 105(c) proceeding, it is not necessary to establish a violation of the antitrust laws. Any violation of the antitrust laws also meets the less rigorous standard of section 105(c) which is inconsistency with the antitrust laws. South Texas, supra, at 570.

NRC statutory responsibilities under section 105(c) cannot be impaired or limited by a State agency. South Texas, supra, at 577.

The legislative history and language of the Public Utilities Regulatory Policies Act of 1978 clearly establish that the act was not intended to divest NRC of its antitrust jurisdiction. South Texas, supra, at 577.

6.3.1 Consideration of Antitrust Matters After the Construction Permit Stage

The NRC antitrust responsibility does not extend over the full life of a licensed facility but is limited to two procedural stages - the construction permit stage and the operating license stage. This limitation on NRC jurisdiction extends to the Director of Nuclear Reactor Regulation as well as to the rest of the NRC. Florida Power & Light Co. (St. Lucie Plant, Unit 1; Turkey Point Plant, Units 3 & 4), ALAB-428, 6 NRC 221, 226-227 (1977). For reactors which have undergone antitrust review in connection with a construction permit application pursuant to Section 105(c) of the Atomic Energy Act, paragraph (c)(2) of that section governs the question of antitrust review at the operating license stage. Antitrust issues may only be pursued at this stage if a finding is made that the licensee's activities have significantly changed subsequent to the construction permit review. Houston Lighting & Power Co. et al. (South Texas Project, Units 1 & 2), CLI-77-13, 5 NRC 1303, 1310 (1977). Where a construction permit antitrust proceeding is under way, the antitrust provisions of the Atomic Energy Act effectively preclude the Commission from instituting a second antitrust hearing in conjunction with an operating license application for the plant. Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), ALAB 661, 14 NRC 1117, 1122 (1981). Where, subsequent to issuance of a construction permit and to termination of the jurisdiction of the Licensing Board which considered the application, new contractual arrangements give rise to antitrust contentions, such contentions cannot be resolved by the original Licensing Board. Houston Lighting & Power Co. et al. (South Texas Project, Units 1 and 2), ALAB-381, 5 NRC 582 (1977). The Commission's regulations indicate that the new antitrust concerns should be raised at the operating license stage. The Commission Staff could also initiate show cause proceedings requiring the licensee to demonstrate why antitrust conditions should not be imposed in an amendment to the construction permit. Id. Where the petitioner who raises the antitrust contentions is a co-licensee, 10 CFR § 50.90 permits the petitioner to seek an amendment to the construction permit which would impose antitrust considerations. Id.

The NRC may facilitate operating license stage antitrust review by waiving the requirements of 10 CFR § 50.30(d) and § 50.34(b) (which require operating license applications to be accompanied by the filing of an FSAR). This permits operating license antitrust review at a much earlier stage prior to completion of the FSAR. South Texas, CLI-77-13 supra at 5 NRC 1319.

Congress did not invest the NRC with ongoing antitrust responsibility during the period subsequent to issuance of

an operating license and the NRC's authority in this area terminates at that point. CLI-77-13 supra at 5 NRC 1317. Congress did not envision for the NRC a broad, ongoing antitrust enforcement role but, rather, established specific procedures (and incentives) intended to tie antitrust review to the two-step licensing process. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 945 (1978).

Section 105 of the Atomic Energy Act and its implementing regulations contemplate that mandatory antitrust review be conducted early in the construction permit process. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

Antitrust review might be conducted out-of-time if significant doubts were cast on the adequacy of the initial antitrust review. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 945 (1978).

Despite the fact that further antitrust review following issuance of a construction permit will usually await the operating license stage of review, a construction permit amendment may give rise to an additional antitrust review prior to the OL stage. An application for a construction permit amendment that would add new co-owners to a plant is within the scope of the phrase in Section 105c(1) of the Atomic Energy Act requiring antitrust review of "any license application." As such, it triggers an opportunity for intervention based on the antitrust aspects of adding new co-owners. To hold otherwise would subvert Congressional intent by insulating applicants coming in by way of amendment from antitrust investigation. Moreover, because a joint venture might raise antitrust problems that would not exist if the joint applicants were considered individually, the Licensing Board has jurisdiction to consider intervention petitions and antitrust issues filed in connection with a new application for joint ownership. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-13, 7 NRC 583, 588 (1978).

A narrower, second antitrust review is to occur at the operating license stage, if and only if, "The Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission..." in connection with the construction permit for the facility. South Carolina Electric and Gas Company, et al. (Virgil C. Summer Nuclear Station, Unit 1), CLI-80-28, 11 NRC 817, 823 (1980).

The ultimate issue in the operating license stage antitrust review is the same as for the construction permit review: would the contemplated license create a situation inconsistent with the antitrust laws or the policies underlying those laws. South Carolina Electric and Gas Company, et al. (Virgil C. Summer Nuclear Station, Unit 1), CLI-80-28, 11 NRC 817, 824 (1980).

To trigger antitrust review at the operating license stage, the significant changes specified by Section 105(c) of the Atomic Energy Act must (1) have occurred since the previous antitrust review of the licensee; (2) be reasonably attributable to the licensee; and (3) have antitrust implications that would warrant Commission remedy. This requires an examination of (a) whether an antitrust review would be likely to conclude that the situation as changed has negative antitrust implications and (b) whether the Commission has available remedies. Summer, supra, at 824-825.

Under section 105c(2) of the Atomic Energy Act, a second formal antitrust review at the operating stage of a reactor licensing proceeding is the exception not the rule. A petition for determination of significant changes is characterized as an informal adjudicatory process and is not governed by the Commission's Rules of Practice for formal procedures (10 CFR Part 2, Subpart G). Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 792 (1981).

In determining whether significant changes have occurred which require referral of the matter to the Attorney General, the Commission must find: (1) that there is a factual basis for the determination; and (2) that the alleged changes are reasonably apparent. Summer, supra.

Although the NRC regulations do not specify a period during which requests for a significant change determination will be timely, the relevant question in determining timeliness is whether the request has followed sufficiently promptly the operating license application. Central Electric Power Cooperative, supra, at 829.

6.3.2 Intervention in Antitrust Proceedings

Although section 105 of the Atomic Energy Act encourages petitioners to voice their antitrust claims early in the licensing process, reasonable late requests for antitrust review are not precluded so long as they are made concurrent with licensing. Licensing Boards must have discretion to consider individual claims in a way which does justice to all of the policies which underlie Section 105c and the strength of particular claims justifying late intervention. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

The criteria of 10 CFR § 2.714 for late petitions are as appropriate for evaluation of late antitrust petitions as in health, safety and environmental licensing, but the Section 2.714 criteria should be more stringently applied to late antitrust petitions, particularly in assessing the good cause factor. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

Late requests for antitrust review hearings may be entertained in the period between the filing of an application for a construction permit -- the time when the advice of the Attorney General is sought -- and its issuance. However, as the time for issuance of the construction permit draws closer, Licensing Boards should scrutinize more closely and carefully the petitioner's claims of good cause. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

Where an antitrust petition is so late that relief will divert from the licensee needed and difficult-to-replace power, the Licensing Board may shape any relief granted to meet this problem. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 948 (1978).

Where a late petition for intervention is involved, the special factors set forth within 10 CFR § 2.714(a)(1) must be balanced and applied before petitions may be granted; the test becomes increasingly vigorous as time passes. Of particular significance is the availability of other remedies for the late petitioner where remedies are available before the Federal Energy Regulating Commission and petitioner has not shown that the remedy is insufficient. Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), LBP-81-28, 14 NRC 333, 336, 338 (1981).

6.3.3 Discovery in Antitrust Proceedings

The Noerr-Pennington doctrine will operate to immunize those legitimately petitioning the government, or exercising other First Amendment rights, from liability under the antitrust laws, even where the challenged activities were conducted for purposes condemned by the antitrust laws. Florida Power & Light Co. (St. Lucie Plant, Unit 2), LBP-79-4, 9 NRC 164, 174 (1979).

Material on Applicant's activities designed to influence legislation and requested through discovery is relevant and may reasonably be calculated to lead to the discovery of admissible evidence, and therefore is not immune from discovery. The Noerr-Pennington cases, on which applicant had based its argument, go to the substantive protection of the First Amendment and do not immunize litigants from discovery. Appropriate discovery into Applicant's legis-

lative activities must be permitted, and the information sought to be discovered may well be directly admissible as evidence. St. Lucie, supra, at 175.

6.3.3.1 Discovery Cutoff Dates for Antitrust Proceedings

The imposition of the cutoff date for discovery is for the purpose of making a preliminary ruling about relevancy for discovery. The cutoff date is only a date after which, in the dimension of time, relevancy may be assumed for discovery purposes. Requests for information from before the cutoff date must show that the information requested is relevant in time to the situation to be created or maintained by a licensed activity. If the information sought is relevant, and not otherwise barred, it may be discovered, no matter how old, upon a reasonable showing. This is entirely consistent with 10 CFR § 2.740(h) and Rule 26(b) which are in turn consistent with the Manual for Complex Litigation, Part 1, § 4.30. Florida Power & Light Company (St. Lucie Plant, Unit No. 2), LBP-79-4, 9 NRC 164, 169-70 (1979).

In antitrust proceedings, the relevant period for discovery must be determined by the circumstances of the alleged situation inconsistent with the antitrust laws, not the planning of the nuclear facility. St. Lucie, supra, at 168.

The standard for allowing discovery requests predating a set cutoff date is that there be a reasonable possibility of relevancy; it is not necessary to show relevancy plus good cause. St. Lucie, supra, at 172.

6.4 Attorney Conduct

6.4.1 Practice Before Licensing/Appeal Boards

10 CFR § 2.713 contains general provisions with respect to representation by counsel in an adjudicatory proceeding, standards of conduct and suspension of attorneys.

Counsel appearing before all NRC adjudicatory tribunals "have a manifest and iron-clad obligation of candor." This obligation includes the duty to call to the tribunal's attention facts of record which cast a different light upon the substance of arguments being advanced by counsel. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC 527, 532 (1978).

6.4.1.1 Professional Decorum Before Licensing/Appeal Boards

Attorneys practicing before Licensing and Appeal Boards are to conduct themselves in a dignified and professional manner and are not to engage in name calling with respect to opposing counsel. Northern Indiana Public Service Co. (Bailly

Generating Station, Nuclear-1), ALAB-204, 7 AEC 835 (1974). In this vein, Licensing Boards have a duty to regulate the course of hearings and the conduct of participants in the interest of insuring a fair, impartial, expeditious and orderly adjudicatory process, 10 CFR § 2.718(e); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-417, 5 NRC 1442, 1445-46 (1977), and the Commission has the authority to disqualify an attorney or an entire law firm for unprofessional conduct, whatever its form. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-332, 3 NRC 785 (1976).

The Code of Professional Responsibility considerably restricts the comments that counsel representing a party in an administrative hearing may make to the public. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-592, 11 NRC 744, 750 (1980).

6.4.2 Disciplinary Matters re Attorneys

The Commission has the authority to disqualify an attorney or an entire law firm for unprofessional conduct, whatever its form. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-332, 3 NRC 785 (1976). 10 CFR § 2.713(c) lists various acts or omissions by an attorney which would justify his suspension from further participation in a proceeding. That Section also sets forth the procedure to be followed by the presiding officer in issuing an order barring the attorney from participation.

6.4.2.1 Jurisdiction of Special Board re Attorney Discipline

The Special Board appointed to consider the disqualification issue has the ultimate responsibility as to that decision. The Licensing Board before which the disqualification question was initially raised should determine only whether the allegations of misconduct state a case for disqualification and should refer the case to the Special Board if they do. After the Special Board's decision, the Licensing Board merely carries out the ministerial duty of entering an order in accordance with the Special Board's decision. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-332, 3 NRC 785 (1976).

6.4.2.2 Procedures in Special Disqualification Hearings re Attorney Conduct

The attorney or law firm accused of misconduct is entitled to a full hearing on the matter. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-332, *supra*. The Commission's discovery rules are applicable to the proceeding and all parties have the right to present evidence and cross-examine witnesses. *Id.* The burden of proof is on the party

moving for disqualification and the Special Board's decision must be based on a preponderance of the evidence. Id.

In general, the doctrine of collateral estoppel applies to disqualification proceedings. An earlier judicial decision would be entitled to collateral estoppel effect unless giving it effect would intrude upon the Commission's ability to ensure the orderly and proper prosecution of its internal proceedings. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-378, 5 NRC 557 (1977). As to costs incurred from an attorney discipline proceeding, there is no basis on which NRC can reimburse a private attorney for out-of-pocket expenses in connection with the termination and settlement of a special proceeding brought to investigate misconduct charges against a private attorney and NRC Staff attorneys. Consumers Power Co. (Midland Plant, Units 1 & 2), CLI-79-3, 9 NRC 107, 109 (1979).

6.4.2.3 Conflict of Interest

Disqualification of an attorney or law firm is appropriate where the attorney formerly represented a party whose interests were adverse to his present client in a related matter. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-332, supra. The aggrieved former client need not show that specific confidences were breached but only that there is a substantial relationship between the issues in the pending action and those in the prior representation. Id.

6.5 Communications Between Staff/Applicant/Other Parties/Adjudicatory Bodies

6.5.1 Ex Parte Communications Rule

10 CFR § 2.780 sets forth the applicable rules with respect to ex parte (off-the-record) communications involving NRC personnel who exercise quasi-judicial functions with respect to the issuance, denial, amendment, transfer, renewal, modification, suspension or revocation of a license or permit. In general, the regulation prohibits ex parte communications with Commissioners, members of their immediate staffs, NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions, Licensing Board members and their immediate staffs and Appeal Board members and their immediate staffs.

The ex parte rule proscribes litigants' discussing, off-the-record, matters in litigation with members of the adjudicatory board. It does not apply to discussions between and among the parties, between the NRC Staff and the applicant or between the Staff, applicant, other litigants and third parties (including state officials and Federal agencies)

not involved in the proceeding. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 269 (1978).

6.5.2 Telephone Conference Calls

A conference call between an adjudicatory board and some but not all of the parties should be avoided except in the case of the most dire necessity. Such calls must be avoided even where no substantive matters are to be discussed and the rule precluding ex parte communications is, therefore, not technically violated. Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-313, 3 NRC 94 (1976).

In general, where substantive matters are to be considered in the conference call, all parties must be on the line. For example, when a prehearing conference is conducted via telephone, the Licensing Board must insure that representatives of all parties concerned are on the line unless that representation has been waived. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-334, 3 NRC 809 (1976). Promptly after any prehearing conference carried on via telephone during which rulings governing the conduct of future proceedings have been made, Licensing Boards must draft and enter written orders confirming those rulings. Id.; 10 CFR § 2.752(c).

Where a party informs an adjudicatory board that it is not interested in a matter to be discussed in a conference call between the board and the other litigants, that party cannot later complain that it was not consulted or included in the conference call. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 269 at n.63 (1978).

6.5.3 Staff-Applicant Communications

6.5.3.1 Staff Review of Application

A prospective applicant may confer informally with the Staff prior to filing its application. 10 CFR §§ 2.101(a)(1), 2.102(a).

A Licensing Board has held that the Staff may continue to confer privately with the applicant even after a hearing has been noticed. In addition, the Board ruled that, while a Licensing Board has supervisory authority over Staff actions that are part of the hearing process, it has no jurisdiction to supervise the Staff's review process and, as such, cannot order the Staff and applicant to hold their private discussions in the vicinity of the site or to provide transcripts of such discussions. Northeast Nuclear Energy Co. (Monta-

gue Nuclear Power Station, Units 1 & 2), LBP-75-19, 1 NRC 436 (1975).

With certain exceptions, all meetings conducted by the NRC technical Staff as part of its review of a particular domestic license or permit application, including applications for amendments to a license or permit, are to be open to attendance by all parties or petitioners for leave to intervene in the case. See Domestic License Applications, Open Meetings and Statement of NRC Staff Policy. 43 Fed. Reg. 28058 (June 28, 1978).

6.5.3.2 Staff-Applicant Correspondence

All Staff-applicant correspondence is required to be served on all parties to a proceeding and such service must be continued through the entire judicial review process, at least with respect to those parties participating in the review and those issues which are the subject of the review. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-184, 7 AEC 229, 237 at n.9 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 183 (1974).

6.5.4 Notice of Relevant Significant Developments

6.5.4.1 Duty to Inform Licensing Board of Significant Developments

The NRC Staff has an obligation to lay all relevant materials before the Board to enable it to adequately dispose of the issues before it. Consolidated Edison Co. of N.Y. (Indian Point Station, Units 1, 2 & 3), CLI-77-2, 5 NRC 13 (1977). Moreover, the Staff is obligated to make every effort promptly to report newly discovered important information or significant developments related to a proceeding to the presiding Licensing Board and the parties. This duty to report arises immediately upon the Staff's discovery of the information and the Staff is not to delay in reporting until it has completed its own evaluation of the matter. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), CLI-76-22, 4 NRC 480, 491 at n.11 (1976). This same obligation extends to all parties, each of whom has an affirmative duty to keep Boards advised of significant changes and developments relevant to the proceeding. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404, 408 (1975); Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-143, 6 AEC 623, 625-26 (1973).

Parties and counsel must adhere to the highest standards in disclosing all relevant factual information to the Licensing Board. Material facts must be affirmatively disclosed. If

counsel have any doubt whether they have a duty to disclose certain facts, they must disclose. An externality such as a threatened lawsuit does not relieve a party of its duty to disclose relevant information and its other duties to the Board. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-81-63, 14 NRC 1768, 1778, 1795 (1981).

6.6 Early Site Review Procedures

Part 2 of the Commission's regulations have been amended to provide for adjudicatory early site reviews. See 10 CFR § 2.101 (a-1), §§ 2.600-2.606.. The early site review procedures, which differ from those set forth in Appendix Q to 10 CFR Part 50, allow for the early issuance of a partial initial decision on site suitability matters.

Early site review regulations provide for a detailed review of site suitability matters by the Staff, an adjudicatory hearing directed toward the site suitability issues proposed by the applicant, and the issuance by a Licensing Board of an early partial decision on site suitability issues. A partial decision on site suitability is not a sufficient basis for the issuance of a construction permit or for a limited work authorization. Neither of these steps can be taken without further action, which includes the full review required by Section 102(2) of the National Environmental Policy Act of 1969, as amended (NEPA), and by 10 CFR Part 51, which implements NEPA. Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), LBP-79-23, 10 NRC 220, 223 (1979).

The early partial decision on site suitability does not authorize the applicant to do anything; it does provide applicant with information of value to applicant in its decision to either abandon the site or proceed with plans for the design, construction, and operation of a specific nuclear power plant at that site. Implementation of any such plans is dependent upon further review by the Staff and approval by a Licensing Board. Fulton, supra.

6.6.1 Scope of Early Site Review

The early site review is not a "major Federal action significantly affecting the human environment" such as would require a full NEPA review of the entire proposed project. Commonwealth Edison Company (Carrol County Site), ALAB-601, 12 NRC 18, 25 (1980).

The scope of the early site review is properly limited to the issues specified in the notice of hearing subject to the limits of NEPA, Section 102(2)(c), 42 U.S.C 4332(2)(c). Carrol County Site, supra, at 26.

6.7 Endangered Species Act

6.7.1 Required Findings re Endangered Species Act

Under Section 7 of the Endangered Species Act, Federal agencies, in consultation with the Department of Interior, are to take such action as necessary to insure that actions authorized by them do not "jeopardize the continued existence of such endangered species." Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 360 (1978). The Federal agency is to obtain input from the Department of Interior and then make its decision. A Licensing Board may not approve relevant action until Interior has been consulted. Approval by a Licensing Board which is conditioned on later approval by the Department of Interior does not fulfill the requirements of the Endangered Species Act. "To give advance approval to whatever Interior might decide is to abdicate the Commission's duty under the Act to make its own fully informed decision." Id. at 7 NRC 363-364.

A Licensing Board's finding with regard to the Endangered Species Act aspects of a construction permit application should not be restricted to a consideration of the particular points raised by contentions. Once informed that an endangered species lives in the vicinity of the proposed plant, the Licensing Board is obligated to examine all possible adverse effects upon the species which might result from construction or operation of the plant and to make findings with respect to them. Hartsville supra at 7 NRC 361. In this vein, releases from the plant which will not produce significant adverse effects on endangered species clearly "will not jeopardize their continued existence." The Act does not require a finding that there will not be any adverse effects. "Insignificant effects are not proscribed by the Statute." Hartsville supra at 7 NRC 360. Likewise, if there are no significant adverse effects on an endangered species, there will be no "harm" to the species under Section 9 of the Act. Id. at 366-367, n.114.

6.7.2 Degree of Proof Needed re Endangered Species Act

The finding that the proposed action will not jeopardize the continued existence of an endangered species must be established by a preponderance of the evidence rather than by clear and convincing proof. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 360 (1978).

6.8 Financial Qualifications

Section 182(a) of the Atomic Energy Act of 1954 does not impose any financial qualifications requirement on license applicants;

it merely authorizes the Commission to impose such financial requirements as it may deem appropriate. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 8, 9 (1978). The relevant implementing regulation is 10 CFR § 50.33(f) which is amplified by Appendix C to 10 CFR Part 50. Id.

The "reasonable assurance" requirement set forth in the regulation was adopted to assure that financial conditions did not compromise the applicant's clear self-interest in safety. It contemplates actual inquiry into the applicant's financial qualifications. It is not enough that the applicant is a regulated public utility. A "reasonable assurance" means that the applicant must have a reasonable financing plan in light of relevant circumstances. However, given the history of the present rule and the relatively modest implementing requirements in Appendix C, it does not mean a demonstration of near certainty that an applicant will never be pressed for funds during the course of construction. Seabrook, supra, at 7 NRC 18. Recent amendments to the regulations have eliminated the financial qualifications review for electric utilities. See 10 CFR § 50.33(f). Pursuant to the amended regulations, financial qualifications of electric utilities are not to be considered in licensing.

6.9 Generic Issues

A generic issue may be defined as one which is applicable to the industry as a whole (e.g., GESMO) or to all reactors or facilities or to all reactors or facilities of a certain type. Current regulations do not deal specifically with generic issues or the manner in which they are to be addressed.

6.9.1 Consideration of Generic Issues in Licensing Proceedings

As a general rule, a true generic issue should not be considered in individual licensing proceedings but should be handled in rulemaking. See, e.g., Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-128, 6 AEC 399, 400, 401 (1973); Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-99, 6 AEC 53, 55-56 (1973). The Commission had indicated at least that generic safety questions should be resolved in rulemaking proceedings whenever possible. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 814-815, clarified, CLI-74-43, 8 AEC 826 (1974). An appellate court has indicated that generic proceedings "are a more efficient forum in which to develop issues without needless repetition and potential for delay." Natural Resources Defense Council v. NRC, 547 F.2d 633 (D.C. Cir. 1976), cert. granted, 97 S. Ct. 1098 (1977). To the same effect, see Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-380, 5 NRC 572 (1977).

Nevertheless, it appears that generic issues may properly be considered in individual adjudicatory proceedings in certain circumstances. For example, an Appeal Board has held that Licensing Boards should not accept, in individual licensing cases, any contentions which are or are about to become the subject of general rulemaking but apparently may accept so-called "generic issues" which are not (or are not about to become) the subjects of rulemaking. Potomac Electric Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79 (1974).

A determination of fact in an adjudicatory proceeding which is necessarily grounded wholly in a nonadversary presentation is not entitled to be accorded generic effect, even if the determination relates to a seemingly generic matter rather than to some specific aspect of the facility in question. Washington Public Power Supply System (WPPSS Nuclear Projects No. 3 & 5), ALAB-495, 7 NRC 986, 988 (1978).

In an operating license proceeding, where a hearing is to be held to consider other issues, Licensing Boards are enjoined, in the absence of issues raised by a party, to determine whether the Staff's resolution of various generic safety issues applicable to the reactor in question is "'at least plausible and...if proven to be of substance ...adequate to justify operation.'" Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 311 (1979).

As a matter of policy, most evidentiary hearings in NRC proceedings are conducted in the general vicinity of the site of the facility involved. In generic matters, however, when the hearing encompasses distinct, geographically separated facilities and no relationship exists between the highly technical questions to be heard and the particular features of those facilities or their sites, the governing consideration in determining the place of hearing should be the convenience of the participants in the hearing. Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-566, 10 NRC 527, 530-31 (1979).

6.9.2 Effect of Unresolved Generic Issues

6.9.2.1 Effect of Unresolved Generic Issues in Construction Permit Proceedings

The existence of an unresolved generic safety question does not necessarily require withholding of construction permits since the Commission has available to it the provisions of 10 CFR § 50.109 for backfitting and the procedures of 10 CFR Part 2, Subpart B for imposing new requirements or condi-

ions. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404 (1975).

While unresolved generic issues might not preclude issuance of a construction permit, those generic issues applicable to the facility in question must be considered and information must be presented on whether (1) the problem has already been resolved for the reactor under study, (2) there is a reasonable basis for concluding that a satisfactory solution will be obtained before the reactor is put into operation, or (3) the problem will have no safety implications until after several years of reactor operation and, if there is no resolution by then, alternate means will be available to assure that continued operation, if permitted, will not pose an undue risk. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 775 (1977).

6.9.2.2 Effect of Unresolved Generic Issues in Operating License Proceedings

An unresolved safety issue cannot be disregarded in individual licensing proceedings merely because the issue also has generic applicability; rather, for an applicant to succeed, there must be some explanation why construction or operation can proceed although an overall solution has not been found. Where issuance of an operating license is involved, the justification for allowing operation may be more difficult to come by than would be the case where a construction permit is involved. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 248 (1978).

Explanations of why an operating license should be issued despite the existence of unresolved generic safety issues should appear in the Safety Evaluation Report. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 249 (1978).

6.10 Inspection and Enforcement

The Commission has both the duty and the authority to make such investigations and inspections as it deems necessary to protect the public health and safety. Union Electric Co. (Callaway Plant, Units 1 & 2), LBP-78-31, 8 NRC 366, 374 (1978).

Because the atomic energy industry is a pervasively regulated industry, lawful inspections of licensee's activities are within the warrantless search exception for a "closely regulated industry" delineated by the Supreme Court in Marshall v. Barlow's, Inc., 436 U.S. 307 (1978). Union Electric Co. (Callaway Plant, Units 1 & 2), LBP-78-31, 8 NRC

366, 377 (1978). In addition, a licensee's submission to all applicable NRC regulations constitutes advance consent to lawful inspections and, therefore, no warrant is required for such inspections. Callaway, LBP-78-31 at 8 NRC 377.

Proposed investigation of the discharge by a licensee's contractor of a worker who reported alleged construction problems to the Commission was within the Commission's statutory and regulatory authority to assure public health and safety. Union Electric Co. (Callaway Plant, Units 1 & 2), LBP-78-31, 8 NRC 366, 376 (1978). The Commission should not defer such an inquiry into the discharge of a worker under a proper exercise of its authority to investigate safety related matters merely because such investigation may touch on matters that are the subject of a grievance proceeding between the licensee and the worker. Callaway, LBP-78-31 at 8 NRC 378.

Refusal by a licensee and contractor to permit a lawful Staff investigation deemed necessary to assure public health and safety is serious enough to warrant the drastic remedy of permit suspension pending submission to investigation, since the refusal interferes with the Commission's duty to assure public health and safety. Callaway, LBP-78-31 at 8 NRC 366, 378 (1978).

Inspections of licensed activities during company-scheduled working hours are reasonable per se. Commission inspections may not be limited to "office hours." In re Radiation Technology, Inc., ALAB-567, 10 NRC 533, 540 (1979).

A search warrant is not needed for inspections of licensed activities. Id. at 538-540.

6.10.1 Enforcement Actions

"[A] licensee may not avoid responsibility for violations because its employees or agents failed to comply with the Commission's rules, regulations or license conditions." Pittsburgh-Des Moines Steel Company, ALJ-78-3, 8 NRC 649, 651 (1978).

The Director of Inspection and Enforcement, subject to requirements that he give licensees written notice of specific violations and consider their responses in deciding whether penalties are warranted, may prefer charges, may demand the payment of penalties, and agree to compromise penalty cases without formal litigation. Additionally, the Director may consult with his Staff privately about the course to be taken. In re Radiation Technology, Inc., ALAB-567, 10 NRC 533, 537 (1979).

The ability of the Director of Inspection and Enforcement to proceed against a licensee by issuing an order imposing civil penalties is not a denial of due process because the licensee was not able to cross-examine the Director to determine he had not been improperly influenced by Staff. The demands of due process do not require a hearing at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective. In re Radiation Technology, Inc., ALAB-567, 10 NRC 533, 536-538 (1977).

6.10.1.1 Civil Penalties

Section 234 of the Atomic Energy Act directs the Commission to afford an opportunity for a hearing to a licensee to whom a notice has been given of an alleged violation. Pittsburgh-Des Moines Steel Company, ALJ-78-3, 8 NRC 649, 653 (1978).

The Commission established detailed procedures and considerations to be undertaken in the assessment of civil penalties by: (1) notice of proposed rulemaking (36 Fed. Reg. 19122 Aug. 26, 1971), and (2) amendment of the Rules of Practice to include the factors which will determine the assessment of civil penalties. (36 Fed. Reg. 16894, Dec. 17, 1970). These two formal actions fulfill the legal requirements for standards utilized in civil penalty proceedings. Radiation Technology, Inc., ALJ-78-4, 8 NRC 655, 663 (1978). See also Pittsburgh-Des Moines Steel Company, ALJ-78-3, 8 NRC 649, 653 (1978).

When a hearing is requested to challenge the imposition of civil penalties, the officer presiding at the hearing, not the Director of Inspection and Enforcement, decides on the basis of the record whether the charges are sustained and whether civil penalties are warranted. In re Radiation Technology, Inc., ALAB-567, 10 NRC 533, 536 (1979).

Civil penalties are not invalidated by the absence of a formally promulgated schedule of fees when the penalties imposed are within statutory limits and in accord with general criteria published by the Commission. Id. at 541.

A civil penalty imposed by the Director of the Office of Inspection and Enforcement and upheld by the Administrative Law Judge, was set aside where the penalty properly should have been mitigated in the absence of an assertion of (1) management malfeasance, misfeasance or nonfeasance or (2) a failure by the licensee to take prompt and corrective action to obviate a recurrence. In re Atlantic Research Corp., ALAB-542, 9 NRC 611, 618-621 (1979).

The propriety of a civil penalty hinges upon whether it serves a discernible remedial purpose, i.e., whether it

might have the effect of deterring future violations of regulatory requirements by the licensee in question or other licensees (or their employees). Civil penalties are outside the bounds of the authorization of Section 234 of the Atomic Energy Act if their purpose or effect is solely punitive. Id.

An adjudicatory hearing in a civil penalty proceeding is essentially a trial de novo. The penalty assessed by the I&E Director constitutes the upper bound of the penalty which may be imposed after the hearing but the Administrative Law Judge may substitute his own judgment for that of the Director. In re Atlantic Research Corporation, ALAB-594, 11 NRC 841, 849 (1980).

6.10.1.2 Show Cause Proceedings

(See 6.24)

6.11 Masters in NRC Proceedings

For a discussion of the role of a "master" in NRC proceedings, see Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975) and Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-290, 2 NRC 401 (1975). In ALAB-300, the Appeal Board ruled that parties to an NRC proceeding may voluntarily agree among themselves to have a master of their own choosing make certain discovery rulings by which they will abide. In effect, the master's rulings were like stipulations among the parties. The question as to whether the Licensing and Appeal Boards retained jurisdiction to review the master's discovery rulings was not raised in this case. Consequently, the Appeal Board did not reach a decision as to that issue. ALAB-300, 2 NRC at 678.

More recently, 10 CFR Part 2 has been amended to provide for the use of special assistants to Licensing Boards. Specifically, special assistants may be appointed to take evidence and prepare a record. With the consent of all parties, the special assistant may take evidence, and prepare a report that becomes a part of the record, subject to appeal to the Licensing Board. 10 CFR § 2.722.

It is within the discretion of the Special Master to hold information confidential if to do so would increase the likelihood of a fair and impartial hearing. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-50, 14 NRC 888, 894 (1981).

6.12 Material False Statements in Applications

(See 1.5.2)

6.13 Materials Licenses

The production, processing and sale of uranium and uranium ore are controlled by the Atomic Energy Act of 1954, as amended. Homestake Mining Co. v. Mid-Continent Exploration Co., 282 F.2d 787, 791 (10th Cir. 1960). Natural uranium and ores bearing it in sufficient concentration constitute "source material" and, when enriched for fabrication into nuclear fuel, become "special nuclear material" within the meaning of the Act. (42 U.S.C. §§ 2014(z) and (aa), 2071, 2091.) Both are expressly subject to Commission regulation (42 U.S.C. §§ 2073, 2093). 10 CFR Parts 40 and 70 specifically provide for the domestic licensing of source and special nuclear material respectively.

In this regard, the NRC has granted a general license to acquire title to nuclear fuel without first obtaining a specific license. Thus, persons may obtain title and own uranium fuel and are free to contract to receive title to such fuel without an NRC license or specific NRC regulatory control. Rochester Gas & Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-507, 8 NRC 551, 554-55 (1978). It is only when a person seeks to reduce its contractual ownership to actual possession that regulatory requirements on possession and use must be met and a specific materials license must be obtained. Sterling, supra, at 8 NRC 555.

A 10 CFR Part 70 materials license is an "order" which under 10 CFR § 2.717(b) may be "modified" by a Licensing Board delegated authority to consider a 10 CFR Part 50 operating license. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 228 (1979).

6.14 Motions in NRC Proceedings

Provisions with regard to motions in general in NRC proceedings are set forth in 10 CFR § 2.730. Motion practice before the Commission involves only a motion and an answer; movants who do not seek leave to file a reply are expressly denied the right to do so. 10 CFR § 2.730(c). Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71 (1981).

Although the Rules of Practice do not explicitly provide for the filing of either objections to contentions or motions to dismiss them, each presiding board must fashion a fair procedure for dealing with such objections to petitions as are filed. The cardinal rule of fairness is that each side must be heard. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 524 (1979).

Prior to entertaining any suggestions that a contention not be admitted, the proponent of the contention must be given some

chance to be heard in response. The intervenors must be heard in response because they cannot be required to have anticipated in the contentions themselves the possible arguments their opponents might raise as grounds for dismissing them. Contentions and challenges to contentions in NRC licensing proceedings are analogous to complaints and motions to dismiss in Federal court. Allens Creek, supra, at 525.

6.14.1 Form of Motion

The requirements with regard to the form and content of motions are set forth in 10 CFR § 2.730(b).

The Appeal Board expects the caption of every filing in which immediate affirmative relief is requested to reference that fact explicitly by adverting to the relief sought and including the word "motion." The movant will not be heard to assert that it has been prejudiced by the Board's failure to take timely action on the motion in the absence of such a reference. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-457, 7 NRC 70, 71 (1978).

6.14.2 Responses to Motions

6.14.2.1 Time for Filing Responses to Motions

Unless specific time limits for responses to motions are expressly set out in specific regulations or are established by the presiding adjudicatory board, the time within which responses to motions must be filed is set forth in 10 CFR § 2.730.

If a document requiring a response within a certain time after service is served incompletely (e.g., only part of the document is mailed), 10 CFR § 2.712 would indicate that the time for response does not begin to run since implicit in that rule is that documents mailed are complete, otherwise service is not effective. Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-235, 8 AEC 645, 649 n.7 (1974) (dictum).

6.14.3 Licensing Board Actions on Motions

If a Licensing Board decides to defer indefinitely a ruling on a motion of some importance, "considerations of simple fairness require that all parties be told of that fact." Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-417, 5 NRC 1442, 1444 (1977).

6.15 NEPA Considerations

NEPA expanded the Commission's regulatory jurisdiction beyond that conferred by the Atomic Energy Act or the Energy Reorganization Act. Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936 (1974). NEPA requires the Commission to consider environmental factors in granting, denying or conditioning a construction permit. It does not give the Commission the power to order an applicant to construct a plant at an alternate site or to order a different utility to construct a facility. Nevertheless, the fact that the Commission is not empowered to implement alternatives does not absolve it from its duty to consider them. Natural Resources Defense Council v. Morton, 458 F.2d 827 (D.C. Cir. 1972); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977).

NEPA does not establish minimal environmental standards; the environmental review mandated entails a balancing of costs and benefits rather than a measuring against absolute environmental standards. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 43 (1977). Pursuant to NEPA, the NRC must make a finding as to the need for the facility or need-for-power in determining whether construction of the facility should be authorized. "Need-for-power" is a shorthand expression for the "benefit" side of the cost-benefit balance NEPA mandates. A nuclear plant's principal "benefit" is the electric power it generates. Hence, absent some "need-for-power," justification for building a facility is problematical. Id. at 90.

NEPA requirements apply to license amendment proceedings as well as to construction permit and operating license proceedings. In license amendment proceedings, however, a Licensing Board should not embark broadly upon a fresh assessment of the environmental issues which have already been thoroughly considered and which were decided in the initial decision. Rather, the Board's role in the environmental sphere will be limited to assuring itself that the ultimate NEPA conclusions reached in the initial decision are not significantly affected by such new developments. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 393 (1978), citing, Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 415, (1975). With regard to license amendments, it has been held that the grant of a license amendment to increase the storage capacity of a spent fuel pool is not a major Commission action significantly affecting the quality of the human environment, and therefore, no EIS is required. Public Service Electric and Gas Company, et al. (Salem Nuclear Generating Station, Unit 1), LBP-80-27, 12 NRC 435, 456 (1980); Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 264-268 (1979).

"[T]he Commission is under a dual obligation: to pursue the objectives of the Atomic Energy Act and those of the National Environmental Policy Act. 'The two statutes and the regulations promulgated under each must be viewed in pari materia.'" Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 & 2), ALAB-506, 8 NRC 533, 539 (1978). (emphasis in original)

In fulfilling its obligations under NEPA, the NRC may impose upon applicants and licensees conditions designed to minimize the adverse environmental effects of licensed activities. Such conditions may be imposed even on other Federal agencies, such as TVA, which seek NRC licenses, despite the language of Section 271 of the Atomic Energy Act (42 U.S.C. 2018) which states, in part, that nothing in the act "shall be construed to affect the authority of any Federal, State or local agency with respect to the generation, sale, or transmission of electric power through the use of nuclear facilities licensed by the Commission...." Phipps Bend, 8 NRC at 541-544. Unless it was explicitly made exclusive, the authority of other Federal, state or local agencies or government corporations to consider the environmental consequences of a proposed project does not preempt the NRC's authority to condition its permits and licenses pursuant to NEPA. For example, TVA's jurisdiction over environmental matters is not exclusive where TVA seeks a license from a Federal agency, such as NRC, which also has full NEPA responsibilities. Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 and 2), LBP-77-14, 5 NRC 494 (1977).

NEPA directs all Federal agencies to comply with its requirements "to the fullest extent possible." (42 U.S.C. 4332.) The leading authorities teach that an agency is excused from those NEPA duties only "when a clear and unavoidable conflict in statutory authority exists." Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 and 2), ALAB-506, 8 NRC 533, 545 (1978).

While the authority of other Federal or local agencies to consider the environmental effects of a project does not preempt the NRC's authority with regard to NEPA, the NRC, in conducting its NEPA analysis, may give considerable weight to action taken by another competent and responsible governmental authority in enforcing an environmental statute. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 & 2), LBP-78-28, 8 NRC 281, 282 (1978).

In contrast to safety questions, the environmental review at the operating license stage need not duplicate the construction-permit review, 10 CFR § 51.21. To raise an issue in an operating license hearing concerning environmental matters which were considered at the construction-permit stage, there needs to be a showing either that the issue had not previously been adequately considered or that significant new information has developed after the construction permit review. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 465 (1979).

6.15.1 Environmental Impact Statements (EIS)

The activities for which environmental statements need be prepared and the procedures for preparation are covered generally in 10 CFR Part 51. For a discussion of the scope of an NRC NEPA review when the project addressed by that review is also covered by a broader overall programmatic EIS prepared by another Federal agency, see USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).

Neither the Atomic Energy Act, NEPA, nor the Commission's regulations require that there be a hearing on an environmental impact statement. Public hearings are held on an EIS only if the Commission finds such hearings are required in the public interest. 10 CFR § 2.104. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 625 (1981), citing, Vermont Yankee Nuclear Power Corp. v. NRC, 435 U.S. 519 (1978).

Under the plain terms of NEPA, the environmental assessment of a particular proposed Federal action coming within the statutory reach may be confined to that action together with, inter alia, its unavoidable consequences. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 48 (1978).

The environmental review mandated by NEPA is subject to a rule of reason and as such need not include all theoretically possible environmental effects arising out of an action, but may be limited to effects which are shown to have some likelihood of occurring. This conclusion draws direct support from the judicial interpretation of the statutory command imposing the obligation to make reasonable forecasts of the future. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 48, 49 (1978).

NEPA requires that a Federal agency make a "good faith" effort to predict reasonably foreseeable environmental impacts and that the agency apply a "rule of reason" after taking a "hard look" at potential environmental impacts. But an agency need not have complete information on all issues before proceeding. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 & 2), LBP-78-26, 8 NRC 102, 141 (1978).

6.15.1.1 Need to Prepare an EIS

Although the determination, as to whether to prepare an environmental impact statement falls initially upon the Staff, that determination may be made an issue in an adjudicatory proceeding. Consumers Power Company (Palisades Nuclear Plant, LBP-79-20, 10 NRC 108, 120 (1979)).

In the final analysis, the significance of the impact of the project -- in large part an evidentiary matter -- will determine whether a statement must be issued. Palisades, supra.

The test of whether benefits of a proposed action outweigh its costs is distinct from the primary question of whether an environmental impact statement is needed because the action is a major Federal action significantly affecting the environment. Virginia Electric Power Co. (Surry Nuclear Power Station, Units 1 & 2), CLI-80-4, 11 NRC 405 (1980).

The fact that risks of other actions or no action are greater than those of the proposed action does not show that risks of the proposed action are not significant so as to require an EIS. Where conflict in the scientific community makes determination of significance of environmental impact problematical, the preferable course is to prepare an environmental impact statement. Virginia Electric Power Co. (Surry Nuclear Power Station, Units 1 & 2), CLI-80-4, 11 NRC 405 (1980).

For an analysis of when an EIA rather than an EIS is appropriate, see Commonwealth Edison Company (Zion Station, Units 1 & 2), LBP-80-7, 11 NRC 245, 249-250 (1980).

When a licensee seeks to withdraw an application to expand its existing low-level waste burial site, the granting of the request to withdraw does not amount to a major Federal action requiring a NEPA review. This is true even though, absent an expansion, the site will not have the capacity to accept additional low-level waste. Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 161-163 (1980).

10 CFR §§ 51.5(b) and (c)(2) authorize the issuance of a negative declaration and an environmental impact appraisal in circumstances where the Staff has determined that the proposed licensing action would not have a significant effect upon the quality of the human environment. Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 265 n.2 (1979).

When the environmental effects of full-term, full-power operation have already been evaluated in an EIS, a licensing action for limited operation under a 10 CFR § 50.57(c) license that would result in lesser impacts need not be accompanied by an additional impact statement or an impact appraisal. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226 (1981).

The Commission has consistently taken the position that individual fuel exports are not "major Federal actions."

Westinghouse Electric Corp. (Exports to Philippines), CLI-80-15, 11 NRC 672 (1980).

6.15.1.2 Scope of EIS

The scope of the environmental statement or appraisal must be at least as broad as the scope of the action being taken. Duke Power Company (Oconee/McGuire), LBP-80-28, 12 NRC 459, 473 (1980).

In Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 551 (1978), the U.S. Supreme Court embraced the doctrine that environmental impact statements need not discuss the environmental effects of alternatives which are "deemed only remote and speculative possibilities." The same has been held with respect to remote and speculative environmental impacts of the proposed project itself. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75 (1981). Public Service Electric & Gas Company, (Hope Creek Generating Station, Units 1 and 2), ALAB-518, 9 NRC 14, 38 (1979).

The scope of a NEPA environmental review in connection with a facility license amendment is limited to a consideration of the extent to which the action under the amendment will lead to environmental impacts beyond those previously evaluated. Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-14, 13 NRC 677, 684-685 (1981), citing, Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312 (1981).

When major Federal actions are involved, if related activities taken abroad have a significant effect within the U.S., those effects are within NEPA's ambit. However, remote and speculative possibilities need not be considered under NEPA. Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-562, 10 NRC 437, 446 (1979).

The Staff's environmental statement pertaining to a manufacturing license application "...shall be directed at the manufacture of the reactor(s) at the manufacturing site; and, in general terms, at the construction and operation of the reactor(s) at an hypothetical site or sites having characteristics that fall within the postulated site parameters." 10 CFR Part 50, Appendix M. This relieves the Staff of any responsibility in the manufacturing license application proceeding for locating or evaluating any specific sites for a floating nuclear power plant. Rather, such issues are addressed in proceedings to place these floating plants

at particular locations. Offshore Power Systems (Floating Nuclear Power Plants), unpublished ASLB order (September 11, 1978).

6.15.2 Role of EIS

A NEPA analysis of the government's proposed licensing of private activities is necessarily more narrow than a NEPA analysis of proposed activities which the government will conduct itself. The former analysis should consider issues which could preclude issuance of the license or which could be affected by license conditions. Kleppe v. Sierra Club, 427 U.S. 390 (1976). It should focus on the proposal submitted by the private party rather than on broader concepts. It must consider other alternatives, however, even if the agency itself is not empowered to order that those alternatives be undertaken. Were there no distinction in NEPA standards between those for approval of private actions and those for federal actions, NEPA would, in effect, become directly applicable to private parties. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977).

The impact statement does not simply "accompany" an agency recommendation for action in the sense of having some independent significance in isolation from the deliberative process. Rather, the impact statement is an integral part of the Commission's decision. It forms as much a vital part of the NRC's decisional record as anything else, such that for reactor licensing, for example, the agency's decision would be fundamentally flawed without it. Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 275 (1980).

Where an applicant has submitted a specific proposal, the statutory language of NEPA's Section 102(2)(C) only requires that an environmental impact statement be prepared in conjunction with that specific proposal, providing the Staff with a "specific action of the known dimensions" to evaluate. A single approval of a plan does not commit the agency to subsequent approvals; should contemplated actions later reach the stage of actual proposals, the environmental effects of the existing project can be considered when preparing the comprehensive statement on the cumulative impact of the proposals. Offshore Power Systems (Floating Nuclear Power Plants), LBP-79-15, 9 NRC 653, 658-660 (1979).

6.15.3 Circumstances Requiring Redrafting of Final Environmental Statement (FES)

In certain instances, an FES may be so defective as to require redrafting, recirculation for comment and reissuance in final form. Possible defects which could render

an FES inadequate are numerous and are set out in a long series of NEPA cases in the Federal Courts. (See, e.g., Brooks v. Volpe, 350 F. Supp. 269 (W.D. Wash. 1972)(FES inadequate when it suffers from a serious lack of detail and relies on conclusions and assumptions without reference to supporting objective data); Essex City Preservation Ass'n. v. Campbell, 536 F.2d 956, 961 (1st Cir. 1976) (new FES required when there is significant new information or a significant change in circumstances upon which original FES was based); NRDC v. Morton, 458 F.2d 827 (D.C. Cir. 1972)(existence of unexamined but viable alternative could render FES inadequate)). The Appeal Board itself has stated that a new FES may be necessary when the current situation departs markedly from the positions espoused or information reflected in the FES. Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility, ALAB-296, 2 NRC 671 (1975).

Even though an FES may be inadequate in certain respects, ultimate NEPA judgments with respect to any facility are to be made on the basis of the entire record before the adjudicatory tribunal. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163 (1975). The Commission's regulations recognize that evidence presented at a hearing may cause a Licensing Board to arrive at conclusions different from those in an FES, in which event the FES is simply deemed amended pro tanto. 10 CFR § 51.52(b)(3); Allied General Nuclear Services, ALAB-296 supra. Since findings and conclusions of the licensing tribunal are deemed to amend the FES where different therefrom, amendment and recirculation of the FES is not always necessary, particularly where the hearing will provide the public ventilation that recirculation of an amended FES would otherwise provide. Philadelphia Electric Co., ALAB-262 supra. Thus, modification of the FES by Staff testimony or the Licensing Board's decision does not normally require recirculation of the FES. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 372 (1975), unless the modifications are truly substantial. Allied General Nuclear Services, ALAB-296 supra.

Two Courts of Appeals have approved the Commission's rule that the FES is deemed modified by subsequent adjudicatory tribunal decisions, Citizens for Safe Power v. NRC, 524 F.2d 1291, 1294, n.5 (D.C. Cir. 1975); Ecology Action v. AEC, 492 F.2d 998, 1001-02 (2nd Cir. 1974). Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 29, n.43 (1978). See also New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 94 (1st Cir. 1978).

If the changes contained in an errata document for an FES do not reveal an obvious need for a modification of plant

design or a change in the outcome of the cost-benefit analysis, the document need not be circulated or issued as a supplemental FES. Nor is it necessary to issue a supplemental FES when timely comments on the DES have not been adequately considered. The Licensing Board may merely effect the required amendment of the FES through its initial decision. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), LBP-77-21, 5 NRC 684 (1977).

Similarly, there is no need for a supplemental impact statement and its circulation for public comment where the changes in the proposed action which would be evaluated in such a supplement mitigate the environmental impacts, although circulation of a supplement may well be appropriate or necessary where the change has significant aggravating environmental impacts. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 28-29 (1978).

NEPA does not require the staff of a Federal agency conducting a NEPA review to consider the record, as developed in collateral State proceedings, concerning the environmental effects of the proposed Federal action. Failure to review the State records prior to issuing an FES, therefore, is not grounds for requiring preparation and circulation of a supplemental FES. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), LBP-77-21, 5 NRC 684 (1977).

A proposed shift in ownership of a plant with no modification to the physical structure of the facility does not by itself cast doubt on the benefit to be derived from the plant such as to require redrafting and recirculating the EIS. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 184 (1978).

The Staff's environmental evaluation is not deficient merely because it contains only a limited discussion of facility decommissioning alternatives. There is little value in considering at the operating license stage what method of decommissioning will be most desirable many years in the future in light of the knowledge which will have been accumulated by that time. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 178 at n.32 (1974).

For a more recent case discussing recirculation of an FES, see Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 786 (1979).

6.15.3.1 Effect of Failure to Comment on Draft Environmental Statement (DES)

Where an intervenor received and took advantage of an opportunity to review and comment on a DES and where his comments did not involve the Staff's alternate site analysis and did not bring sufficient attention to that analysis to stimulate the Commission's consideration of it, the intervenor will not be permitted to raise and litigate, at a late stage in the hearings, the issue as to whether the Staff's alternate site analysis was adequate, although he may attack the conclusions reached in the FES. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-366, 5 NRC 39, 66-67 (1977), aff'd as modified, CLI-77-8, 5 NRC 503 (1977).

Since the public is afforded early opportunity to participate in the NEPA review process, imposition of a greater burden for justification for changes initiated by untimely comments is appropriate. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503, 539 (1977).

Comments on a DES which fail to meet the standards of CEQ Guidelines (40 CFR § 1500.9(e)) on responsibilities of commenting entities to assist the Staff need not be reviewed by the Staff. Thus, where comments which suggest that the Staff consider collateral State proceedings on the environmental effects of a proposed reactor do not specify the parts of the collateral proceedings which should be considered and the parts of the DES which should be revised, the Staff need not review the collateral proceedings. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), LBP-77-21, 5 NRC 684 (1977).

6.15.3.2 Stays Pending Remand for Inadequate EIS

Where judicial review disclosed inadequacies in an agency's environmental impact statement prepared in good faith, a stay of the underlying activity pending remand does not follow automatically. Whether the project need be stayed essentially must be decided on the basis of (1) a traditional balancing of the equities, and (2) a consideration of any likely prejudice to further decisions that might be called for by the remand. Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 784-785 (1977).

6.15.4 Alternatives

Perhaps the most important environmentally related task the Staff has under NEPA is to determine whether an application should be turned down because there is some other site at

which the plant ought to be located. No other environmental question is both so significant in terms of the ultimate outcome and so dependent upon facts particular to the application under scrutiny. Consequently, the Appeal Board expects the Staff to take unusual care in performing its analysis and in disclosing the results of its work to the public. Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit 2), ALAB-435, 6 NRC 541, 543, 544 (1977).

A hard look for a superior alternative is a condition precedent to a licensing determination that an applicant's proposal is acceptable under NEPA. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 513 (1978). When NEPA requires an EIS, the Commission is obliged to take a harder look at alternatives than if the proposed action were inconsequential. Florida Power and Light Co. (Turkey Point Nuclear Generating, Units Nos. 3 and 4), ALAB-660, 14 NRC 987, 1005-1006 (1981), citing, Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979). In fact the NEPA mandate that alternatives to the proposed licensing action be explored and evaluated does not come into play where the proposed action will neither (1) entail more than negligible environmental impacts, nor (2) involve the commitment of available resources respecting which there are unresolved conflicts. Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 265-266 (1979).

NEPA was not intended merely to give the appearance of weighing alternatives that are in fact foreclosed. Pending completion of sufficient comparison between an applicant's proposed site and others, in situations where substantial work has already taken place, the Commission can preserve the opportunity for a real choice among alternatives only by suspending outstanding construction permits. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-14, 7 NRC 952, 958-959 (1978).

Despite the importance of alternate site considerations, where all parties have proceeded since the inception of the proceeding on the basis that there was no need to examine alternate sites beyond those referred to in the FES, a party cannot insist at the "eleventh hour" that still other sites be considered in the absence of a compelling showing that the newly suggested sites possess attributes which establish them to have greater potential as alternatives than the sites already selected as alternatives. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-495, 8 NRC 304, 306 (1978).

A party seeking consideration at an advanced stage of a proceeding of a site other than the alternate sites already explored in the proceeding must at least provide informa-

tion regarding the salient characteristics of the newly suggested sites and the reasons why these characteristics show that the new sites might prove better than those already under investigation. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-499, 8 NRC 319, 321 (1978).

The fact that a possible alternative is beyond the Commission's power to implement does not absolve the Commission of any duty to consider it, but that duty is subject to a "rule of reason". Factors to be considered include, distance from site to load center, institutional and legal obstacles and the like. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 486 (1978).

Under NEPA, there is no need for Boards to consider economically better alternatives, which are not shown to also be environmentally preferable. No study of alternatives is needed under NEPA unless the action significantly affects the environment (§ 102(2)(c)) or involves an unresolved conflict in the use of resources (§ 102(2)(e)). Where an action will have little environmental effect, an alternative could not be materially advantageous. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 456-458 (1980).

NEPA does not require the NRC to choose the environmentally preferred site. NEPA is primarily procedural, requiring the NRC to take a hard look at environmental consequences and alternatives. Rochester Gas & Electric Corp., et al. (Sterling Power Project, Nuclear Unit No. 1), CLI-80-23, 11 NRC 731, 736 (1980).

The application of the Commission's "obviously superior" standard for alternative sites (sec 6.15.4.1 *infra*) does not affect the Staff's obligation to take the hard look. The NRC's "obviously superior" standard is a reasonable exercise of discretion to insist on a high degree of assurance that the extreme action of denying an application is appropriate in view of inherent uncertainties in benefit-cost analysis. Sterling, supra, at 735.

Whether or not the parties to a particular licensing proceeding may agree that none of the alternatives (in Seabrook, alternative sites) to the proposal under consideration is preferable, based on a NEPA cost-benefit balance, it remains the Commission's obligation to satisfy itself, that that is so. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-557, 10 NRC 153, 155 (1979).

The scope of a NEPA environmental review in connection with a facility license amendment is limited to a consideration of the extent to which the action under the amendment will lead to environmental impacts beyond those previously evaluated. Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-4, 13 NRC 677, 684-85 (1981), citing, Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312 (1981). The consideration of alternatives in such a case does not include alternatives to the continued operation of the plant, even though the amendment might be necessary to continued reactor operation. Turkey Point, supra.

6.15.4.1 Obviously Superior Standard for Site Selection

The standard for approving a site is acceptability, not optimality. Public Service Co. of N.H. (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503 (1977). Due to the more extensive environmental studies made of the proposed site in comparison to alternate sites, more of the environmental costs of the selected site are usually discovered. Upon more extensive analysis of alternate sites, additional cost will probably be discovered. Moreover, a Licensing Board can do no more than accept or reject the application for the proposed site; it cannot ensure that the applicant will apply for a construction permit at the alternate site. For these reasons, a Licensing Board should not reject a proposed site unless an alternate site is "obviously superior" to the proposed site. Id. at 526. Standards of acceptability, instead of optimality, apply to approval of plant designs as well. Id. In view of all of this, an applicant's selection of a site may be rejected on the grounds that a preferable alternative exists only if the alternative is "obviously superior" Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit 2), ALAB-435, 6 NRC 541 (1977). For a further discussion of the "obviously superior" standard with regard to alternatives, see Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 67, 78 (1977).

The Commission's obviously superior standard for alternate sites has been upheld by the Court of Appeals for the First Circuit. The Court held that, given the necessary imprecision of the cost-benefit analysis and the fact that the proposed site will have been subjected to closer scrutiny than any alternative, NEPA does not require that the single best site for environmental purposes be chosen. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 95 (1st Cir. 1978).

A Licensing Board determination that none of the potential alternative sites surpasses a proposed site in terms of

providing new generation for areas most in need of new capacity cannot of itself serve to justify a generic rejection of all those alternative sites on institutional, legal, or economic grounds. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 491 (1978).

To establish that no suggested alternative sites are "obviously superior" to the proposed site, there must be either (1) an adequate evidentiary showing that the alternative sites should be generically rejected or (2) sufficient evidence for informed comparisons between the proposed site and individual alternatives. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 498 (1978).

It is not enough for rejection of all alternative sites to show that a proposed site is a rational selection from the standpoint solely of system reliability and stability. For the comparison to rest on this limited factor, it would also have to be shown that the alternative sites suffer so badly on this factor that no need existed to compare the sites from other standpoints. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 497 (1978).

For application of the "obviously superior" standard, see Rochester Gas and Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 393-399 (1978), particularly at 8 NRC 397 where the Appeal Board equates "obviously" to "clearly and substantially."

6.15.4.2 Standards for Conducting Cost-Benefit Analysis Related to Alternatives

If, under NEPA, the Commission finds that environmentally preferable alternatives exist, then it must undertake a cost-benefit balancing to determine whether such alternatives should be implemented. Florida Power and Light Co. (Turkey Point Nuclear Generating, Units No. 3 and 4), ALAB-660, 14 NRC 987, 1004 (1981), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155 (1978).

Neither the NRC Staff nor a Licensing Board is limited to reviewing only those alternate sites unilaterally selected by the applicant. To do so would permit decisions to be based upon "sham" alternatives elected to be identified by an applicant and would often result in consideration of something less than the full range of reasonable alternatives that NEPA contemplates. The adequacy of the alternate site analysis performed by the Staff remains a proper subject of inquiry by the Licensing Board, notwithstanding the fact that none of the alternatives selected by the applicant proves to

be "obviously superior" to the proposed site. Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 & 2), LBP-77-60, 6 NRC 647, 659 (1977). Nevertheless, the NEPA evaluation of alternatives is subject to a "rule of reason" and application of that rule "may well justify exclusion or but limited treatment" of a suggested alternative. Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 100 (1977), citing, CLI-77-8, 5 NRC 503, 540 (1977).

In Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503 (1977), the Commission set forth standards for determining whether, in connection with conducting a second cost-benefit analysis to consider alternate sites, the Licensing Board should account for nontransferable investments made at the previously approved site. Where the earlier environmental analysis of the proposed site had been soundly made, the projected costs of construction at the alternate site should take into account nontransferable investments in the proposed site. Where the earlier analysis lacked integrity, prior expenditures in the proposed site should be disregarded. Public Service Co. of New Hampshire et al. supra at 5 NRC 533-536.

Population is one -- but only one -- factor to be considered in evaluating alternative sites. All other things being equal, it is better to place a plant farther from population concentrations. The population factor alone, however, usually cannot justify dismissing alternative sites which meet the Commission's regulations. Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 510 (1978).

In alternative site considerations, the presence of an existing reactor at a particular site where the proposed reactor might be built is significant, but not dispositive. Rochester Gas and Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 394-395 (1978).

In assessing the environmental harm associated with land clearance necessary to build a nuclear facility, one must look at what is being removed -- not just how many acres are involved. Sterling, ALAB-502, 8 NRC 383 at 395.

In considering the economic costs of building a facility at an alternative site, the costs of replacement power which might be required by reason of the substitution at a late date of an alternate site for the proposed site may be considered. Rochester Gas and Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 394 (1978). However, where no alternative site

is "obviously superior" from an environmental standpoint, there is no need to consider this "delay cost" factor. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 533-536 (1977); Sterling, supra at 8 NRC 398. Indeed, unless an alternative site is shown to be environmentally superior, comparisons of economic costs are irrelevant. Sterling, supra at 8 NRC 395, n.25.

6.15.5 Need for Facility

Pursuant to NEPA, the NRC must make a finding as to the need for the facility or need for power in determining whether construction of the facility should be authorized. "Need for power" is a shorthand expression for the "benefit" side of the cost-benefit balance NEPA mandates. A nuclear plant's principal "benefit" is the electric power it generates. Hence, absent some "need-for-power," justification for building a facility is problematical. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 90 (1977). For a further discussion of "need for facility," see Section 3.7.3.2.

NEPA does not foreclose reliance, in resolution of "need-of-power" issues, on the judgment of local regulatory bodies that are charged with the responsibility to analyze future electrical demand growth, at least where the forecasts are not facially defective, are explained on a detailed record, and a principal participant in the local proceeding has been made available for examination in the NRC proceeding. Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-490, 8 NRC 234, 241 (1978).

The standard for judging the "need-for-power" is whether a forecast of demand is reasonable and additional or replacement generating capacity is needed to meet that demand. Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-490, 8 NRC 234, 237 (1978).

The general rule applicable to cases involving differences or changes in demand forecasts is not whether the utility will need additional generating capacity but when. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 633, 691 (1980).

6.15.6 Cost-Benefit Analysis Under NEPA

The NEPA cost-benefit analysis considers the costs and benefits to society as a whole. Rather than isolate the costs or benefits to a particular group, overall benefits

are weighed against overall costs. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-II, 7 NRC 381, 391 (1978).

In weighing the costs and benefits of a facility, adjudicatory boards must consider the time and resources that have already been invested if the facility has been partially completed. Money and time already spent are irrelevant only where the NEPA comparison is between completing the proposed facility on the one hand and abandoning that facility on the other. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-392, 5 NRC 759 (1977). In comparing the costs of completion of a facility at the proposed site to the costs of building the facility at an alternate site, the Commission may consider the fact that costs have already been incurred at the proposed site. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 95-96 (1st Cir. 1978).

Unless a proposed nuclear unit has environmental disadvantages when compared to alternatives, differences in financial cost are of little concern. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 & 2), LBP-78-26, 8 NRC 102, 161 (1978).

While the balancing of costs and benefits of a project is usually done in the context of an environmental impact statement prepared because the project will have significant environmental impacts, at least one court has implied that a cost-benefit analysis may be necessary for certain Federal actions which, of themselves, do not have a significant environmental impact. Specifically, the court opined that an operating license amendment derating reactor power significantly could upset the original cost-benefit balance and, therefore, require that the cost-benefit balance for the facility be reevaluated. Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1084-85, (D.C. Cir. 1974).

6.15.6.1 Consideration of Specific Costs Under NEPA

When water quality decisions have been made by the EPA pursuant to the Federal Water Pollution Control Act Amendments of 1972 and these decisions are raised in NRC licensing proceedings, the NRC is bound to take EPA's considered decisions at face value and simply to factor them into the NEPA cost-benefit analysis. Carolina Power & Light Co. (H.B. Robinson, Unit No. 2), ALAB-569, 10 NRC 557, 561-62 (1979).

The environmental and economic costs of decommissioning necessarily comprise a portion of the cost-benefit analysis which the Commission must make. Pennsylvania Power & Light

Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 313 (1979).

Alternative methods of decommissioning do not have to be discussed. All that need be shown is that the estimated costs do not tip the balance against the plant and that there is reasonable assurance that an applicant can pay for them. Susquehanna, supra, at 314.

6.15.6.1.1 Cost of Withdrawing Farmland from Production

(SEE 3.7.3.5.1)

6.15.6.1.2 Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility

Increased employment and tax revenue cannot be included on the benefit side in striking the ultimate NEPA cost-benefit balance for a particular plant. But the presence of such factors can certainly be taken into account in weighing the potential extent of the socioeconomic impact which the plant might have upon local communities. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 509 at n.58 (1978).

6.15.7 Consideration of Class 9 Accidents in an Environmental Impact Statement

The ECCS Final Acceptance Criteria as set forth in 10 CFR § 50.46 and Appendix K to 10 CFR Part 50 assume that ECCS will operate during an accident. On the other hand, Class 9 accidents postulate the failure of the ECCS. Thus, on its face, consideration of Class 9 accidents would appear to be a challenge to the Commission's regulations. However, the Commission has squarely held that the regulations do not preclude the use of inconsistent assumptions about ECCS failure for other purposes. Thus, the prohibition of challenges to the regulations in adjudicatory proceedings does not preclude the consideration of Class 9 accidents and a failure of ECCS related thereto in environmental impact statements and proceedings thereon. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 221 (1978).

Because the law does not require consistency in treatment of two parties in different circumstances, the Staff does not violate principles of fairness in considering Class 9 accidents in environmental impact statements for floating but not land based plants. The Staff need only provide a reasonable explanation why the differences justify a departure from past agency practice. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 222 (1978).

6.15.8 Power of NRC Under NEPA

6.15.8.1 Powers in General

Commensurate with the Commission's obligation to comply with NEPA in licensing nuclear facilities is an implicit power to impose permit and license conditions indicated by the NEPA analysis.

The Commission may prescribe such regulations, orders and conditions as it deems necessary under any activity authorized pursuant to the Atomic Energy Act of 1954, as amended, and NEPA requires the Commission to exercise comparable regulatory authority in the environmental area. Wisconsin Electric Power Co. (Point Beach, Unit 2), ALAB-82, 5 AEC 350, 352 (1972).

Where necessary to assure that NEPA is complied with and its policies protected, Licensing Boards can and must ignore stipulations among the parties to that effect. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Unit 3), CLI-75-14, 2 NRC 835 (1975). Beyond this, Licensing Boards have independent responsibilities to enforce NEPA and may raise environmental issues sua sponte. Tennessee Valley Authority (Hartsville Nuclear Power Plant, Units 1A, 2A, 1B & 2B), ALAB-380, 5 NRC 572 (1977).

In Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 2), ALAB-399, 5 NRC 1156 (1977), the Appeal Board dealt with the question as to the degree to which NEPA allows the NRC to preempt State and local regulation with respect to nuclear facilities. Therein, the Appeal Board held that the Federal doctrine of preemption invalidates local zoning decisions that substantially obstruct or delay the effectuation of an NRC license condition imposed by the Commission pursuant to NEPA. Id. at 1169-1170.

The Appeal Board stated:

...NEPA gave this Commission both the power and the duty to interpret and administer with the Atomic Energy Act and its own regulations in accordance with the policies of NEPA. Among the policies of NEPA are to 'fulfill the responsibilities of each generation as trustee of the environment for succeeding generations,' to 'attain the widest range of beneficial uses of the environment without degradation...', and to 'enhance the quality of renewable resources...' ...State or local regulation is preempted where it 'produces a result inconsistent with the objective of the Federal statute,' where it 'frustrates

the full effectiveness of Federal law,' or where it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' ... (footnotes omitted). 5 NRC 1169.

However, the Appeal Board also indicated that, where a question is presented as to whether State or local regulations relating to alteration of a nuclear power plant are preempted under NEPA, the NRC should refrain from ruling on that question until regulatory action has been taken by the State or local agency involved. *Id.* at 1170. To the same effect in this regard is Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 2), ALAB-453, 7 NRC 31, 35 (1978), where the Appeal Board reiterated that Federal tribunals should refrain from ruling on questions of Federal preemption of State law where a State statute has not yet been definitively interpreted by the State courts or where an actual conflict between Federal and State authority has not ripened.

A State or political subdivision thereof may not substantially obstruct or delay conditions imposed upon a plant's operating license by the NRC pursuant to its NEPA responsibilities, as such actions would be preempted by Federal law. However, a State may refuse to authorize construction of a nuclear power plant on environmental or other grounds and may prevent or halt operation of an already built plant for some valid reason under State law. Consolidated Edison Co. of New York, Inc. (Indian Point Station, Unit 2), ALAB-453, 7 NRC 31, 34-35 (1978).

When another agency has yet to resolve a major issue pertaining to a particular nuclear facility, NRC may allow construction to continue at that facility only if NRC's NEPA analysis encompasses all likely outcomes of the other agency's review. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), CLI-78-14, 7 NRC 952, 957 (1978).

A Licensing Board may rule on the adequacy of the FES once it is introduced into evidence and may modify it if necessary. A Licensing Board's authority to issue directions to the NRC Staff regarding the performance of its independent responsibilities to prepare a draft environmental statement is limited. Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-80-18, 11 NRC 906, 909 (1980).

Neither NEPA nor the Atomic Energy Act applies to activities occurring in foreign countries and subject to their sovereign control. Philadelphia Electric Co., et al.

(Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-562, 10 NRC 437, 445-46 (1979).

6.15.8.2 Transmission Line Routing

Consistent with its interpretation of the Commission's NEPA authority (see Wisconsin Electric Power Co. (Point Beach, Unit 2), ALAB-82, 5 AEC 350 (1972)), the Appeal Board has held that the NRC has the authority under NEPA to impose conditions (i.e., require particular routes) on transmission lines, at least to the extent that the lines are directly attributable to the proposed nuclear facility. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-247, 8 AEC 936, 939 (1974). In addition, the Commission has legal authority to review the offsite environmental impacts of transmission lines and to order changes in transmission routes selected by an applicant. Public Service of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 83 (1977).

6.15.8.3 Pre-LWA Activities/Offsite Activities

NEPA and the Commission's implementing regulations proscribe environmentally significant construction activities associated with a nuclear plant, including activities beyond the site boundary, without prior Commission approval. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), CLI-77-1, 5 NRC 1 (1977). A "site," in the context of the Commission's NEPA responsibilities, includes land where the proposed plant is to be located and its necessary accouterments, including transmission lines and access ways. Id. 10 CFR § 50.10(c), which broadly prohibits any substantial action which would affect the environment of the site prior to Commission approval, can clearly be interpreted to bar, for example, road and railway construction leading to the site, at least where substantial clearing and grading is involved. Id. In those situations where the Commission does approve offsite activities (e.g., through an LWA or a CP), conditions may be imposed to minimize adverse impacts. Id.

6.15.8.4 Relationship to EPA with Regard to Cooling Systems

The NRC may accept and use without independent inquiry EPA's determination of the magnitude of the marine environmental impacts from a cooling system in striking an overall cost-benefit balance for the facility. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 23, 24 (1978). For a discussion of the statutory framework governing the relationship between NRC and EPA in this area, see Seabrook supra at 7 NRC 23-26. Briefly, that relationship in the present setting may be described thusly: EPA determines what cool-

ing system a nuclear power facility may use and NRC factors the impacts resulting from use of that system into the NEPA cost-benefit analysis. Id. at 7 NRC 26.

The NRC's acceptance and use, without independent inquiry, of EPA's determination as to the aquatic impacts of the Seabrook Station (see Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 23, 24 (1978)) was upheld in New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 98 (1st Cir. 1978).

The Commission may rely on final decisions of the Environmental Protection Agency prior to completion of judicial review of such decisions. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-17, 8 NRC 179, 180 (1978).

Although an adverse environmental impact on water quality resulting from a cooling system discharge is an important input in the NEPA cost-benefit balance, a Licensing Board cannot require alteration of a facility's cooling system if that system has been approved by EPA. Carolina Power & Light Co. (H. B. Robinson, Unit 2), LBP-78-22, 7 NRC 1052, 1063-64 (1978).

6.15.8.5 NRC Power Under NEPA With Regard to the FWPCA

The spread of the Federal responsibility for water quality standards and pollution control among various licensing agencies, which resulted from the reading given NEPA by the Calvert Cliffs court, has been curtailed. That responsibility is shifted to EPA as its exclusive province. Section 511(c)(2) of the FWPCA does not change a licensing agency's obligation to weigh degradation of water quality in its NEPA cost-benefit balance, but the substantive regulation of water pollution is in EPA's hands. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 712-13 (1978).

Section 511(c)(2) of the FWPCA requires that the Commission and the Appeal Board accept EPA's determinations on effluent limitations. Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279, 282 (1979).

When water quality decisions have been made by the EPA pursuant to the Federal Water Pollution Control Act Amendments of 1972 and these decisions are raised in NRC licensing proceedings, the NRC is bound to take EPA's considered decisions at face value and simply to factor them into the NEPA cost-benefit analysis. Carolina Power & Light Co.

(H.B. Robinson, Unit No. 2), ALAB-569, 10 NRC 557, 561-62 (1979).

6.15.9 Spent Fuel Pool Proceedings

A Licensing Board is not required to consider in a spent fuel pool expansion case the environmental effects of all other spent fuel pool capacity expansions. Because pending or past licensing actions affecting the capacity of other spent fuel pools could neither enlarge the magnitude nor alter the nature of the environmental effects directly attributable to the expansion in question, there is no occasion to take into account any such pending or past actions in determining the expansion application at bar. Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 267-68 (1979).

The attempt, in a licensing proceeding for an individual pool capacity expansion, to challenge the absence of an acceptable generic long-term resolution of the waste management question was precluded in Prairie Island, ALAB-455, 7 NRC 41, restating the Commission's policy that for the purposes of licensing actions, the availability of offsite spent fuel repositories in the relatively near term should be presumed. Trojan, supra.

The Licensing Board need not consider alternatives to pool capacity expansion in a proposed expansion proceeding, where the environmental effects of the proposed action are negligible. The NEPA mandate that alternatives to the proposed licensing action be explored and evaluated does not come into play where the proposed action will neither (1) entail more than negligible environmental impacts nor (2) involve the commitment of available resources respecting which there are unresolved conflicts. Trojan, supra, at 256-266; Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981).

In a license amendment proceeding to expand a spent fuel pool, the environmental review for such amendment need not consider the effects of continued plant operation where the environmental status quo will remain unchanged. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 326 (1981), citing, Committee for Auto Responsibility v. Solomon, 603 F.2d 992 (D.C. Cir. 1979), cert. denied, 445 U.S. 915 (1980).

6.16 NRC Staff

6.16.1 Staff Role in Licensing Proceedings

In general, the Staff does not occupy a favored position at hearing. It is, in fact, just another party to the proceeding. Vermont Yankee Nuclear Power Corp. (Vermont

Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 532 (1973). The Staff's views are in no way binding upon the Board and they cannot be accepted without being subjected to the same scrutiny as those of other parties. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Units 2 & 3), ALAB-304, 3 NRC 1, 6 (1976); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-268, 1 NRC 383, 399 (1975). In the same vein, the Staff must abide by the Commission's regulations just as an applicant or intervenor must do. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-194, 7 AEC 431, 435 (1974). On the other hand, in certain situations, as where the Staff prepares a study at the express direction of the Commission, the Staff is an arm of the Commission and the primary instrumentality through which the NRC carries out its regulatory responsibilities and its submissions are entitled to greater consideration. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-76-17, 4 NRC 451 (1976).

After an order authorizing the issuance of a construction permit has become final agency action, and prior to the commencement of any adjudicatory proceeding on any operating license application, the exclusive regulatory power with regard to the facility lies with the Staff. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-381, 5 NRC 582 (1977). Under such circumstances an adjudicatory board has no authority with regard to the facility or the Staff's regulation of it. In the same vein, after a full-term, full power operating license has issued and the order authorizing it has become final agency action, no further jurisdiction over the license lies with any adjudicatory board. Portland General Electric Co., et al. (Trojan Nuclear Plant), ALAB-451, 6 NRC 889, 891 at n.3 (1977); Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 (1977); The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-II, 7 NRC 381, 386, aff'd, ALAB-470, 7 NRC 473 (1978).

Licensing Boards lack the power to direct the Staff in the performance of its independent responsibilities and, under the Commission's regulatory scheme, Boards cannot direct the Staff to suspend review of an application, preparation of an environmental impact statement or work, studies or analyses being conducted or planned as part of the Staff's evaluation of an application. New England Power Co., et al. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 278-79 (1978).

Although the Licensing Boards and the NRC Staff have independent responsibilities, they are "partners" in implementation of the Commission's policy that decisionmaking should be "both sound and timely," and thus they must coordinate

their operations in order to achieve this goal. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 203 (1978).

The general rule that the applicant carries the burden of proof in licensing proceedings does not apply with regard to alternate site considerations. For alternate sites, the burden of proof is on the Staff and the applicant's evidence in this regard cannot substitute for an inadequate analysis by the Staff. Boston Edison Co., et al. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 794 (1978).

The Staff plays a key role in assessing an applicant's qualifications. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-577, 11 NRC 18, 34 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

The Staff is assumed to be fair and capable of judging a matter on its merits. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4 (1980).

An early appraisal of an applicant's capability does not foreclose the Staff from later altering its conclusions. Such an early appraisal would aid the public and the Commission in seeing whether a hearing is warranted. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-577, 11 NRC 18, 33-34 (1980), reconsidered, ALAB-581, 11 NRC 233 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

6.16.1.1 Staff Demands on Applicant or Licensee

While the Commission, through the Regulatory Staff, has a continuing duty and responsibility under the Atomic Energy Act of 1954 to assure that applicants and licensees comply with the applicable requirements, Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-143, 6 AEC 623, 627 (1974), the Staff may not require an applicant to do more than the regulations require without a hearing. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Power Station), ALAB-191, 7 AEC 431, 445, 447 at n.32 (1974).

Because the law does not require consistency in treatment of two parties in different circumstances, the Staff does not violate principles of fairness in considering Class 9 accidents in environmental impact statements for floating but not land based plants. The Staff need only provide a reasonable explanation why the differences justify a

departure from past agency practice. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 222 (1978).

6.16.1.2 Staff Witnesses

Except in extraordinary circumstances, a Licensing Board may not compel the Staff to furnish a particular named individual to testify - i.e., the Staff may select its own witnesses. 10 CFR § 2.720(h)(2)(i). However, once a certain individual has appeared as a Staff witness, he may be recalled and compelled to testify further. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 391 (1974).

6.16.1.3 Post Hearing Resolution of Outstanding Matters by the Staff

A Licensing Board may refer minor matters which in no way pertain to the basic findings necessary for issuance of a license to the Staff for post hearing resolution. Such referral should be used sparingly, however. Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 951-52 (1974); Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 318 (1978). Since delegation of open matters to the Staff is a practice frowned upon by the Commission and the Appeal Board, a Licensing Board properly decided to delay issuing a construction permit until it had reviewed a loan guarantee from REA rather than delegating that responsibility to the Staff for post hearing resolution. Marble Hill, supra.

At the same time, it is entirely appropriate for the Staff to resolve matters not at issue in an operating license or amendment proceeding. In such proceedings, once a Licensing Board has resolved any contested issues and any issues which it raises sua sponte, the decision as to all other matters which need be considered prior to issuance of an operating license is the responsibility of the Staff alone. Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-181, 7 AEC 207, 209 at n.7 (1974). The Licensing Board is neither required nor expected to pass upon all items which the Staff must consider before the operating license is issued. Indian Point, supra, 3 NRC at 190.

6.16.2 Status of Staff Regulatory Guides

Regulatory guides promulgated by the Staff are not regulations, are subject to question in the course of adjudicatory hearings, and, when challenged, are to be regarded merely as the views of one party which cannot serve as evidence

of their own validity but must be supported by other sources. Porter County Chapter of the Izaak Walton League of America v. AEC, 633 F.2d 1011 (7th Cir. 1976); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-229, 8 AEC 425, 439, rev'd on other gnds., CLI-74-40, 8 AEC 809 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-217, 8 AEC 61, 68, (1974); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 28 at n. 76 (1974); Consolidated Edison Co. of N.Y., Inc. (Indian Point, Unit 2), ALAB-188, 7 AEC 323, 333 at n.42, rev'd in part on other gnds., CLI-74-23, 7 AEC 947 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 174 at n.27 (1974). Nevertheless, regulatory guides are entitled to considerable prima facie weight. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 811, (1974); clarified as to other matters, CLI-74-43, 8 AEC 826 (1974).

Nonconformance with regulatory guides or Staff positions does not mean that General Design Criteria (G.D.C.) are not met; applicants are free to select other methods to comply with the G.D.C. The G.D.C. are intended to provide engineering goals rather than precise tests by which reactor safety can be gauged. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).

While it is clear that regulatory guides are not regulations, are not entitled to be treated as such, need not be followed by applicants, and do not purport to represent the only satisfactory method of meeting a specific regulatory requirement, they do provide guidance as to acceptable modes of conforming to specific regulatory requirements. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977). Indeed, the Commission itself has indicated that conformance with regulatory guides is likely to result in compliance with specific regulatory requirements, though nonconformance with such guides does not mean non-compliance with the regulations. Petition for Emergency & Remedial Action, CLI-78-6, 7 NRC 400, 406-07 (1978).

6.16.3 Status of Staff Position and Working Papers

Staff position papers have no legal significance for any regulatory purpose and are entitled to less weight than an adopted regulatory guide. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383 (1975); Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244 (1974). Similarly, an NRC Staff working paper or draft report neither adopted nor sanctioned by the Commission itself has no legal significance for any NRC regu-

latory purpose. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-355, 4 NRC 397 (1976); Consolidated Edison Co. of N.Y., Inc. (Indian Point, Unit 2), ALAB-209, 7 AEC 971, 973 (1974).

Nonconformance with regulatory guides or Staff positions does not mean that General Design Criteria are not met; applicants are free to select other methods to comply with the G.D.C. The G.D.C. are intended to provide engineering goals rather than precise tests by which reactor safety can be gauged. Petition for Emergency & Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).

6.16.4 Status of Standard Review Plan

Where the applicant used criteria "required" by the Staff's Standard Review Plan (NUREG-75/087, § 2.2.3) in determining the probability of occurrence of a postulated accident, it is not legitimate for the Staff to base its position on a denigration of the process which the Staff itself had promulgated. Public Service Electric and Gas Company, Atlantic City Electric Company, (Hope Creek Generating Station, Units 1 and 2), ALAB-518, 9 NRC 14, 29 (1979).

6.16.5 Conduct of NRC Employees

(RESERVED)

6.17 Orders of Licensing and Appeal Boards

6.17.1 Compliance with Board Orders

Compliance with orders of an NRC adjudicatory board is mandatory unless such compliance is excused for good cause. Thus, a party may not disregard a board's direction to file a memorandum without seeking leave of the board after setting forth good cause for requesting such relief. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187, 190-91 (1978). Similarly, a party seeking to be excused from participation in a pre-hearing conference ordered by the board should present its justification in a request presented before the date of the conference. Seabrook, 8 NRC 187 at 191.

6.18 Precedent and Adherence to Past Agency Practice

Application of the "law of the case" doctrine is a matter of discretion. When an administrative tribunal finds that its declared law is wrong and would work an injustice, it may apply a different rule of law in the interests of settling the case before it correctly. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 260 (1978).

An Appeal Board does not give stare decisis effect to affirmation of Licensing Board conclusions on legal issues not brought to it by way of an appeal. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-482, 7 NRC 979, 981 at n.4 (1978).

A determination of fact in an adjudicatory proceeding which is necessarily grounded wholly in a nonadversary presentation is not entitled to be accorded generic effect, even if the determination relates to a seemingly generic matter rather than to some specific aspect of the facility in question. Washington Public Power Supply System (WPPSS Nuclear Projects Nos. 3 & 5), ALAB-485, 7 NRC 986, 988 (1978).

Because the law does not require consistency in treatment of two parties in different circumstances, the Staff does not violate principles of fairness in considering Class 9 accidents in environmental impact statements for floating but not land-based plants. The Staff need only provide a reasonable explanation why the differences justify a departure from past agency practice.

Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 222 (1978).

6.19 Pre-Permit Activities

NEPA and the Commission's implementing regulations proscribe environmentally significant construction activities associated with a nuclear plant, including activities beyond the site boundary, without prior Commission approval. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), CLI-77-1, 5 NRC 1 (1977). A "site" in this context includes land where the proposed plant is to be located and its necessary accouterments, including transmission lines and access ways. Id. The Commission may authorize certain site-related work prior to issuance of a construction permit pursuant to 10 CFR § 50.10(c) and (e). 10 CFR § 50.10(c), which broadly prohibits any substantial action which would adversely affect the environment of the site prior to Commission approval, can clearly be interpreted to bar, for example, road and railway construction leading to the site, at least where substantial clearing and grading is involved. Kansas Gas & Electric Co., supra.

Commission regulations provide means for an applicant to obtain prelicensing authorization to engage in certain specified construction activities. These include obtaining an exemption from licensing requirements under 10 CFR § 50.12, pleading special circumstances under 10 CFR § 2.758, and demonstrating that proposed activities will have only de minimus or "trivial" environmental effects. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-321, 3 NRC 293 (1976); Washington Public Power Supply System (Nuclear Projects 3 & 5), LBP-77-15, 5 NRC 643 (1977). In those situations where the Commission does approve offsite (through an LWA or CP) or pre-permit (through an

LWA) activities, conditions may be imposed to minimize adverse impacts. Kansas Gas & Electric Co., CLI-77-1, 5 NRC 1 (1977).

6.19.1 Pre-LWA Activity

Unlike authorization of activities under an LWA, pre-LWA activities may be authorized prior to issuance of a partial initial decision on environmental issues. Washington Public Power Supply System (Nuclear Projects 3 & 5), LRP-77-15, 5 NRC 643 (1977). Permission to commence activities preparatory to construction in advance of an LWA can be sought by three different methods. One method is to seek a determination by the Licensing Board that the proposed activities are not barred by 10 CFR § 50.10(c) because their impacts are de minimus (the so-called "trivial impact" standard) or minor and fully redressible. This is the preferred method when the issues involved are essentially factual. The second method is to proceed in accordance with 10 CFR § 2.758(b) under which a waiver or exemption may be obtained from the Commission if the Board certifies the issue presented in accordance with 10 CFR § 2.758(d). This method should be used when an interpretation or application of a regulation to particular facts is called into question. The third method is to seek an exemption from the Commission under 10 CFR § 50.12. The Commission has stated that this method is extraordinary and emphasized that it should be used sparingly. Washington Public Power Supply System (WPPSS Nuclear Projects 3 & 5), CLI-77-11, 5 NRC 719, 723 (1977).

10 CFR § 50.10(c) permits only that pre-LWA activity with so trivial an impact that it can be safely said that no conceivable harm would have been done to any of the interests sought to be protected by NEPA should the application for the facility ultimately be denied. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-331, 1 NRC 6 (1976), aff'd in part, CLI-77-1, 5 NRC 1 (1977). For purposes of authorization of pre-LWA activity under 10 CFR § 50.10(c), redressibility is a factor to be considered. Where the potential damage from the pre-LWA activity is fully redressible and the applicant is willing to commit to restoration of the site, a Licensing Board can permit the applicant to proceed accordingly. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), CLI-77-1, 5 NRC 1 (1977).

The governing standard with regard to pre-LWA activity is "trivial impact," not zero impact. Puget Sound Power & Light Company et al. (Skagit Nuclear Power Project, Units 1 & 2), ALAB-446, 6 NRC 870 (1977), reversing in part LBP-77-61, 6 NRC 674 (1977). The fact that certain activities would entail the removal of some trees which could not be replaced within a short span of time does not

necessarily mean that such activities cannot be conducted prior to issuance of an LWA. Id.

The proscriptions in the Wild and Scenic River Act against any form of assistance by a Federal agency in the construction of a water resource project which might have a direct and adverse impact on a river designated under the Act precludes the granting by a Licensing Board of pre-LWA authority for constructing a proposed sewer line to service a proposed nuclear plant where the nuclear plant itself is considered to be a "water resource project." Puget Sound Power & Light Company et al. (Skagit Nuclear Power Project, Units 1 & 2), LBP-77-61, 6 NRC 674, 678 (1977).

6.19.2 Limited Work Authorization

Under 10 CFR § 50.10(e), the Commission may authorize certain site-related pre-permit work which is more substantial than that permitted under 10 CFR § 50.10(c). Prior to granting such "limited work authorization" (LWA), the presiding officer in the proceeding must have made certain environmental findings and, in some instances, health and safety findings. See 10 CFR § 50.10(e)(1) through (3). Notice to all parties of the proposed action is necessary. Carolina Power & Light Co. (Shearon-Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-184, 7 AEC 229 (1974).

The cost-benefit analysis which must be performed prior to issuance of an LWA requires a determination as to whether construction of certain site-related facilities should be permitted prior to issuance of a construction permit but subsequent to a determination resulting from a cost-benefit analysis that the plant should be built. The cost-benefit analysis relevant to issuance of an LWA has been handled generically under 10 CFR § 51.52(b). Thus, the cost-benefit balance required for an LWA need not be specifically performed for each LWA. Rather, once a Licensing Board has made all the findings on environmental and site suitability matters required by Section 51.52(b) and (c), the cost-benefit balancing implicit in those regulations has automatically been satisfied. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-380, 5 NRC 572, 579-80 (1977).

Applicants are not required to have every permit in hand before a Limited Work Authorization can be granted. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 & 2), LBP-78-26, 8 NRC 102, 123, 129 (1978).

6.19.2.1 LWA Status Pending Remand Proceedings

It has been held that, where a partial initial decision on a construction permit is remanded by an Appeal Board to the Licensing Board for further consideration, an outstanding LWA may remain in effect pending resolution of the CP issues provided that little consequential environmental damage will occur in the interim. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-335, 3 NRC 830 (1976). On appeal of this decision, however, the Court of Appeals stayed the effectiveness of the LWA pending alternate site consideration by the Licensing Board on the grounds that it is anomalous to allow construction to take place at one site while the Board is holding further hearings on other sites. Hodder v. NRC, 589 F.2d 1115 (D.C. Cir. 1978).

6.20 Regulations

6.20.1 Compliance with Regulations

Applicants and licensees must, of course, comply with the Commission's regulations, but the Staff may not compel an applicant or licensee to do more than the regulations require without a hearing. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-191, 7 AEC 431, 445, 447 at n.32 (1974).

The power to grant exemptions from the regulations has not been delegated to Licensing Boards and such Boards, therefore, lack the authority to grant exemptions. Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Units 2 & 3), LBP-77-35, 5 NRC 1290, 1291 (1977).

6.20.2 Regulatory Guides

Staff regulatory guides are not regulations and do not have the force of regulations. When challenged by an applicant or licensee, they are to be regarded merely as the views of one party, although they are entitled to considerable prima facie weight. See Section 6.16.2 and cases cited therein.

Nonconformance with regulatory guides or Staff positions does not mean that the General Design Criteria (G.D.C.) are not met; applicants are free to select other methods to comply with the G.D.C. The G.D.C. are intended to provide engineering goals rather than precise tests by which reactor safety can be gauged. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).

While it is clear that regulatory guides are not regulations, are not entitled to be treated as such, need not be followed by applicants, and do not purport to represent the only

satisfactory method of meeting a specific regulatory requirement, they do provide guidance as to acceptable modes of conforming to specific regulatory requirements. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977); Fire Protection for Operating Nuclear Power Plants, CLI-81-11, 13 NRC 778 (1981). Indeed, the Commission itself has indicated that conformance with regulatory guides is likely to result in compliance with specific regulatory requirements, though, as stated previously, nonconformance with such guides does not mean noncompliance with the regulations. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406-07 (1978).

6.20.3 Challenges to Regulations

In Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), Comm'n's Mem. & Order, 2 CCH At. Eng. L. Rep. ¶ 11,578.02 (1969), the Commission recognized the general principle that regulations are not subject to amendment in individual adjudicatory proceedings. Under that ruling, now supplanted by 10 CFR § 2.758, challenges to the regulations would be permitted in only three limited situations:

- (1) where the regulation was claimed to be outside the Commission's authority;
- (2) where it was claimed that the regulation was not promulgated in accordance with applicable procedural requirements;
- (3) in the case of radiological safety standards, where it was claimed that particular standards were not within the broad discretion given to the Commission by the Atomic Energy Act to establish.

The Commission directed Licensing Boards to certify the question of the validity of any challenge to it prior to rendering any initial decision.

No challenge of any kind is permitted, in an adjudicatory proceeding, as to a regulation that is the subject of ongoing rulemaking. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319 (1972); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-57, WASH-1218, 435 (1972). In such a situation, the appropriate forum for deciding a challenge is the rulemaking proceeding itself. Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-352, 4 NRC 371 (1976).

The assertion of a claim in an adjudicatory proceeding that a regulation is invalid is barred as a matter of law as an attack upon a regulation of the Commission. Metropolitan

Edison Company et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-456, 7 NRC 63, 65 (1978); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-410, 5 NRC 1398, 1402 (1977). Consequently, under current regulations, there can be no challenge of any kind by discovery, proof, argument, or other means except in accord with 10 CFR § 2.758. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163, 204 (1975); Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79, 88-89 (1974). Under Section 2.758, the regulation must be challenged by way of a petition requesting a waiver or exception to the regulation on the sole ground of "special circumstances" (i.e., because of special circumstances with respect to the subject matter of the particular proceeding, application of the regulation would not serve the purposes for which the regulation was adopted. 10 CFR § 2.758(b)). The petition must be accompanied by an affidavit.

Other parties to the proceeding may respond to the petition. If the petition and responses, considered together, do not make a prima facie showing that application of the regulation would not serve the purpose intended, the Licensing Board may not go any further. If a prima facie showing is made, then the issue is to be directly certified to the Commission (not to the Appeal Board - 10 CFR § 2.758, n.9) for determination.

In the alternative, any party who asserts that a regulation is invalid may always petition for rulemaking under 10 CFR Part 1, Subpart H (§§ 2.800-2.807).

The ECCS Final Acceptance Criteria as set forth in 10 CFR § 50.45 and Appendix K to 10 CFR Part 50 assume that ECCS will operate during an accident. On the other hand, Class 9 accidents postulate the failure of ECCS. Thus, on its face, consideration of Class 9 accidents would appear to be a challenge to the Commission's regulations. However, the Commission has squarely held that the regulations do not preclude the use of inconsistent assumptions about ECCS failure for other purposes. Thus, the prohibition of challenges to the regulations in adjudicatory proceedings does not preclude the consideration of Class 9 accidents and a failure of ECCS related thereto in environmental impact statements and proceedings thereon. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 221 (1978).

6.20.4 Agency's Interpretation of its Own Regulations

Where NRC interprets its own regulations and where those regulations have long been construed in a given way, the doctrine of stare decisis will govern absent compelling

reasons for a different interpretation; the regulations may be modified, if appropriate, through rulemaking procedures. New England Power Company (NEP Units 1 and 2), Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-390, 5 NRC 733, 741-42 (1977).

6.21 Rulemaking

Rulemaking procedures are covered, in general, in 10 CFR §§ 2.800-2.807, which govern the issuance, amendment and repeal of regulations and public participation therein. It is well established that an agency's decision to use rulemaking or adjudication in dealing with a problem is a matter of discretion. Fire Protection for Operating Nuclear Power Plants, CLI-81-11, 13 NRC 778, 800 (1981), citing, NAACP v. FPC, 425 U.S. 662, 668 (1976).

6.21.1 Rulemaking Distinguished from General Policy Statements

While notice and comment procedures are required for rulemaking, such procedures are not required for issuance of a policy statement by the Commission since policy statements are not rules. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-76-14, 4 NRC 163 (1976).

6.21.2 Generic Issues and Rulemaking

The Commission has indicated that, as a rule, generic safety questions should be resolved in rulemaking rather than adjudicatory proceedings. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 814-15, clarified, CLI-74-43, 8 AEC 826 (1974). In this vein, it has been held that the Commission's use of rulemaking to set ECCS standards is not a violation of due process. Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1081-82 (D.C. Cir. 1974).

It is within the agency's authority to settle factual issues of a generic nature by means of rulemaking. Minnesota v. NRC, 602 F.2d 412, 416-17 (D.C. Cir. 1979) and Ecology Action v. AEC, 492 F.2d 998, 1002 (2d Cir. 1974), cited in Fire Protection for Operating Nuclear Power Plants, CLI-81-11, 13 NRC 778, 802 (1981). An agency's previous use of a case-by-case problem resolution method does not act as a bar to a later effort to resolve generic issues by rulemaking, Pacific Coast European Conference v. United States, 350 F.2d 197, 205-06 (9th Cir.), cert. denied, 382 U.S. 958 (1965), cited in Fire Protection, supra, and the fact that standards addressing generic concerns adopted pursuant to such a rulemaking proceeding affect only a few, or one, licensee(s) does not make the use of rulemaking improper. Hercules, Inc. v. EPA, 598 F.2d 91, 118 (D.C. Cir. 1978), cited in Fire Protection, supra.

Waiver of a Commission rule is not appropriate for a generic issue. The proper approach when a problem affects nuclear reactors generally is to petition the Commission to promulgate an amendment to its rules under 10 CFR § 2.802. If the issue is sufficiently urgent, petitioner may request suspension of the licensing proceeding while the rulemaking is pending. Cleveland Electric Illuminating Power Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-57, 14 NRC 1037, 1038-39 (1981).

6.22 Research Reactors

(RESERVED)

6.23 Disclosure of Information to the Public

10 CFR § 2.790 deals generally with NRC practice and procedure in making NRC records available to the public. 10 CFR Part 9 specifically establishes procedures for implementation of the Freedom of Information (10 CFR § 9.3-9.16) and Privacy (10 CFR §§ 9.50, 9.51) Acts.

Under 10 CFR §§ 2.790, hearing boards are delegated the authority and obligation to determine whether proposals of confidentiality filed pursuant to Section 2.790(b)(1) should be granted pursuant to the standards set forth in subsections (b)(2) through (c) of that Section. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-62, 14 NRC 1747, 1755-56 (1981).

Under Chrysler Corp. v. Brown, 441 U.S. 281, 60 L.Ed.2d 208, 99 S. Ct. 1705 (1979), neither the Privacy Act nor the Freedom of Information Act gives a private individual the right to prevent disclosure of names of individuals where the Licensing Board elects to disclose. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-50, 14 NRC 888, 891 (1981).

6.23.1 Freedom of Information Act Disclosure

Under FOIA, a Commission decision to withhold a document from the public must be by majority vote. Public Service Co. of Oklahoma, et al. (Black Fox Station, Units 1 and 2), CLI-80-35, 12 NRC 409, 412 (1980).

While FOIA does not establish new government privileges against discovery, the Commission has elected to incorporate the exemptions of the FOIA into its own discovery rules. Consumers Power Company (Palisades Nuclear Power Facility, ALJ-80-1, 12 NRC 117, 121 (1980).

Section 2.790 of the Rules of Practice is the NRC's promulgation in obedience to the Freedom of Information Act. Palisades, supra, at 120.

Section 2.744 of the Rules of Practice provides that a presiding officer may order production of any record exempt under Section 2.790 if its "disclosure is necessary to a proper decision and the document is not reasonably obtainable from another source." This balancing test weighs the need for a proper decision against the interest in privacy. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-50, 14 NRC 888, 892 (1981).

The Commission, in adopting the standards of Exemption 5, and the "necessary to a proper decision" as its document privilege standard under 10 CFR § 2.744(d), has adopted traditional work product/executive privilege exemptions from disclosure. Palisades, supra, at 123.

The government is no less entitled to normal privilege than is any other party in civil litigation. Palisades, supra, at 127.

Any documents in final form memorializing the Director's decision not to issue a notice of violation imposing civil penalties does not fall within Exemption 5. Palisades, supra, at 129.

6.23.2 Privacy Act Disclosure

(RESERVED)

6.23.3 Disclosure of Proprietary Information

10 CFR § 2.790, which deals generally with public inspection of NRC official records, provides exemptions from public inspection in appropriate circumstances. Specifically, Section 2.790(a) establishes that the NRC need not disclose information, including correspondence to and from the NRC regarding issuance, denial, and amendment of a license or permit, where such information involves trade secrets and commercial or financial information obtained from a person as privileged or confidential.

Under 10 CFR § 2.790(b), any person may seek to have a document withheld, in whole or in part, from public disclosure on the grounds that it contains trade secrets or is otherwise proprietary. To do so, he must file an application for withholding accompanied by an affidavit identifying the parts to be withheld and containing a statement of the reasons for withholding. As a basis for withholding, the affidavit must specifically address the factors listed in Section 2.790(b)(4). If the NRC determines that the information is proprietary based on the application, it must then determine whether the right of the public to be fully

appraised of the information outweighs the demonstrated concern for protection of the information.

6.23.3.1 Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding

To justify the withholding of information in an adjudicatory proceeding where full disclosure of such information is sought, the person seeking to withhold the information must demonstrate that:

- (1) the information is of a type customarily held in confidence by its originator;
- (2) the information has, in fact, been held in confidence;
- (3) the information is not found in public sources;
- (4) there is a rational basis for holding the information in confidence.

Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976).

The Government enjoys a privilege to withhold from disclosure the identity of persons furnishing information about violations of law to officers charged with enforcing the law. Rovario v. United States, 353 U.S. 53, 59 (1957), cited in Houston Power and Lighting Co., et al. South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 473 (1981). This applies not only in criminal but also civil cases, In re United States, 565 F.2d 19, 21 (1977), cert. denied sub nom. Bell v. Socialist Workers Party, 436 U.S. 962 (1978), and in Commission proceedings as well, Northern States Power Co. (Monticello Plant, Unit 1), ALAB-16, 4 AEC 435, affirmed by the Commission, 4 AEC 440 (1970); 10 CFR § 2.744(d), § 2.790(a)(7); and is embodied in FOIA, 5 USC 552(b)(7)(D). The privilege is not absolute; where an informer's identity is (1) relevant and helpful to the defense of an accused, or (2) essential to a fair determination of a cause (Rovario, supra); it must yield. However, the Appeal Board reversed a Licensing Board's order to the Staff to reveal the names of confidential informants (subject to a protective order) to intervenors as an abuse of discretion, where the Appeal Board found that the burden to obtain the names of such informants is not met by intervenor's speculation that identification might be of some assistance to them. To require disclosure in such a case would contravene NRC policy in that it might jeopardize the likelihood of receiving similar future reports. South Texas, supra.

For a detailed listing of the factors to be considered by a Licensing Board in determining whether certain documents should be classed as proprietary and withheld from disclosure in an adjudicatory proceeding, see Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-137, 6 AEC 491, Appendix at 518 (1973). If a Licensing Board or an intervenor with a pertinent contention wishes to review data claimed by an applicant to be proprietary, it has a right to do so, albeit under a protective order if necessary. 10 CFR § 2.790(b)(6); Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-435, 6 NRC 541, 544 at n.12 (1977).

Following issuance of a protective order enabling an intervenor to obtain useful information, a Board can defer ruling on objections concerning the public's right to know until after the merits of the case are considered. If an intervenor has difficulties due to failure to participate in in camera sessions, these cannot affect the Board's ruling on the merits. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017 (1981).

6.23.3.2 Security Plan Information Under 10 CFR § 2.790(d)

In making physical security plan information available to intervenors, Licensing Boards are to follow certain guidelines. Security plans are sensitive and are subject to discovery in Commission adjudicatory proceedings only under certain conditions: (1) the party seeking discovery must demonstrate that the plan or a portion of it is relevant to its contentions; (2) the release of the plan must (in most circumstances) be subject to a protective order; and (3) no witness may review the plan (or any portion of it) without it first being demonstrated that he possesses the technical competence to evaluate it. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775, 777 (1980).

Release of a security plan to qualified intervenors must be under a protective order and the individuals who review the security plan itself should execute an affidavit of non-disclosure. Diablo Canyon, supra, at 778.

Protective orders may not constitutionally preclude public dissemination of information which is obtained outside the hearing process. A person subject to a protective order, however, is prohibited from using protected information gained through the hearing process to corroborate the accuracy or inaccuracy of outside information. Diablo Canyon, supra, at 778.

6.24 Show Cause Proceedings

Any person at any time may request the Director of Nuclear Reactor Regulation, Director of Nuclear Material Safety and Safeguards, or Director, Office of Inspection and Enforcement, as appropriate, to issue a show cause order for suspension, revocation or modification of an operating license or a construction permit. 10 CFR § 2.206, 10 CFR § 2.202 et seq.

The Director of Nuclear Reactor Regulation, upon receipt of a request to initiate an enforcement proceeding, is required to make an inquiry appropriate to the facts asserted. Provided he does not abuse his discretion, he is free to rely on a variety of sources of information, including Staff analyses of generic issues, documents issued by other agencies and the comments of the licensee on the factual allegations. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 432, 433 (1978).

In reaching a determination on a show cause petition, the Director need not accord presumptive validity to every assertion of fact, irrespective of the degree of substantiation. Nor is the Director required to convene an adjudicatory proceeding to determine whether an adjudicatory proceeding is warranted. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 432 (1978).

The A.P.A., 5 U.S.C 551 et seq., particularly Section 554, and the Commission's regulations, particularly 10 CFR § 2.719, deal specifically with on-the-record adjudication and thus the Staff's participation in a construction permit proceeding does not render it incapable of impartial regulatory action in a subsequent show cause or suspension proceeding where no adjudication has been begun. Moreover, in terms of policy, any view which questions the Staff's capabilities in such a situation is contradicted by the structure of nuclear regulation established by the Atomic Energy Act and 20 years experience implementing that statute. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 431, 432 (1978).

The agency alone has power to develop enforcement policy and allocate resources in a way that it believes is best calculated to reach statutory ends. NRC can develop policy that has licensees consent to, rather than contest, enforcement proceedings. A Director may set forth and limit the questions to be considered in a show cause proceeding. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 441 (1980).

The Commission has broad discretion to allow intervention where it is not a matter of right. Such intervention will not be granted where conditions have already been imposed

on a licensee, and no useful purpose will be served by that intervention. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 442-43 (1980).

In the context of proceedings before the Commission, an order to show cause is a remedial step in dealing with failure to meet required standards of conduct. The Licensing Board denied a petition for a show cause order which did not make allegations of any such failure. Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), LBP-79-23, 10 NRC 220, 223 (1979).

If an interested person desires a hearing on environmental qualifications of equipment, after review of Staff's written judgment, that person may petition the Commission pursuant to Section 2.202 or 2.206. In re Petition for Emergency and Remedial Action, CLI-80-21, 11 NRC 707, 715 (1980).

The Commission's decision that cause existed to start a proceeding by issuing an immediately effective show cause order does not disqualify the Commission from later considering the merits of the matter. No prejudgment is involved, and no due process issue is created. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4-5 (1980).

New matters which cannot be raised before a Board because of a lack of jurisdiction may be raised in a petition under 10 CFR § 2.206. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-579, 11 NRC 223, 226 (1980). Where petitioner's case has no discernible relationship to any other pending proceeding involving the same facility, the show cause proceeding set out in 10 CFR § 2.206 must be regarded as the exclusive remedy. Northern Indiana Public Service Company (Bailey Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 570 (1980).

Under 10 CFR § 2.206, one may petition the NRC for stricter enforcement actions than the agency contemplates. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 442-43 (1980).

The agency has broad discretion in establishing and applying rules for public participation on enforcement proceedings. Marble Hill, supra, at 440-41.

6.24.1 Petition for Show Cause Order

The mechanism for requesting a show cause order is a petition filed pursuant to 10 CFR § 2.206. Note that such a petition

may not be used to seek relitigation of an issue that has already been decided or to avoid an existing forum in which the issue is being or is about to be litigated. Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), CLI-75-8, 2 NRC 173, 177 (1975); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443, 446 (1981).

6.24.1.1 Grounds for Show Cause Order

The institution of a show cause proceeding to modify, suspend, or revoke a license need not be predicated upon alleged license violations, but rather may be based upon any "facts deemed to be sufficient grounds for the proposed action" 10 CFR § 2.202. Northern Indiana Public Service Company (Bailey Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 570-71 (1980).

6.24.1.2 Burden of Proof for Show Cause Order

The Atomic Energy Act intends the party seeking to build or operate a nuclear reactor to bear the burden of proof in any Commission proceeding bearing on its application to do so, including a show cause proceeding. Northern Indiana Public Service Company (Bailey Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 571 (1980).

6.24.1.3 Issues in Show Cause Proceedings

One cannot seek to intervene in an enforcement proceeding to have NRC impose a stricter penalty than the NRC seeks. Issues in show cause proceedings are only those set out in the show cause order. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 442 (1980).

One may only intervene in an enforcement action upon a showing of injury from the contemplated action set out in the show cause order. One who seeks a stricter penalty than the NRC proposes has no standing to intervene because it is not injured by the lesser penalty. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 442 (1980).

6.24.2 Standards for Issuing a Show Cause Order

The standard to be applied in determining whether to issue a show cause order is whether substantial health or safety issues have been raised. A mere dispute over factual issues will not suffice. Northern Indiana Public Service Company (Bailey Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433 (1978).

The Director of Nuclear Reactor Regulation properly has discretion to differentiate between those petitions which indicate that substantial issues have been raised warranting institution of a proceeding and those which serve merely to demonstrate that in hindsight, even the most thorough and reasonable of forecasts will prove to fall short of absolute prescience. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433 (1978).

6.24.3 Review of Decision on Request for Show Cause Order

10 CFR § 2.206 has been amended to provide that the Commission may, on its own motion, review the decision of the Director not to issue a show cause order to determine if the Director has abused his discretion. 10 CFR § 2.206(c)(1). No other petition or request for Commission review will be entertained. 10 CFR § 2.206(c)(2).

While there is no specific provision for Commission review of a decision to issue a show cause order, the amended regulation does acknowledge that the review power set forth in Section 2.206 does not limit the Commission's supervisory power over delegated Staff actions. 10 CFR § 2.206(c)(1). Thus, it is clear that the Commission may conduct any review of a decision with regard to requests for show cause orders that it deems necessary.

Prior to the amendment of Section 2.206, that regulation was silent as to Commission review. At that time, the Commission indicated that its review of a decision of the Director would be directed toward whether the Director abused his authority and, in particular, would include a consideration of the following:

- (1) does the statement of reasons for issuing the order permit a rational understanding of the basis for the decision;
- (2) did the Director correctly comprehend the applicable law, regulations and policy;
- (3) were all necessary factors included and irrelevant factors excluded;
- (4) were appropriate inquiries made as to the facts asserted;
- (5) is the decision basically untenable on the basis of the facts known to the Director.

Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), CLI-75-8, 2 NRC 173 (1975). See also Nuclear Engineering

Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 676 at n.1 (1979).

Under the Indian Point standards, the Director's decision will not be disturbed unless it is clearly unwarranted or an abuse of discretion. Licenses Authorized to Possess or Transport Strategic Quantities of Special Nuclear Material, CLI-77-3, 5 NRC 16 (1977). Although the Indian Point review is essentially a deferral to the Staff's judgment on facts relating to a potential enforcement action, it is not an abdication of the Commission's responsibilities since the Commission will decide any policy matters involved. Id. at 5 NRC 20, n.6.

The Appeal Board normally lacks jurisdiction to entertain motions seeking review only of actions of the Director of Nuclear Reactor Regulation; the Commission itself is the forum for such review. See 10 CFR § 2.206(c). Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-466, 7 NRC 457 (1978).

Review of a show cause order is limited to whether the Director of Nuclear Reactor Regulation abused his discretion. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433 (1978).

The validity of a show cause order is judged on the basis of information available to the Director at the time it was issued at the start of the proceeding. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5 (1980).

Issuance of a show cause order requiring interim action is not the determination of the merits of a controversy. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 6 (1980).

There are five Commission criteria for determining if the Director acted within his discretion in issuing an order, as set forth in Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173 (1975), Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 676 n.1 (1979).

6.24.4 Notice/Hearing on Show Cause to Licensee/Permittee

While a show cause order with immediate suspension of a license or permit may be issued without prior written notice where the public health, interest or safety is involved, the Commission cannot permanently revoke a license without

prior notice and an opportunity for a hearing guaranteed by 10 CFR § 2.202. Consumers Power Co. (Midland Plant, Units 1 & 2), CLI-74-3, 7 AEC 7 (1974).

The Director may issue an immediately effective order without prior written notice under 10 CFR § 2.202(f) if (1) the public health, safety or interest so requires, or (2) the licensee's violations are willful. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 677 (1979). In civil proceedings, action taken by a licensee in the belief that it was legal does not preclude a finding of willfulness. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 678 (1979).

Latent conditions which may cause harm in the future are a sufficient basis for issuing an immediately effective show cause order where the consequences might not be subject to correction in the future. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 677 (1979), citing Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-3, 7 AEC 7, 10-12 (1974).

Purported violations of agency regulations support an immediately effective order even where no adverse public health consequences are threatened. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 677-78 (1979).

6.24.5 Burden of Proof in Show Cause Proceedings

The burden of proof in a show cause proceeding with respect to a construction permit is on the permit holder. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-283, 2 NRC 11 (1975). As to safety matters this is so until the award of a full-term operating license. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-81-7, 13 NRC 257, 264-65 (1981). However, the burden of going forward with evidence "sufficient to require reasonable minds to inquire further" is on the person who sought the show cause order. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-315, 3 NRC 101, 110-11 (1976). The burden in operating license cases is apparently not yet settled.

Civil penalties may be imposed for the violation of regulations of license conditions without a finding of fault on the part of the licensee, so long as it is believed such action will positively affect the conduct of the licensee, or serve as an example to others. It matters not that the

imposition of the civil penalty might be viewed as punitive. A licensee is responsible for all violations committed by its employees, whether it knew or could have known of them. There is no need to show scienter. One is not exempted from regulation by operating through an employee. In re Atlantic Research Corp., CLI-80-7, 11 NRC 413 (1980).

6.24.6 Consolidation of Petitioners in Show Cause Proceedings

The Director may, in his discretion, consolidate the essentially indistinguishable requests of petitioners if those petitioners are unable to demonstrate prejudice as a result of the consolidation. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 33 (1978).

6.24.7 Necessity of Hearing in Show Cause Proceedings

Once a notice of opportunity for hearing has been published and a request for a hearing has been submitted, the decision as to whether a hearing is to be held no longer rests with the Staff but instead is transferred to the Commission or an adjudicatory tribunal designated to preside in the proceeding. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-26, 12 NRC 367, 371 (1980).

6.24.8 Intervention in Show Cause Proceedings

The requirements for standing in a show cause proceeding are no stricter than those in the usual licensing proceeding. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-26, 12 NRC 367, 374 (1980).

6.25 Summary Disposition Procedures

(SEE 3.5)

6.26 Suspension, Revocation or Modification of License

A license or construction permit may be modified, suspended or revoked for:

- (1) any material false statement in an application or other statement of fact required of the applicant;
- (2) conditions revealed by the application, statement of fact, inspection or other means which would warrant the Commission to refuse to grant a license in the first instance;
- (3) failure to construct or operate a facility in accordance with the terms of the construction permit or operating license; or

- (4) violation of, or failure to observe, any terms and provisions of the Atomic Energy Act, the regulations, a permit, a license, or an order of the Commission. 10 CFR § 50.100.

The procedures for modifying, suspending or revoking a license are set forth in Subpart B to 10 CFR.

Where information is presented which demonstrates an undue risk to public health and safety, the NRC will take prompt remedial action including shutdown of operating facilities. Such actions may be taken with immediate effect notwithstanding the Administrative Procedure Act requirements of notice and opportunity to achieve compliance. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 404, 405 (1978).

A violation of a regulation does not of itself result in a requirement that a license be suspended. Both the Atomic Energy Act and NRC regulations support the conclusion that the choice of remedy for regulatory violations is within the sound judgment of the Commission and not foreordained. See 42 U.S.C. § 2236, § 2280, § 2282; 10 CFR § 50.100. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 405 (1978).

A decision on whether to suspend a permit pending a decision on remand must be based on (1) a traditional balancing of the equities, and (2) a consideration of any likely prejudice to further decisions that might be called for by the remand. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-623, 12 NRC 670, 677 (1980).

6.27 Technical Specifications

10 CFR § 50.36 specifies, inter alia, that each operating license will include technical specifications to be derived from the analysis and evaluation included in the safety analysis report, and amendments thereto, and may also include such additional technical specifications as the Commission finds appropriate. The regulation sets forth with particularity the types of items to be included in technical specifications. Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 272 (1979).

There is neither a statutory nor a regulatory requirement that every operational detail set forth in an application's safety analysis report (or equivalent) be subject to a technical specification to be included in the license as an absolute condition of operation which is legally binding upon the licensee unless and until changed with specific Commission approval. Technical specifications are reserved for those matters where the imposition of rigid conditions or limitations upon reactor operation is deemed necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. Trojan, supra, at 273.

6.28 Termination of Facility Licenses

Termination of facility licenses is covered generally in 10 CFR § 50.82.

6.29 Procedures in Other Types of Hearings

6.29.1 Military or Foreign Affairs Functions

Under the Administrative Procedure Act, 5 U.S.C. § 554(a)(4), and the Commission's Rules of Practice, 10 CFR § 2.700a, procedures other than those for formal evidentiary hearings may be fashioned when an adjudication involves the conduct of military or foreign affairs functions. Nuclear Fuel Services, Inc. (Erwin, Tennessee), CLI-80-27, 11 NRC 799, 802 (1980).

6.29.2 Export Licensing

Individual fuel exports are not major Federal actions. Westinghouse Electric Corp. (Exports to the Philippines), CLI-80-15, 11 NRC 672 (1980). (See also 3.4.6)

6.29.2.1 Jurisdiction of Commission re Export Licensing

The Commission is neither required nor precluded by the Atomic Energy Act or NEPA from considering impacts of exports on the global commons. Provided that NRC review does not include visiting sites within the recipient nation to gather information or otherwise intrude upon the sovereignty of a foreign nation, consideration of impacts upon the global commons, is legally permissible. Westinghouse Electric Corp. (Exports to the Philippines), CLI-80-14, 11 NRC 631, 637-644 (1980).

The Commission's legislative mandate neither compels nor precludes examination of health, safety and environmental effects occurring abroad that could affect U.S. interests. The decision whether to examine these effects is a question of policy to be decided as a matter of agency discretion. Id., 11 NRC at 654.

As a matter of policy, the Commission has determined not to conduct such reviews in export licensing decisions primarily because no matter how thoroughly the NRC review, the Commission still would not be in a position to determine that the reactor could be operated safely. Id., 11 NRC at 648.

The Commission lacks legal authority under AEA, NEPA and NNPA to consider health, safety and environmental impacts upon citizens of recipient nations because of the tradi-

tional rule of domestic U.S. law that federal statutes apply only to conduct within, or having effect within, the territory of the U.S. unless the contrary is clearly indicated in the statute. Id., 11 NRC at 637. See also General Electric Co., et al. (Exports to Taiwan), CLI-81-2, 13 NRC 67, 71 (1981).

The alleged undemocratic character of the Government of the Philippines does not relate to health, safety, environmental and non-proliferation responsibilities of the Commission and are beyond the scope of the Commission's jurisdiction. Exports to the Philippines, supra, 11 NRC at 656.

6.29.2.2 Export License Criteria

The AEA of 1954, as amended by the NNPA, provides that the Commission may not issue a license authorizing the export of a reactor, unless it finds, based on a reasonable judgment of the assurances provided, that the criteria set forth in §§ 127 and 128 of the AEA are met. The Commission must also determine that the export would not be inimical to the common defense and security or health and safety of the public and would be pursuant to an Agreement for Cooperation, Westinghouse Electric Corp. (Exports to the Philippines), CLI-80-14, 11 NRC 631, 652 (1980).

The Commission may not issue a license for component exports unless it determines that the three specific criteria in § 109(b) of AEA are met and also determines that the export won't be inimical to common defense. Westinghouse Electric Corp. (Exports to the Philippines), CLI-80-14, 11 NRC 631, 654 (1980).

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(PILGRIM NUCLEAR STATION, UNIT 2), LBP-74-63, 8 AEC 330(1974)	2.9.3.3.3
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CAROLINA POWER AND LIGHT CO.

(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), ALAB-581, 11 NRC 233(1980)

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(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), CLI-80-14, 11 NRC 514(1980)

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(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), LDP-78-2, 7 NRC 83(1978)

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4.4.2

CENTRAL ELECTRIC POWER COOPERATIVE, INC.

(VIRGIL C. SUMNER NUCLEAR STATION, UNIT 1), CLI-81-26 14 NRC 787(1981)

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CINCINNATI GAS AND ELECTRIC CO.

(WILLIAM H. ZIMMER STATION), ALAB-79, 5 AEC 342(1972)

5.6.1

(WILLIAM H. ZIMMER NUCLEAR STATION), ALAB-305, 3 NRC 8(1976)

2.9.5.1

(WILLIAM H. ZIMMER NUCLEAR STATION), ALAB-595, 11 NRC 860(1980)

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2.9.3.3.3

2.9.7

(WILLIAM H. ZIMMER NUCLEAR STATION), LDP-79-22, 10 NRC 213(1979)

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(WILLIAM H. ZIMMER NUCLEAR STATION), LDP-80-14, 11 NRC 570(1980)

2.9.5.5

CINCINNATI GAS AND ELECTRIC CO. ET AL.

(WILLIAM H. ZIMMER NUCLEAR STATION), ALAB-633 13 NRC 94(1981)

2.9.3.3.3

(WILLIAM H. ZIMMER NUCLEAR STATION), LDP-79-24, 10 NRC 226(1979)

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CINCINNATI GAS AND ELECTRIC CO. ET AL.
 (WILLIAM H. GIBBS NUCLEAR STATION), LEP-01-2 13 NRC 36 (1981)
 CLEVELAND ELECTRIC ILLUMINATING CO.
 (PERRY NUCLEAR PLANT, UNITS 1 AND 2), LEP-01-3, 14 NRC 682 (1981)

(PERRY NUCLEAR PLANT, UNITS 1 AND 2), LEP-01-02 14 NRC 842 (1981)
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COMMONWEALTH EDISON CO.
 (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), ALAB-659 14 NRC 983 (1981)

(BYRON STATION, UNITS 1 AND 2), LEP-01-30-A, 14 NRC 364 (1981)

(BYRON STATION, UNITS 1 AND 2), LEP-01-52 14 NRC 901 (1981)

(CARROLL COUNTY SITE), ALAB-601, 12 NRC 18 (1980)

(DODDGE NUCLEAR POWER STATION, UNIT 1), CLI-01-25 14 NRC 616 (1981)

(LASSALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), CLI-73-0, 6 ASC 169 (1973)

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2.11.4

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COMMONWEALTH EDISON CO.

{ZION STATION, UNITS 1 AND 2}, ALAB-116, 6 AEC 258(1973)

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{ZION STATION, UNITS 1 AND 2}, ALAB-154, 6 AEC 827(1973)

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5.13.1.2

{ZION STATION, UNITS 1 AND 2}, ALAB-185, 7 AEC 240(1974)

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{ZION STATION, UNITS 1 AND 2}, ALAB-222, 8 AEC 229(1974)

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{ZION STATION, UNITS 1 AND 2}, ALAB-226, 8 AEC 381(1974)

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{ZION STATION, UNITS 1 AND 2}, ALAB-616, 12 NRC 419(1980)

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{ZION STATION, UNITS 1 AND 2}, CLI-74-35, 8 AEC 374(1974)

{ZION STATION, UNITS 1 AND 2}, LBP-80-7 11 NRC 245(1980)

3.3.2.3
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COMMONWEALTH EDISON CO.

{BYEON STATION, UNITS 1 AND 2}, LBP-80-30, 12 NRC 683(1980)

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CONSOLIDATED EDISON CO

{INDIAN POINT STATION, UNIT 2}, ALAB-399, 5 NRC 1156(1977)

6.15.8.1

CONSOLIDATED EDISON CO.

{INDIAN POINT STATION, UNIT 2}, ALAB-453, 7 NRC 31(1978)

6.15.8.1

CONSOLIDATED EDISON CO. OF N.Y.

{INDIAN POINT STATION, UNIT 4}, ALAB-209, 7 AEC 971(1974)

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{INDIAN POINT STATION, UNIT 4}, ALAB-414, 5 NRC 1425(1977)

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{INDIAN POINT NUCLEAR STATION, UNITS 1, 2 AND 3}, ALAB-304, 1 NRC 1(1976)

2.9.4.1.4
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CONSOLIDATED EDISON CO. OF N.Y.

(INDIAN POINT NUCLEAR STATION, UNITS 1, 2 AND 3), ALAB-304, 3 NRC 1(1976)

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(INDIAN POINT STATION, UNIT 2), ALAB-159, 6 AEC 1001(1973)

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(INDIAN POINT STATION, UNIT 2), ALAB-188, 7 AEC 323(1974)

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(INDIAN POINT STATION, UNIT 2), ALAB-243, 8 AEC 850(1974)

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(INDIAN POINT STATION, UNIT 2), ALAB-369, 5 NRC 129(1977)

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(INDIAN POINT STATION, UNIT 2), ALAB-75, 5 AEC 309(1972)

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(INDIAN POINT STATION, UNIT 2), CLI-74-23 7 AEC 947(1974)

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(INDIAN POINT STATION, UNIT 3), UNIT 3), CLI-74-28, 8 AEC 7(1974)

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(INDIAN POINT STATION, UNIT 3), UNIT 3), CLI-75-14, 2 NRC 835(1975)

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(INDIAN POINT STATION, UNIT 3), ALAB-281, 2 NRC 6(1975)

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5.12.1

5.13.1.2

(INDIAN POINT STATION, UNITS 1, 2 AND 3), ALAB-357, 4 NRC 542(1976)

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(INDIAN POINT STATION, UNITS 1, 2 AND 3), CLI-77-2, 5 NRC 13(1977)

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(INDIAN POINT STATION, UNITS 1, 2 AND 3), CLI-77-4 5 NRC 31(1977)

6.1.5

(INDIAN POINT STATION, UNITS 1, 2, AND 3), ALAB-319, 3 NRC 188(1976)

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(INDIAN POINT STATION, UNITS 1, 2, AND 3), ALAB-377, 5 NRC 430(1977)

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CONSOLIDATED EDISON CO. OF N.Y. N.Y., INC.

(INDIAN POINT STATION, UNITS 1, 2 AND 3), CLI-75-8 2 NRC 175(1975)

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CONSOLIDATED EDISON CO. OF NEW YORK; POWER AUTHORITY OF THE STATE OF NEW YORK

(INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3), CLI-81-1 13 NRC 1(1981)

5.16.1

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(INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3), CLI-81-23, 14 NRC 610(1981)

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CONSUMERS POWER CO.

(BIG ROCK POINT PLANT), CLI-81-32 14 NRC 962(1981)

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CONSUMERS POWER CO.

(BIG ROCK POINT PLANT), N/A ALAB-636 13 NRC 312 (1981)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-101, 6 AEC 60 (1973)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-115 6 AEC 257 (1973)

5. 10. 2. 2

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-118, 6 AEC 263 (1973)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-122, 6 AEC 322 (1973)

2. 11. 5
2. 11. 6
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5. 8. 3. 1

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-123, 6 AEC 331 (1973)

3. 1. 1
3. 7. 2
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5. 5. 1
5. 5. 2

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-235, 8 AEC 645 (1974)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-270, 1 NRC 473 (1975)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-282, 2 NRC 9 (1975)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-283, 2 NRC 11 (1975)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-379, 5 NRC 565 (1977)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-382, 5 NRC 603 (1977)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-395, 5 NRC 772 (1977)

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CONSUMERS POWER CO.

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-395, 5 NRC 772 (1977)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-417, 5 NRC 1442 (1977)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-468, 7 NRC 464 (1978)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-541, 9 NRC 436 (1979)

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(MIDLAND PLANT, UNITS 1 AND 2), CLI-74-3, 7 AEC 7 (1974)

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(MIDLAND PLANT, UNITS 1 AND 2), LBP-81-63 14 NRC 1766 (1961)

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(PALISADES NUCLEAR PLANT), LBP-79-20, 10 NRC 108 (1979)

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(QUANICASSEE PLANT, UNITS 1 AND 2), CLI-74-29, 8 AEC 10 (1974)

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(LA CROSSE BOILING WATER REACTOR) LBP-80-26, 12 NRC 367 (1980)

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(LA CROSSE BOILING WATER REACTOR), ALAB-614 12 NRC 347 (1980)

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(LA CROSSE BOILING WATER REACTOR), N/A LBP-81-31, 14 NRC 375 (1981)

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DELMARVA POWER AND LIGHT CO.

(SUMMIT POWER STATION, UNITS 1 AND 2), ALAB-516, 9 NRC 5 (1979)

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(ENRICO FERMI ATOMIC POWER PLANT), ALAB-77, 5 AEC 315 (1972)

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(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2) LBP-79-1, 9 NRC 73 (1979)

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(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), ALAB-466, 7 NRC 457 (1978)

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(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), LBP-78-11, 7 NRC 381 (1978)

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DETROIT EDISON CO.

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), LBP-78-13, 7 NRC 583 (1978)

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2.8.1.1
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(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), ALAB-376, 5 NRC 426 (1977)

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DETROIT EDISON CO. FT AL.

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), LBP-78-37, 8 NRC 575 (1978)

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DUKE POWER CO.

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(CATAWBA NUCLEAR STATION UNITS 1 AND 2), ALAB-355, 4 NRC 397 (1976)

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(CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), ALAB-457, 7 NRC 70 (1978)

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(CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), ALAB-482, 7 NRC 979 (1978)

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DUKE POWER CO.

{CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3}, ALAB-482, 7 NRC 979 (1978)

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{CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3}, ALAB-440, 6 NRC 642 (1977)

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2.9.3.3.3

{PERKINS NUCLEAR STATION UNITS 1, 2, 3}, ALAB-362, 2 NRC 856 (1975)

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{PERKINS NUCLEAR STATION UNITS 1, 2, 3}, ALAB-431, 6 NRC 460 (1977)

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{PERKINS NUCLEAR STATION UNITS 1, 2, 3}, ALAB-597, 11 NRC 870 (1980)

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{WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2}, ALAB-128, 6 AEC 399 (1973)

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{WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2}, ALAB-143 6 AEC 623 (1973)

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6.16.1.1

{WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2}, ALAB-626 13 NRC 17 (1981)

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{WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2}, LBL-77-20, 5 NRC 680 (1977)

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{CATAWBA NUCLEAR STATION, UNITS 1 AND 2}, ALAB-687, 16 NRC 460 (1982)

2.9.5.8

{CATAWBA NUCLEAR STATION, UNITS 1 AND 2}, CLI-83-19, 17 NRC (1983)

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{OCONEE NUCLEAR STATION AND MCGUIRE NUCLEAR STATION} ALAB-528, 9 NRC 146, (1979)

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DUKE POWER CO. ET AL.

{CATAWBA NUCLEAR STATION UNITS 1 AND 2}, LBP-81-1 13 NRC 27 (1981)

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DUQUESNE LIGHT CO.

{BEAVER VALLEY POWER STATION, UNIT 1}, ALAB-310, 3 NRC 33 (1976)

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{BEAVER VALLEY POWER STATION, UNIT 1}, ALAB-408, 5 NRC 1383 (1977)

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{BEAVER VALLEY POWER STATION, UNITS 1 AND 2}, ALAB-174, 7 AEC 42 (1974)

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(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-280 2 NRC 3(1975)	4.2.2
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(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-404, 5 NRC 1185(1977)	5.7.1
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{ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-574, 11 NRC 7(1980)

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{ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-631 13 NRC 87(1981)

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{ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1}, LBP-81-34 14 NRC 637(1981)

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HOUSTON LIGHTING AND POWER CO.

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(SOUTH TEXAS PROJECT, UNITS 1 AND 2), LBP-79-27, 10 NRC 563 (1979)

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KANSAS GAS AND ELECTRIC CO.
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(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-311, 3 NRC 85(1976)

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(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-121, 6 AEC 319 (1973)	5. 10. 2. 1
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LOUISIANA POWER AND LIGHT CO.

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-242, 8 AEC 847 (1974)

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(WATERFORD STEAM ELECTRIC STATION, UNIT 3), LBP-73-31, 6 AEC 717 (1973)

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MAINE YANKEE ATOMIC POWER CO.

(MAINE YANKEE ATOMIC POWER STATION), ALAB-144, 6 AEC 628 (1973)

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(MAINE YANKEE ATOMIC POWER STATION), CLI-74-2 7 AEC 2 (1974)

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(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), CLI-79-8, 10 NRC 141 (1979)

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(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), CLI-80-20, 11 NRC 705 (1980)

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(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), CLI-80-5, 11 NRC 408 (1980)

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(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), ALAB-384, 5 NRC 612 (1977)

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METROPOLITAN EDISON CO. ET AL.

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	2.11.1
(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-244, 8 AEC 857 (1974)	2.9.9.2.1
	2.9.9.3
	2.9.9.4
	2.9.11
	3.11.3
	3.13.1
	4.2.1
	4.2.2
	5.5
	5.5.2
	5.13.3
(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-252, 8 AEC 1175 (1974)	2.9.9.2.1
	3.13.1
	5.5
	5.1

NORTHERN STATES POWER CO.

{PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2}, ALAB-284, 2 NRC 197 (1975)

3. 14. 1

{PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2}, ALAB-288 2 NRC 390 (1975)

3. 6

{PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2}, ALAB-419, 6 NRC 3 (1977)

3. 4

3. 15

5. 12. 2. 1. 1

{PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2}, ALAB-455, 7 NRC 41 (1978)

3. 1b

5. 6. 1

6. 1

6. 1. 3. 1

6. 15. 1

6. 15. 9

{PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2}, CLI-73-12 6 AEC 241 (1973)

2. 9. 4. 1. 4

2. 9. 5. 11

2. 11. 1

3. 5

{PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2}, CLI-75-1, 1 NRC 1 (1975)

2. 9. 9. 2. 1

{PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2} ALAB-104 6 AEC 179 (1973)

2. 9. 3

4. 3

{PRAIRIE ISLAND NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-343, 4 NRC 169 (1976)

5. 15

{TYRONE ENERGY PARK, UNIT 1}, ALAB-492, 8 NRC 251 (1978)

2. 9. 5. 13

5. 8. 1

{TYRONE ENERGY PARK, UNIT 1}, CLI-80-36 12 NRC 523 (1980)

2. 9. 4. 1. 4

NORTHERN STATES POWER CO. ET AL.

{TYRONE ENERGY PARK, UNIT 1}, ALAB-464, 7 NRC 372 (1978)

3. 1. 2. 6

4. 4. 1. 1

{TYRONE ENERGY PARK, UNIT 1}, LBP-77-37, 5 NRC 1298 (1977)

2. 11. 5. 2

NUCLEAR ENGINEERING CO.

{SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE}, ALAB-473, 7 NRC 737 (1978)

2. 9. 4. 1. 1

2. 9. 4. 1. 4

2. 9. 4. 2

2. 9. 5. 3

2. 9. 7

5. 8. 1

{SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE}, ALAB-494 8 NRC 299 (1978)

3. 1. 4. 1

3. 1. 4. 2

{SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE}, ALAB-606, 12 NRC 156 (1980)

5. 4

{SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE}, CLI-79-6, 9 NRC 673 (1979)

6. 15. 1. 1

6. 24. 3

6. 24. 4

NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), CLI-80-1, 11 NRC 1 (1980)	3.1.1 3.1.4.2 4.4.2 4.5 5.15 6.16.1 6.24 6.24.3
NUCLEAR FUEL SERVICES (ERWIN, TENNESSEE), CLI-80-27, 11 NRC 799 (1980)	6.29.1
NUCLEAR FUEL SERVICES, INC. AND N.Y.S. ENERGY RESEARCH AND DEVELOP. AUTHORITY (WESTERN NEW YORK NUCLEAR SERVICE CENTER), CLI-81-29, 14 NRC 940 (1981)	5.7.1 6.1.4
NUCLEAR FUEL SERVICES, INC., ET AL. (WEST VALLEY REPROCESSING PLANT), (1975)	2.9.3.3.4 2.9.5.5 2.11.1
(WEST VALLEY REPROCESSING PLANT), CLI-75-4, 1 NRC 273 (1975)	2.9.3.3.3
NUCLEAR REGULATORY COMMISSION (FINANCIAL ASSISTANCE TO PARTICIPANTS IN COMMISSION PROCEEDINGS), CLI-76-23, 4 NRC 494 (1976)	2.9.10.1
OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS), ALAB-489, 8 NRC 194 (1978)	1.8 3.1.2.5 3.3.1 6.15.7 6.16.1 6.16.1.1 6.18 6.20.3
(FLOATING NUCLEAR POWER PLANTS), ALAB-500, 8 NRC 323 (1978)	5.14
(FLOATING NUCLEAR POWER PLANTS), LBP-79-15, 9 NRC 653 (1979)	6.15.2
(MANUFACTURING LICENSE FOR FLOATING NUCLEAR POWER PLANTS), LBP-75-67, 2 NRC 813 (1975)	2.9.2 2.11.5.2 3.3.2.1 3.3.2.4
UNPUBL. ASLB ORDER (FLOATING NUCLEAR POWER PLANTS) UNPUBL. ASLB (1978)	6.15.1.2
OMAHA PUBLIC POWER DISTRICT (FORT CALHOUN STATION, UNIT 2), LBP-77-5, 5 NRC 437 (1977)	1.1
PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), (1975)	3.16 4.3 5.6.3

PACIFIC GAS AND ELECTRIC CO.

(DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), ALAB-254, 8 AEC 1184 (1975)

3. 8. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2 ALAB-580, 11 NRC 227 (1980)

3. 1. 2. 1

3. 3. 7

3. 14. 3

4. 6

5. 6. 3

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), (1977)

3. 12. 4

6. 20. 3

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-223, 8 AEC 241 (1974)

2. 9. 3. 3. 4

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-334, 3 NRC 809 (1976)

2. 7

3. 11. 1. 2

6. 5. 2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-410, 5 NRC 1398 (1977)

2. 11. 2. 4

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-504, 8 NRC 406 (1978)

3. 16

5. 12. 2

5. 12. 2. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-514, 8 NRC 697 (1978)

5. 12. 2. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-519, 9 NRC 42 (1979)

2. 11. 5. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-583, 11 NRC 447 (1980)

2. 10. 2

5. 2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-592, 11 NRC 744 (1980)

6. 4. 1. 1

5. 6. 6. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-598, 11 NRC 876 (1980)

4. 4. 2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-600, 12 NRC 3 (1980)

2. 10. 2

2. 11. 2. 5

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-604, 12 NRC 149 (1980)

3. 12. 1. 2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-607, 12 NRC 165 (1980)

3. 12. 3

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-644 13 NRC 903 (1981)

3. 16

3. 1. 4. 2

5. 1

5. 15

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-76-1, 3 NRC 73 (1976)

5. 4

5. 8. 11

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-11, 11 NRC 511 (1980)

3. 1. 4. 2

5. 6. 7

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-24 11 NRC 775 (1980)

2. 9. 5. 9

PACIFIC GAS AND ELECTRIC CO.

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-24 11 NRC 775 (1980)

6. 23. 3. 2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-6, 11 NRC 411 (1980)

5. 16. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-9 11 NRC 436 (1980)

3. 1. 4. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-81-6 13 NRC 443 (1981)

3. 1. 2. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), LBP-78-36, 8 NRC 567 (1978)

6. 24. 1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), LBP-81-5 13 NRC 226 (1981)

3. 12. 4

4. 4

4. 4. 2

6. 15. 1. 1

3. 4. 1

(STANISLAUS NUCLEAR PROJECT, UNIT 1), ALAB-400, 5 NRC 1175 (1977)

2. 9. 3

3. 1. 2. 2

3. 5. 2. 1

5. 8. 5

(STANISLAUS NUCLEAR PROJECT, UNIT 1), ALAB-550, 9 NRC 683 (1979)

2. 11. 2

2. 11. 5

2. 11. 6

(STANISLAUS NUCLEAR PROJECT, UNIT 1), LBP-78-20, 7 NRC 1038 (1978)

2. 11. 2

2. 11. 2. 2

PENNSYLVANIA POWER AND LIGHT CO.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-613, 12 NRC 317 (1980)

2. 11. 2

2. 11. 2. 8

2. 11. 3

2. 11. 4

2. 11. 6

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), CLI-80-17, 11 NRC 678 (1980)

5. 14

PENNSYLVANIA POWER AND LIGHT CO. ET AL.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-79-6, 9 NRC 291 (1979)

2. 9. 5. 4

6. 9. 1

6. 15. 6. 1

2. 9. 5. 10

PENNSYLVANIA POWER AND LIGHT CO.; ALLEGHENY ELECTRIC COOP.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-593, 11 NRC 761 (1980)

5. 12. 2

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-641 13 NRC 550 (1981)

3. 5. 5

5. 12. 2. 1

5. 8. 5

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-8 13 NRC 335 (1981)

3. 5

3. 5. 2. 3

3. 5. 3

PENNSYLVANIA POWER AND LIGHT CO., ET AL. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-80-18, 11 NRC 906 (1980)	2.11.2.2 3.1.1 6.15.8.1
PENNSYLVANIA POWER LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-148, 6 AEC 642 (1973)	2.9.3.3.2
PETITION FOR EMERGENCY AND REMEDIAL ACTION CLI-78-6, 7 NRC 400 (1978)	1.8 6.16.2 6.16.3 6.20.2 6.26
PHILA. ELEC. CO. ET AL.; MET. EDISON CO. ET AL.; PUB. SERVICE ELEC. AND GAS CO. (PEACH BOTTOM UNITS 2,3; ISLAND UNIT 2; HOPE CREEK UNITS 1,2), ALAB-640 13 NRC 487 (1981)	3.17
PHILADELPHIA ELECTRIC CO. (FULTON ENGINEERING STATION, UNITS 1 AND 2), ALAB-206, 7 AEC 841 (1974)	2.9.7
(FULTON GENERATING STATION, UNITS 1 AND 2), ALAB-657, 14 NRC 967 (1981)	1.3 1.9 3.1.2.1.1 3.4.3
(FULTON GENERATING STATION, UNITS 1 AND 2), LBP-79-23, 10 NRC 220 (1979)	3.1.2.5 6.6 6.24
(LIMERICK GENERATING STATION, UNITS 1 AND 2), ALAB-262, 1 NRC 163 (1975)	2.9.9.1 6.15.3 6.20.3
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-158, 6 AEC 999 (1973)	5.7.1
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-165, 6 AEC 1145 (1973)	5.11.2
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-216, 8 AEC 13 (1974)	2.9.5.1 6.16.2
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-221, 8 AEC 95 (1974)	5.7.1
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-389, 5 NRC 727 (1977)	3.1.2.1.1 5.19.1
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-540, 9 NRC 428 (1979)	5.5.4
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-546, 9 NRC 636 (1979)	5.5.4
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-566, 10 NRC 527 (1979)	3.3.5.2 3.7.1 6.9.1
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), CLI-73-10, 6 AEC 173 (1973)	2.9.3.1

PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), CLI-73-10, 6 AEC 173 (1973)	2.9.4.1.4
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), CLI-74-32, 8 AEC 217 (1974)	2.10.2
PHILADELPHIA ELECTRIC CO. ET AL. (PEACH BOTTOM ATOMIC POWER STATION, UNIT 3), ALAB-532, 9 NRC 279 (1979)	4.1 6.15.8.5
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-562, 10 NRC 437 (1979)	6.15.1.2 6.15.8.1
PITTSBURGH-DES MOINES STEEL CO. ALAB-441, 6 NRC 725 (1977)	5.8.12 5.12.2
ALJ-78-3 8 NRC 649 (1978)	6.10.1 6.10.1.1
PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), ALAB-273, 1 NRC 492 (1975)	2.9.7 5.8.1
(PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), ALAB-333, 3 NRC 804 (1976)	2.9.4 2.9.4.1.1
(PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), CLI-76-26 4 NRC 608 (1976)	3.3.6
(PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), CLI-76-27, 4 NRC 610 (1976)	2.9.4 2.9.4.1.1 2.9.4.2
(TROJAN NUCLEAR PLANT), ALAB-181, 7 AEC 207 (1974)	3.4.2 5.6.6 6.16.1.3
(TROJAN NUCLEAR PLANT), ALAB-534, 9 NRC 287 (1979)	2.5.1 3.4 6.1.3.1 6.1.4.4
PORTLAND GENERAL ELECTRIC CO. ET AL. (TROJAN NUCLEAR PLANT), ALAB-451, 6 NRC 889 (1977)	3.1.2.5 6.1.6 6.16.1
(TROJAN NUCLEAR PLANT), ALAB-496, 8 NRC 308 (1978)	2.9.9.2.2 5.8.4.1
(TROJAN NUCLEAR PLANT), ALAB-524, 9 NRC 65 (1979)	5.7.1
(TROJAN NUCLEAR PLANT), ALAB-531, 9 NRC 263 (1979)	6.15 6.15.1.1 6.15.4 6.15.9

PORTLAND GENERAL ELECTRIC CO. ET AL. (TROYAN NUCLEAR PLANT), ALAB-531, 9 NRC 263 (1979)	6.27
(TROYAN NUCLEAR PLANT), LBP-77-69, 6 NRC 1179 (1977)	6.1.6
(TROYAN NUCLEAR PLANT), LBP-78-32, 8 NRC 413 (1978)	3.16
(TROYAN NUCLEAR PLANT), LBP-78-40, 8 NRC 717 (1978)	6.1.3.1 6.1.4.4
POTOMAC ELECTRIC POWER CO. (DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-218, 8 AEC 79 (1974)	2.9.5.6 2.9.5.7 6.9.1 6.20.3
(DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-277, 1 NRC 539 (1975)	3.3.1 3.3.1.1 3.3.1.2 3.3.2.1 3.4.4
POWER AUTHORITY OF THE STATE OF NEW YORK (GREENE COUNTY NUCLEAR PLANT), ALAB-434, 6 NRC 471 (1977)	2.9.7
(GREENE COUNTY NUCLEAR PLANT), ALAB-439, 6 NRC 640 (1977)	5.12.2.1
PROJECT MANAGEMENT CORP. (CLINCH RIVER BREEDER REACTOR PLANT), ALAB-326, 3 NRC 406 (1976)	5.12.2.1
(CLINCH RIVER BREEDER REACTOR PLANT), ALAB-330, 3 NRC 613 (1976)	5.12.2.1
PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), LBP-74-36, 7 AEC 877 (1974)	1.9 3.5 3.5.3
PUBLIC SERVICE CO. OF OKLAHOMA ET AL. (BLACK FOX STATION, UNITS 1 AND 2), ALAB-505, 8 NRC 527 (1978)	5.7.1 6.4.1
PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-316, 3 NRC 167 (1976)	3.1.2.1 3.4 2.5.1
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-322, 3 NRC 328 (1976)	2.9.4 2.9.4.1.2
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-339, 4 NRC 20 (1976)	2.9.3.3.3 2.9.7.1 5.5.3 5.8.4.1 5.12.2

PUBLIC SERVICE CO. OF INDIANA

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-371, 5 NRC 409 (1977)

3. 3. 1
5. 12. 2. 1

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-374, 5 NRC 417 (1977)

4. 6
5. 12. 2. 1. 2

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-393, 5 NRC 767 (1977)

5. 12. 2. 1

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-405, 5 NRC 1190 (1977)

3. 15
5. 12. 2. 1

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-437, 6 NRC 630 (1977)

5. 7. 1

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-459, 7 NRC 179 (1978)

1. 1
3. 3. 2. 4
3. 3. 4
3. 11. 1. 4
5. 6. 1
5. 13
6. 15. 3

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-461, 7 NRC 313 (1978)

3. 1. 2. 5
3. 1. 2. 7
3. 13. 1
5. 5
5. 4
5. 8. 7
5. 10. 1
5. 13. 2
6. 16. 1. 3

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-493, 8 NRC 253 (1978)

2. 7
3. 1. 2. 6
3. 6
4. 5
5. 7. 1
5. 12. 1
5. 15. 1
5. 18
5. 19. 4
6. 5. 1
6. 5. 2
6. 18

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-530, 9 NRC 261 (1979)

4. 4

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), CL1-80-10, 11 NRC 438 (1980)

2. 9. 3. 1
2. 9. 4. 1. 1
2. 9. 4. 2
6. 24
6. 24. 1. 3

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

(SEABROOK STATION, UNITS 1 AND 2), (1975)

3. 3. 4

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

{SEABROOK STATION, UNITS 1 AND 2}, (1975)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-271, 1 NRC 478 (1975)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-293, 2 NRC 660 (1975)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-295, 2 NRC 668 (1975)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-338, 4 NRC 10 (1976)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-349, 4 NRC 235 (1976)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-350, 4 NRC 365 (1976)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-356, 4 NRC 525 (1976)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-366 5 NRC 39 (1977)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-423, 6 NRC 115 (1977)

{SEABROOK STATION, UNITS 1 AND 2}, CLI-76-17, 4 NRC 451 (1976)

{SEABROOK STATION, UNITS 1 AND 2}, CLI-77-8, 5 NRC 503 (1977)

{SEABROOK STATION, UNITS 1 AND 2}, LBP-75-28, 1 NRC 513 (1975)

{SEABROOK STATION, UNITS 1 AND 2}, LBP-75-9, 1 NRC 243 (1975)

PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL.

{SEABROOK STATION, UNITS 1 AND 2}, (1976)

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-390, 5 NRC 733 (1977)

5. 8. 2

3. 15
5. 12. 2. 1

3. 3. 1
3. 3. 4
5. 8. 2

3. 3. 1

5. 7
5. 7. 1

3. 7. 3. 3
3. 17
5. 4
5. 18

5. 18

5. 6. 1
5. 7

6. 15. 3. 1

4. 3
5. 6. 5

6. 16. 1

3. 1. 2. 1. 1
5. 7

5. 7. 1
5. 15
5. 19. 3
6. 15

6. 15. 2
6. 15. 3. 1
6. 15. 4. 1
6. 15. 4. 2

2. 11. 2. 4

3. 5. 2. 2

2. 9. 9. 5
2. 9. 9. 6
3. 6
6. 17. 1

6. 20. 4

PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL.

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-422, 6 NRC 33(1977)

3. 1. 4. 3
3. 1. 5
3. 12. 1
3. 13. 1
3. 16
3. 16. 1
4. 2
4. 3
4. 4
5. 6. 1
5. 6. 3
6. 1. 4
6. 15
6. 15. 4. 1
6. 15. 4. 2
6. 15. 5
6. 15. 8. 2

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-471, 7 NRC 477(1978)

3. 7. 2
3. 7. 3. 6
3. 11. 1. 5
3. 16
6. 15. 4
6. 15. 4. 1
6. 15. 4. 2
6. 15. 6. 1. 2

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-488, 8 NRC 187(1978)

2. 6

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-495, 8 NRC 304(1978)

6. 15. 4

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-499, 8 NRC 319(1978)

6. 15. 4

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-513, 8 NRC 694(1978)

3. 1. 2. 1

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-520, 9 NRC 48(1979)

5. 6. 1

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-548, 9 NRC 640(1979)

3. 11. 1. 1

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-557, 10 NRC 153(1979)

3. 11. 1. 6

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-623, 12 NRC 670(1980)

5. 15. 2

{SEABROOK STATION, UNITS 1 AND 2}, CLI-77-25, 6 NRC 535(1977)

6. 15. 4

{SEABROOK STATION, UNITS 1 AND 2}, CLI-78-1 7 NRC 1(1978)

6. 26

2. 10. 2

5. 15

3. 17

5. 6. 3

5. 7

5. 12. 3

6. 8

6. 15. 3

PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL.

{SEABROOK STATION, UNITS 1 AND 2}, CLI-78-17 NRC 1(1978)

{SEABROOK STATION, UNITS 1 AND 2}, CLI-78-14, 7 NRC 952(1978)

{SEABROOK STATION, UNITS 1 AND 2}, CLI-78-15, 8 NRC 1(1978)

{SEABROOK STATION, UNITS 1 AND 2}, CLI-78-17, 8 NRC 175(1978)

PUBLIC SERVICE CO. OF OKLAHOMA

{BLACK FOX STATION, UNITS 1 AND 2}, ALAB-370, 5 NRC 131(1977)

{BLACK FOX STATION, UNITS 1 AND 2}, ALAB-388 5 NRC 640(1977)

{BLACK FOX STATION, UNITS 1 AND 2}, ALAB-573, 10 NRC 775(1979)

{BLACK FOX STATION, UNITS 1 AND 2}, CLI-80-31, 12 NRC 264(1980)

PUBLIC SERVICE CO. OF OKLAHOMA ET AL.

{BLACK FOX STATION, UNITS 1 AND 2}, CLI-80-35, 12 NRC 409(1980)

{BLACK FOX STATION, UNITS 1 AND 2}, LBP-77-17, 5 NRC 657(1977)

{BLACK FOX STATION, UNITS 1 AND 2}, LBP-77-18, 5 NRC 671(1977)

{BLACK FOX STATION, UNITS 1 AND 2}, LBP-78-26 8 NRC 102(1978)

PUBLIC SERVICE CO. OF OKLAHOMA ET AL. ET AL.

{BLACK FOX STATION, UNITS 1 AND 2}, LBP-78-28 8 NRC 281(1978)

PUBLIC SERVICE ELECTRIC AND GAS CO.

{ATLANTIC GENERATING STATION, UNITS 1 AND 2}, LBP-75-62, 2 NRC 702(1975)

{ATLANTIC GENERATING STATION, UNITS 1 AND 2}, LBP-78-5, 7 NRC 147(1978)

{HOPE CREEK GENERATING STATION, UNITS 1 AND 2}, ALAB-251, 8 AEC 993(1974)

{HOPE CREEK GENERATING STATION, UNITS 1 AND 2}, LBP-77-9, 5 NRC 474(1977)

{SALEM NUCLEAR GENERATING STATION, UNIT 1}, ALAB-586, 11 NRC 533(1980)

{SALEM NUCLEAR GENERATING STATION, UNIT 1}, ALAB-650, 14 NRC 43(1981)

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6.15.8.1

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6.15.8.4

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5.8.3.2

5.8.4

5.10.3

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5.10.3

5.1

6.15.3

3.4

6.15.2

6.23.1

2.9.4.1.1

2.11.2.2

3.12.4.1

6.15.1

6.15.6

6.19.2

6.15

2.11.5.2

2.8.1.3

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2.9.3.3.3

5.12.2.1

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PUGET SOUND POWER AND LIGHT CO. ET AL. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-446, 6 NRC 870 (1977)	6. 19. 1
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TENNESSEE VALLEY AUTHORITY

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6. 9. 1
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6. 19-2

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-409, 5 NRC 1391(1977)

5. 9. 1
5. 13
5. 13. 4

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-418, 6 NRC 1(1977)

4. 5
5. 12. 1

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-463, 7 NRC 341(1978)

3. 1. 2. 7
3. 7. 2
3. 11. 4
3. 13. 1
3. 14. 3
3. 16
4. 3
4. 4
5. 5. 1
6. 7. 1
6. 7. 2

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-467, 7 NRC 459(1978)

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5. 5
5. 4
5. 6. 1
5. 8. 15
5. 1

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-554, 10 NRC 15(1979)

3. 5

(PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), ALAB-506, 8 NRC 533(1978)

6. 15

(PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), LBP-77-60, 6 NRC 647(1977)

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(PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), LBP-77-14, 5 NRC 494(1977)

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(WATTS BAR NUCLEAR PLANT, UNITS 1 AND 2), ALAB-413, 5 NRC 1418(1977)

2. 9. 4. 1. 1
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2. 9. 4. 1. 4
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(YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2), ALAB-445, 6 NRC 865(1977)

1. 7. 1
2. 5. 3

(YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2), ALAB-515, 8 NRC 702(1978)

6. 15. 8. 5

(BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 AND 3) LBP-73-29, 6 AEC 682(1973)

3. 5

TEXAS UTILITIES GENERATING CO.

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-260, 1 NRC 51(1975)

5. 6. 3

TEXAS UTILITIES GENERATING CO.

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), CLA-81-24 14 NRC 614(1981)

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), CLI-81-36 14 NRC 1111(1981)

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-23, 14 NRC 159(1981)

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-25, 14 NRC 241(1981)

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-51, 14 NRC 896(1981)

TEXAS UTILITIES GENERATING CO. ET AL.

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-621 12 NRC 578(1980)

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(UCLA RESEARCH REACTOR), LBP-81-29, 14 NRC 353(1981)

TOLEDO EDISON CO.

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-157, 6 AEC 858(1973)

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-25, 4 AEC 633(1971)

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-290, 2 NRC 401(1975)

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-300, 2 NRC 752(1975)

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-332, 3 NRC 785(1976)

(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-297, 2 NRC 727(1975)

(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-314, 3 NRC 98(1976)

(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-323, 3 NRC 331(1976)

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), LBP-76-8, 3 NRC 199(1976)

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), LBP-77-7, 5 NRC 452(1977)

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), ALAB-652, 14 NRC 627(1981)

TOLEDO EDISON CO. AND CLEVELAND ILLUMINATING CO.

(DAVIS-BESSE STATION, UNITS 1, 2, 3; PERRY PLANT, UNITS 1, 2), ALAB-430, 6 NRC 457(1977)

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3.1.2.3

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2.9.5

2.11.2.8

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6.4.1.1

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6.4.2.1

6.4.2.3

6.4.2.2

3.15

5.12.2.1

5.12.2.1

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2.11.2.2

4.3

6.3

5.6.1

4.4

5.10.3

TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO.

(DAVIS-BESSE STATION, UNITS 1, 2, 3); PERRY PLANT, UNITS 1 AND 2, CLI-77-22 6 NRC 451(1977)

N/A

TOLEDO EDISON CO. ET AL.

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), ALAB-385, 5 NRC 621(1977)

5.6.3

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5.7.1

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(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), ALAB-560, 10 NRC 265(1979)

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(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), ALAB-622, 12 NRC 667(1980)

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3.18.2

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6.4.2.2

UNION ELECTRIC CO.

(CALLAWAY PLANT, UNITS 1 AND 2), ALAB-347, 4 NRC 216(1976)

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(CALLAWAY PLANT, UNITS 1 AND 2), ALAB-348, 4 NRC 225(1976)

3.7.3.3

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(CALLAWAY PLANT, UNITS 1 AND 2), ALAB-352, 4 NRC 371(1976)

6.20.3

(CALLAWAY PLANT, UNITS 1 AND 2), LBP-78-31, 8 NRC 366(1978)

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USERDA

(CLINCH RIVER BREEDER REACTOR PLANT), ALAB-354, 4 NRC 383(1976)

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2.9.7.1

2.9.9.2.1

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5.2

(CLINCH RIVER BREEDER REACTOR PLANT), CLI-76-13, 4 NRC 67(1976)

5.12.2.1

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6.15.1

(CLINCH RIVER BREEDER RE PLANT), ALAB-345, 4 NRC 212(1977)

5.8.1

(CLINCH RIVER BREEDER RE PLANT), ALAB-369, 5 NRC 129(1977)

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VERMONT YANKEE NUCLEAR POWER CORP.

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-124 6 AEC 358(1973)

3.1.1

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4.4.1.1

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5.6.1

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-126 6 AEC 393(1973)

4.4.1.1

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-138, 6 AEC 520(1973)

2.11.1

VERMONT YANKEE NUCLEAR POWER CORP.

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-138, 6 AEC 520 (1973)

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(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-141, 6 AEC 576 (1973)

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(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-179, 7 AEC 159 (1974)

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(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-194, 7 AEC 431 (1974)

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6.20.1

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-217, 8 AEC 61 (1974)

6.16.2

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-229, 8 AEC 425 (1974)

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(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-245, 8 AEC 873 (1974)

6.1.4.2

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-392, 5 NRC 759 (1977)

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(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-421, 6 NRC 25 (1977)

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(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-57, WASH-1218, 435 (1972)

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(VERMONT YANKEE NUCLEAR POWER STATION), CLI-74-43, 8 AEC 826 (1974)

6.9.1
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(VERMONT YANKEE NUCLEAR POWER STATION), CLI-76-14, 4 NRC 163 (1976)

5.6.2
6.21.1

VIRGINIA ELECTRIC AND POWER CO.

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), UNPUBL. DEC. (1976)

2.9.2

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-146, 6 AEC 631 (1978)

2.9.3.2
2.9.4.1.4

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-256, 1 NRC 10 (1975)

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VIRGINIA ELECTRIC AND POWER CO.

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-289, 2 NRC 395 (1975)

2.9.3.3.3

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-324, 3 NRC 347 (1976)

1.5.2

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-342, 4 NRC 98 (1976)

2.9.3.3.3

2.9.3.3.4

2.9.4

2.9.4.1.1

2.9.7.1

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(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-491, 8 NRC 245 (1978)

5.6.1

6.9.2.2

5.5.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-522, 9 NRC 54 (1979)

2.9.4.1.1

2.9.7.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-551, 9 NRC 704 (1979)

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5.5.1

5.6.1

5.19.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-568, 10 NRC 554 (1979)

5.10.2

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-578, 11 NRC 189 (1980)

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(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-584, 11 NEC 451 (1980)

3.1.1

3.3.2.4

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5.8.2

6.15.4

3.5.5

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), CLI-74-16, 7 AEC 313 (1974)

2.11.3

2.11.5

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), CLI-76-22, 4 NRC 480 (1976)

1.5.2

6.5.4.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-555 10 NRC 23 (1979)

3.12.4

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(SURRY NUCLEAR POWER STATION, UNITS 1 AND 2), CLI-80-4, 11 NRC 405 (1980)

6.15.1.1

WASHINGTON PUBLIC POWER SUPPLY SYSTEMS ET AL.

(WPPSS NUCLEAR PROJECTS 3 AND 5 ALAB-501, 8 NRC 381 (1978)

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WASHINGTON PUBLIC POWER SUPPLY SYSTEM

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WASHINGTON PUBLIC POWER SUPPLY SYSTEM

(WPPSS NUCLEAR PROJECT 2), ALAB-571 10 NRC 687(1979)

5.6.1
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2.9.4.1.2
2.9.4.1.4

(WPPSS NUCLEAR PROJECTS 1 AND 4 ALAB-265, 1 NRC 374(1975)

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(WPPSS NUCLEAR PROJECTS 3 AND 5 ALAB-485, 7 NRC 986(1978)

5.6.3
6.9.1
6.18

(WPPSS NUCLEAR PROJECTS 3 AND 5 CLI-77-11, 5 NRC 719(1977)

3.1.1
6.19.1

(WPPSS NUCLEAR PROJECTS 3 AND 5 LBP-77-15, 5 NRC 643(1977)

3.1.2.2
6.19
6.19.1

(WPPSS NUCLEAR PROJECTS 3 AND 5 LBP-77-16, 5 NRC 650(1977)

2.9.3

WESTINGHOUSE ELECTRIC CORP.

(EXPORT TO SOUTH KOREA), CLI-80-30, 12 NRC 253(1980)

2.9.4.1.3
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3.4.6

(EXPORTS TO THE PHILLIPINES), CLI-80-14, 11 NRC 631(1980)

6.29.2.1
6.29.2.2
5.7.1

(EXPORTS TO THE PHILLIPINES), CLI-80-15, 11 NRC 672(1980)

6.15.1.1
6.29.2

WISCONSIN ELECTRIC POWER CO.

(KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2), CLI-75-2, 1 NRC 39(1975)

3.3.2.2

(KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2), CLI-74-45, 8 AEC 928(1974)

2.11.1

(POINT BEACH NUCLEAR PLANT), ALAB-73, 5 AEC 297(1972)

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(POINT BEACH NUCLEAR PLANT, UNIT 1), CLI-80-38 12 NRC 547(1980)

2.9.4.1.1

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	LONG ISLAND LIGHTING CO.	
	(JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 2CCH NBR 30,091 (1976)	3.6
	MISSISSIPPI POWER AND LIGHT CO.	
	(GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), (1973)	2.9.3
		2.9.5.1
		2.9.5.3
		3.5
	NORTHERN STATES POWER CO.	
	(MONTICELLO PLANT, UNIT 1), 4 AEC 440 (1970)	6.23.3.1
		2.11.2.4
	(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), (1975)	2.9.9.3
		3.11.3
		3.13.1
		5.5
		5.1
	NUCLEAR FUEL SERVICES, INC., ET AL.	
	(WEST VALLEY REPROCESSING PLANT), (1975)	2.9.3.3.4
		2.9.5.5
		2.11.1
	OFFSHORE POWER SYSTEMS	
UNPUBL. ASLB ORDER (FLOATING NUCLEAR POWER PLANTS) UNPUBL. ASLB (1978)	PACIFIC GAS AND ELECTRIC CO.	6.15.1.2
	(DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), (1975)	3.16
		4.3
		5.6.3
	(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), (1977)	3.12.4
		6.20.3
	PUBLIC SERVICE CO. OF NEW HAMPSHIRE	
	(SEABROOK STATION, UNITS 1 AND 2), (1975)	3.3.4
		5.8.2
	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL.	
	(SEABROOK STATION, UNITS 1 AND 2), (1978)	2.9.9.5
		2.9.9.6
		3.6
		6.17.1
	PUGET SOUND POWER AND LIGHT CO.	
	(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), UNREPORTED DEC. (1980)	2.9.3.3.4
	VIRGINIA ELECTRIC AND POWER CO.	
	(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), UNPUBL. DEC. (1976)	2.9.2
ALAB-101,	CONSUMERS POWER CO.	
	(MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 60 (1973)	2.8.1
		2.8.1.1
		2.8.1.3

ALAB-101,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 60 (1973)	3.1.4.1
ALAB-104	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2) 6 AEC 179 (1973)	2.9.3 4.3
ALAB-105,	DUCESNE LIGHT CO. ET AL. (BEAVER VALLEY POWER STATION, UNIT 1), 6 AEC 181 (1973)	2.9.3
ALAB-107,	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 6 AEC 188 (1973)	2.9.3.1 2.9.4.1.4 2.9.5.11 2.9.7.1 2.11.1 5.6.3
ALAB-108,	IOWA ELECTRIC LIGHT AND POWER CO. (DYANE ARNOLD ENERGY CENTER), 6 AEC 195 (1973)	2.10.1 2.10.1.2 3.4.2
ALAB-109,	DUCESNE LIGHT CO. ET AL. (BEAVER VALLEY POWER STATION, UNIT 1), 6 AEC 243 (1973)	2.6 2.6.2 2.9.3 2.9.5.3 2.9.7.1 3.4.1 3.5 5.6.3 2.9.5.1
ALAB-110	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 6 AEC 247 (1973)	2.9.4.1.4 2.9.5.11 2.11.1
ALAB-113,	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (HANFORD NO. 2 NUCLEAR POWER PLANT), 6 AEC 251 (1973)	3.10
ALAB-114,	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMNER NUCLEAR STATION, UNIT 1), 6 AEC 253 (1973)	5.6.1
ALAB-115	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 257 (1973)	5.10.2.2
ALAB-116,	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 6 AEC 258 (1973)	2.11.6 5.8.3.1
ALAB-117,	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 261 (1973)	5.10.2.1
ALAB-118,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 263 (1973)	2.11.5
ALAB-121,	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 319 (1973)	5.10.3
ALAB-122,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 322 (1973)	2.11.5 2.11.6 5.4 5.8.3.1
ALAB-123,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 331 (1973)	3.1.1 3.7.2 3.10

ALAB-191	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 1), 7 AEC 417 (1974)	6. 1. 4. 3
ALAB-192,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 7 AEC 420 (1974)	5. 7 5. 7. 1
ALAB-194,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 7 AEC 431 (1974)	6. 16. 1 6. 16. 1. 1 6. 20. 1
ALAB-195,	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 7 AEC 455 (1974)	5. 13. 1. 1 5. 4
ALAB-199,	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 7 AEC 478 (1974)	5. 7. 1
ALAB-204,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 7 AEC 835 (1974)	5. 8. 13 6. 4. 1. 1 5. 10. 3
ALAB-206,	PHILADELPHIA ELECTRIC CO. (FULTON ENGINEERING STATION, UNITS 1 AND 2), 7 AEC 841 (1974)	2. 9. 7
ALAB-207,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 7 AEC 957 (1974)	5. 10. 1 5. 13. 2
ALAB-209,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 7 AEC 971 (1974)	6. 16. 3
ALAB-212,	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 7 AEC 986 (1974)	3. 3. 2. 4
ALAB-216,	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 8 AEC 13 (1974)	2. 9. 5. 1 6. 16. 2
ALAB-217,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 61 (1974)	6. 16. 2
ALAB-218,	POTOMAC ELECTRIC POWER CO. (DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2), 8 AEC 75 (1974)	2. 9. 5. 6 2. 9. 5. 7 6. 9. 1 6. 20. 3
ALAB-220,	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 8 AEC 93 (1974)	3. 5. 5 5. 8. 5
ALAB-221,	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 8 AEC 95 (1974)	5. 7. 1
ALAB-222,	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 8 AEC 229 (1974)	3. 1. 3 3. 3. 1 3. 3. 2. 3
ALAB-223,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 8 AEC 241 (1974)	2. 9. 3. 3. 4
ALAB-224,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 8 AEC 244 (1974)	2. 8. 1. 2 2. 8. 1. 3 3. 1. 4. 1 3. 1. 4. 2 3. 6 5. 7 5. 7. 1

ALAB-156, (LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION), 6 AEC 831(1973))	5. 10.3
ALAB-157, (TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 6 AEC 858(1973))	5. 8.8
ALAB-158, (PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 7 AND 8), 6 AEC 959(1973))	5. 7.1
ALAB-159, (CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 6 AEC 001(1973))	5. 10.3
ALAB-16 (NORTHERN STATES POWER CO. (MONTICELLO PLANT, UNIT 1), 4 AEC 435(1970))	2. 11.2.4 6. 23.3.1
ALAB-161, (MAINE YANKEE ATOMIC POWER STATION), 6 AEC 1003(1973)	3. 7.2 5. 5.1
ALAB-164, (TENNESSEE VALLEY AUTHORITY (BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2), 6 AEC 1143(1973))	2. 8.1.2
ALAB-165, (PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 6 AEC 1145(1973))	5. 11.2
ALAB-166, (MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 6 AEC 1148(1973))	3. 7.2 5. 12.1
ALAB-168, (LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 1155(1973))	2. 9.3.4
ALAB-172, (DUCESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNITS 1 AND 2), 7 AEC 42(1974))	2. 8.1.1 3. 1.4.1
ALAB-175, (MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 7 AEC 62(1974))	3. 7.2
ALAB-179, (VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 7 AEC 159(1974))	6. 5.3.2 6. 15.3 6. 16.2
ALAB-181, (PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 7 AEC 207(1974))	3. 4.2 5. 6.6 6. 16.1.3
ALAB-182 (ALAPAMA POWER CO. (JOSEPH M. FARLEY PLANT, UNITS 1 AND 2), 7 AEC 210(1974))	2. 9.5.3 3. 4.1 3. 5 3. 5.3 3. 17
ALAB-183, (GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 7 AEC 222(1974))	2. 9.1 2. 9.4.1.4 2. 9.5.1
ALAB-184, (CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 7 AEC 229(1974))	6. 5.3.2 6. 19.2
ALAB-185, (COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 7 AEC 240(1974))	2. 11.2.1 2. 11.2.2
ALAB-188, (CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 7 AEC 323(1974))	6. 16.2
ALAB-191 (BOSTON EDISON CO. (FILGEM NUCLEAR STATION, UNIT 1), 7 AEC 417(1974))	3. 5.1.2

ALAB-123,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 331(1973)	5.5.1 5.5.2
ALAB-124	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 AEC 350(1973)	3.1.1 4.4 4.4.1 4.4.1.1 4.4.2 5.6.1
ALAB-125,	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 371(1973)	2.9.3 2.9.4.1.4 2.9.5.1
ALAB-126	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 AEC 393(1973)	4.4.1.1
ALAB-128,	DUKE POWER CO. (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), 6 AEC 399(1973)	6.9.1
ALAB-130,	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 423(1973)	2.6.3.3
ALAB-136,	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNITS 1 AND 2), 6 AEC 487(1973)	2.9.2 2.9.3 2.9.3.1
ALAB-137,	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 2), 6 AEC 491(1973)	3.7.2 6.23.3.1
ALAB-138,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 AEC 520(1973)	2.11.1 3.1.1 4.4.1.1 4.4.2 4.4.4 6.16.1
ALAB-140,	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 575(1973)	2.9.7 5.10.1
ALAB-141,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 AEC 576(1973)	4.4.2
ALAB-143	DUKE POWER CO. (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), 6 AEC 623(1973)	6.5.4.1 6.16.1.1
ALAB-144,	MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 6 AEC 628(1973)	5.10.2.1
ALAB-146,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 631(1978)	2.9.3.2 2.9.4.1.4
ALAB-148,	PENNSYLVANIA POWER LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 6 AEC 642(1973)	2.9.3.3.2
ALAB-153,	COMMONWEALTH EDISON CO. (LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 821(1973)	4.4 4.4.2
ALAB-154,	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 6 AEC 827(1973)	5.4 5.13.1.2

ALAB-224,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILY GENERATING STATION, NUCLEAR 1), 8 AEC 244 (1974)	5.8.2 5.15.2 6.16.3
ALAB-225,	DETROIT EDISON CO. (GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 8 AEC 379 (1974)	2.8.1.1 3.1.4.1
ALAB-226,	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 8 AEC 381 (1974)	2.8.1.3 2.9.3.2 2.9.5.10 2.9.9.1 3.1.4.1 3.7.2 3.12.1.1 5.10.1 5.13.1.1 6.16.1.2
ALAB-227,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILY GENERATING STATION, NUCLEAR 1), 8 AEC 416 (1974)	3.14.3 4.4.2
ALAB-229,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 425 (1974)	2.9.1 3.16.1 6.16.2
ALAB-231,	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 1), 8 AEC 633 (1974)	4.6 5.8.6
ALAB-235,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 8 AEC 645 (1974)	4.3.1 6.14.2.1
ALAB-237,	TENNESSEE VALLEY AUTHORITY (BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2), 8 AEC 654 (1974)	5.2
ALAB-238,	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), 8 AEC 656 (1974)	2.9.3.3.3
ALAB-242,	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 8 AEC 847 (1974)	3.6 4.6 5.9
ALAB-243,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 8 AEC 850 (1974)	2.9.1
ALAB-244,	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 8 AEC 857 (1974)	2.9.9.2.1 2.9.9.3 2.9.9.4 2.9.11 3.11.3 3.13.1 4.2.1 4.2.2 5.5 5.5.2 5.13.3
ALAB-245,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 873 (1974)	6.1.4.2

ALAB-247,	DETROIT EDISON CO. (GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 8 AEC 936 (1974)	6. 15 6. 15. 8. 2
ALAB-249,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 8 AEC 980 (1974)	3. 3. 1. 2 3. 13. 3 4. 4. 2
ALAB-25,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 4 AEC 633 (1971)	5. 7
ALAB-251,	PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 8 AEC 993 (1974)	5. 2
ALAB-252,	NORTHERN STATES POWER CO. (PEAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 8 AEC 1175 (1974)	2. 9. 9. 2. 1 3. 13. 1 5. 5 5. 1
ALAB-254,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), 8 AEC 1184 (1975)	3. 8. 1
ALAB-256,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 1 NRC 10 (1975)	2. 9. 1 3. 7 3. 8 3. 16 4. 3
ALAB-258,	LOUISIANA POWER AND LIGHT CO (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 1 NRC 45 (1975)	4. 6
ALAB-260,	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 1 NRC 51 (1975)	5. 6. 3
ALAB-262,	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 1 NRC 163 (1975)	2. 9. 9. 1 6. 15. 3 6. 20. 3
ALAB-264,	NIAGARA MOHAWK POWER CORP. (NINE MILE POINT NUCLEAR STATION, UNIT 2), 1 NRC 347 (1975)	3. 7. 3. 2 3. 16 4. 4. 2 5. 2 5. 6. 3 6. 15. 3
ALAB-265,	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 1 AND 4), 1 NRC 374 (1975)	4. 6 5. 9
ALAB-268,	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 1 NRC 383 (1975)	3. 4. 3 3. 7. 3. 1 5. 6. 4 6. 16. 1 6. 16. 3
ALAB-269,	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), UNIT 2), 1 NRC 411 (1975)	2. 9. 7 5. 4 5. 8. 1
ALAB-270,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 1 NRC 473 (1975)	5. 10. 1
ALAB-271,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 1 NRC 478 (1975)	3. 15

ALAB-271,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 1 NRC 476(1975)	5. 12. 2. 1
ALAB-273,	PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), 1 NRC 492(1975)	2. 9. 7 5. 8. 1
ALAB-274,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 1 NRC 497(1975)	5. 13. 1. 1
ALAB-277,	POTOMAC ELECTRIC POWER CO. (DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2), 1 NRC 539(1975)	3. 3. 1 3. 3. 1. 1 3. 3. 1. 2 3. 3. 2. 1 3. 4. 4
ALAB-279,	KANSAS GAS AND ELECTRIC CO. ET AL. (WOLF CREEK NUCLEAR GENERATING STATION), 1 NRC 559(1975)	2. 9. 3. 1
ALAB-280	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 2 NRC 3(1975)	4. 2. 2 5. 5. 2 5. 13. 3
ALAB-281,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN PCINT STATION, UNIT 3), 2 NRC 6(1975)	5. 4 5. 12. 1 5. 13. 1. 2
ALAB-282,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 2 NRC 9(1975)	5. 2
ALAB-283,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 2 NRC 11(1975)	6. 24. 5
ALAB-284,	NORTHERN STATES POWER CO. (PEAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 2 NRC 197(1975)	3. 14. 1
ALAB-286,	PUERTO RICO WATER RESOURCES AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 2 NRC 213(1975)	2. 9. 7 5. 8. 1
ALAB-288	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 2 NRC 390(1975)	3. 6
ALAB-289,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 2 NRC 395(1975)	2. 9. 3. 3. 3
ALAB-290,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 2 NRC 401(1975)	6. 11
ALAB-291,	GEORGIA POWER CO. (ALVIN W. VOGTE NUCLEAR PLANT, UNITS 1 AND 2), 2 NRC 404(1975)	4. 4. 2 4. 4. 3 6. 1. 4. 4 6. 5. 4. 1 6. 9. 2. 1 6. 15
ALAB-292,	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 2 NRC 631(1975)	2. 5. 3 2. 9. 3. 3. 3 2. 9. 4. 1. 1 2. 9. 4. 1. 4
ALAB-293,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 2 NRC 660(1975)	3. 3. 1 3. 3. 4 5. 8. 2
ALAB-294,	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 2 NRC 663(1975)	5. 2

ALAB-295,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 2 NRC 668 (1975)	3. 3. 1
ALAB-296,	ALLIED-GENERAL NUCLEAR SERVICES ET AL. (BARNWELL NUCLEAR FUEL PLANT SEPARATION FACILITY), 2 NRC 671 (1975)	3. 3. 1 3. 3. 1. 2 5. 7. 1 6. 15. 3
ALAB-297,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), 2 NRC 727 (1975)	3. 15 5. 12. 2. 1
ALAB-298	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 2 NRC 730 (1975)	3. 1. 2. 5
ALAB-300,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 2 NRC 752 (1975)	5. 4 5. 12. 2. 1 6. 11
ALAB-301,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2), 2 NRC 853 (1975)	5. 4 5. 8. 10
ALAB-302,	DUKE POWER CO. (PEBKINS NUCLEAR STATION UNITS 1, 2, 3), 2 NRC 856 (1975)	2. 9. 7 5. 8. 1
ALAB-303,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 2 NRC 858 (1975)	2. 11. 6 3. 16 5. 6. 3 5. 8. 3. 2
ALAB-304,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT NUCLEAR STATION, UNITS 1, 2 AND 3), 3 NRC 1 (1976)	2. 9. 4. 1. 4 5. 2 6. 16. 1
ALAB-305,	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), 3 NRC 8 (1976)	2. 9. 5. 1 4. 3
ALAB-307,	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 3 NRC 17 (1976)	5. 7. 1
ALAB-310,	DUPUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNIT 1), 3 NRC 33 (1976)	5. 4
ALAB-311,	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 3 NRC 85 (1976)	2. 11. 6 5. 2 5. 4
ALAB-313,	PUEERTO RICO WATER RESOURCES AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 3 NRC 94 (1976)	2. 7 6. 5. 2
ALAB-314,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), 3 NRC 98 (1976)	5. 12. 2. 1
ALAB-315,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 3 NRC 101 (1976)	6. 24. 5
ALAB-316,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 3 NRC 167 (1976)	3. 1. 2. 1 3. 4 2. 5. 1
ALAB-317,	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 3 NRC 175 (1976)	3. 7. 3. 4 5. 2

ALAB-318,	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR POWER STATION, UNITS 1 AND 2), 3 NRC 186 (1976)	5. 12. 2. 1
ALAB-319,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2, AND 3), 3 NRC 188 (1976)	3. 4. 2 6. 16. 1. 3 3. 1. 2. 3
ALAB-321,	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION), 3 NRC 293 (1976)	3. 1. 2. 1
ALAB-322,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 3 NRC 328 (1976)	2. 9. 4 2. 9. 4. 1. 2
ALAB-323,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), 3 NRC 331 (1976)	6. 3
ALAB-324,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 3 NRC 347 (1976)	1. 5. 2
ALAB-326,	PROJECT MANAGEMENT CORP. (CLINCH RIVER BREEDER REACTOR PLANT), 3 NRC 406 (1976)	5. 12. 2. 1
ALAB-327,	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 3 NRC 408 (1976)	2. 11. 2. 4 2. 11. 2. 5 4. 3 5. 12. 2. 1 6. 23. 3. 1
ALAB-328,	ALLIED-GENERAL NUCLEAR SERVICES (BARNWELL FUEL RECEIVING AND STORAGE STATION), 3 NRC 420 (1976)	2. 9. 4. 1. 2
ALAB-329,	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 3 NRC 607 (1976)	2. 9. 7 2. 9. 7. 1 5. 8. 1
ALAB-330,	PROJECT MANAGEMENT CORP. (CLINCH RIVER BREEDER REACTOR PLANT), 3 NRC 613 (1976)	5. 12. 2. 1
ALAB-331,	KANSAS GAS AND ELECTRIC CO. ET AL. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 3 NRC 771 (1976)	5. 4 5. 8. 9 5. 8. 10
ALAB-332,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 3 NRC 785 (1976)	6. 4. 1. 1 6. 4. 2 6. 4. 2. 1 6. 4. 2. 3 6. 4. 2. 2
ALAB-333,	PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), 3 NRC 804 (1976)	2. 9. 4 2. 9. 4. 1. 1
ALAB-334,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 3 NRC 809 (1976)	2. 7 3. 11. 1. 2 6. 5. 2
ALAB-336,	ARIZONA PUBLIC SERVICE CO. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2 AND 3), 4 NRC 3 (1976)	4. 3
ALAB-338,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 19 (1976)	5. 7 5. 7. 1
ALAB-339,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 4 NRC 20 (1976)	2. 9. 3. 3. 3 2. 9. 7. 1

ALAB-339,	PUBLIC SERVICE CO. OF INDIANA (NARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 4 NRC 20 (1976)	5. 5. 3 5. 8. 4. 1 5. 12. 2
ALAB-340,	ILLINOIS POWER CO. (CLINTON POWER STATION, UNITS 1 AND 2), 4 NRC 27 (1976)	2. 11. 1 2. 11. 2. 2 2. 11. 2. 3 3. 11. 1. 3 3. 13. 1 5. 10. 3. 1
ALAB-341,	TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1 AND 2), 4 NRC 95 (1976)	2. 9. 3. 3. 2 2. 9. 3. 3. 3
ALAB-342,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 4 NRC 98 (1976)	2. 9. 3. 3. 3 2. 9. 3. 3. 4 2. 9. 4 2. 9. 4. 1. 1 2. 9. 7. 1 5. 5. 3
ALAB-343,	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING STATION, UNITS 1 AND 2), 4 NRC 169 (1976)	5. 15
ALAB-344,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 4 NRC 207 (1976)	5. 8. 2
ALAB-345,	USERDA (CLINCH RIVER BREEDER RE PLANT), 4 NRC 212 (1977)	5. 8. 1
ALAB-347,	UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2), 4 NRC 216 (1976)	3. 7. 3. 4
ALAB-348,	UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2), 4 NRC 225 (1976)	3. 7. 3. 3 5. 6. 4
ALAB-349,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 235 (1976)	3. 7. 3. 3 3. 17 5. 4 5. 18
ALAB-350,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 365 (1976)	5. 18
ALAB-352,	UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2), 4 NRC 371 (1976)	6. 20. 3
ALAB-353,	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 4 NRC 381 (1976)	5. 12. 2. 1
ALAB-354,	USERDA (CLINCH RIVER BREEDER REACTOR PLANT), 4 NRC 383 (1976)	2. 9. 3. 3. 3 2. 9. 5. 1 2. 9. 7. 1 2. 9. 9. 2. 1 2. 10. 2 5. 2
ALAB-355	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 3 NRC 810 (1976)	3. 11. 4 4. 4 5. 5. 1 5. 10. 1 5. 10. 3

ALAB-355	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 3 NRC 830 (1976)	6. 19. 2. 1
ALAB-355,	DUKE POWER CO. (CATAWBA NUCLEAR STATION UNITS 1 AND 2), 4 NRC 307 (1976)	3. 11. 1. 1. 1 5. 6. 3 5. 10. 3 6. 16. 3
ALAB-356,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 525 (1976)	5. 6. 1 5. 7
ALAB-357,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2 AND 3), 4 NRC 542 (1976)	6. 1. 5
ALAB-358,	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 4 NRC 558 (1976)	2. 9. 4. 1. 4 3. 6
ALAB-359,	DUKE POWER CO. (CATAWBA NUCLEAR STATION UNITS 1 AND 2), 4 NRC 619 (1976)	4. 4. 1 4. 4. 2 5. 10. 1
ALAB-366	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 5 NRC 39 (1977)	6. 15. 3. 1
ALAB-367,	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1E, 2B), 5 NRC 92 (1977)	2. 11 3. 11. 1. 1. 1 3. 13. 1 5. 6. 3 5. 10. 3 5. 10. 1
ALAB-369,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 5 NRC 129 (1977) USERDA (CLINCH RIVER BREEDER RE PLANT), 5 NRC 129 (1977)	5. 2 5. 1
ALAB-370,	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 5 NRC 131 (1977)	4. 5 5. 8. 3. 2 5. 8. 4
ALAB-371,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 5 NRC 409 (1977)	3. 3. 1 5. 12. 2. 1
ALAB-374,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 5 NRC 417 (1977)	4. 6 5. 12. 2. 1. 2
ALAB-376,	DITPOIT EDISON CO. (GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 5 NRC 426 (1977)	2. 9. 4. 1. 1 2. 9. 7 3. 1. 2. 4 5. 4 5. 8. 1
ALAB-377,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2, AND 3), 5 NRC 430 (1977)	2. 6 3. 3. 3
ALAB-378	TOLEDO EDISON CO. ET AL. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1, 2, 3), 5 NRC 557 (1977)	3. 17 6. 4. 2. 2
ALAB-379,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 5 NRC 565 (1977)	3. 12

ALAB-379,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 5 NRC 565 (1977)	3. 12. 2
ALAB-380,	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), 5 NRC 572 (1977)	3. 1. 2. 3 6. 9. 1 6. 15. 8. 1 6. 19. 2
ALAB-381,	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 5 NRC 582 (1977)	3. 1. 2. 1. 1 3. 1. 2. 5 4. 4 6. 3. 1 6. 16. 1
ALAB-382,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 5 NRC 603 (1977)	2. 9. 10. 2 3. 12. 3
ALAB-383,	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 5 NRC 609 (1977)	5. 6. 1
ALAB-384,	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 5 NRC 612 (1977)	2. 9. 3. 3. 3
ALAB-385,	TOLFGO EDISON CO. ET AL. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1, 2, 3), 5 NRC 621 (1977)	5. 6. 3 5. 7 5. 7. 1 6. 3
ALAB-388	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 5 NRC 640 (1977)	5. 10. 3
ALAB-389,	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 5 NRC 727 (1977)	3. 1. 2. 1. 1 5. 19. 1
ALAB-390,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 5 NRC 733 (1977)	6. 20. 4
ALAB-392,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 5 NRC 759 (1977)	6. 15. 6
ALAB-393,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 5 NRC 767 (1977)	5. 12. 2. 1
ALAB-394,	PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 5 NRC 769 (1977)	5. 10. 3
ALAB 395,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2) 5 NRC 772 (1977)	5. 6. 2 5. 7 5. 7. 1 5. 15. 2 5. 18 5. 19. 3 6. 15. 3. 2
ALAB-399,	CONSOLIDATED EDISON CO (INDIAN POINT STATION, UNIT 2), 5 NRC 1156 (1977)	6. 15. 8. 1
ALAB-400,	PACIFIC GAS AND ELECTRIC CO. (STANISLAUS NUCLEAR PROJECT, UNIT 1), 5 NRC 1175 (1977)	2. 9. 3 3. 1. 2. 2 3. 5. 2. 1 5. 8. 5
ALAB-404,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 5 NRC 1185 (1977)	5. 7. 1

ALAB-405,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 5 NRC 1190 (1977)	3. 15 5. 12. 2. 1
ALAB-408,	DUCHESS LIGHT CO. (DEAVER VALLEY POWER STATION, UNIT 1), 5 NRC 1383 (1977)	3. 1. 2. 5 4. 6 6. 16. 1
ALAB-409,	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), 5 NRC 1391 (1977)	5. 9. 1 5. 13 5. 13. 4
ALAB-410,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 5 NRC 1398 (1977)	2. 11. 2. 4
ALAB-413,	TENNESSEE VALLEY AUTHORITY (WATTS BAR NUCLEAR PLANT, UNITS 1 AND 2), 5 NRC 1418 (1977)	2. 9. 4. 1. 1 2. 9. 4. 1. 2 2. 9. 4. 1. 4 2. 9. 4. 2
ALAB-414,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 3), 5 NRC 1425 (1977)	5. 7 5. 15
ALAB-415,	FLORIDA POWER AND LIGHT CO. 5 NRC 1435 (1977)	5. 7. 1
ALAB-417,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 5 NRC 1442 (1977)	5. 4 6. 4. 1. 1 6. 14. 3
ALAB-418,	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), 6 NRC 1 (1977)	4. 5 5. 12. 1
ALAB-419,	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 6 NRC 3 (1977)	3. 4 3. 15 5. 12. 2. 1. 1
ALAB-420,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 6 NRC 8 (1977)	2. 9. 3. 3. 3 2. 9. 3. 3. 4 5. 5. 3 6. 3
ALAB-421,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 NRC 25 (1977)	5. 14
ALAB-422,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 6 NRC 33 (1977)	3. 1. 4. 3 3. 1. 5 3. 12. 1 3. 13. 1 3. 16 3. 16. 1 4. 2 4. 3 4. 4 5. 6. 1 5. 6. 3 6. 1. 4 6. 15 6. 15. 4. 1

ALAB-422,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 6 NRC 33(1977)	6.15.4.2 6.15.5 6.15.8.2
ALAB-423,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 6 NRC 115(1977)	4.3 5.6.5
ALAB-424,	KANSAS GAS AND ELECTRIC CO. ET AL. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 6 NRC 1.2(1977)	2.9.4.1.1 5.4 5.10.2 5.10.3 5.13.4
ALAB-428,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE PLANT, UNIT 1; TURKEY POINT PLANT, UNITS 3 AND 4), 6 NRC 221(1977)	6.3 6.3.1
ALAB-430,	TOLEDO EDISON CO. AND CLEVELAND ILLUMINATING CO. (DAVIS-BESSE STATION, UNITS 1, 2, 3; PERRY PLANT, UNITS 1, 2), 6 NRC 457(1977)	4.4 5.10.3
ALAB-431,	DUKE POWER CO. (PERKINS NUCLEAR STATION UNITS 1, 2, 3), 6 NRC 460(1977)	2.9.3.3.3
ALAB-432,	SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 6 NRC 465(1977)	5.6.1
ALAB-433,	DUKE POWER CO. (PERKINS NUCLEAR STATION UNITS 1, 2, 3), 6 NRC 469(1977)	5.2 5.12.2
ALAB-434,	POWER AUTHORITY OF THE STATE OF NEW YORK (GREENE COUNTY NUCLEAR PLANT), 6 NRC 471(1977)	2.9.7
ALAB-435,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 6 NRC 541(1977)	5.10.1 6.15.4 6.15.4.1 6.23.3.1
ALAB-437,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 6 NRC 630(1977)	5.7.1
ALAB-438,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 NRC 638(1977)	2.11.6 5.12.2.1
ALAB-439,	POWER AUTHORITY OF THE STATE OF NEW YORK (GREENE COUNTY NUCLEAR PLANT), 6 NRC 640(1977)	5.12.2.1
ALAB-440,	DUKE POWER CO. (CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), 6 NRC 642(1977)	2.9.2 2.9.3.3.3
ALAB-441,	PITTSBURGH-DES MOINES STEEL CO. 6 NRC 7.5(1977)	5.8.12 5.12.2
ALAB-443,	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 6 NRC 741(1977)	3.1.2.1 3.1.2.6 3.5.2.3 3.5.3 3.14.2 5.6.4
ALAB-444,	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 6 NRC 760(1977)	2.9.3.3.3 2.9.5.7

ALAB-444,	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 6 NRC 760 (1977)	2. 10.2 3. 1. 2. 5 3. 4. 2 3. 7. 3. 4 3. 12. 1. 2 6. 9. 2. 1 6. 16. 2 6. 20. 2
ALAB-445,	TENNESSEE VALLEY AUTHORITY (YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2), 6 NRC 865 (1977)	1. 7. 1 2. 5. 3
ALAB-446,	PUGET SOUND POWER AND LIGHT CO. ET AL. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 6 NRC 870 (1977)	6. 19. 1
ALAB-447,	EXXON NUCLEAR CO., INC. (NUCLEAR FUEL RECOVERY AND RECYCLING CENTER), 6 NRC 873 (1977)	2. 10. 2
ALAB-451,	PORTLAND GENERAL ELECTRIC CO. ET AL. (TRUJAN NUCLEAR PLANT), 6 NRC 889 (1977)	3. 1. 2. 5 6. 1. 6 6. 16. 1
ALAB-453,	CONSOLIDATED EDISON CO. (INDIAN POINT STATION, UNIT 2), 7 NRC 31 (1978)	6. 15. 8. 1
ALAB-454,	METROPOLITAN EDISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNIT 27 NRC 39 (1978)	2. 10. 1. 2 5. 2 2. 10. 2
ALAB-455,	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 7 NRC 41 (1978)	3. 16 5. 6. 1 6. 1 6. 1. 3. 1 6. 15. 1 6. 15. 2
ALAB-456,	METROPOLITAN EDISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 7 NRC 63 (1978)	2. 9. 5. 6 6. 20. 3
ALAB-457,	DUKE POWER CO. (CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), 7 NRC 70 (1978)	6. 14. 1
ALAB-458,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 7 NRC 155 (1978)	4. 3 5. 7. 1 5. 7. 2 5. 15. 3 6. 15. 4. 2
ALAB-459,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 7 NRC 179 (1978)	1. 1 3. 3. 2. 4 3. 3. 4 3. 11. 1. 4 5. 6. 1 5. 13 6. 15. 3
ALAB-460,	PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 7 NRC 204 (1978)	4. 3
ALAB-461,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 7 NRC 313 (1978)	3. 1. 2. 5

ALAB-461, PUBLIC SERVICE CO. OF INDIANA
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 7 NRC 313 (1978)

3. 1. 2. 7
3. 13. 1
5. 5
5. 4
5. 8. 7
5. 10. 1
5. 13. 2
6. 16. 1. 3

ALAB-462, KANSAS GAS AND ELECTRIC CO. ET AL.
(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 7 NRC 320 (1978)

3. 7. 3. 2
3. 7. 3. 4
3. 7. 3. 5. 1
3. 14. 3
4. 4. 1
4. 4. 2

ALAB-463, TENNESSEE VALLEY AUTHORITY
(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), 7 NRC 341 (1978)

3. 1. 2. 7
3. 7. 2
3. 11. 4
3. 13. 1
3. 14. 3
3. 16
4. 3
4. 4
5. 5. 1
6. 7. 1
6. 7. 2

ALAB-464, NORTHERN STATES POWER CO. ET AL.
(TYRONE ENERGY PARK, UNIT 1), 7 NRC 372 (1978)

3. 1. 2. 6
4. 4. 1. 1

ALAB-466, DETROIT EDISON CO.
(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 7 NRC 457 (1978)

5. 6. 1
5. 8. 14
6. 24. 3

ALAB-467, TENNESSEE VALLEY AUTHORITY
(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), 7 NRC 459 (1978)

4. 5
5. 5
5. 4
5. 6. 1
5. 8. 15
5. 1

ALAB-468, CONSUMERS POWER CO.
(MIDLAND PLANT, UNITS 1 AND 2), 7 NRC 464 (1978)

3. 3. 4
5. 8. 2

ALAB-469, DETROIT EDISON CO.
(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 7 NRC 470 (1978)

5. 9
6. 14

ALAB-470, DETROIT EDISON CO.
(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 7 NRC 473 (1978)

2. 9. 4. 1. 1
2. 9. 4. 1. 2
2. 9. 4. 1. 4
2. 9. 4. 2
2. 9. 5. 3
3. 1. 2. 5
6. 16. 1

ALAB-471,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 7 NRC 477(1978)	3.7.2 3.7.3.6 3.11.1.5 3.16 6.15.4 6.15.4.1 6.15.4.2 6.15.6.1.2
ALAB-472,	DETROIT EDISON CO. (GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 7 NRC 570(1978)	2.9.7 5.4 5.8.1
ALAB-473,	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 7 NRC 737(1978)	2.9.4.1.1 2.9.4.1.4 2.9.4.2 2.9.5.3 2.9.7 5.8.1
ALAB-474,	METROPOLITAN EDISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNIT 27 NRC 746(1978)	2.9.2
ALAB-476,	DETROIT EDISON CO. (GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 7 NRC 759(1978)	2.9.3.3.3
ALAB-477,	KANSAS GAS AND ELECTRIC CO. ET AL. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 7 NRC 766(1978)	4.5
ALAB-479,	BOSTON EDISON CO. ET AL. (PILGRIM NUCLEAR STATION, UNIT 2), UNIT 2), 7 NRC 774(1978)	3.7 6.16.1
ALAB-481,	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 7 NRC 807(1978)	5.7.1
ALAB-482,	DUKE POWER CO. (CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), 7 NRC 979(1978)	5.5 5.6.6 6.18 5.1
ALAB-485,	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 57 NRC 986(1978)	5.6.3 6.9.1 6.18
ALAB-486,	METROPOLITAN EDISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 8 NRC 9(1978)	4.4.2 5.5.1
ALAB-488,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 187(1978)	2.6
ALAB-489,	OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS), 8 NRC 194(1978)	1.8 3.1.2.5 3.3.1 6.15.7 6.16.1 6.16.1.1 6.18 6.20.3
ALAB-490,	CARCLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 8 NRC 234(1978)	3.7.3.2

ALAB-490,	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 8 NRC 234 (1978)	6. 15. 5
ALAB-491,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 8 NRC 245 (1978)	5. 6. 1 6. 9. 2. 2 5. 5. 1
ALAB-492,	NORTHERN STATES POWER CO. (TYRONE ENERGY PARK, UNIT 1), 8 NRC 251 (1978)	2. 9. 5. 13 5. 8. 1
ALAB-493,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 8 NRC 253 (1976)	2. 7 3. 1. 2. 6 3. 6 4. 5 5. 7. 1 5. 12. 1 5. 15. 1 5. 18 5. 19. 4 6. 5. 1 6. 5. 2 6. 18
ALAB-494	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 8 NRC 299 (1978)	3. 1. 4. 1 3. 1. 4. 2
ALAB-495,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 304 (1978)	6. 15. 4
ALAB-496,	PORTLAND GENERAL ELECTRIC CO. ET AL. (TROJAN NUCLEAR PLANT), 8 NRC 308 (1978)	2. 9. 9. 2. 2 5. 8. 4. 1
ALAB-497	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR), 8 NRC 312 (1978)	3. 1. 4. 1
ALAB-499,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 319 (1978)	6. 15. 4
ALAB-500,	OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS), 8 NRC 323 (1978)	5. 14
ALAB-501,	WASHINGTON PUBLIC POWER SUPPLY SYSTEMS ET AL. (WPPSS NUCLEAR PROJECTS 3 AND 58 NRC 381 (1978)	5. 6. 1 5. 15
ALAB-502,	ROCHESTER GAS AND ELECTRIC CORP. ET AL. (STERLING POWER PROJECT, UNIT 1), 8 NRC 383 (1978)	3. 7. 3. 2 5. 1 6. 15. 4. 1 6. 15. 4. 2
ALAB-504,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 8 NRC 406 (1978)	3. 16 5. 12. 2 5. 12. 2. 1
ALAB-505,	PUBLIC SERVICE CO. OF OKLAHOMA ET AL. (BLACK FOX STATION, UNITS 1 AND 2), 8 NRC 527 (1978)	5. 7. 1 6. 4. 1
ALAB-506,	TENNESSEE VALLEY AUTHORITY (PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), 8 NRC 533 (1978)	6. 15
ALAB-507,	ROCHESTER GAS AND ELECTRIC CORP. ET AL. (STERLING POWER PROJECT, UNIT 1), 8 NRC 551 (1978)	6. 13

ALAB-513,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 694(1978)	3. 1. 2. 1 5. 6. 1
ALAB-514,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 8 NRC 697(1978)	5. 12. 2. 1
ALAB-515,	TENNESSEE VALLEY AUTHORITY (YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2), 8 NRC 702(1978)	6. 15. 8. 5
ALAB-516,	DELMARVA POWER AND LIGHT CO. (SUMMIT POWER STATION, UNITS 1 AND 2), 9 NRC 5(1979)	1. 3 6. 2
ALAB-518,	PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 9 NRC 14(1979)	4. 3 6. 15. 1. 2 6. 16. 4
ALAB-519,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 9 NRC 42(1979)	2. 11. 5. 1
ALAB-520,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 9 NRC 48(1979)	3. 11. 1. 1 3. 11. 1. 6
ALAB-522,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 9 NRC 54(1979)	2. 9. 4. 1. 1 2. 9. 7. 1
ALAB-523,	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 9 NRC 58(1979)	2. 9. 3. 3. 3 2. 9. 3. 3. 4
ALAB-524,	PORTLAND GENERAL ELECTRIC CO. ET AL. (TROJAN NUCLEAR PLANT), 9 NRC 65(1979)	5. 7. 1
ALAB-525,	METROPOLITAN ELISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 9 NRC 111(1979)	3. 14. 1
ALAB-526,	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 9 NRC 122(1979)	2. 9. 3. 3. 3 2. 9. 12 5. 19. 1
ALAB-528,	DUKE POWER CO. (CONNEE NUCLEAR STATION AND MCGUIRE NUCLEAR STATION) 9 NRC 146, (1979)	2. 9. 6 2. 9. 3. 3. 3 2. 9. 4. 1. 2 2. 9. 4. 2
ALAB-530,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 9 NRC 261(1979)	4. 4
ALAB-531,	PORTLAND GENERAL ELECTRIC CO. ET AL. (TROJAN NUCLEAR PLANT), 9 NRC 203(1979)	6. 15 6. 15. 1. 1 6. 15. 4 6. 15. 9 6. 27
ALAB-532,	PHILADELPHIA ELECTRIC CO. ET AL. (PEACH BOTTOM ATOMIC POWER STATION, UNIT 3), 9 NRC 279(1979)	4. 1 6. 15. 8. 5
ALAB-534,	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 9 NRC 287(1979)	2. 5. 1 3. 4 6. 1. 3. 1 6. 1. 4. 4
ALAB-535,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 377(1979)	2. 9. 7

ALAB-535,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 377 (1979)	3.4.4
ALAB-539	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 422 (1979)	3.4.4
ALAB-540,	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 9 NRC 428 (1979)	5.5.4
ALAB-541,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 9 NRC 436 (1979)	5.8.2 5.12.2.1
ALAB-542,	IN RE ATLANTIC RESEARCH CORP. 9 NRC 611 (1979)	6.10.1.1
ALAB-544	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 630 (1979)	5.12.1
ALAB-546,	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 9 NRC 636 (1979)	5.5.4
ALAB-547,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 638 (1979)	5.4
ALAB-548,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 9 NRC 640 (1979)	5.15.2
ALAB-549,	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 9 NRC 644 (1979)	2.9.3.3.3 2.9.4.1.2 2.9.5.1
ALAB-550,	PACIFIC GAS AND ELECTRIC CO. (STANISLAUS NUCLEAR PROJECT, UNIT 1), 9 NRC 683 (1979)	2.11.2 2.11.5 2.11.6
ALAB-551,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 9 NRC 704 (1979)	4.6 5.5.1 5.6.1 5.19.1
ALAB-552,	PUGET SOUND POWER AND LIGHT CO. ET AL. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 10 NRC 1 (1979)	2.9.3.3.3
ALAB-553,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 10 NRC 12 (1979)	3.3.2.4
ALAB-554,	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), 10 NRC 15 (1979)	3.5
ALAB-555	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 10 NRC 23 (1979)	3.12.4 3.16
ALAB-556,	PUGET SOUND POWER AND LIGHT CO. ET AL. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 10 NRC 30 (1979)	3.1.4.1 3.1.4.2 5.2
ALAB-557,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 10 NRC 153 (1979)	6.15.4
ALAB-559,	PUGET SOUND POWER AND LIGHT CO. ET AL. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 10 NRC 162 (1979)	2.9.3.3.3
ALAB-560,	TOLEDO EDISON CO. ET AL. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1, 2, 3), 10 NRC 265 (1979)	6.3
ALAB-562,	PHILADELPHIA ELECTRIC CO. ET AL. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 10 NRC 437 (1979)	6.15.1.2 6.15.8.1
ALAB-565,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 10 NRC 521 (1979)	2.9.5.3

ALAB-565,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 10 NRC 521(1979)	3.4.1 6.14 2.9.5
ALAB-566,	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 10 NRC 527(1979)	3.3.5.2 3.7.1 6.9.1
ALAB-567,	IN THE MATTER OF RADIATION TECHNOLOGY, INC. 10 NRC 533(1979)	5.2 6.10 6.10.1
ALAB-568,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 10 NRC 554(1979)	5.10.2
ALAB-569,	CAROLINA POWER AND LIGHT CO. (H. B. ROBINSON, UNIT 2) 10 NRC 557(1979)	6.15.6.1 6.15.8.5
ALAB-57,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), WASH-1218, 435(1972)	6.20.3
ALAB-571	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT 2), 10 NRC 687(1979)	5.6.1 5.8.1 4.6
ALAB-572,	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 10 NRC 693(1979)	3.15
ALAB-573,	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 10 NRC 775(1979)	3.5 5.10.3 5.1 6.15.3
ALAB-574,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 7(1980)	1.7.1 2.5.2 2.5.3 2.9.3.1 2.9.3.3.1 2.9.5.1 3.1.2.4
ALAB-575,	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 11 NRC 14(1980)	3.17
ALAB-577,	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 11 NRC 18(1980)	3.1.2.1.1 3.3.1 3.3.1.1 3.4 3.7.3.7 3.16 4.3 5.5 5.6.1 5.15 5.19.1 6.16.1 5.2
ALAB-578,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 11 NRC 189(1980)	4.6

ALAB-578,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 11 NRC 189(1980)	5. 15
ALAB-579,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 11 NRC 223(1980)	4. 4. 1. 1 5. 12. 1 6. 24
ALAB-580,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2) 11 NRC 227(1980)	3. 1. 2. 1 3. 3. 7 3. 14. 3 4. 6 5. 6. 3
ALAB-581,	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 11 NRC 233(1980)	1. 8 3. 1. 2. 1. 1 3. 3. 1 3. 7. 3. 7 5. 6. 3
ALAB-582,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 239(1980)	2. 9. 3. 3. 3 2. 9. 4. 1. 4 5. 5. 1 5. 10. 3
ALAB-583,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 447(1980)	2. 10. 2 5. 2
ALAB-584,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 11 NRC 451(1980)	3. 1. 1 3. 3. 2. 4 3. 5. 2. 3 3. 5. 4 5. 5 5. 8. 2 6. 15. 4 3. 5. 5
ALAB-585,	HOUSTON LIGHTING AND POWER CO. (ALIENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2), 11 NRC 469(1980)	5. 5
ALAB-586,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 472(1980)	2. 9. 7 5. 8. 1
ALAB-588,	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 533(1980)	5. 12. 2. 1
ALAB-590,	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 542(1980)	2. 9. 3. 1 2. 9. 5. 3 3. 5
ALAB-591,	DUKE POWER CO. (PERKINS NUCLEAR STATION UNITS 1, 2, 3), 11 NRC 741(1980)	3. 1. 2. 1
ALAB-592,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 744(1980)	6. 4. 1. 1 5. 6. 6. 1
ALAB-593,	PENNSYLVANIA POWER AND LIGHT CO.; ALLEGHENY ELECTRIC COOP. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 11 NRC 761(1980)	5. 12. 2
ALAB-594,	IN RE ATLANTIC RESEARCH CORP. 11 NRC 841(1980)	6. 10. 1. 1

ALAB-595,	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), 11 NRC 860 (1980)	2.9.3.3.3 2.9.7
ALAB-596,	ROCHESTER GAS AND ELECTRIC CORP. ET AL. (STERLING POWER PROJECT, UNIT 1), 11 NRC 867 (1980)	1.9
ALAB-597,	DUKE POWER CO. (PERKINS NUCLEAR STATION UNITS 1, 2, 3), 11 NRC 870 (1980)	5.6.5 5.8.10
ALAB-598,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 876 (1980)	4.4.2
ALAB-600,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 12 NRC 3 (1980)	2.10.2 2.11.2.5
ALAB-601,	COMMONWEALTH EDISON CO. (CARROL COUNTY SITE), 12 NRC 18 (1980)	6.6.1
ALAB-604,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 12 NRC 149 (1980)	3.12.1.2
ALAB-605,	PUERTO RICO ELECTRIC POWER AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 12 NRC 153 (1980)	1.10
ALAB-606,	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 12 NRC 156 (1980)	5.4 6.15.1.1
ALAB-607,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 12 NRC 165 (1980)	3.12.3
ALAB-611,	NORTHERN STATES POWER CO. (MONTICELLO PLANT, UNIT .), 12 NRC 301 (1980)	4.6
ALAB-613,	PENNSYLVANIA POWER AND LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 12 NRC 317 (1980)	2.11.2 2.11.2.8 2.11.3 2.11.4 2.11.6
ALAB-614,	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR), 12 NRC 347 (1980)	3.1.4.2
ALAB-616,	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 12 NRC 419 (1980)	2.5.1 3.1.2.1 3.4 5.13.2
ALAB-619,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 12 NRC 558 (1980)	2.5.1 2.9.4.1.4 3.1.2.1 3.4 3.4.5 6.24 6.24.1.1 6.24.1.2
ALAB-620,	NORTHERN STATES POWER CO. (MONTICELLO PLANT, UNIT 1), 12 NRC 574 (1980)	3.4.3
ALAB-621,	TEXAS UTILITIES GENERATING CO. ET AL. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 12 NRC 578 (1980)	3.15
ALAB-622,	TCLEDO EDISON CO. ET AL. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), 12 NRC 667 (1980)	3.18.1 3.18.2

ALAB-623,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 12 NRC 670 (1980)	6. 26
ALAB-626	DUKE POWER CO. (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), 13 NRC 17 (1981)	4. 3
ALAB-629	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 13 NRC 75 (1981)	3. 5 3. 5. 2. 3 6. 15. 1. 2 3. 5. 5
ALAB-630	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 13 NRC 84 (1981)	3. 1. 4. 1 3. 15 5. 12. 2. 1
ALAB-631	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 13 NRC 87 (1981)	5. 2
ALAB-632	BOSTON EDISON CO. ET AL. (PILGRIM NUCLEAR STATION, UNIT 2), 13 NRC 91 (1981)	4. 3
ALAB-633	CINCINNATI GAS AND ELECTRIC CO. ET AL. (WILLIAM H. ZIMMER NUCLEAR STATION), 13 NRC 94 (1981)	5. 4
ALAB-634	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 13 NRC 96 (1981)	5. 12. 2. 1
ALAB-635	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 13 NRC 309 (1981)	5. 12. 2 5. 12. 2. 1
ALAB-636	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), N/A 13 NRC 312 (1981)	5. 10. 2. 2 6. 15. 9 3. 1. 2. 5 6. 15. 1. 2 6. 15. 4
ALAB-639	HOUSTON LIGHTING AND POWER CO. ET AL. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 13 NRC 469 (1981)	2. 11. 2. 4 5. 8. 3. 2 5. 12. 2. 1 6. 23. 3. 1
ALAB-640	PHILA. ELEC. CO. ET AL.; MET. EDISON CO. ET AL.; PUB. SERVICE ELEC. AND GAS CO. (PEACH BOTTOM UNITS 2, 3; ISLAND UNIT 2; HOPE CREEK UNITS 1, 2), 13 NRC 487 (1981)	3. 17
ALAB-641	PENNSYLVANIA POWER AND LIGHT CO.; ALLEGHENY ELECTRIC COOP. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 13 NRC 550 (1981)	3. 5. 5 5. 12. 2. 1 5. 8. 5
ALAB-642	SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL. (VIRGIL C. SUMNER NUCLEAR STATION, UNIT 1), 13 NRC 881 (1981)	2. 9. 3. 3. 3 2. 9. 3. 3. 4 3. 1. 2. 7
ALAB-643	SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL. (VIRGIL C. SUMNER NUCLEAR STATION, UNIT 1), 13 NRC 898 (1981)	2. 9. 3. 3. 3 5. 7. 1
ALAB-644	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 13 NRC 903 (1981)	3. 16 3. 1. 4. 2 5. 1 5. 15
ALAB-650,	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1), 14 NRC 43 (1981)	4. 2 4. 4. 2

ALAB-650,	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1), 14 NRC 43 (1981)	5. 5. 1 5. 10. 1 5. 10. 3 6. 15. 1. 2 6. 15. 9
ALAB-652,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), 14 NRC 627 (1981)	5. 6. 1
ALAB-655	SACRAMENTO MUNICIPALITY UTILITY DISTRICT (RANCHO SECO NUCLEAR GENERATING STATION), 14 NRC 799 (1981)	2. 9. 5. 7 4. 6 5. 6. 3
ALAB-657,	PHILADELPHIA ELECTRIC CO. (FULTON GENERATING STATION, UNITS 1 AND 2), 14 NRC 967 (1981)	1. 3 1. 9 3. 1. 2. 1. 1 3. 4. 3
ALAB-659	COMMONWEALTH EDISON CO. (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 14 NRC 983 (1981)	4. 3. 1 5. 4
ALAB-660	FLORIDA POWER AND LIGHT CO. (TURKEY POINT PLANT, UNITS 3 AND 4), 14 NRC 987 (1981)	3. 5. 2. 3 6. 15. 4 6. 15. 4. 2
ALAB-661,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 14 NRC 1117 (1981)	2. 5. 1 6. 3. 1
ALAB-662,	PUERTO RICO ELECTRIC POWER AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 14 NRC 1125 (1981)	1. 3 1. 9
ALAB-663	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 14 NRC 1140 (1981)	3. 1. 2. 1 3. 1. 2. 5 3. 12. 3 5. 12. 2
ALAB-687,	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 16 NRC 460 (1982)	2. 9. 5. 8
ALAB-73,	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT), 5 AEC 297 (1972)	4. 6
ALAB-74,	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION), 5 AEC 308 (1972)	5. 10. 2. 1
ALAB-75,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 5 AEC 309 (1972)	3. 10
ALAB-77,	DETROIT EDISON CO. (ENRICO FERMI ATOMIC POWER PLANT), 5 AEC 315 (1972)	4. 6
ALAB-78,	WISCONSIN ELECTRIC POWER CO. ET AL. (POINT BEACH NUCLEAR PLANT, UNIT 2), 5 AEC 319 (1972)	3. 1. 1 3. 16 4. 2 5. 6. 1 6. 20. 3 5. 6. 3
ALAB-79,	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H ZIMMER STATION), 5 AEC 342 (1972)	5. 6. 1
ALAB-81,	BOSTON EDISON CO. (PILGRIM NUCLEAR POWER STATION), 5 AEC 348 (1972)	5. 7. 1

ALAB-82,	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 2), 5 AEC 350 (1972)	6.15.8.1 6.15.8.2
ALAB-83,	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION), 5 AEC 354 (1972)	3.1.1 3.11.1.1 3.16 4.2
ALAB-94	ARKANSAS POWER AND LIGHT CO. (ARKANSAS NUCLEAR-1, UNIT 2), 6 AEC 25 (1973)	3.11.2
ALAB-99,	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION), 6 AEC 53 (1973)	6.9.1
ALJ-78-3	PITTSBURGH-DES MOINES STEEL CO. 8 NRC 649 (1978)	6.10.1 6.10.1.1
ALJ-78-4	RADIATION TECHNOLOGY, INC. 8 NRC 655 (1978)	6.10.1.1
ALJ-80-1,	CONSUMERS POWER CO. (PALISADES NUCLEAR PLANT), 12 NRC 117 (1980)	2.11.2.4 2.11.3 6.23.1
CLI-73-10,	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 6 AEC 173 (1973)	2.9.3.1 2.9.4.1.4
CLI-73-12	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 6 AEC 241 (1973)	2.9.4.1.4 2.9.5.11 2.11.1 3.5
CLI-73-16,	METROPOLITAN EDISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 391 (1973)	2.9.3
CLI-73-8,	COMMONWEALTH EDISON CO. (LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 169 (1973)	2.8.1.1 3.1.4.1
CLI-74-12,	ALABAMA POWER CO. (JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), 7 AEC 203 (1974)	3.17 5.6.2
CLI-74-16,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 7 AEC 313 (1974)	2.11.3 2.11.5
CLI-74-2	MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 7 AEC 2 (1974)	3.7.2 3.9
CLI-74-23	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 7 AEC 947 (1974)	2.9.5.9 6.16.1.3 6.16.2
CLI-74-28,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 3), UNIT 3), 8 AEC 7 (1974)	3.4.2
CLI-74-29,	CONSUMERS POWER CO. (QUAWICASSEE PLANT, UNITS 1 AND 2), 8 AEC 10 (1974)	1.9
CLI-74-3,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 7 AEC 7 (1974)	6.24.4
CLI-74-32,	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 8 AEC 217 (1974)	2.10.2

CLI-74-35,	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 8 AEC 374 (1974)	3. 3. 2. 3
CLI-74-37,	CONSUMERS POWER CO. (QUANICASSEE PLANT, UNITS 1 AND 2), 8 AEC 627 (1974)	1. 9
CLI-74-39,	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 8 AEC 631 (1974)	4. 4. 2
CLI-74-40,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 809 (1974)	3. 16. 1 6. 9. 1 6. 16. 2 6. 21. 2
CLI-74-43,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 826 (1974)	6. 9. 1 6. 16. 2 6. 21. 2
CLI-74-45,	WISCONSIN ELECTRIC POWER CO. (KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2), 8 AEC 928 (1974)	2. 11. 1
CLI-75-1,	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 1 NRC 1 (1975)	2. 9. 9. 2. 1
CLI-75-14,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 3), UNIT 3), 2 NRC 835 (1975)	3. 9 6. 15. 8. 1
CLI-75-4,	NUCLEAR FUEL SERVICES, INC., ET AL. (WEST VALLEY REPROCESSING PLANT), 1 NRC 273 (1975)	2. 9. 3. 3. 3
CLI-75-8	CONSOLIDATED EDISON CO. OF N.Y. N.Y., INC. (INDIAN POINT STATION, UNITS 1, 2 AND 3), 2 NRC 173 (1975)	6. 24. 1 6. 24. 3
CLI-76-1,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 3 NRC 73 (1976)	5. 4 5. 8. 11
CLI-76-13,	USERDA (CLINCH RIVER BREEDER REACTOR PLANT), 4 NRC 67 (1976)	5. 12. 2. 1 5. 15 6. 15. 1
CLI-76-14,	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 4 NRC 163 (1976)	5. 6. 2 6. 21. 1
CLI-76-17,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 451 (1976)	6. 16. 1
CLI-76-2,	NATURAL RESOURCES DEFENSE COUNCIL 3 NRC 76 (1976)	5. 15. 2
CLI-76-22,	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 4 NRC 480 (1976)	1. 5. 2 6. 5. 4. 1
CLI-76-23,	NUCLEAR REGULATORY COMMISSION (FINANCIAL ASSISTANCE TO PARTICIPANTS IN COMMISSION PROCEEDINGS), 4 NRC 494 (1976)	2. 9. 10. 1
CLI-76-26	PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), 4 NRC 603 (1976)	3. 3. 6
CLI-76-27,	PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), 4 NRC 610 (1976)	2. 9. 4 2. 9. 4. 1. 1 2. 9. 4. 2
CLI-76-6,	EDLOW INTERNATIONAL CO. 3 NRC 563 (1976)	2. 9. 4. 1. 3
CLI-77-1,	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION), 5 NRC 1 (1977)	3. 1. 2. 1

CLI-77-1,	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION), 5 NRC 1(1977)	3. 1. 2. 2 6. 15. 8. 3 6. 19 6. 19. 1
CLI-77-11,	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 55 NRC 719(1977))	3. 1. 1 6. 19. 1
CLI-77-13,	HOUSTON LIGHTING AND POWER CO. ET AL. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 5 NRC 1303(1977)	3. 17 6. 3. 1
CLI-77-16	EDLOW INTERNATIONAL CO. (APPLICATION TO EXPORT SPECIAL NUCLEAR MATERIALS), 5 NRC 1327(1977)	3. 3. 6
CLI-77-18,	BABCOCK AND WILCOX (APPLIC. FOR CONSID. OF FACILITY EXPORT LICENSE) EXPORT LICENSE), 5 NRC 1332(1977)	2. 9. 4. 1. 3
CLI-77-2,	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2 AND 3), 5 NRC 13(1977)	3. 7 6. 5. 4. 1
CLI-77-22	TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO. (DAVIS-BESSE STATION, UNITS 1, 2, 3); PERRY PLANT, UNITS 1 AND 2), 6 NRC 451(1977)	N/A
CLI-77-24,	IN THE MATTER OF TEN APPLICATIONS 6 NRC 525(1977)	2. 9. 4. 1. 3
CLI-77-25,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 6 NRC 535(1977)	2. 10. 2 5. 15
CLI-77-3,	LICENSE TO TRANSP. STRATEGIC QUANTITIES OF SPEC. NUCLEAR MATERIALS 5 NRC 16()	6. 24. 3
CLI-77-31,	EXXON NUCLEAR CO., INC. ET AL. (LOW ENRICHED URANIUM EXPORTS TO EURATOM MEMBER NATIONS), 6 NRC 849(1977)	2. 9. 10. 1
CLI-77-4	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2 AND 3), 5 NRC 31(1977)	6. 1. 5
CLI-77-8,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 5 NRC 503(1977)	3. 1. 2. 1. 1 5. 7 5. 7. 1 5. 15 5. 19. 3 6. 15 6. 15. 2 6. 15. 3. 1 6. 15. 4. 1 6. 15. 4. 2
CLI-78-1	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 7 NRC 1(1978)	3. 17 5. 6. 3 5. 7 5. 12. 3 6. 8 6. 15. 3 6. 15. 8. 4
CLI-78-10	MIXED OXIDE FUEL 7 NRC 711(1978)	4. 3
CLI-78-12,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 7 NRC 939(1978)	2. 9. 3. 3. 3 2. 9. 3. 6 2. 9. 7

CLI-78-12,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 7 NRC 939 (1978)	5.8.1 6.3 6.3.1 6.3.2
CLI-78-14,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 7 NRC 952 (1978)	5.19.1 6.15.4 6.15.8.1
CLI-78-15,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 1 (1978)	4.7
CLI-78-17,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 179 (1978)	6.15.8.4
CLI-78-3,	METROPOLITAN EDISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 7 NRC 397 (1978)	5.7 5.12.3
CLI-78-4	EDLOW INTERNATIONAL CO. (APPLICATION TO EXPORT SPECIAL NUCLEAR MATERIALS), 7 NRC 311 (1978)	3.3.6
CLI-78-5	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 7 NRC 397 (1978)	6.3
CLI-78-6,	PETITION FOR EMERGENCY AND REMEDIAL ACTION 7 NRC 400 (1978)	1.8 6.16.2 6.16.3 6.20.2 6.26
CLI-78-7,	NORTHERN INDIANA PUBLIC SERVICE CO. (BALLY GENERATING STATION, NUCLEAR-1), 7 NRC 429 (1978)	6.24 6.24.2 6.24.3 6.24.6
CLI-79-10,	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 10 NRC 675 (1979)	4.4.2
CLI-79-3,	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 9 NRC 107 (1979)	6.4.2.2
CLI-79-5	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 9 NRC 607 (1979)	3.1.2.1 4.4.2
CLI-79-b,	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 9 NRC 673 (1979)	6.24.3 6.24.4
CLI-79-8,	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 10 NRC 141 (1979)	2.11.2.2 2.11.4
CLI-80-1,	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 11 NRC 1 (1980)	3.1.1 3.1.4.2 4.4.2 4.5 5.15 6.16.1 6.24 6.24.3
CLI-80-10,	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 11 NRC 438 (1980)	2.9.3.1 2.9.4.1.1

CLI-80-10,	PUBLIC SERVICE CO. OF INDIANA (HASSLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 11 NRC 438(1980)	2.9.4.2 6.24 6.24.1.3
CLI-80-11,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 511(1980)	3.1.4.2 5.6.7
CLI-80-12,	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 11 NRC 514(1980)	1.8 2.5.1 3.1.2.1.1 3.1.2.5 3.3.1 3.3.1.1 3.4 3.7.3.7 3.16 4.3 5.5 5.6.1 5.6.3 5.15 5.19.1 6.16.1 5.2
CLI-80-14,	WESTINGHOUSE ELECTRIC CORP. (EXPORTS TO THE PHILLIPINES), 11 NRC 631(1980)	6.29.2.1 6.29.2.2 5.7.1
CLI-80-15,	WESTINGHOUSE ELECTRIC CORP. (EXPORTS TO THE PHILLIPINES), 11 NRC 672(1980)	6.15.1.1 6.29.2
CLI-80-16,	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 674(1980)	3.4
CLI-80-17,	PENNSYLVANIA POWER AND LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 11 NRC 678(1980)	5.14
CLI-80-19,	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 700(1980)	2.9.10.1
CLI-80-20,	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 705(1980)	2.9.10.1
CLI-80-21,	IN RE PETITION FOR EMERGENCY AND REMEDIAL ACTION 11 NRC 707(1980)	3.7.1 6.24
CLI-80-22,	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 11 NRC 724(1980)	2.11.5
CLI-80-23,	ROCHESTER GAS AND ELECTRIC CORP. ET AL. (STERLING POWER PROJECT, UNIT 1), 11 NRC 731(1980)	6.15.4
CLI-80-24,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 775(1980)	2.9.5.9 6.23.3.2
CLI-80-27,	NUCLEAR FUEL SERVICES (ERWIN, TENNESSEE), 11 NRC 799(1980)	6.29.1
CLI-80-28,	SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL. (VIRGIL C. SUMNER NUCLEAR STATION, UNIT 1), 11 NRC 817(1980)	6.3.1
CLI-80-3,	DUKE POWER CO. (AMENDMENT TO MATERIALS LIC. SNM-1773), 11 NRC 185(1980)	3.3.7

CLI-80-30,	WESTINGHOUSE ELECTRIC CORP. (EXPORT TO SOUTH KOREA), 12 NRC 253(1980)	2.9.4.1.3 3.2.1 3.4.6
CLI-80-31,	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 12 NRC 264(1980)	3.4 6.15.2
CLI-80-32,	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 12 NRC 281(1980)	2.2
CLI-80-34	PUGET SOUND POWER AND LIGHT CO. ET AL. (SEAGUPT NUCLEAR PROJECT, UNITS 1 AND 2), 12 NRC 407(1980)	2.9.3.3.5
CLI-80-35,	PUBLIC SERVICE CO. OF OKLAHOMA ET AL. (BLACK FOX STATION, UNITS 1 AND 2), 12 NRC 409(1980)	6.23.1
CLI-80-36	NORTHEAST STATES POWER CO. (TYBONE ENERGY PARK, UNIT 1), 12 NRC 523(1980)	2.9.4.1.4
CLI-80-38	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 1), 12 NRC 547(1980)	2.9.4.1.1
CLI-80-4,	VIRGINIA ELECTRIC AND POWER CO. (SURREY NUCLEAR POWER STATION, UNITS 1 AND 2), 11 NRC 405(1980)	6.15.1.1
CLI-80-41,	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 12 NRC 650(1980)	5.17
CLI-80-5,	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 408(1980)	3.7.3.7
CLI-80-6,	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 411(1980)	5.16.1
CLI-80-7,	ATLANTIC RESEARCH CORP. 11 NRC 413(1980)	6.24.5
CLI-80-9	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 436(1980)	3.1.4.1
CLI-81-1	CONSOLIDATED EDISON CO. OF NEW YORK; POWER AUTHORITY OF THE STATE OF NEW YORK (INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3), 13 NRC 1(1981)	5.16.1 3.1.2.7
CLI-81-2	GENERAL ELECTRIC CO., WESTINGHOUSE ELECTRIC CO., COMBUSTION ENGINEERING (EXPORTS TO TAIWAN), 13 NRC 67(1981)	3.2.1 3.4.6 6.29.2.1
CLI-81-23,	CONSOLIDATED EDISON CO. OF NEW YORK; POWER AUTHORITY OF THE STATE OF NEW YORK (INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3), 14 NRC 610(1981)	3.1.2.7 5.16.1
CLI-81-24	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 14 NRC 614(1981)	3.4.2
CLI-81-25	COMMONWEALTH EDISON CO. (DRESDEN NUCLEAR POWER STATION, UNIT 1), 14 NRC 616(1981)	2.9.4.1.2 2.9.4.2 2.9.5.1 2.10.1.1 3.3.6 6.1.4 6.15.1
CLI-81-26	CENTRAL ELECTRIC POWER COOPERATIVE, INC. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 14 NRC 787(1981)	4.5 6.3.1
CLI-81-27	ALABAMA POWER CO. (JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 795(1981)	5.7.1
CLI-81-29,	NUCLEAR FUEL SERVICES, INC. AND N.Y.S. ENERGY RESEARCH AND DEVELOP. AUTHORITY (WESTERN NEW YORK NUCLEAR SERVICE CENTER), 14 NRC 940(1981)	5.7.1

CLI-81-29,	NUCLEAR FUEL SERVICES, INC. AND N.Y.S. ENERGY RESEARCH AND DEVELOP. AUTHORITY (WESTERN NEW YORK NUCLEAR SERVICE CENTER), 14 NRC 940 (1981)	6.1.4
CLI-81-31,	FLORIDA POWER AND LIGHT CO. (TURKEY POINT PLANT, UNITS 3 AND 4), 14 NRC 959 (1981)	2.9.3 2.9.3.1
CLI-81-32	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 14 NRC 962 (1981)	2.9.3 2.9.3.1
CLI-81-36	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 14 NRC 1111 (1981)	3.1.2.3 3.4.2
CLI-81-4	ENVIRONMENTAL RADIATION PROTECTION STDS. FOR NUCLEAR POWER OPERATIONS, 40 CFR 19 13 NRC 298 (1981)	5.7.1
CLI-81-6	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 13 NRC 443 (1981)	3.1.2.1 6.24.1
CLI-81-8	STATEMENT OF POLICY ON CONDUCT OF LICENSING PROCEEDINGS 13 NRC 452 (1981)	2.9.9.2.2 2.9.9.4 2.11.1 2.11.2.8 3.1.2.7 3.12 3.13.1 4.1 4.2.2
CLI-33-19,	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 17 NRC (1983)	2.9.5.8
DOC. NO. 50-409	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR) UNPUBL. DEC. (1980)	2.9.10.1
LBP-73-29,	TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 AND 3), 6 AEC 682 (1973)	3.5
LBP-73-31,	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 717 (1973)	2.9.3.4
LBP-73-41,	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 1057 (1973)	2.9.3.5 2.9.8
LBP-74-22,	DUKE POWER CO. (CATAWBA NUCLEAR STATION UNITS 1 AND 2), 7 AEC 659 (1974)	3.10
LBP-74-25,	DUQUESNE LIGHT CO. ET AL. (BEAVER VALLEY POWER STATION, UNIT 2), 7 AEC 711 (1974)	3.10
LBP-74-26,	NIAGARA MOHAWK POWER CORP. (NINE MILE POINT NUCLEAR STATION, UNIT 2), 7 AEC 758 (1974)	3.10
LBP-74-36,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 7 AEC 877 (1974)	1.9 3.5 3.5.3
LBP-74-5,	DUKE POWER CO. (CATAWBA NUCLEAR STATION UNITS 1 AND 2), 7 AEC 82 (1974)	3.10
LBP-74-54	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 8 AEC 112 (1974)	3.7
LBP-74-63,	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), 8 AEC 330 (1974)	2.9.3.3.3
LBP-74-74,	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 8 AEC 659 (1974)	2.11.5

LBP-75-10	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 1 NRC 246 (1975)	3.5
LBP-75-19,	NORTHEAST NUCLEAR ENERGY CO. (MONTAGUE NUCLEAR POWER STATION, UNITS 1 AND 2), 1 NRC 436 (1975)	1.8 6.5.3.1
LBP-75-28,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 1 NRC 513 (1975)	2.11.2.4
LBP-75-62,	PUBLIC SERVICE ELECTRIC AND GAS CO. (ATLANTIC GENERATING STATION, UNITS 1 AND 2), 2 NRC 702 (1975)	2.11.5.2
LBP-75-67,	OFFSHORE POWER SYSTEMS (MANUFACTURING LICENSE FOR FLOATING NUCLEAR POWER PLANTS), 2 NRC 813 (1975)	2.9.2 2.11.5.2 3.3.2.1 3.3.2.4
LBP-75-9,	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 1 NRC 243 (1975)	3.5.2.2
LBP-76-10,	TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1 AND 2), 3 NRC 209 (1976)	2.9.3.1 2.9.5.1
LBP-76-7	BOSTON EDISON CO., ET AL. (PILGRIM NUCLEAR STATION, UNIT 2), 3 NRC 156 (1976)	2.9.9.5 3.6
LBP-76-8,	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), 3 NRC 199 (1976)	2.11.2.2
LBP-77-11,	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR STATION, UNIT 1), 5 NRC 481 (1977)	2.9.4.1.2
LBP-77-13,	ALLIED-GENERAL NUCLEAR SERVICES ET AL. (BARNWELL FUEL RECEIVING AND STORAGE STATION), 5 NRC 489 (1977)	2.11.2 2.11.2.2
LBP-77-14,	TENNESSEE VALLEY AUTHORITY (PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), 5 NRC 494 (1977)	6.15
LBP-77-15,	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 55 NRC 643 (1977)	3.1.2.2 6.19 6.19.1
LBP-77-16,	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 55 NRC 650 (1977)	2.9.3
LBP-77-17,	PUBLIC SERVICE CO. OF OKLAHOMA ET AL. (BLACK FOX STATION, UNITS 1 AND 2), 5 NRC 657 (1977)	2.9.4.1.1
LBP-77-18,	PUBLIC SERVICE CO. OF OKLAHOMA ET AL. (BLACK FOX STATION, UNITS 1 AND 2), 5 NRC 671 (1977)	2.11.2.2 3.12.4.1
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(LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), CLI-73-8, 6 AEC 169 (1973)

(LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), ALAB-153, 6 AEC 821 (1973)

(ZION STATION, UNITS 1 AND 2), CLI-74-35, 8 AEC 374 (1974)

CONSOLIDATED EDISON CO. OF N.Y.
(INDIAN POINT NUCLEAR STATION, UNITS 1, 2 AND 3), ALAB-304, 3 NRC 1 (1976)

2.8.1.1
3.1.4.1
4.4
4.4.2
3.3.2.3

(INDIAN POINT STATION, UNITS 1, 2 AND 3), CLI-77-4 5 NRC 31 (1977)

CONSUMERS POWER CO.
(MIDLAND PLANT, UNITS 1 AND 2), (1975)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-101, 6 AEC 60 (1973)

2.9.4.1.4
5.2
6.16.1
6.1.5

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-115 6 AEC 257 (1973)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-123, 6 AEC 331 (1973)

5.10.3
5.13.2
2.8.1
2.8.1.1
2.8.1.3
3.1.4.1
5.10.2.2
3.1.1
3.7.2
3.10

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-235, 6 AEC 645 (1974)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-270, 1 NRC 473 (1975)

5.5.1
5.5.2
4.3.1
6.14.2.1
5.10.1

CONSTRUCTION PERMIT

CONSUMERS POWER CO.

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-283, 2 NRC 11 (1975)
 (MIDLAND PLANT, UNITS 1 AND 2), ALAB-315, 3 NRC 101 (1976)
 (MIDLAND PLANT, UNITS 1 AND 2), ALAB-344, 4 NRC 207 (1976)
 (MIDLAND PLANT, UNITS 1 AND 2), ALAB-379, 5 NRC 565 (1977)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-382, 5 NRC 603 (1977)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-395, 5 NRC 772 (1977)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-438, 6 NRC 638 (1977)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-458, 7 NRC 155 (1978)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-468, 7 NRC 464 (1978)

(MIDLAND PLANT, UNITS 1 AND 2), CLI-74-3, 7 AEC 7 (1974)

(MIDLAND PLANT, UNITS 1 AND 2), LBP-74-54 8 AEC 112 (1974)

(MIDLAND PLANT, UNITS 1 AND 2), LBP-81-63 14 NRC 1768 (1981)

(QUANICASSEE PLANT, UNITS 1 AND 2), CLI-74-29, 8 AEC 10 (1974)

(QUANICASSEE PLANT, UNITS 1 AND 2), CLI-74-37, 8 AEC 627 (1978)

DAIRYLAND POWER COOP.

(LA CROSSE BOILING WATER REACTOR) LBP-80-26, 12 NRC 367 (1980)

DELMARVA POWER AND LIGHT CO.

(SUMMIT POWER STATION, UNITS 1 AND 2), ALAB-516, 9 NRC 5 (1979)

DETROIT EDISON CO.

(ENRICO FERMI ATOMIC POWER PLANT), ALAB-77, 5 AEC 315 (1972)

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), ALAB-466, 7 NRC 457 (1978)

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), ALAB-469, 7 NRC 470 (1978)

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), ALAB-470, 7 NRC 473 (1978)

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), LBP-78-13, 7 NRC 583 (1978)

6-24.5
 6-24.5
 5-8.2
 3-12
 3-12.2
 2-9.10.2
 3-12.3
 5-6.2
 5-7
 5-7.1
 5-15.2
 5-18
 5-19.3
 6-15.3.2
 2-11.6
 5-12.2.1
 4-3
 5-7.1
 5-7.2
 5-15.3
 6-15.4.2
 3-3.4
 5-8.2
 6-24.4
 3-7
 6-5.4.1
 2-11.2.6
 3-12
 1-9
 1-9
 2-2
 6-24.8
 6-24.7
 1-3
 6-2
 4-6
 5-6.1
 5-8.14
 6-24.3
 5-9
 6-14
 2-9.4.1.1
 2-9.4.1.2
 2-9.4.1.4
 2-9.4.2
 2-9.5.3
 3-1.2.5
 6-16.1
 2-9.3.6
 2-9.4.1.1
 6-3

CONSTRUCTION PERMIT

DETROIT EDISON CO.

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), LBP-78-13, 7 NRC 583 (1978)

(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), ALAB-225, 8 AEC 379 (1974)

(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), ALAB-247, 8 AEC 936 (1974)

(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), ALAB-376, 5 NRC 426 (1977)

(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), ALAB-472, 7 NRC 570 (1978)

(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), ALAB-476, 7 NRC 759 (1978)

DUKE POWER CO.

(CATAWBA NUCLEAR STATION UNITS 1 AND 2), ALAB-355, 4 NRC 397 (1976)

(CATAWBA NUCLEAR STATION UNITS 1 AND 2), ALAB-359, 4 NRC 619 (1976)

(CATAWBA NUCLEAR STATION UNITS 1 AND 2), LBP-74-22, 7 AEC 659 (1974)

(CATAWBA NUCLEAR STATION UNITS 1 AND 2), LBP-74-5, 7 AEC 82 (1974)

(CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), ALAB-457, 7 NRC 70 (1978)

(CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), ALAB-482, 7 NRC 979 (1978)

(CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), ALAB-440, 6 NRC 642 (1977)

(PERKINS NUCLEAR STATION UNITS 1, 2, 3), ALAB-302, 2 NRC 856 (1975)

(PERKINS NUCLEAR STATION UNITS 1, 2, 3), ALAB-431, 6 NRC 460 (1977)

(PERKINS NUCLEAR STATION UNITS 1, 2, 3), ALAB-433, 6 NRC 469 (1977)

(PERKINS NUCLEAR STATION UNITS 1, 2, 3), ALAB-591, 11 NRC 741 (1980)

(PERKINS NUCLEAR STATION UNITS 1, 2, 3), ALAB-597, 11 NRC 870 (1980)

(WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), ALAB-128, 6 AEC 399 (1973)

(WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), ALAB-143, 6 AEC 623 (1973)

DUQUESNE LIGHT CO. ET AL.

(BEAVER VALLEY POWER STATION, UNIT 1), ALAB-109, 6 AEC 243 (1973)

(BEAVER VALLEY POWER STATION, UNIT 2), LBP-74-25, 7 AEC 711 (1974)

2.8.1.1
3.1.4.1
6.15
6.15.8.2
2.9.4.1.1
2.9.7
3.1.2.4
5.4
5.8.1
2.9.7
5.4
5.8.1
2.9.3.3.3
3.11.1.1.1
5.6.3
5.10.3
6.16.3
4.4.1
4.4.2
5.10.1
3.10
3.10
6.14.1
5.5
5.6.6
6.18
5.1
2.9.2
2.9.3.3.3
2.9.7
5.8.1
2.9.3.3.3
5.2
5.12.2
3.1.2.1
5.6.5
5.8.10
6.9.1
6.5.4.1
6.16.1.1

2.6
2.6.2
2.9.3
2.9.5.3
2.9.7.1
3.4.1
3.5
5.6.3
2.9.5.1
3.10

CONSTRUCTION PERMIT

EXXON NUCLEAR CO., INC.

(NUCLEAR FUEL RECOVERY AND RECYCLING CENTER), ALAB-447, 6 NRC 873 (1977)

FLORIDA POWER AND LIGHT CO.

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-274, 1 NRC 497 (1975)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-280 2 NRC 3 (1975)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-355 3 NRC 830 (1976)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-404, 5 NRC 1185 (1977)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-420, 6 NRC 8 (1977)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-435 6 NRC 541 (1977)

ALAB-415, 5 NRC 1435 (1977)

GEORGIA POWER CO.

(ALVIN W. VOGTLE NUCLEAR PLANT, UNITS 1 AND 2), ALAB-291, 2 NRC 404 (1975)

GULF STATES UTILITIES CO.

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-183, 7 AEC 222 (1974)

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-317, 3 NRC 175 (1976)

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-329, 3 NRC 607 (1976)

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-358, 4 NRC 558 (1976)

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-383, 5 NRC 609 (1977)

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-444, 6 NRC 760 (1977)

(RIVER BEND STATION, UNITS 1 AND 2), LBP-74-74, 8 AEC 669 (1974)

(RIVER BEND STATION, UNITS 1 AND 2), LBP-75-10 1 NRC 246 (1975)

2-10-2

5-13-1.1

4-2-2

5-5-2

5-13-3

3-11-4

4-4

5-5-1

5-10-1

5-10-3

6-19-2.1

5-7-1

2-9-3.3.3

2-9-3.3.4

5-5-3

6-3

5-10-1

6-15-4

6-15-4.1

6-23-3.1

5-7-1

4-4-2

4-4-3

6-1-4.4

6-5-4.1

6-9-2.1

6-15

2-9-1

2-9-4.1.4

2-9-5.1

3-7-3.4

5-2

2-9-7

2-9-7.1

5-8-1

2-9-4.1.4

3-6

5-6-1

2-9-3.3.3

2-9-5.7

2-10-2

3-1-2.5

3-4-2

3-7-3.4

3-12-1.2

6-9-2.1

6-16-2

6-20-2

2-11-5

3-5

CONSTRUCTION PERMIT

HOUSTON LIGHTING AND POWER CO.

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-535, 9 NRC 377 (1979)

2.9.7

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-539 9 NRC 422 (1979)

3.4.4

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-547, 9 NRC 638 (1979)

3.4.4

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-565, 10 NRC 521 (1979)

5.4

2.9.5.3

3.4.1

6.14

2.9.5

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-574, 11 NRC 7 (1980)

1.7.1

2.5.2

2.5.3

2.9.3.1

2.9.3.3.1

2.9.5.1

3.1.2.4

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-582, 11 NRC 239 (1980)

2.9.3.3.3

2.9.4.1.4

5.5.1

5.10.3

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-586, 11 NRC 472 (1980)

2.9.7

5.8.1

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-590, 11 NRC 542 (1980)

2.9.3.1

2.9.5.3

3.5

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-629 13 NRC 75 (1981)

3.5

3.5.2.3

6.15.1.2

3.5.5

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-630 13 NRC 84 (1981)

3.1.4.1

3.15

5.12.2.1

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-631 13 NRC 87 (1981)

5.2

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), LBP-81-34 14 NRC 637 (1981)

3.5

(ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-301, 2 NRC 853 (1975)

5.4

5.8.10

(ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-585, 11 NRC 469 (1980)

5.5

ILLINOIS POWER CO.

(CLINTON POWER STATION, UNITS 1 AND 2), ALAB-340, 4 NRC 27 (1976)

2.11.1

2.11.2.2

2.11.2.3

3.11.1.3

3.13.1

5.10.3.1

IOWA ELECTRIC LIGHT AND POWER CO.

(DUANE ARNOLD ENERGY CENTER), ALAB-108, 6 AEC 195 (1973)

2.10.1

2.10.1.2

3.4.2

KANSAS GAS AND ELECTRIC CO.

(WOLF CREEK NUCLEAR GENERATING STATION), (1976)

3.1.2.2

6.19

6.19.1

(WOLF CREEK NUCLEAR GENERATING STATION), ALAB-321, 3 NRC 293 (1976)

3.1.2.1

(WOLF CREEK NUCLEAR GENERATING STATION), CLI-77-1, 5 NRC 1 (1977)

3.1.2.1

3.1.2.2

CONSTRUCTION PERMIT

KANSAS GAS AND ELECTRIC CO.

(WOLF CREEK NUCLEAR GENERATING STATION), CLI-77-1, 5 NRC 1(1977)

8.3

(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-307, 3 NRC 17(1976)

6.19

(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-311, 3 NRC 85(1976)

6.19.1

(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-327, 3 NRC 408(1976)

5.7.1

2.11.6

5.2

5.4

2.11.2.4

2.11.2.5

4.3

5.12.2.1

6.23.3.1

KANSAS GAS AND ELECTRIC CO. ET AL.

(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-331, 3 NRC 771(1976)

5.4

(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-424, 6 NRC 122(1977)

5.8.9

5.8.10

2.9.4.1.1

5.4

5.10.2

5.10.3

5.13.4

(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-462, 7 NRC 320(1978)

3.7.3.2

3.7.3.4

3.7.3.5.1

3.14.3

4.4.1

4.4.2

4.5

LONG ISLAND LIGHTING CO.

(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-477, 7 NRC 766(1978)

(JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), ALAB-292, 2 NRC 631(1975)

2.5.3

2.9.3.3.3

2.9.4.1.1

2.9.4.1.4

5.12.2.1

(JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), ALAB-353, 4 NRC 381(1976)

5.7.1

(JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), ALAB-481, 7 NRC 807(1978)

6.15.3

(JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), LBP-77-21, 5 NRC 684(1977)

6.15.3.1

(JAMESPORT NUCLEAR POWER STATION, UNITS 1 AND 2), ALAB-318, 3 NRC 186(1976)

5.12.2.1

(SHOREHAM NUCLEAR POWER STATION), ALAB-156, 6 AEC 831(1973)

5.10.3

(SHOREHAM NUCLEAR POWER STATION), ALAB-99, 6 AEC 53(1973)

6.9.1

LOUISIANA POWER AND LIGHT CO.

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-117, 6 AEC 261(1973)

5.10.2.1

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-121, 6 AEC 319(1973)

5.10.3

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-125, 6 AEC 371(1973)

2.9.3

2.9.4.1.4

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-168, 6 AEC 1155(1973)

2.9.5.1

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-242, 8 AEC 847(1974)

2.9.3.4

3.6

4.6

5.9

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-258, 1 NRC 45(1975)

4.6

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), LBP-73-31, 6 AEC 717(1973)

2.9.3.4

MISSISSIPPI POWER AND LIGHT CO.

(GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), ALAB-130, 6 AEC 423(1973)

2.6.3.3

CONSTRUCTION PERMIT

MISSISSIPPI POWER AND LIGHT CO.

(GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), ALAB-140, 6 AEC 575 (1973)

2.9.7

(GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), ALAB-195, 7 AEC 455 (1974)

5.10.1

(GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), LBP-73-41, 6 AEC 1057 (1973)

5.13.1.1

5.4

2.9.3.5

2.9.8

NEW ENGLAND POWER CO.

(NEP UNITS 1 AND 2), LBP-78-18 7 NRC 932 (1978)

2.9.3.3.3

NEW ENGLAND POWER CO. ET AL.

(NEP UNITS 1 AND 2), LBP-78-9, 7 NRC 271 (1978)

1.5.1

1.8

3.1.2.5

6.16.1

NIAGARA MOHAWK POWER CORP.

(NINE MILE POINT NUCLEAR STATION, UNIT 2), ALAB-264, 1 NRC 347 (1975)

3.7.3.2

3.16

4.4.2

5.2

5.6.3

6.15.3

3.10

(NINE MILE POINT NUCLEAR STATION, UNIT 2), LBP-74-26, 7 AEC 758 (1974)

NORTHEAST NUCLEAR ENERGY CO.

(MONTAGUE NUCLEAR POWER STATION, UNITS 1 AND 2), LBP-75-19, 1 NRC 436 (1975)

1.8

6.5.3.1

NORTHERN INDIANA PUBLIC SERVICE CO.

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-192, 7 AEC 420 (1974)

5.7

5.7.1

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-204, 7 AEC 835 (1974)

5.8.13

6.4.1.1

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-207, 7 AEC 957 (1974)

5.10.3

5.10.1

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-224, 8 AEC 244 (1974)

5.13.2

2.8.1.2

2.8.1.3

3.1.4.1

3.1.4.2

3.6

5.7

5.7.1

5.8.2

5.15.2

6.16.3

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-227, 8 AEC 416 (1974)

3.14.3

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-249, 8 AEC 980 (1974)

4.4.2

3.3.1.2

3.13.3

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-303, 2 NRC 858 (1975)

4.4.2

2.11.6

3.16

5.6.3

5.8.3.2

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-619, 12 NRC 558 (1980)

2.5.1

2.9.4.1.4

3.1.2.1

CONSTRUCTION PERMIT

NORTHERN INDIANA PUBLIC SERVICE CO.

(BAILLY GENERATING STATION, NUCLEAR-1), ALAB-619, 12 NRC 558 (1980)

(BAILLY GENERATING STATION, NUCLEAR-1), CLI-74-39, 8 AEC 631 (1974)

(BAILLY GENERATING STATION, NUCLEAR-1), CLI-78-7, 7 NRC 429 (1978)

(BAILLY GENERATING STATION, NUCLEAR-1), LBP-80-22, 12 NRC 191 (1980)

(BAILLY GENERATING STATION, NUCLEAR-1), LBP-81-6 13 NRC 253 (1981)

NORTHERN STATES POWER CO.

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), (1975)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-107, 6 AEC 188 (1973)

(TYRONE ENERGY PARK, UNIT 1), ALAB-492, 8 NRC 251 (1978)

NORTHERN STATES POWER CO. ET AL.

(TYRONE ENERGY PARK, UNIT 1), ALAB-464, 7 NRC 372 (1978)

(TYRONE ENERGY PARK, UNIT 1), LBP-77-37, 5 NRC 1298 (1977)

NUCLEAR FUEL SERVICES, INC., ET AL.

(WEST VALLEY REPROCESSING PLANT), (1975)

(WEST VALLEY REPROCESSING PLANT), CLI-75-4, 1 NRC 273 (1975)

OFFSHORE POWER SYSTEMS

(FLOATING NUCLEAR POWER PLANTS), ALAB-489, 8 NRC 194 (1978)

OMAHA PUBLIC POWER DISTRICT

(FORT CALHOUN STATION, UNIT 2), LBP-77-5, 5 NRC 437 (1977)

PACIFIC GAS AND ELECTRIC CO.

(DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), ALAB-254, 8 AEC 1184 (1975)

(STANISLAUS NUCLEAR PROJECT, UNIT 1), LBP-78-20, 7 NRC 1038 (1978)

PENNSYLVANIA POWER AND LIGHT CO.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), CLI-80-17, 11 NRC 678 (1980)

3-4-5
6-24
6-24-1.1
6-24-1.2
4-4-2
6-24
6-24-2
6-24-3
6-24-6
2-9-4-1-4
6-1-4-2
3-4-5
2-9-9-3
3-11-3
3-13-1
5-5
5-1
2-9-3-1
2-9-4-1-4
2-9-5-11
2-9-7-1
2-11-1
5-6-3
2-9-5-13
5-8-1
3-1-2-6
4-4-1-1
2-11-5-2
2-9-3-3-4
2-9-5-5
2-11-1
2-9-3-3-3
1-8
3-1-2-5
3-3-1
6-15-7
6-16-1
6-16-1-1
6-18
6-20-3
1-1
3-8-1
2-11-2
2-11-2-2
5-14

CONSTRUCTION PERMIT

PENNSYLVANIA POWER LIGHT CO.

{SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2}, ALAB-148, 6 AEC 642(1973)

PHILADELPHIA ELECTRIC CO.

{FULTON ENGINEERING STATION, UNITS 1 AND 2}, ALAB-206, 7 AEC 841(1974)

{FULTON GENERATING STATION, UNITS 1 AND 2}, ALAB-657, 14 NRC 967(1981)

{FULTON GENERATING STATION, UNITS 1 AND 2}, LBP-79-23, 10 NRC 220(1979)

{LIMERICK GENERATING STATION, UNITS 1 AND 2}, ALAB-262, 1 NRC 163(1975)

PORTLAND GENERAL ELECTRIC CO.

{PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2}, ALAB-273, 1 NRC 492(1975)

{PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2}, ALAB-333, 3 NRC 804(1976)

{PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2}, CLI-76-26 4 NRC 608(1976)

{TROJAN NUCLEAR PLANT}, ALAB-181, 7 AEC 207(1974)

POTOMAC ELECTRIC POWER CO.

{DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-218, 6 AEC 79(1974)

{DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-277, 1 NRC 539(1975)

POWER AUTHORITY OF THE STATE OF NEW YORK

{GREENE COUNTY NUCLEAR PLANT}, ALAB-434, 6 NRC 471(1977)

{GREENE COUNTY NUCLEAR PLANT}, ALAB-439, 6 NRC 640(1977)

PROJECT MANAGEMENT CORP.

{CLINCH RIVER BREEDER REACTOR PLANT}, ALAB-326, 3 NRC 406(1976)

{CLINCH RIVER BREEDER REACTOR PLANT}, ALAB-330, 3 NRC 613(1976)

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

{SEABROOK STATION, UNIT 1 AND 2}, LBP-74-36, 7 AEC 877(1974)

PUBLIC SERVICE CO. OF OKLAHOMA ET AL.

{BLACK FOX STATION, UNITS 1 AND 2}, ALAB-505, 8 NRC 527(1973)

PUBLIC SERVICE CO. OF INDIANA

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-322, 3 NRC 328(1976)

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-339, 4 NRC 20(1976)

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-371, 5 NRC 409(1977)

2.9.3.3.2

2.9.7

1.3

1.9

3.1.2.1.1

3.4.3

3.1.2.5

6.6

6.24

2.9.9.1

6.15.3

6.20.3

2.9.7

5.8.1

2.9.4

2.9.4.1.1

3.3.6

3.4.2

5.6.6

6.16.1.3

2.9.5.6

2.9.5.7

6.9.1

6.20.3

3.3.1

3.3.1.1

3.3.1.2

3.3.2.1

3.4.4

2.9.7

5.12.2.1

5.12.2.1

5.12.2.1

1.9

3.5

3.5.3

5.7.1

6.4.1

2.9.4

2.9.4.1.2

2.9.3.3.3

2.9.7.1

5.5.3

5.8.4.1

5.12.2

3.3.1

CONSTRUCTION PERMIT

PUBLIC SERVICE CO. OF INDIANA

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-371, 5 NRC 409 (1977)	2.1
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-374, 5 NRC 417 (1977)	4.6
	5.12.2.1.2
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-393, 5 NRC 767 (1977)	5.12.2.1
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-405, 5 NRC 1190 (1977)	3.15
	5.12.2.1
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-437, 6 NRC 630 (1977)	5.7.1
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-459, 7 NRC 179 (1978)	1.1
	3.3.2.4
	3.3.4
	3.11.1.4
	5.6.1
	5.13
	6.15.3
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-461, 7 NRC 313 (1978)	3.1.2.5
	3.1.2.7
	3.13.1
	5.5
	5.4
	5.8.7
	5.10.1
	5.13.2
	6.16.1.3
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-493, 8 NRC 253 (1978)	2.7
	3.1.2.6
	3.6
	4.5
	5.7.1
	5.12.1
	5.15.1
	5.18
	5.19.4
	6.5.1
	6.5.2
	6.18
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-530, 9 NRC 261 (1979)	4.4
(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), CLI-80-10, 11 NRC 438 (1980)	2.9.3.1
	2.9.4.1.1
	2.9.4.2
	6.24
	6.24.1.3

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

(SEABROOK STATION, UNITS 1 AND 2), (1975)	3.3.4
	5.8.2
(SEABROOK STATION, UNITS 1 AND 2), ALAB-271, 1 NRC 478 (1975)	3.15
	5.12.2.1
(SEABROOK STATION, UNITS 1 AND 2), ALAB-293, 2 NRC 660 (1975)	3.3.1
	3.3.4
	5.8.2
(SEABROOK STATION, UNITS 1 AND 2), ALAB-295, 2 NRC 668 (1975)	3.3.1
(SEABROOK STATION, UNITS 1 AND 2), ALAB-338, 4 NRC 10 (1976)	5.7
	5.7.1
(SEABROOK STATION, UNITS 1 AND 2), ALAB-349, 4 NRC 235 (1976)	3.7.3.3
	3.17

CONSTRUCTION PERMIT

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

(SEABROOK STATION, UNITS 1 AND 2), ALAB-349, 4 NRC 235 (1976)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-350, 4 NRC 365 (1976)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-356, 4 NRC 525 (1976)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-366 5 NRC 39 (1977)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-423, 6 NRC 115 (1977)

(SEABROOK STATION, UNITS 1 AND 2), CLI-76-17, 4 NRC 451 (1976)

SEABROOK STATION, UNITS 1 AND 2), CLI-77-8, 5 NRC 503 (1977)

(SEABROOK STATION, UNITS 1 AND 2), LBP-75-28, 1 NRC 513 (1975)

(SEABROOK STATION, UNITS 1 AND 2), LBP-75-9, 1 NRC 243 (1975)

PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL.

(SEABROOK STATION, UNITS 1 AND 2), (1978)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-390, 5 NRC 733 (1977)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-422, 6 NRC 33 (1977)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-471, 7 NRC 477 (1978)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-495, 8 NRC 304 (1978)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-499, 8 NRC 319 (1978)

5. 18
5. 18
5. 6. 1
5. 7
6. 15. 3. 1
4. 3
5. 6. 5
6. 16. 1
3. 1. 2. 1. 1
5. 7
5. 7. 1
5. 15
5. 19. 3
6. 15
6. 15. 2
6. 15. 3. 1
6. 15. 4. 1
6. 15. 4. 2
2. 11. 2. 4
3. 5. 2. 2

2. 9. 9. 5
2. 9. 9. 6
3. 6
6. 17. 1
6. 20. 4
3. 1. 4. 3
3. 1. 5
3. 12. 1
3. 13. 1
3. 16
3. 16. 1
4. 2
4. 3
4. 4
5. 6. 1
5. 6. 3
6. 1. 4
6. 15
6. 15. 4. 1
6. 15. 4. 2
6. 15. 5
6. 15. 8. 2
3. 7. 2
3. 7. 3. 6
3. 11. 1. 5
3. 16
6. 15. 4
6. 15. 4. 1
6. 15. 4. 2
6. 15. 6. 1. 2
6. 15. 4
6. 15. 4

CONSTRUCTION PERMIT

PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL.

(SEABROOK STATION, UNITS 1 AND 2), ALAB-513, 8 NRC 694 (1978)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-548, 9 NRC 640 (1979)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-623, 12 NRC 670 (1980)

(SEABROOK STATION, UNITS 1 AND 2), CLI-77-25, 6 NRC 535 (1977)

(SEABROOK STATION, UNITS 1 AND 2), CLI-78-1 7 NRC 1 (1978)

(SEABROOK STATION, UNITS 1 AND 2), CLI-78-14, 7 NRC 952 (1978)

(SEABROOK STATION, UNITS 1 AND 2), CLI-78-15, 8 NRC 1 (1978)

(SEABROOK STATION, UNITS 1 AND 2), CLI-78-17, 8 NRC 179 (1978)

PUBLIC SERVICE CO. OF OKLAHOMA

(BLACK FOX STATION, UNITS 1 AND 2), ALAB-370, 5 NRC 131 (1977)

(BLACK FOX STATION, UNITS 1 AND 2), ALAB-388 5 NRC 640 (1977)

(BLACK FOX STATION, UNITS 1 AND 2), ALAB-573, 10 NRC 775 (1979)

PUBLIC SERVICE CO. OF OKLAHOMA ET AL.

(BLACK FOX STATION, UNITS 1 AND 2), LBP-77-17, 5 NRC 657 (1977)

(BLACK FOX STATION, UNITS 1 AND 2), LBP-77-18, 5 NRC 671 (1977)

(BLACK FOX STATION, UNITS 1 AND 2), LBP-78-26 8 NRC 102 (1978)

PUBLIC SERVICE CO. OF OKLAHOMA ET AL. ET AL.

(BLACK FOX STATION, UNITS 1 AND 2), LBP-78-28 8 NRC 281 (1978)

PUBLIC SERVICE ELECTRIC AND GAS CO.

(ATLANTIC GENERATING STATION, UNITS 1 AND 2), LBP-75-62, 2 NRC 702 (1975)

(ATLANTIC GENERATING STATION, UNITS 1 AND 2), LBP-78-5, 7 NRC 147 (1978)

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), ALAB-251, 8 AEC 993 (1974)

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), LBP-77-9, 5 NRC 474 (1977)

PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL.

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), ALAB-394, 5 NRC 769 (1977)

PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL.

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), LBP-78-15, 7 NRC 642 (1978)

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), ALAB-460, 7 NRC 204 (1978)

PUERTO RICO ELECTRIC POWER AUTHORITY

(NORTH COAST NUCLEAR PLANT, UNIT 1), ALAB-605, 12 NRC 153 (1980)

(NORTH COAST NUCLEAR PLANT, UNIT 1), ALAB-662, 14 NRC 1125 (1981)

(NORTH COAST NUCLEAR PLANT, UNIT 1), LBP-80-15, 11 NRC 765 (1980)

3.1.2.1
5.6.1
5.15.2
6.26
2.10.2
5.15
3.17
5.6.3
5.7
5.12.3
6.8
6.15.3
6.15.8.4
5.19.1
6.15.4
6.15.8.1
4.7
6.15.8.4
4.5
5.8.3.2
5.8.4
5.10.3
3.5
5.10.3
5.1
6.15.3
2.9.4.1.1
2.11.2.2
3.12.4.1
6.15.1
6.15.6
6.19.2
6.15
2.11.5.2
2.8.1.3
5.2
2.9.3.3.3
5.10.3
3.12
4.3
1.10
1.3
1.9
2.9.10.1
3.1.2.2
3.5.1.1

CONSTRUCTION PERMIT

PUERTO RICO WATER RESOURCES AUTHORITY

(NORTH COAST NUCLEAR PLANT, UNIT 1), ALAB-286, 2 NRC 213(1975)

(NORTH COAST NUCLEAR PLANT, UNIT 1), ALAB-313, 3 NRC 94(1976)

PUGET SOUND POWER AND LIGHT CO.

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-572, 10 NRC 693(1979)

PUGET SOUND POWER AND LIGHT CO. ET AL.

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-446, 6 NRC 870(1977)

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-552, 10 NRC 1(1979)

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-556, 10 NRC 30(1979)

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-559, 10 NRC 162(1979)

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), CLI-80-34 12 NRC 407(1980)

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), LBP-77-61, 6 NRC 674(1977)

ROCHESTER GAS AND ELECTRIC CORP. ET AL.

(STERLING POWER PROJECT, UNIT 1), ALAB-502, 8 NRC 383(1978)

(STERLING POWER PROJECT, UNIT 1), ALAB-596, 11 NRC 867(1980)

(STERLING POWER PROJECT, UNIT 1), CLI-80-23, 11 NRC 731(1980)

SOUTH CAROLINA ELECTRIC AND GAS CO.

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), ALAB-114, 6 AEC 253(1973)

SOUTHERN CALIFORNIA EDISON CO.

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), ALAB-199, 7 AEC 478(1974)

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), ALAB-212, 7 AEC 986(1974)

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), ALAB-268, 1 NRC 383(1975)

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO.

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), ALAB-432, 6 NRC 465(1977)

SOUTHERN CALIFORNIA EDISON CO. ET AL.

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), LBP-77-35, 5 NRC 1290(1977)

TENNESSEE VALLEY AUTHORITY

(BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2), ALAB-164, 6 AEC 1143(1973)

(BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2), ALAB-237, 8 AEC 654(1974)

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-367, 5 NRC 92(1977)

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-380, 5 NRC 572(1977)

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-409, 5 NRC 1391(1977)

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), ALAB-418, 6 NRC 1(1977)

2-9.7

5-8.1

2-7

6-5.2

3-15

6-19.1

2-9.3.3.3

3-1.4.1

3-1.4.2

5-2

2-9.3.3.3

2-9.3.3.5

6-19.1

3-7.3.2

5-1

6-15.4.1

6-15.4.2

1-9

6-15.4

5-6.1

5-7.1

3-3.2.4

3-4.3

3-7.3.1

5-6.4

6-16.1

6-16.3

5-6.1

3-1.2.2

6-20.1

2-8.1.2

5-2

3-11

3-11.1.1.1

3-13.1

5-6.3

5-10.3

5-10.1

3-1.2.3

6-9.1

6-15.8.1

6-19.2

5-9.1

5-13

5-13.4

4-5

CONSTRUCTION PERMIT

TENNESSEE VALLEY AUTHORITY

(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), ALAB-418, 6 NRC 1(1977)
 (HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), ALAB-463, 7 NRC 341(1978)

1
 3. 1. 2. 7
 3. 7. 2
 3. 11. 4
 3. 13. 1
 3. 14. 3
 3. 16
 4. 3
 4. 4
 5. 5. 1
 6. 7. 1
 6. 7. 2

(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), ALAB-467, 7 NRC 459(1978)

4. 5
 5. 5
 5. 4
 5. 6. 1
 5. 8. 15
 5. 1

(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), ALAB-554, 10 NRC 15(1979)
 (PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), ALAB-506, 8 NRC 533(1978)
 (PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), LBP-77-60, 6 NRC 647(1977)
 (YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2), ALAB-445, 6 NRC 865(1977)

3. 5
 6. 15
 6. 15. 4. 2
 1. 7. 1
 2. 5. 3
 6. 15. 8. 5
 3. 5

(YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2), ALAB-515, 8 NRC 702(1978)
 (BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 AND 3) LBP-73-29, 6 AEC 682(1973)

TEXAS UTILITIES GENERATING CO.

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-260, 1 NRC 51(1975)

5. 6. 3

TOLEDO EDISON CO.

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-157, 6 AEC 858(1973)
 (DAVIS-BESSE NUCLEAR POWER STATION), ALAB-25, 4 AEC 633(1971)
 (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), ALAB-652, 14 NRC 627(1981)

5. 8. 8
 5. 7
 5. 6. 1

TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO.

(DAVIS-BESSE STATION, UNITS 1, 2, 3); PERRY PLANT, UNITS 1 AND 2), CLI-77-22 6 NRC 451(1977)

N/A

TOLEDO EDISON CO. ET AL.

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), ALAB-622, 12 NRC 667(1980)

3. 18. 1
 3. 18. 2

UNION ELECTRIC CO.

(CALLAWAY PLANT, UNITS 1 AND 2), ALAB-347, 4 NRC 216(1976)
 (CALLAWAY PLANT, UNITS 1 AND 2), ALAB-348, 4 NRC 225(1976)

3. 7. 3. 4
 3. 7. 3. 3
 5. 6. 4

(CALLAWAY PLANT, UNITS 1 AND 2), ALAB-352, 4 NRC 371(1976)
 (CALLAWAY PLANT, UNITS 1 AND 2), LBP-78-31, 8 NRC 366(1978)

6. 20. 3
 3. 1. 2. 1
 6. 10

USERDA

(CLINCH RIVER BREEDER REACTOR PLANT), ALAB-354, 4 NRC 383(1976)

2. 9. 3. 3. 3
 2. 9. 5. 1
 2. 9. 7. 1
 2. 9. 9. 2. 1
 2. 10. 2

(CLINCH RIVER BREEDER REACTOR PLANT), CLI-76-13, 4 NRC 67(1976)

5. 2
 5. 12. 2. 1
 5. 15

(CLINCH RIVER BREEDER REACTOR PLANT), ALAB-345, 4 NRC 212(1977)

6. 15. 1
 5. 8. 1

CONSTRUCTION PERMIT

USERDA	
(CLINCH RIVER BREEDER RE PLANT), ALAB-369, 5 NRC 129 (1977)	5.1
VERMONT YANKEE NUCLEAR POWER CORP.	
(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-392, 5 NRC 759 (1977)	6.15.6
VIRGINIA ELECTRIC AND POWER CO.	
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-256, 1 NRC 10 (1975)	2.9.1
	3.7
	3.8
	3.16
	4.3
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-324, 3 NRC 347 (1976)	1.5.2
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), CLI-74-16, 7 AEC 313 (1974)	2.11.3
	2.11.5
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), CLI-76-22, 4 NRC 480 (1976)	1.5.2
	6.5.4.1
WASHINGTON PUBLIC POWER SUPPLY SYSTEM	
(HANFORD NO. 2 NUCLEAR POWER PLANT), ALAB-113, 6 AEC 251 (1973)	3.10
(WPPSS NUCLEAR PROJECTS 1 AND 4 ALAB-265, 1 NRC 374 (1975)	4.6
	5.9
(WPPSS NUCLEAR PROJECTS 3 AND 5 ALAB-485, 7 NRC 986 (1978)	5.6.3
	6.9.1
	6.18
(WPPSS NUCLEAR PROJECTS 3 AND 5 CLI-77-11, 5 NRC 719 (1977)	3.1.1
	6.19.1
(WPPSS NUCLEAR PROJECTS 3 AND 5 LBP-77-15, 5 NRC 643 (1977)	3.1.2.2
	6.19
	6.19.1
(WPPSS NUCLEAR PROJECTS 3 AND 5 LBP-77-16, 5 NRC 650 (1977)	2.9.3
WISCONSIN ELECTRIC POWER CO.	
(KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2), CLI-75-2, 1 NRC 39 (1975)	3.3.2.2
(KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2), CLI-74-45, 8 AEC 928 (1974)	2.11.1
ENFORCEMENT ACTION	
ATLANTIC RESEARCH CORP.	
CLI-80-7, 11 NRC 413 (1980)	6.24.5
CONSOLIDATED EDISON CO. OF N.Y.	
(INDIAN POINT STATION, UNITS 1, 2, AND 3), ALAB-377, 5 NRC 430 (1977)	2.6
	3.3.3
CONSUMERS POWER CO.	
(MIDLAND PLANT, UNITS 1 AND 2), ALAB-417, 5 NRC 1442 (1977)	5.4
	6.4.1.1
	6.14.3
(PALISADES NUCLEAR PLANT), ALJ-80-1, 12 NRC 117 (1980)	2.11.2.4
	2.11.3
	6.23.1
DAIRYLAND POWER COOPERATIVE	
(LA CROSSE BOILING WATER REACTOR), ALAB-614 12 NRC 347 (1980)	3.1.4.2
(LA CROSSE BOILING WATER REACTOR), LBP-81-7 13 NRC 257 (1981)	6.24.5
FLORIDA POWER AND LIGHT CO.	
(TURKEY POINT PLANT, UNITS 3 AND 4), CII-81-31, 14 NRC 959 (1981)	2.9.3
	2.9.3.1
IN RE ATLANTIC RESEARCH CORP.	
ALAB-542, 9 NRC 611 (1979)	6.10.1.1
ALAB-594, 11 NRC 841 (1980)	6.10.1.1
IN THE MATTER OF RADIATION TECHNOLOGY, INC.	
ALAB-567, 10 NRC 533 (1979)	5.2

ENFORCEMENT ACTION

IN THE MATTER OF RADIATION TECHNOLOGY, INC.
ALAB-567, 10 NRC 533(1979)

6. 10. 1

NORTHERN STATES POWER CO.

(TYBONE ENERGY PARK, UNIT 1), CLI-80-36 12 NRC 523(1980)

2. 9. 4. 1. 4

PACIFIC GAS AND ELECTRIC CO.

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-81-6 13 NRC 443(1981)

3. 1. 2. 1

6. 24. 1

PITTSBURGH-DES MOINES STEEL CO.

ALAB-441, 6 NRC 725(1977)

5. 8. 12

5. 12. 2

EXPORT LICENSE

BABCOCK AND WILCOX

(APPLIC. FOR CONSID. OF FACILITY EXPORT LICENSE) EXPORT LICENSE), CLI-77-18, 5 NRC 1332(1977)

2. 9. 4. 1. 3

EDLOW INTERNATIONAL CO.

(APPLICATION TO EXPORT SPECIAL NUCLEAR MATERIALS), CLI-77-16 5 NRC 1327(1977)

3. 3. 6

(APPLICATION TO EXPORT SPECIAL NUCLEAR MATERIALS), CLI-78-4 7 NRC 311(1978)

3. 3. 6

CLI-76-6, 3 NRC 563(1976)

2. 9. 4. 1. 3

WESTINGHOUSE ELECTRIC CORP.

(EXPORT TO SOUTH KOREA), CLI-80-30, 12 NRC 253(1980)

2. 9. 4. 1. 3

3. 2. 1

3. 4. 6

LICENSE AMENDMENT

CAROLINA POWER AND LIGHT CO.

(H. B. ROBINSON, UNIT 2) ALAB-569, 10 NRC 557(1979)

6. 15. 6. 1

6. 15. 8. 5

COMMONWEALTH EDISON CO.

(BYRON STATION, UNITS 1 AND 2), LBP-81-30-A, 14 NRC 364(1981)

2. 11. 1

2. 11. 4

2. 9. 3

(BYRON STATION, UNITS 1 AND 2), LBP-81-52 14 NRC 901(1981)

3. 1. 2. 2

(ZION STATION, UNITS 1 AND 2), LBP-80-7 11 NRC 245(1980)

2. 11. 4

6. 15. 1. 1

CONSUMERS POWER CO.

(BIG ROCK POINT PLANT), N/A ALAB-636 13 NRC 312(1981)

5. 10. 2. 2

6. 15. 9

3. 1. 2. 5

6. 15. 1. 2

6. 15. 4

DAIRYLAND POWER COOPERATIVE

(LA CROSSE BOILING WATER REACTOR), ALAB-497 8 NRC 312(1978)

3. 1. 4. 1

DUKE POWER CO.

(AMENDMENT TO OCONEE SNM LICENSE), LBP-80-28 12 NRC 459(1980)

6. 15. 1. 2

KANSAS GAS AND ELECTRIC CO. ET AL.

(WOLF CREEK NUCLEAR GENERATING STATION), (1975)

2. 9. 4. 1. 1

NUCLEAR FUEL SERVICES

(ERWIN, TENNESSEE), CLI-80-27, 11 NRC 799(1980)

6. 29. 1

PORTLAND GENERAL ELECTRIC CO. ET AL.

(TROJAN NUCLEAR PLANT), ALAB-531, 9 NRC 263(1979)

6. 15

6. 15. 1. 1

6. 15. 4

6. 15. 9

6. 27

(TROJAN NUCLEAR PLANT), LBP-77-69, 6 NRC 1179(1977)

6. 1. 6

LICENSE AMENDMENT

PUBLIC SERVICE ELECTRIC AND GAS CO.

(SALEM NUCLEAR GENERATING STATION, UNIT 1), ALAB-588, 11 NRC 533 (1980)
 (SALEM NUCLEAR GENERATING STATION, UNIT 1), ALAB-650, 14 NRC 43 (1981)

5.12.2.1
 4.2
 4.4.2
 5.5.1
 5.10.1
 5.10.3
 6.15.1.2
 6.15.9

PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL.

(SALEM NUCLEAR GENERATING STATION, UNIT 1), LBP-80-27, 12 NRC 435 (1980)

TENNESSEE VALLEY AUTHORITY

(BROWNS FERRY NUCLEAR PLANT, UNITS 1 AND 2), LBF-76-10, 3 NRC 209 (1976)

6.15

VERMONT YANKEE NUCLEAR POWER CORP.

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-245, 8 AEC 873 (1974)

WISCONSIN ELECTRIC POWER CO.

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-39 14 NRC 819 (1981)

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBF-81-44 14 NRC 850 (1981)

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-45 14 NRC 853 (1981)

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-46 14 NRC 862 (1981)

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBF-81-55 14 NRC 1017 (1981)

2.9.3.1
 2.9.5.1
 6.1.4.2

3.1.2.4
 3.1.2.4
 3.1.2.4
 3.4.1
 3.1.2.4
 3.4.1
 3.5.3
 3.3.7
 6.23.3.1
 6.23

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBF-81-62, 14 NRC 1747 (1981)

LICENSING

GENERAL ELECTRIC CO.

(VALLECITOS NUCLEAR CENTER, GENERAL ELECTRIC TEST REACTOR), LBP-78-33, 8 NRC 461 (1978)

OFFSHORE POWER SYSTEMS

(FLOATING NUCLEAR POWER PLANTS), ALAB-500, 8 NRC 323 (1978)

(FLOATING NUCLEAR POWER PLANTS), LBP-79-15, 9 NRC 653 (1979)

(MANUFACTURING LICENSE FOR FLOATING NUCLEAR POWER PLANTS), LBP-75-67, 2 NRC 813 (1975)

2.11.2.4

5.14
 6.15.2
 2.9.2
 2.11.5.2
 3.3.2.1
 3.3.2.4

MATERIALS LICENSE

ALLIED-GENERAL NUCLEAR SERVICES

(BARNWELL FUEL RECEIVING AND STORAGE STATION), ALAB-328, 3 NRC 420 (1976)

ALLIED-GENERAL NUCLEAR SERVICES ET AL.

(BARNWELL FUEL RECEIVING AND STORAGE STATION), LBP-77-13, 5 NRC 489 (1977)

2.9.4.1.2

2.11.2
 2.11.2.2

DUKE POWER CO.

(OCONEE NUCLEAR STATION AND HOGUIRE NUCLEAR STATION) ALAB-528, 9 NRC 146, (1979)

2.9.6
 2.9.3.3.3
 2.9.4.1.2
 2.9.4.2

EXXON NUCLEAR CO., INC. ET AL.

(LOW ENRICHED URANIUM EXPORTS TO EURATOM MEMBER NATIONS), CLI-77-31, 6 NRC 849 (1977)

GENERAL ELECTRIC CO., WESTINGHOUSE ELECTRIC CO., COMBUSTION ENGINEERING

(EXPORTS TO TAIWAN), CLI-81-2 13 NRC 67 (1981)

2.9.10.1

3.2.1
 3.4.6
 6.29.2.1

MATERIALS LICENSE	
IN THE MATTER OF TEN APPLICATIONS	
CLI-77-24, 6 NRC 525 (1977)	2.9.4-1.3
LICENSE TO TRANSP. STRATEGIC QUANTITIES OF SPEC. NUCLEAR MATERIALS	
CLI-77-3, 5 NRC 16(j)	6.24.3
MIXED OXIDE FUEL	
CLI-78-10 7 NRC 711 (1978)	4.3
NUCLEAR ENGINEERING CO.	
(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), CLI-79-6, 9 NRC 673 (1979)	6.24.3
	6.24.4
PITTSBURGH-DES MOINES STEEL CO.	
ALJ-78-3 8 NRC 649 (1978)	6.10.1
	6.10.1.1
RADIATION TECHNOLOGY, INC.	
ALJ-78-4 8 NRC 655 (1978)	6.10.1.1
OPERATING LICENSE	
ALABAMA POWER CO.	
(JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), CLI-74-12, 7 AEC 203 (1974)	3.17
	5.6.2
(JOSEPH M. FARLEY PLANT, UNITS 1 AND 2), ALAB-182 7 AEC 210 (1974)	2.9.5.3
	3.4.1
	3.5
	3.5.3
	3.17
BOSTON EDISON CO.	
(PILGRIM NUCLEAR STATION), ALAB-74, 5 AEC 308 (1972)	5.10.2.1
(PILGRIM NUCLEAR STATION), ALAB-83, 5 AEC 354 (1972)	3.1.1
	3.11.1.1
	3.16
	4.2
(PILGRIM NUCLEAR STATION, UNIT 1), ALAB-191 7 AEC 417 (1974)	3.5.1.2
	6.1.4.3
(PILGRIM NUCLEAR STATION, UNIT 1), ALAB-231, 8 AEC 633 (1974)	4.6
	5.8.6
	5.7.1
(PILGRIM NUCLEAR POWER STATION), ALAB-81, 5 AEC 348 (1972)	
CAROLINA POWER AND LIGHT CO.	
(H. B. ROBINSON, UNIT 2) LBP-78-22, 7 NRC 1052 (1978)	6.15.8.4
CINCINNATI GAS AND ELECTRIC CO.	
(WILLIAM H. ZIMMER NUCLEAR STATION), ALAB-305, 3 NRC 8 (1976)	2.9.5.1
	4.3
(WILLIAM H. ZIMMER NUCLEAR STATION), ALAB-595, 11 NRC 860 (1980)	2.9.3.3.3
	2.9.7
(WILLIAM H. ZIMMER NUCLEAR STATION), LBP-79-17, 9 NRC 723 (1979)	2.9.2
(WILLIAM H. ZIMMER NUCLEAR STATION), LBP-79-22, 10 NRC 213 (1979)	2.9.5.5
(WILLIAM H. ZIMMER NUCLEAR STATION), LBP-80-14, 11 NRC 570 (1980)	2.9.3.3.3
CINCINNATI GAS AND ELECTRIC CO. ET AL.	
(WILLIAM H. ZIMMER NUCLEAR STATION), ALAB-633 13 NRC 94 (1981)	5.4
(WILLIAM H. ZIMMER NUCLEAR STATION), LBP-79-24, 10 NRC 226 (1979)	3.1.2.1
	3.1.2.2
	6.13
	3.5.3
(WILLIAM H. ZIMMER NUCLEAR STATION), LBP-81-2 13 NRC 36 (1981)	
CLEVELAND ELECTRIC ILLUMINATING CO.	
(PERRY NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-35 14 NRC 682 (1981)	2.9.3.3.3
	2.9.5.3
	2.9.9.2.2
	2.11.4

OPERATING LICENSE

CLEVELAND ELECTRIC ILLUMINATING CO.

{PERRY NUCLEAR PLANT, UNITS 1 AND 2}, LBP-81-35 14 NRC 682 (1981)
 {PERRY NUCLEAR PLANT, UNITS 1 AND 2}, LBP-81-42 14 NRC 842 (1981)
 {PERRY NUCLEAR PLANT, UNITS 1 AND 2}, LBP-81-57, 14 NRC 1037 (1981)
 {PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2}, LBP-81-24, 14 NRC 175 (1981)

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 2.9.5.7
 6.21.2
 2.9.4.1.1
 3.4.1
 3.17

COMMONWEALTH EDISON CO.

{BYRON NUCLEAR POWER STATION, UNITS 1 AND 2}, ALAB-659 14 NRC 983 (1981)
 {ZION STATION, UNITS 1 AND 2}, ALAB-116, 6 AEC 258 (1973)
 {ZION STATION, UNITS 1 AND 2}, ALAB-154, 6 AEC 827 (1973)
 {ZION STATION, UNITS 1 AND 2}, ALAB-185, 7 AEC 240 (1974)
 {ZION STATION, UNITS 1 AND 2}, ALAB-222, 8 AEC 229 (1974)
 {ZION STATION, UNITS 1 AND 2}, ALAB-226, 8 AEC 381 (1974)

4.3.1
 5.4
 2.11.6
 5.8.3.1
 5.4
 5.13.1.2
 2.11.2.1
 2.11.2.2
 3.1.3
 3.3.1
 3.3.2.3
 2.8.1.3
 2.9.3.2
 2.9.5.10
 2.9.9.1
 3.1.4.1
 3.7.2
 3.12.1.1
 5.10.1
 5.13.1.1
 6.16.1.2

CONSOLIDATED EDISON CO

{INDIAN POINT STATION, UNIT 2}, ALAB-399, 5 NRC 1156 (1977)

6.15.8.1

CONSOLIDATED EDISON CO.

{INDIAN POINT STATION, UNIT 2}, ALAB-453, 7 NRC 31 (1978)

6.15.8.1

CONSOLIDATED EDISON CO. OF N.Y.

{INDIAN POINT STATION, UNIT 2}, ALAB-209, 7 AEC 971 (1974)
 {INDIAN POINT STATION, UNIT 2}, ALAB-414, 5 NRC 1425 (1977)

6.16.3
 5.7

{INDIAN POINT STATION, UNIT 2}, ALAB-159, 6 AEC 1001 (1973)
 {INDIAN POINT STATION, UNIT 2}, ALAB-188, 7 AEC 323 (1974)
 {INDIAN POINT STATION, UNIT 2}, ALAB-243, 8 AEC 850 (1974)
 {INDIAN POINT STATION, UNIT 2}, ALAB-369, 5 NRC 129 (1977)
 {INDIAN POINT STATION, UNIT 2}, ALAB-75, 5 AEC 309 (1972)
 {INDIAN POINT STATION, UNIT 2}, CLI-74-23 7 AEC 947 (1974)

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 5.10.3
 6.16.2
 2.9.1
 5.2
 3.10
 2.9.5.9
 6.16.1.3
 6.16.2

{INDIAN POINT STATION, UNIT 3}, UNIT 3), CLI-74-28, 8 AEC 7 (1974)
 {INDIAN POINT STATION, UNIT 3}, UNIT 3), CLI-75-14, 2 NRC 835 (1975)

3.4.2
 3.9

{INDIAN POINT STATION, UNIT 3}, ALAB-281, 2 NRC 6 (1975)

6.15.8.1
 5.4

{INDIAN POINT STATION, UNITS 1, 2 AND 3}, ALAB-357, 4 NRC 542 (1976)
 {INDIAN POINT STATION, UNITS 1, 2 AND 3}, CLI-77-2, 5 NRC 13 (1977)

5.12.1
 5.13.1.2
 6.1.5
 3.7

{INDIAN POINT STATION, UNITS 1, 2, AND 3}, ALAB-319, 3 NRC 188 (1976)

6.5.4.1
 3.4.2

OPERATING LICENSE

CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2, AND 3), ALAB-319, 3 NRC 188 (1976)	1.3 3.1.2.3
CONSOLIDATED EDISON CO. OF N.Y. N.Y., INC. (INDIAN POINT STATION, UNITS 1, 2 AND 3), CLI-75-8 2 NRC 173 (1975)	6.24.1 6.24.3
CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), LBP-78-27 8 NRC 275 (1978)	2.6.3.3 2.9.3.1 2.9.4 2.9.7 5.8.1
DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR), N/A LBP-81-31, 14 NRC 375 (1981)	3.3.6
DETROIT EDISON CO. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2) LBP-79-1, 9 NRC 73 (1979)	2.9.3.1 2.9.4.1.1 2.9.4.1.2 2.9.4.1.4 3.16
DETROIT EDISON CO. ET AL. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), LBP-78-37, 8 NRC 575 (1978)	1.7.1 2.9.4 2.9.4.1.2 2.9.5.6 2.11.1 2.11.2.1
DUKE POWER CO. (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), ALAB-626 13 NRC 17 (1981) (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), LBP-77-20, 5 NRC 680 (1977)	4.3 3.5.3 3.17 2.9.5.8
(CATAWBA NUCLEAR STATION, UNITS 1 AND 2), ALAB-687, 16 NRC 460 (1982)	
DUQUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNIT 1), ALAB-310, 3 NRC 33 (1976) (BEAVER VALLEY POWER STATION, UNIT 1), ALAB-408, 5 NRC 1383 (1977)	5.4 3.1.2.5 4.6 6.16.1 2.8.1.1 3.1.4.1
(BEAVER VALLEY POWER STATION, UNITS 1 AND 2), ALAB-172, 7 AEC 42 (1974)	
DUQUESNE LIGHT CO. ET AL. (BEAVER VALLEY POWER STATION, UNIT 1), ALAB-105, 6 AEC 181 (1973)	2.9.3
FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-661, 14 NRC 1117 (1981)	2.5.1 6.3.1 2.5.3 2.9.3.3.3 2.9.5.5
(TURKEY POINT NUCLEAR GENERATING UNITS 3 AND 4), LBP-79-21, 10 NRC 163 (1979)	
HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), ALAB-549, 9 NRC 644 (1979)	2.9.3.3.3 2.9.4.1.2 2.9.5.1 6.3 2.9.4.1.1 2.9.4.1.2 2.9.4.2
(SOUTH TEXAS PROJECT, UNITS 1 AND 2), CLI-78-5 7 NRC 397 (1978)	
(SOUTH TEXAS PROJECT, UNITS 1 AND 2), LBP-79-10 9 NRC 439 (1979)	

OPERATING LICENSE

HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), LBP-79-10 9 NRC 439 (1979)	
(SOUTH TEXAS PROJECT, UNITS 1 AND 2), LBP-81-54, 14 NRC 918 (1981)	6.15 3.4.2 3.1.2.5
HOUSTON LIGHTING AND POWER CO. ET AL. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), ALAB-639 13 NRC 469 (1981)	2.11.2.4 5.8.3.2 5.12.2.1 6.23.3.1
ILLINOIS POWER CO. (CLINTON POWER STATION, UNIT 1), LBP-61-61 14 NRC 1735 (1981)	2.9.3.1 2.11.2.1 2.11.4
ILLINOIS POWER CO. ET AL. (CLINTON POWER STATION, UNITS 1 AND 2), LBP-81-15 13 NRC 708 (1981)	3.4.1
LONG ISLAND LIGHTING CO (SHOREHAM NUCLEAR STATION, UNIT 1), LBP-81-18, 14 NRC 71 (1981)	3.4.1 6.14
LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR STATION, UNIT 1), LBP-77-11, 5 NRC 481 (1977)	2.9.4.1.2
LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), LBP-81-48 14 NRC 877 (1981)	3.5 3.5.3
MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), ALAB-144, 6 AEC 628 (1973)	5.10.2.1
(MAINE YANKEE ATOMIC POWER STATION), ALAB-161, 6 AEC 1003 (1973)	3.7.2
(MAINE YANKEE ATOMIC POWER STATION), ALAB-166, 6 AEC 1148 (1973)	5.5.1 3.7.2
(MAINE YANKEE ATOMIC POWER STATION), ALAB-175, 7 AEC 62 (1974)	5.12.1
(MAINE YANKEE ATOMIC POWER STATION), CLI-74-2 7 AEC 2 (1974)	3.7.2 3.7.2 3.9
METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), CLI-80-16, 11 NRC 674 (1980)	3.4
(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), CLI-80-19, 11 NRC 700 (1980)	2.9.10.1
(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), CLI-80-20, 11 NRC 705 (1980)	2.9.10.1
(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), ALAB-384, 5 NRC 612 (1977)	2.9.3.3.3
(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), CLI-80-22, 11 NRC 724 (1980)	2.11.5
METROPOLITAN EDISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2 ALAB-454, 7 NRC 39 (1978)	2.10.1.2 5.2 2.10.2
(THREE MILE ISLAND NUCLEAR STATION, UNIT 2 ALAB-474, 7 NRC 746 (1978)	2.9.2
(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), ALAB-456, 7 NRC 63 (1978)	2.9.5.6
(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), ALAB-486, 8 NRC 9 (1978)	6.20.3 4.4.2
(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), CLI-78-3, 7 NRC 307 (1978)	5.5.1 5.7
(THREE MILE ISLAND NUCLEAR STATION, UNITS 1 AND 2), CLI-73-16, 6 AEC 391 (1973)	5.12.3 2.9.3
NORTHERN STATES POWER CO. (MONTICELLO PLANT, UNIT 1), ALAB-611, 12 NRC 301 (1980)	4.6
(MONTICELLO PLANT, UNIT 1), ALAB-620, 12 NRC 574 (1980)	3.4.3
(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-110 6 AEC 247 (1973)	2.9.4.1.4

OPERATING LICENSE

NORTHEPN STATES POWER CO.

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-110 6 AEC 247(1973)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-244, 8 AEC 857(1974)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-252, 8 AEC 1175(1974)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-284, 2 NRC 197(1975)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-288 2 NRC 390(1975)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-419, 6 NRC 3(1977)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-455, 7 NRC 41(1978)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), CII-73-12 6 AEC 241(1973)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), CLI-75-1, 1 NRC 1(1975)

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2) ALAB-104 6 AEC 179(1973)

NUCLEAR ENGINEERING CO.

(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), ALAB-473, 7 NRC 737(1978)

(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), ALAB-494 8 NRC 299(1978)

(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), ALAB-606, 12 NRC 156(1980)

NUCLEAR FUEL SERVICES, INC. AND N.Y.S. ENERGY RESEARCH AND DEVELOP. AUTHORITY

(WESTERN NEW YORK NUCLEA SERVICE CENTER), CLI-81-29, 14 NRC 940(1981)

PACIFIC GAS AND ELECTRIC CO.

(DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), (1975)

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2 ALAB-580, 11 NRC 227(1980)

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 2.11.1
 2.9.9.2.1
 2.9.9.3
 2.9.9.4
 2.9.11
 3.11.3
 3.13.1
 4.2.1
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 5.5.2
 5.13.3
 2.9.9.2.1
 3.13.1
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 5.12.2.1.1
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 6.15.9
 2.9.4.1.4
 2.9.5.11
 2.11.1
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 2.9.9.2.1
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 2.9.4.1.1
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 2.9.4.2
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 2.9.7
 5.8.1
 3.1.4.1
 3.1.4.2
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 6.15.1.1
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 6.1.4
 3.16
 4.3
 5.6.3
 3.1.2.1

OPERATING LICENSE

PACIFIC GAS AND ELECTRIC CO.

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2 ALAB-580, 11 NRC 227(1980)

3.14.3

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5.6.3

3.12.4

6.20.3

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), (1977)

2.9.3.3.4

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-223, 8 AEC 241(1974)

2.7

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-334, 3 NRC 809(1976)

3.11.1.2

6.5.2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-410, 5 NRC 1398(1977)

2.11.2.4

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-504, 8 NRC 406(1978)

3.16

5.12.2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-514, 8 NRC 697(1978)

5.12.2.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-519, 9 NRC 42(1979)

5.12.2.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-583, 11 NRC 447(1980)

2.11.5.1

2.10.2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-592, 11 NRC 744(1980)

5.2

6.4.1.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-598, 11 NRC 876(1980)

5.6.6.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-600, 12 NRC 3(1980)

4.4.2

2.10.2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-604, 12 NRC 149(1980)

2.11.2.5

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-607, 12 NRC 165(1980)

3.12.1.2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-644 13 NRC 903(1981)

3.12.3

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3.1.4.2

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5.15

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-76-1, 3 NRC 73(1976)

5.4

5.8.11

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-11, 11 NRC 511(1980)

3.1.4.2

5.6.7

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-24 11 NRC 775(1980)

2.9.5.9

6.23.3.2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-6, 11 NRC 411(1980)

5.16.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), CLI-80-9 11 NRC 436(1980)

3.1.4.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), LBP-78-36, 8 NRC 567(1978)

3.12.4

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), LBP-81-5 13 NRC 226(1981)

4.4

4.4.2

6.15.1.1

3.4.1

PENNSYLVANIA POWER AND LIGHT CO.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-613, 12 NRC 317(1980)

2.11.2

2.11.2.8

2.11.3

2.11.4

2.11.6

PENNSYLVANIA POWER AND LIGHT CO. ET AL.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), LEP-79-6, 9 NRC 291(1979)

2.9.5.4

6.9.1

6.15.6.1

2.9.5.10

OPERATING LICENSE

PENNSYLVANIA POWER AND LIGHT CO.; ALLEGHENY ELECTRIC COOP.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-593, 11 NRC 761(1980)
 (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-8 13 NRC 335(1981)

5.12.2
 3.5
 3.5.2.3
 3.5.3

PENNSYLVANIA POWER AND LIGHT CO., ET AL.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-80-18, 11 NRC 906(1980)

2.11.2.2
 3.1.1
 6.15.8.1

PHILADELPHIA ELECTRIC CO.

(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-158, 6 AEC 999(1973)
 (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-165, 6 AEC 1145(1973)
 (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-216, 8 AEC 13(1974)

5.7.1
 5.11.2
 2.9.5.1
 6.16.2

(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-221, 8 AEC 95(1974)
 (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-389, 5 NRC 727(1977)

5.7.1
 3.1.2.1.1
 5.19.1

(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), CLI-73-10, 6 AEC 173(1973)

2.9.3.1
 2.9.4.1.4
 2.10.2

(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), CLI-74-32, 8 AEC 217(1974)

PORTLAND GENERAL ELECTRIC CO.

(PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), CLI-76-27, 4 NRC 610(1976)

2.9.4
 2.9.4.1.1
 2.9.4.2

PORTLAND GENERAL ELECTRIC CO. ET AL.

(TROJAN NUCLEAR PLANT), ALAB-451, 6 NRC 889(1977)

3.1.2.5
 6.1.6

(TROJAN NUCLEAR PLANT), ALAB-496, 8 NRC 308(1978)

6.16.1
 2.9.9.2.2
 5.8.4.1

(TROJAN NUCLEAR PLANT), LBP-78-32, 8 NRC 413(1978)

3.16

(TROJAN NUCLEAR PLANT), LBP-78-40, 8 NRC 717(1978)

6.1.3.1
 6.1.4.4

PUBLIC SERVICE ELECTRIC AND GAS CO.

(SALEM NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-136, 6 AEC 487(1973)

2.9.2
 2.9.3
 2.9.3.1

PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL.

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), ALAB-518, 9 NRC 14(1979)

4.3
 6.15.1.2
 6.16.4

SOUTH CAROLINA ELECTRIC AND GAS CO.

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), ALAB-663 14 NRC 1140(1981)

3.1.2.1
 3.1.2.5
 3.12.3
 5.12.2

SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL.

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), LBP-78-6, 7 NRC 209(1978)

2.9.3.3.3

SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL.

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), ALAB-642 13 NRC 881(1981)

2.9.3.3.3
 2.9.3.3.4
 3.1.2.7

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), ALAB-643 13 NRC 898(1981)

2.9.3.3.3
 5.7.1

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), LBP-81-11 13 NRC 420(1981)

2.9.3.3.3

OPERATING LICENSE

SOUTHERN CALIFORNIA EDISON CO.

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), LBP-81-36, 14 NRC 691(1981)

3. 1. 2. 3
3. 4. 2
5. 14

TENNESSEE VALLEY AUTHORITY

(BROWNS FERRY NUCLEAR PLANT, UNITS 1 AND 2), ALAB-341, 4 NRC 95(1976)

(WATTS BAR NUCLEAR PLANT, UNITS 1 AND 2), ALAB-413, 5 NRC 1418(1977)

2. 9. 3. 3. 2
2. 9. 3. 3. 3
2. 9. 4. 1. 1
2. 9. 4. 1. 2
2. 9. 4. 1. 4
2. 9. 4. 2

TEXAS UTILITIES GENERATING CO.

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-23, 14 NRC 159(1981)

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-25, 14 NRC 241(1981)

3. 4. 2
2. 9. 5
2. 11. 2. 8
2. 11. 2
2. 9. 5. 7

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-51, 14 NRC 896(1981)

TEXAS UTILITIES GENERATING CO. ET AL.

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-621 12 NRC 578(1980)

3. 15

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

(UCLA RESEARCH REACTOR), LBP-81-29, 14 NRC 353(1981)

3. 13. 2

VERMONT YANKEE NUCLEAR POWER CORP.

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-124 6 AEC 358(1973)

3. 1. 1
4. 4

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-126 6 AEC 393(1973)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-138, 6 AEC 520(1973)

4. 4. 1
4. 4. 1. 1
4. 4. 2
5. 6. 1

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-141, 6 AEC 576(1973)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-179, 7 AEC 159(1974)

4. 4. 1. 1
2. 11. 1
3. 1. 1
4. 4. 1. 1
4. 4. 2
4. 4. 4

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-194, 7 AEC 431(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-217, 8 AEC 61(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-229, 8 AEC 425(1974)

6. 16. 1
4. 4. 2
6. 5. 3. 2
6. 15. 3
6. 16. 2
6. 16. 1
6. 16. 1. 1

(VERMONT YANKEE NUCLEAR POWER STATION), CLI-74-40, 8 AEC 809(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), CLI-74-43, 8 AEC 826(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), CLI-76-14, 4 NRC 163(1976)

6. 20. 1
6. 16. 2
2. 9. 1
3. 16. 1
6. 16. 2
3. 16. 1
6. 9. 1
6. 16. 2
6. 21. 2
6. 9. 1
6. 16. 2
6. 21. 2
5. 6. 2
6. 21. 1

OPERATING LICENSE

VIRGINIA ELECTRIC AND POWER CO.

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-146, 6 AEC 631 (1978)

2.9.3.2

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-342, 4 NRC 98 (1976)

2.9.4.1.4

2.9.3.3.3

2.9.3.3.4

2.9.4

2.9.4.1.1

2.9.7.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-491, 8 NRC 245 (1978)

5.5.3

5.6.1

6.9.2.2

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-551, 9 NRC 704 (1979)

5.5.1

4.6

5.5.1

5.6.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-578, 11 NRC 189 (1980)

5.19.1

4.6

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-584, 11 NRC 451 (1980)

5.15

3.1.1

3.3.2.4

3.5.2.3

3.5.4

5.5

5.8.2

6.15.4

3.5.5

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

(WPPSS NUCLEAR PROJECT 2), ALAB-571 10 NRC 687 (1979)

5.6.1

5.8.1

(WPPSS NUCLEAR PROJECT 2), LBP-79-7, 9 NRC 330 (1979)

4.6

2.9.4.1.2

2.9.4.1.4

WISCONSIN ELECTRIC POWER CO.

(POINT BEACH NUCLEAR PLANT), ALAB-73, 5 AEC 297 (1972)

4.6

(POINT BEACH NUCLEAR PLANT, UNIT 1), LBP-80-29, 12 NRC 581 (1980)

5.14

(POINT BEACH NUCLEAR PLANT, UNIT 2), ALAB-137, 6 AEC 491 (1973)

3.7.2

6.23.3.1

(POINT BEACH NUCLEAR PLANT, UNIT 2), ALAB-82, 5 AEC 350 (1972)

6.15.8.1

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-78-23, 8 NRC 71 (1978)

6.15.8.2

2.6

2.9.3

2.9.3.1

3.1.2.2

WISCONSIN ELECTRIC POWER CO. ET AL.

(POINT BEACH NUCLEAR PLANT, UNIT 2), ALAB-78, 5 AEC 319 (1972)

3.1.1

3.1b

4.2

5.6.1

6.20.3

5.6.3

WISCONSIN PUBLIC SERVICE CORP. ET AL.

(KEWAUNEE NUCLEAR PLANT) LBP-78-24, 8 NRC 78 (1978)

2.9.3.1

2.9.3.3.3

PERMIT AMENDMENT

DETROIT EDISON CO.

(HENRIQ FERMI ATOMIC POWER PLANT, UNIT 2), LBP-78-11, 7 NRC 381(1978)

2.9-4-1.1
2.9-4-1.2
2.9-4-1.4
2.9-4.2
2.9-5.3
3.1-2.1
3.1-2.5
6.1-4.4
6.15
6.15-6
6.16.1

NORTHERN INDIANA PUBLIC SERVICE CO.

(BAILLY GENERATING STATION, NUCLEAR-1), LBP-80-31, 12 NRC 699(1980)

3.4.5

RULEMAKING-DENIAL OF RULEMAKING

ENVIRONMENTAL RADIATION PROTECTION STDS. FOR NUCLEAR POWER OPERATIONS, 40 CFR 19

CLI-81-4 13 NRC 298(1981)

5.7.1

SPECIAL PROCEEDING

ALABAMA POWER CO.

(JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2, CLI-81-27 14 NRC 795(1981)

5.7.1

(JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), LBP-77-24, 5 NRC 804(1977)

6.3

BOSTON EDISON CO. ET AL.

(PILGRIM NUCLEAR STATION, UNIT 2), ALAB-632 13 NRC 51(1981)

4.3

CENTRAL ELECTRIC POWER COOPERATIVE, INC.

(VIRGIL C. SUMNER NUCLEAR STATION, UNIT 1), CLI-81-26 14 NRC 787(1981)

4.5

6.3.1

CLEVELAND ELECTRIC ILLUMINATING CO.

(PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-294, 2 NRC 663(1975)

5.2

COMMONWEALTH EDISON CO.

(CARRGL COUNTY SITE), ALAB-601, 12 NRC 18(1980)

6.6.1

(DRESDEN NUCLEAR POWER STATION, UNIT 1), CLI-81-25 14 NRC 616(1981)

2.9-4-1.2

2.9-4.2

2.9-5.1

2.10-1.1

3.3.6

6.1.4

6.15.1

2.5.1

3.1-2.1

3.4

5.13.2

(ZION STATION, UNITS 1 AND 2), ALAB-616, 12 NRC 419(1980)

CONSOLIDATED EDISON CO. OF NEW YORK; POWER AUTHORITY OF THE STATE OF NEW YORK

(INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3), CLI-81-1 13 NRC 1(1981)

5.16.1

3.1-2.7

(INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3), CLI-81-23, 14 NRC 610(1981)

3.1-2.7

5.16.1

CONSUMERS POWER CO.

(BIG ROCK POINT PLANT), CLI-81-32 14 NRC 962(1981)

2.9.3

2.9.3.1

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-118, 6 AEC 263(1973)

2.11.5

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-122, 6 AEC 322(1973)

2.11.5

2.11.6

5.4

5.8.3.1

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-282, 2 NRC 9(1975)

5.2

SPECIAL PROCEEDING

CONSUMERS POWER CO.

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-541, 9 NRC 436(1979)

(MIDLAND PLANT, UNITS 1 AND 2), CLI-79-3, 9 NRC 107(1979)

DUKE POWER CO.

(AMENDMENT TO MATERIALS LIC. SMH-1773), CLI-80-3, 11 NRC 185(1980)

DUKE POWER CO. ET AL.

(CATAWBA NUCLEAR STATION UNITS 1 AND 2), LBP-81-1 13 NRC 27(1981)

FLORIDA POWER AND LIGHT CO.

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-553, 10 NRC 12(1979)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-579, 11 NRC 223(1980)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), CLI-78-12, 7 NRC 939(1978)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), CLI-80-41, 12 NRC 650(1980)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), LBP-79-4, 9 NRC 164(1979)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), LBP-81-58 14 NRC 1167(1981)

(ST. LUCIE NUCLEAR PLANT UNITS 1 AND 2; TURKEY POINT, UNITS 3 AND 4), LBP-77-23, 5 NRC 789(1977)

(ST. LUCIE PLANT, UNIT 1; TURKEY POINT PLANT, UNITS 3 AND 4), ALAB-428, 6 NRC 221(1977)

(TURKEY POINT PLANT, UNITS 3 AND 4), ALAB-660 14 NRC 987(1981)

(TURKEY POINT PLANT, UNITS 3 AND 4), LBP-81-14 13 NRC 677(1981)

(TURKEY POINT PLANT, UNITS 3 AND 4), LBP-81-30, 14 NRC 357(1981)

HOUSTON LIGHTING AND POWER CO.

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-544 9 NRC 630(1979)

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-635 13 NRC 309(1981)

(SOUTH TEXAS PROJECT, UNITS 1 AND 2), ALAB-381, 5 NRC 582(1977)

(SOUTH TEXAS PROJECT, UNITS 1 AND 2), ALAB-575, 11 NRC 14(1980)

(SOUTH TEXAS PROJECT, UNITS 1 AND 2), CLI-80-32, 12 NRC 281(1980)

(SOUTH TEXAS PROJECT, UNITS 1 AND 2), LBP-79-5 9 NRC 193(1979)

HOUSTON LIGHTING AND POWER CO. ET AL.

(SOUTH TEXAS PROJECT, UNITS 1 AND 2), CLI-77-13, 5 NRC 1303(1977)

5-8-2
5-12-2.1
6-4-2.2

3-3-7

2-9-3.1
2-9-3.2
2-9-3-6
2-9-4.2

3-3-2.4
4-4-1.1
5-12.1
6-24
2-9-3-3-3
2-9-3-6
2-9-7
5-8.1
6-3
6-3.1
6-3-2
5-17
6-3.3
6-3-3.1
2-11-2
3-17
2-9-3-3-3
3-1-2-1.1
6-3

6-3.1
3-5-2.3
6-15.4
6-15-4.2
6-1-4.4
6-15-1.2
6-15-4
5-7.1

5-12.1
5-12.2
5-12.2.1
3-1-2-1.1
3-1-2.5
4-4
6-3.1
6-16.1
3-17
2-2
2-11-2.6
2-11.5

3-17
6-3.1

SPECIAL PROCEEDING

HOUSTON LIGHTING AND POWER CO. ET AL.

(SOUTH TEXAS PROJECT, UNITS 1 AND 2), LBP-79-27, 10 NRC 563(1979)

3-1.2-2
3-17
6-3

IN RE PETITION FOR EMERGENCY AND REMEDIAL ACTION

CLI-80-21, 11 NRC 707(1980)

3-7.1
6-24

KANSAS GAS AND ELECTRIC CO. ET AL.

(WOLF CREEK NUCLEAR GENERATING STATION), ALAB-279, 1 NRC 559(1975)

LOUISIANA POWER AND LIGHT CO.

(WATERFORD STEAM ELECTRIC STATION, UNIT 3), ALAB-220, 8 AEC 93(1974)

2-9.3-1

3-5.5
5-8.5

METROPOLITAN EDISON CO.

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), CLI-79-8, 10 NRC 141(1979)

2-11.2-2
2-11-4

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), CLI-80-5, 11 NRC 408(1980)

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1) LBP-80-17, 11 NRC 893(1980)

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1) LBP-81-50 14 NRC 888(1981)

2-11.5-2
6-11

6-23

6-23-1

3-4-1

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1) LBP-81-60 14 NRC 1724(1981)

METROPOLITAN EDISON CO. ET AL.

(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), ALAB-525, 9 NRC 111(1979)

3-14-1

NATURAL RESOURCES DEFENSE COUNCIL

CLI-76-2, 7 NRC 76(1976)

NUCLEAR ENGINEERING CO.

(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), CLI-80-1, 11 NRC 1(1980)

5-15-2

3-1.1

3-1.4-2

4-4-2

4-5

5-15

6-16.1

6-24

6-24-3

NUCLEAR REGULATORY COMMISSION

(FINANCIAL ASSISTANCE TO PARTICIPANTS IN COMMISSION PROCEEDINGS), CLI-76-23, 4 NRC 494(1976)

OFFSHORE POWER SYSTEMS

UNPUBL. ASLB ORDER (FLOATING NUCLEAR POWER PLANTS) UNPUBL. ASLB(1978)

PACIFIC GAS AND ELECTRIC CO.

(STANISLAUS NUCLEAR PROJECT, UNIT 1), ALAB-400, 5 NRC 1175(1977)

6-15.1-2

2-9.3

3-1.2-2

3-5-2-1

5-8.5

2-11.2

2-11.5

2-11-6

(STANISLAUS NUCLEAR PROJECT, UNIT 1), ALAB-550, 9 NRC 683(1979)

PENNSYLVANIA POWER AND LIGHT CO.; ALLEGHENY ELECTRIC COOP.

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-641 13 NRC 550(1981)

3-5.5

5-12-2-1

5-8.5

PETITION FOR EMERGENCY AND REMEDIAL ACTION

CLI-78-6, 7 NRC 400(1978)

1-8

6-16-2

6-16-3

6-20-2

SPECIAL PROCEEDING

PETITION FOR EMERGENCY AND REMEDIAL ACTION

CLI-78-6, 7 NRC 400(1978)	
PHILA. ELEC. CO. ET AL.; MET. EDISON CO. ET AL.; PUB. SERVICE ELEC. AND GAS CO. (PEACH BOTTOM UNITS 2,3; ISLAND UNIT 2; HOPE CREEK UNITS 1,2), ALAB-640 13 NRC 487(1981)	3. 17
PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-540, 9 NRC 428(1979)	5. 5. 4
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-546, 9 NRC 636(1979)	5. 5. 4
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-566, 10 NRC 527(1979)	3. 3. 5. 2
	3. 7. 1
	6. 9. 1
PHILADELPHIA ELECTRIC CO. ET AL. (PEACH BOTTOM ATOMIC POWER STATION, UNIT 3), ALAB-532, 9 NRC 279(1979)	4. 1
	6. 15. 8. 5
(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-562, 10 NRC 437(1979)	6. 15. 1. 2
	6. 15. 8. 1
PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), ALAB-534, 9 NRC 287(1979)	2. 5. 1
	3. 4
	6. 1. 3. 1
	6. 1. 4. 4
PORTLAND GENERAL ELECTRIC CO. ET AL. (TROJAN NUCLEAR PLANT), ALAB-524, 9 NRC 65(1979)	5. 7. 1
PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-316, 3 NRC 167(1976)	3. 1. 2. 1
	3. 4
	2. 5. 1
PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL. (SEABROOK STATION, UNITS 1 AND 2), ALAB-488, 8 NRC 187(1978)	2. 6
(SEABROOK STATION, UNITS 1 AND 2), ALAB-520, 9 NRC 48(1979)	3. 11. 1. 1
	3. 11. 1. 6
(SEABROOK STATION, UNITS 1 AND 2), ALAB-557, 10 NRC 153(1979)	6. 15. 4
PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), CLI-80-31, 12 NRC 264(1980)	3. 4
	6. 15. 2
PUBLIC SERVICE CO. OF OKLAHOMA ET AL. (BLACK FOX STATION, UNITS 1 AND 2), CLI-80-35, 12 NRC 409(1980)	6. 23. 1
PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1), LBP-79-14 9 NRC 557(1979)	3. 5. 1. 2
	3. 5. 3
PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-523, 9 NRC 58(1979)	2. 9. 3. 3. 3
	2. 9. 3. 3. 4
(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), LBP-79-16 9 NRC 711(1979)	2. 9. 3. 3. 3
ROCHESTER GAS AND ELECTRIC CORP. ET AL. (STERLING POWER PROJECT, UNIT 1), ALAB-507, 8 NRC 551(1978)	6. 13
SACRAMENTO MUNICIPALITY UTILITY DISTRICT (RANCHO SECO NUCLEAR GENERATING STATION), ALAB-655 14 NRC 799(1981)	2. 9. 5. 7
	4. 6
	5. 6. 3
SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), CLI-80-28, 11 NRC 817(1980)	6. 3. 1
TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), CLI-81-24 14 NRC 614(1981)	3. 4. 2
(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), CLI-81-36 14 NRC 1111(1981)	3. 1. 2. 3
	3. 4. 2

SPECIAL PROCEEDING

TOLEDO EDISON CO.

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-290, 2 NRC 401(1975)
 (DAVIS-BESSE NUCLEAR POWER STATION), ALAB-300, 2 NRC 752(1975)

6. 11
 5. 4
 5. 12. 2. 1
 6. 11

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-332, 3 NRC 785(1976)

6. 4. 1. 1
 6. 4. 2
 6. 4. 2. 1
 6. 4. 2. 3
 6. 4. 2. 2

(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-297, 2 NRC 727(1975)

3. 15
 5. 12. 2. 1
 5. 12. 2. 1

(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-314, 3 NRC 98(1976)

(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-323, 3 NRC 331(1976)

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), LBP-76-8, 3 NRC 199(1976)

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), LBP-77-7, 5 NRC 452(1977)

6. 3
 2. 11. 2. 2
 4. 3
 6. 3

TOLEDO EDISON CO. AND CLEVELAND ILLUMINATING CO.

(DAVIS-BESSE STATION, UNITS 1, 2, 3; PERRY PLANT, UNITS 1, 2), ALAB-430, 6 NRC 457(1977)

4. 4
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OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS), ALAB-489, 8 NRC 194 (1978)	1.8 3.1.2.5 3.3.1 6.15.7 6.16.1 6.16.1.1 6.18 6.20.3
PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), (1975)	3.16 4.3 5.6.3
(DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), ALAB-254, 8 AEC 1184 (1975)	3.8.1
(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2 ALAB-580, 11 NRC 227 (1980)	3.1.2.1 3.3.7 3.14.3 4.6 5.6.3
(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-223, 8 AEC 241 (1974)	2.9.3.3.4
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(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-598, 11 NRC 876 (1980)	4.4.2
(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-644 13 NRC 903 (1981)	3.16 3.1.4.2 5.1 5.15
(STANISLAUS NUCLEAR PROJECT, UNIT 1), ALAB-400, 5 NRC 1175 (1977)	2.9.3 3.1.2.2 3.5.2.1
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PENNSYLVANIA POWER AND LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-613, 12 NRC 317 (1980)	2.11.2 2.11.2.8 2.11.3

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PHILA. ELEC. CO. ET AL.; MET. EDISON CO. ET AL.; PUB. SERVICE ELEC. AND GAS CO. (PEACH BOTTOM UNITS 2,3; ISLAND UNIT 2; HOPE CREEK UNITS 1,2), ALAB-640 13 NRC 487(1981)	3.17
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(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-216, 8 AEC 13(1974)	
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PHILADELPHIA ELECTRIC CO. ET AL. (PEACH BOTTOM ATOMIC POWER STATION, UNIT 3), ALAB-532, 9 NRC 279(1979)	4.1 6.15.8.5 6.15.1.2 6.15.8.1
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PITTSBURGH-DES MOINES STEEL CO. ALJ-78-3 8 NRC 649(1978)	6.10.1 6.10.1.1
PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), ALAB-181, 7 AEC 207(1974)	3.4.2 5.6.6 6.16.1.3 2.5.1 3.4 6.1.3.1 6.1.4.4
(TROJAN NUCLEAR PLANT), ALAB-534, 9 NRC 287(1979)	
PORTLAND GENERAL ELECTRIC CO. ET AL. (TROJAN NUCLEAR PLANT), ALAB-531, 9 NRC 263(1979)	6.15 6.15.1.1 6.15.4 6.15.9 6.27 3.16 6.1.3.1 6.1.4.4
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(TROJAN NUCLEAR PLANT), LBP-78-40, 8 NRC 717(1978)	
PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-316, 3 NRC 167(1976)	3.1.2.1 3.4 2.5.1 2.9.4 2.9.4.1.2 2.9.3.3.3 2.9.7.1 5.5.3 5.8.4.1 5.12.2
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(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-461, 7 NRC 313 (1978)

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-493, 8 NRC 253 (1978)

PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL.

(SEABROOK STATION, UNITS 1 AND 2), ALAB-390, 5 NRC 733 (1977)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-422, 6 NRC 33 (1977)

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PUBLIC SERVICE CO. OF OKLAHOMA ET AL. (BLACK FOX STATION, UNITS 1 AND 2), LBP-78-26 8 NRC 102 (1978)	6.15.1 6.15.6 6.19.2
PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), ALAB-251, 8 AEC 993 (1974)	5.2
(SALEM NUCLEAR GENERATING STATION, UNIT 1), ALAB-650, 14 NRC 43 (1981)	4.2 4.4.2 5.5.1 5.10.1 5.10.3 6.15.1.2 6.15.9
(SALEM NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-136, 6 AEC 487 (1973)	2.9.2 2.9.3 2.9.3.1
PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), LBP-78-15, 7 NRC 642 (1978)	3.12
(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), ALAB-518, 9 NRC 14 (1979)	4.3 6.15.1.2 6.16.4 6.15
(SALEM NUCLEAR GENERATING STATION, UNIT 1), LBP-80-27, 12 NRC 435 (1980)	
PUERTO RICO ELECTRIC POWER AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), ALAB-662, 14 NRC 1125 (1981)	1.3 1.9
PUERTO RICO WATER RESOURCES AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), ALAB-286, 2 NRC 213 (1975)	2.9.7 5.8.1
PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-523, 9 NRC 58 (1979)	2.9.3.3.3 2.9.3.3.4
PUGET SOUND POWER AND LIGHT CO. ET AL. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-446, 6 NRC 870 (1977)	6.19.1
(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-559, 10 NRC 162 (1979)	2.9.3.3.3
RADIATION TECHNOLOGY, INC. ALJ-78-4 8 NRC 655 (1978)	6.10.1.1
SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), ALAB-114, 6 AEC 253 (1973)	5.6.1
SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), ALAB-642 13 NRC 881 (1981)	2.9.3.3.3 2.9.3.3.4 3.1.2.7
SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), ALAB-268, 1 NRC 383 (1975)	3.4.3 3.7.3.1 5.6.4 6.16.1

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TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT, UNITS 1A,2A,1B,2B), ALAB-367, 5 NRC 92(1977)	3.11 3.11.1.1.1 3.13.1 5.6.3 5.10.3 5.10.1 3.1.2.3 6.9.1 6.15.8.1 6.19.2
(HARTSVILLE NUCLEAR PLANT, UNITS 1A,2A,1B,2B), ALAB-380, 5 NRC 572(1977)	3.1.2.7 3.7.2 3.11.4 3.13.1 3.14.3 3.16 4.3 4.4
(HARTSVILLE NUCLEAR PLANT, UNITS 1A,2A,1B,2B), ALAB-463, 7 NRC 341(1978)	5.5.1 6.7.1 6.7.2 3.5 6.15
(HARTSVILLE NUCLEAR PLANT, UNITS 1A,2A,1B,2B), ALAB-554, 10 NRC 15(1979)	6.15.4.2
(PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), ALAB-506, 8 NRC 533(1978)	2.9.4.1.1 2.9.4.1.2 2.9.4.1.4
(PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), LBF-77-60, 6 NRC 647(1977)	2.9.4.2
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TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), ALAB-157, 6 AEC 858(1973)	5.8.8 6.4.1.1 6.4.2
(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-332, 3 NRC 785(1976)	6.4.2.1 6.4.2.3 6.4.2.2 6.3
(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-323, 3 NRC 331(1976)	
TOLEDO EDISON CO. ET AL. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), ALAB-560, 10 NRC 265(1979)	6.3 3.17
(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), ALAB-378 5 NRC 557(1977)	6.4.2.2
UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2), ALAB-347, 4 NRC 216(1976)	3.7.3.4 3.1.2.1
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(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-245, 8 AEC 873 (1974)	
VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-146, 6 AEC 631 (1978)	2.9.3.2 2.9.4.1.4 2.9.1 3.7 3.8 3.16 4.3
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-256, 1 NRC 10 (1975)	
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-324, 3 NRC 347 (1976)	1.5.2
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-491, 8 NRC 245 (1978)	5.6.1 6.9.2.2 5.5.1
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-522, 9 NRC 54 (1979)	2.9.4.1.1 2.9.7.1
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-578, 11 NRC 189 (1980)	4.6 5.15
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WASHINGTON PUBLIC POWER SUPPLY SYSTEM (HANFORD NO. 2 NUCLEAR POWER PLANT), ALAB-113, 6 AEC 251 (1973)	3.10
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WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT), ALAB-73, 5 AEC 297 (1972)	4.6
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ALABAMA POWER CO. (JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), CLI-81-27 14 NRC 795 (1981)	5.7.1
BABCOCK AND WILCOX (APPLIC. FOR CONSID. OF FACILITY EXPORT LICENSE) EXPORT LICENSE), CLI-77-18, 5 NRC 1332 (1977)	2.9.4.1.3
BALTIMORE GAS AND ELECTRIC CO. (CALVERT CLIFFS NUCLEAR POWER PLANT, UNITS 1 AND 2), 2AELS 11,578.02 (1969)	6.20.3
BOSTON EDISON CO. (PILGRIM NUCLEAR STATION), ALAB-74, 5 AEC 308 (1972)	5.10.2.1
(PILGRIM NUCLEAR STATION, UNIT 2), LBP-74-63, 8 AEC 330 (1974)	2.9.3.3.3
(PILGRIM NUCLEAR POWER STATION), ALAB-81, 5 AEC 348 (1972)	5.7.1
CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), ALAB-581, 11 NRC 233 (1980)	1.8 3.1.2.1.1 3.3.1 3.7.3.7 5.6.3 3.1.2.1 4.4.2 1.8 2.5.1 3.1.2.1.1 3.1.2.5 3.3.1 3.3.1.1 3.4 3.7.3.7 3.16 4.3 5.5 5.6.1 5.6.3 5.15 5.19.1 6.16.1 5.2 4.4 4.4.1.1 4.4.2
(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), CLI-79-5 9 NRC 607 (1979)	
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(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), LBP-78-2, 7 NRC 83 (1978)	
CENTRAL ELECTRIC POWER COOPERATIVE, INC. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), CLI-81-26 14 NRC 787 (1981)	4.5 6.3.1
CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), ALAB-595, 11 NRC 860 (1980)	2.9.3.3.3 2.9.7 2.9.2 2.9.5.5 2.9.3.3.3
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(WILLIAM H. ZIMMER NUCLEAR STATION), LBP-81-2 13 NRC 36 (1981)	
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CLEVELAND ELECTRIC ILLUMINATING CO.

(PERRY NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-35 14 NRC 682 (1981)

(PERRY NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-42 14 NRC 842 (1981)

(PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-294, 2 NRC 663 (1975)

(PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), LBP-81-24, 14 NRC 175 (1981)

COMMONWEALTH EDISON CO.

(BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), ALAB-659 14 NRC 983 (1981)

(BYRON STATION, UNITS 1 AND 2), LBP-81-30-A, 14 NRC 364 (1981)

(BYRON STATION, UNITS 1 AND 2), LBP-81-52 14 NRC 901 (1981)

(CARROLL COUNTY SITE), ALAB-601, 12 NRC 18 (1980)

(DRESDEN NUCLEAR POWER STATION, UNIT 1), CLI-81-25 14 NRC 616 (1981)

(LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), CLI-73-8, 6 AEC 169 (1973)

(LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), ALAB-153, 6 AEC 821 (1973)

(ZION STATION, UNITS 1 AND 2), ALAB-116, 6 AEC 258 (1973)

(ZION STATION, UNITS 1 AND 2), ALAB-154, 6 AEC 827 (1973)

(ZION STATION, UNITS 1 AND 2), ALAB-185, 7 AEC 240 (1974)

(ZION STATION, UNITS 1 AND 2), CLI-74-35, 8 AEC 374 (1974)

CONSOLIDATED EDISON CO. OF N.Y.

(INDIAN POINT STATION, UNIT 2), ALAB-209, 7 AEC 971 (1974)

(INDIAN POINT STATION, UNIT 2), ALAB-414, 5 NRC 1425 (1977)

(INDIAN POINT STATION, UNIT 2), ALAB-243, 8 AEC 850 (1974)

(INDIAN POINT STATION, UNIT 2), CLI-74-23 7 AEC 947 (1974)

(INDIAN POINT STATION, UNIT 3), UNIT 3), CLI-74-28, 8 AEC 7 (1974)

(INDIAN POINT STATION, UNIT 3), UNIT 3), CLI-75-14, 2 NRC 835 (1975)

(INDIAN POINT STATION, UNIT 3), ALAB-281, 2 NRC 6 (1975)

(INDIAN POINT STATION, UNITS 1, 2 AND 3), ALAB-357, 4 NRC 542 (1976)

(INDIAN POINT STATION, UNITS 1, 2, AND 3), ALAB-319, 3 NRC 188 (1976)

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CONSOLIDATED EDISON CO. OF N.Y.

(INDIAN POINT STATION, UNITS 1, 2, AND 3), ALAB-377, 5 NRC 430(1977)

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CONSOLIDATED EDISON CO. OF N.Y. N.Y., INC.

(INDIAN POINT STATION, UNITS 1, 2 AND 3), CLI-75-8 2 NRC 173(1975)

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CONSOLIDATED EDISON CO. OF NEW YORK; POWER AUTHORITY OF THE STATE OF NEW YORK

(INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3), CLI-81-1 13 NRC 1(1981)

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CONSUMERS POWER CO.

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-101, 6 AEC 60(1973)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-379, 5 NRC 565(1977)

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(MIDLAND PLANT, UNITS 1 AND 2), ALAB-438, 6 NRC 638(1977)

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-468, 7 NRC 464(1978)

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(MIDLAND PLANT, UNITS 1 AND 2), CLI-79-3, 9 NRC 107(1979)

(MIDLAND PLANT, UNITS 1 AND 2), LBP-74-54 8 AEC 112(1974)

(MIDLAND PLANT, UNITS 1 AND 2), LBP-78-27 8 NRC 275(1978)

(PALISADES NUCLEAR PLANT), ALJ-80-1, 12 NRC 117(1980)

(WANICASSEE PLANT, UNITS 1 AND 2), CLI-74-37, 8 AEC 627(1974)

DAIRYLAND POWER COOPERATIVE

(LA CROSSE BOILING WATER REACTOR), w/A LBP-81-31, 14 NRC 375(1981)

3.3.6

DELMARVA POWER AND LIGHT CO.

(SUNNIT POWER STATION, UNITS 1 AND 2), ALAB-516, 9 NRC 5(1979)

1.3

MEMO AND ORDER

DELMARVA POWER AND LIGHT CO.

(SUMMIT POWER STATION, UNITS 1 AND 2), ALAB-516, 9 NEC 5(1979)

DETROIT EDISON CO.

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), ALAB-466, 7 NRC 457(1978)

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), ALAB-469, 7 NRC 470(1978)

(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), ALAB-376, 5 NRC 426(1977)

(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), ALAB-472, 7 NRC 570(1978)

DETROIT EDISON CO. ET AL.

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), LBP-78-37, 8 NRC 575(1978)

DUKE POWER CO.

(CATAWBA NUCLEAR STATION UNITS 1 AND 2), ALAB-359, 4 NRC 619(1976)

(CATAWBA NUCLEAR STATION UNITS 1 AND 2), LBP-74-5, 7 AEC 82(1974)

(CHEPOKEE NUCLEAR STATION, UNITS 1, 2 AND 3), ALAB-457, 7 NRC 70(1978)

(PERKINS NUCLEAR STATION UNITS 1, 2, 3), ALAB-433, 6 NRC 469(1977)

(PERKINS NUCLEAR STATION UNITS 1, 2, 3), ALAB-591 11 NRC 741(1980)

(PERKINS NUCLEAR STATION UNITS 1, 2, 3), ALAB-597, 11 NRC 870(1980)

(WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), ALAB-626 13 NRC 17(1981)

(WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), LBP-77-20, 5 NRC 680(1977)

(CATAWBA NUCLEAR STATION, UNITS 1 AND 2), ALAB-687, 16 NRC 460(1982)

DUKE POWER CO. ET AL.

(CATAWBA NUCLEAR STATION UNITS 1 AND 2), LBP-81-1 13 NRC 27(1981)

DUQUESNE LIGHT CO.

(BEAVER VALLEY POWER STATION, UNITS 1 AND 2), ALAB-172, 7 AEC 42(1974)

EDLOW INTERNATIONAL CO.

(APPLICATION TO EXPORT SPECIAL NUCLEAR MATERIALS), CLI-77-16 5 NRC 1327(1977)

ENVIRONMENTAL RADIATION PROTECTION STDS. FOR NUCLEAR POWER OPERATIONS, 40 CFR 19

CLI-81-4 13 NRC 298(1981)

EXXON NUCLEAR CO., INC. ET AL.

(LOW ENRICHED URANIUM EXPORTS TO EURATOM MEMBER NATIONS), CLI-77-31, 6 NRC 849(1977)

FLORIDA POWER AND LIGHT CO.

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-274, 1 NRC 497(1975)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-280 2 NRC 3(1975)

5. 6. 1
5. 8. 14
6. 24. 3
5. 9
6. 14
2. 9. 4. 1. 1
2. 9. 7
3. 1. 2. 4
5. 4
5. 8. 1
2. 9. 7
5. 4
5. 8. 1

1. 7. 1
2. 9. 4
2. 9. 4. 1. 2
2. 9. 5. 6
2. 11. 1
2. 11. 2. 1

4. 4. 1
4. 4. 2
5. 10. 1
3. 10
6. 14. 1
5. 2
5. 12. 2
3. 1. 2. 1
5. 6. 5
5. 8. 10
4. 3
3. 5. 3
3. 17
2. 9. 5. 8

2. 9. 3. 1
2. 9. 3. 2
2. 9. 3. 6
2. 9. 4. 2

2. 8. 1. 1
3. 1. 4. 1

3. 3. 6

5. 7. 1

2. 9. 10. 1

5. 13. 1. 1
4. 2. 2

MEMO AND ORDER

FLORIDA POWER AND LIGHT CO.

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-280 2 NRC 3 (1975)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-404, 5 NRC 1185 (1977)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-553, 10 NRC 12 (1979)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), ALAB-579, 11 NRC 223 (1980)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), CLI-78-12, 7 NRC 939 (1978)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), CLI-80-41, 12 NRC 650 (1980)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), LBP-79-4, 9 NRC 164 (1979)

(ST. LUCIE NUCLEAR PLANT, UNIT 2), LBP-81-58 14 NRC 1167 (1981)

(ST. LUCIE NUCLEAR PLANT UNITS 1 AND 2; TURKEY POINT, UNITS 3 AND 4), LBP-77-23, 5 NRC 789 (1977)

(TURKEY POINT PLANT, UNITS 3 AND 4), LBP-81-14 13 NRC 677 (1981)

(TURKEY POINT PLANT, UNITS 3 AND 4), LBP-81-30, 14 NRC 357 (1981)

ALAB-415, 5 NRC 1435 (1977)

GENERAL ELECTRIC CO.

(VALLECITOS NUCLEAR CENTER, GENERAL ELECTRIC TEST REACTOR), LBP-78-33, 8 NRC 461 (1978)

GENERAL ELECTRIC CO., WESTINGHOUSE ELECTRIC CO., COMBUSTION ENGINEERING

(EXPORTS TO TAIWAN), CLI-81-2 13 NRC 67 (1981)

GEORGIA POWER CO.

(ALVIN W. VOGTLE NUCLEAR PLANT, UNITS 1 AND 2), ALAB-251, 2 NRC 404 (1975)

GULF STATES UTILITIES CO.

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-317, 3 NRC 175 (1976)

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-329, 3 NRC 607 (1976)

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-358, 4 NRC 558 (1976)

(RIVER BEND STATION, UNITS 1 AND 2), ALAB-383, 5 NRC 609 (1977)

HOUSTON LIGHTING AND POWER CO.

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-539 3 NRC 422 (1979)

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-544 9 NRC 630 (1979)

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-547, 9 NRC 638 (1979)

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), ALAB-586, 11 NRC 472 (1980)

5. 13. 3
5. 7. 1
3. 3. 2. 4
4. 4. 1. 1
5. 12. 1
6. 24
2. 9. 3. 3. 3
2. 9. 3. 6
2. 9. 7
5. 8. 1
6. 3
6. 3. 1
6. 3. 2
5. 17
6. 3. 3
6. 3. 3. 1
2. 11. 2
3. 17
2. 9. 3. 3. 3
3. 1. 2. 1. 1
6. 1. 4. 4
6. 15. 1. 2
6. 15. 4
5. 7. 1
5. 7. 1

2. 11. 2. 4

3. 2. 1
3. 4. 6
6. 29. 2. 1

4. 4. 2
4. 4. 3
6. 1. 4. 4
6. 5. 4. 1
6. 9. 2. 1
6. 15

3. 7. 3. 4
5. 2
2. 9. 7
2. 9. 7. 1
5. 8. 1
2. 9. 4. 1. 4
3. 6
5. 6. 1

3. 4. 4
5. 12. 1
5. 4
2. 9. 7
5. 8. 1

MEMO AND ORDER

HOUSTON LIGHTING AND POWER CO.

{ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-630 13 NRC 84(1981)

3.1.4.1

3.15

5.12.2.1

{ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-631 13 NRC 87(1981)

5.2

{ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-635 13 NRC 309(1981)

5.12.2

5.12.2.1

{ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-301, 2 NRC 853(1975)

5.4

5.8.10

{ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-585, 11 NRC 469(1980)

5.5

{SOUTH TEXAS PROJECT, UNITS 1 AND 2}, ALAB-575, 11 NRC 14(1980)

3.17

{SOUTH TEXAS PROJECT, UNITS 1 AND 2}, CLI-80-32, 12 NRC 281(1980)

2.2

{SOUTH TEXAS PROJECT, UNITS 1 AND 2}, LBP-81-54, 14 NRC 918(1981)

3.4.2

3.1.2.5

HOUSTON LIGHTING AND POWER CO. ET AL.

{SOUTH TEXAS PROJECT, UNITS 1 AND 2}, CLI-77-13, 5 NRC 1303(1977)

3.17

6.3.1

ILLINOIS POWER CO.

{CLINTON POWER STATION, UNIT 1}, LBP-81-61 14 NRC 1735(1981)

2.9.3.1

2.11.2.1

2.11.4

ILLINOIS POWER CO. ET AL.

{CLINTON POWER STATION, UNITS 1 AND 2}, LBP-81-15 13 NRC 708(1981)

3.4.1

IN RE PETITION FOR EMERGENCY AND REMEDIAL ACTION

CLI-80-21, 11 NRC 707(1980)

3.7.1

6.24

IN THE MATTER OF TEN APPLICATIONS

CLI-77-24, 6 NRC 525(1977)

2.9.4.1.3

KANSAS GAS AND ELECTRIC CO.

{WOLF CREEK NUCLEAR GENERATING STATION}, CLI-77-1, 5 NRC 1(1977)

3.1.2.1

3.1.2.2

6.15.8.3

6.19

6.19.1

{WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-307, 3 NRC 17(1976)

5.7.1

{WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-311, 3 NRC 85(1976)

2.11.6

5.2

5.4

KANSAS GAS AND ELECTRIC CO. ET AL.

{WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-424, 6 NRC 122(1977)

2.9.4.1.1

5.4

5.10.2

5.10.3

5.13.4

{WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1}, ALAB-477, 7 NRC 766(1978)

4.5

LICENSE TO TRANSP. STRATEGIC QUANTITIES OF SPEC. NUCLEAR MATERIALS

CLI-77-3, 5 NRC 16()

6.24.3

LONG ISLAND LIGHTING CO

{SHOREHAM NUCLEAR STATION, UNIT 1}, LBP-81-18, 14 NRC 71(1981)

3.4.1

6.14

LONG ISLAND LIGHTING CO.

{JAMESPORT NUCLEAR STATION, UNITS 1 AND 2}, ALAB-353, 4 NRC 341(1976)

5.12.2.1

{JAMESPORT NUCLEAR STATION, UNITS 1 AND 2}, ALAB-481, 7 NPC 807(1978)

5.7.1

{JAMESPORT NUCLEAR STATION, UNITS 1 AND 2}, LBP-77-21, 5 NRC 684(1977)

6.15.3

6.15.3.1

MEMO AND ORDER

LONG ISLAND LIGHTING CO.

{JAMESPORT NUCLEAR POWER STATION, UNITS 1 AND 2}, ALAB-318, 3 NRC 186(1976)

{SHOREHAM NUCLEAR STATION, UNIT 1}, LBP-77-11, 5 NRC 481(1977)

5. 12. 2. 1

2. 9. 4. 1. 2

LOUISIANA POWER AND LIGHT CO.

{WATERFORD STEAM ELECTRIC STATION, UNIT 3}, ALAB-121, 6 AEC 319(1973)

{WATERFORD STEAM ELECTRIC STATION, UNIT 3}, ALAB-168, 6 AEC 1155(1973)

{WATERFORD STEAM ELECTRIC STATION, UNIT 3}, ALAB-220, 8 AEC 93(1974)

5. 10. 3

2. 9. 3. 4

3. 5. 5

5. 8. 5

{WATERFORD STEAM ELECTRIC STATION, UNIT 3}, LBP-73-31, 6 AEC 717(1973)

{WATERFORD STEAM ELECTRIC STATION, UNIT 3}, LBP-81-48 14 NRC 877(1981)

2. 9. 3. 4

3. 5

3. 5. 3

MAINE YANKEE ATOMIC POWER CO.

{MAINE YANKEE ATOMIC POWER STATION}, ALAB-144, 6 AEC 628(1973)

{MAINE YANKEE ATOMIC POWER STATION}, ALAB-166, 6 AEC 1148(1973)

5. 10. 2. 1

3. 7. 2

5. 12. 1

{MAINE YANKEE ATOMIC POWER STATION}, CLI-74-2 7 AEC 2(1974)

3. 7. 2

3. 9

METROPOLITAN EDISON CO.

{THREE MILE ISLAND NUCLEAR STATION, UNIT 1}, CLI-79-R, 10 NRC 141(1979)

{THREE MILE ISLAND NUCLEAR STATION, UNIT 1}, CLI-80-16, 11 NRC 674(1980)

{THREE MILE ISLAND NUCLEAR STATION, UNIT 1}, CLI-80-19, 11 NRC 700(1980)

{THREE MILE ISLAND NUCLEAR STATION, UNIT 1}, CLI-80-20, 11 NRC 705(1980)

{THREE MILE ISLAND NUCLEAR STATION, UNIT 1}, CLI-80-5, 11 NRC 408(1980)

{THREE MILE ISLAND NUCLEAR STATION, UNIT 2}, CLI-80-22, 11 NRC 724(1980)

{THREE MILE ISLAND NUCLEAR STATION, UNIT 1} LBP-80-17, 11 NRC 893(1980)

{THREE MILE ISLAND NUCLEAR STATION, UNIT 1} LBP-81-50 14 NRC 888(1981)

2. 11. 2. 2

2. 11. 4

3. 4

2. 9. 10. 1

2. 9. 10. 1

3. 7. 3. 7

2. 11. 5

{THREE MILE ISLAND NUCLEAR STATION, UNIT 1} LBP-81-60 14 NRC 1723(1981)

2. 11. 5. 2

6. 11

6. 23

6. 23. 1

3. 4. 1

METROPOLITAN EDISON CO. ET AL.

{THREE MILE ISLAND NUCLEAR STATION, UNIT 2} ALAB-454, 7 NRC 39(1978)

2. 10. 1. 2

5. 2

{THREE MILE ISLAND NUCLEAR STATION, UNIT 2} ALAB-474, 7 NRC 746(1978)

2. 10. 2

{THREE MILE ISLAND NUCLEAR STATION, UNIT 2}, ALAB-456, 7 NRC 63(1978)

2. 9. 2

2. 9. 5. 6

{THREE MILE ISLAND NUCLEAR STATION, UNIT 2}, ALAB-525, 9 NRC 111(1979)

6. 20. 3

{THREE MILE ISLAND NUCLEAR STATION, UNITS 1 AND 2}, CLI-73-16, 6 AEC 391(1973)

3. 14. 1

2. 9. 3

MISSISSIPPI POWER AND LIGHT CO.

{GRAND GULF NUCLEAR STATION, UNITS 1 AND 2}, ALAB-140, 6 AEC 575(1973)

2. 9. 7

5. 10. 1

NATURAL RESOURCES DEFENSE COUNCIL

CLI-76-2, 3 NRC 76(1976)

5. 15. 2

NORTHERN INDIANA PUBLIC SERVICE CO.

{BAILLY GENERATING STATION, NUCLEAR-1}, ALAB-204, 7 AEC 835(1974)

5. 8. 13

6. 4. 1. 1

{BAILLY GENERATING STATION, NUCLEAR-1}, ALAB-207, 7 AEC 957(1974)

5. 10. 3

{BAILLY GENERATING STATION, NUCLEAR-1}, ALAB-227, 8 AEC 416(1974)

5. 10. 1

5. 13. 2

{BAILLY GENERATING STATION, NUCLEAR-1}, CLI-74-39, 8 AEC 631(1974)

3. 14. 3

4. 4. 2

{BAILLY GENERATING STATION, NUCLEAR-1}, CLI-78-7, 7 NRC 429(1978)

4. 4. 2

6. 24

6. 24. 2

MEMO AND ORDER

NORTHERN INDIANA PUBLIC SERVICE CO.

(BAILLY GENERATING STATION, NUCLEAR-1), CLI-78-7, 7 NRC 429(1978)

3

(BAILLY GENERATING STATION, NUCLEAR-1), LBP-80-31, 12 NRC 699(1980)

6.24.6

(BAILLY GENERATING STATION, NUCLEAR-1), LBP-81-6 13 NRC 253(1981)

3.4.5

3.4.5

NORTHERN STATES POWER CO.

(MONTICELLO PLANT, UNIT 1), ALAB-611, 12 NRC 301(1980)

4.6

(MONTICELLO PLANT, UNIT 1), ALAB-620, 12 NRC 574(1980)

3.4.3

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-252, 8 AEC 1175(1974)

2.9.9.2.1

3.13.1

5.5

5.1

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-284, 2 NRC 197(1975)

3.14.1

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-288 2 NRC 390(1975)

3.6

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), ALAB-419, 6 NRC 3(1977)

3.4

3.15

5.12.2.1.1

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), CLI-75-1, 1 NRC 1(1975)

2.9.9.2.1

(TYRONE ENERGY PARK, UNIT 1), ALAB-492, 8 NRC 251(1978)

2.9.5.13

5.8.1

NUCLEAR ENGINEERING CO.

(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), ALAB-494 8 NRC 299(1978)

3.1.4.1

(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), CLI-79-6, 9 NRC 673(1979)

3.1.4.2

6.24.3

(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), CLI-80-1, 11 NRC 1(1980)

6.24.4

3.1.1

3.1.4.2

4.4.2

4.5

5.15

6.16.1

6.24

6.24.3

NUCLEAR FUEL SERVICES

(ERWIN, TENNESSEE), CLI-80-27, 11 NRC 799(1980)

6.29.1

NUCLEAR FUEL SERVICES, INC., ET AL.

(WEST VALLEY REPROCESSING PLANT), CLI-75-4, 1 NRC 273(1975)

2.9.3.3.3

OFFSHORE POWER SYSTEMS

(FLOATING NUCLEAR POWER PLANTS), ALAB-500, 8 NRC 323(1978)

5.14

(FLOATING NUCLEAR POWER PLANTS), LBP-79-15, 9 NRC 653(1979)

6.15.2

UNPUBL. ASLB ORDER (FLOATING NUCLEAR POWER PLANTS) UNPUBL. ASLB(1978)

6.15.1.2

OMAHA PUBLIC POWER DISTRICT

(FORT CALHOUN STATION, UNIT 2), LBP-77-5, 5 NRC 437(1977)

1.1

PACIFIC GAS AND ELECTRIC CO.

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-410, 5 NRC 1398(1977)

2.11.2.4

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-504, 8 NRC 406(1978)

3.16

5.12.2

5.12.2.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-514, 8 NRC 697(1978)

5.12.2.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-519, 9 NRC 42(1979)

2.11.5.1

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-583, 11 NRC 447(1980)

2.10.2

5.2

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-600, 12 NRC 3(1980)

2.10.2

2.11.2.5

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), ALAB-604, 12 NRC 149(1980)

3.12.1.2

MEMO AND ORDER

PACIFIC GAS AND ELECTRIC CO.

{DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2}, ALAB-607, 12 NRC 165(1980)
 {DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2}, CLI-76-1, 3 NRC 73(1976)

{DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2}, CLI-80-24 11 NRC 775(1980)

{DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2}, CLI-81-6 13 NRC 443(1981)

3.12.3
 5.4
 5.8.11
 2.9.5.9
 6.23.3.2
 3.1.2.1
 6.24.1

PENNSYLVANIA POWER AND LIGHT CO.; ALLEGHENY ELECTRIC COOP.

{SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2}, ALAB-593, 11 NRC 761(1980)
 {SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2}, ALAB-641 13 NRC 550(1981)

{SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2}, LBP-81-8 13 NRC 335(1981)

5.12.2
 3.5.5
 5.12.2.1
 5.8.5
 3.5
 3.5.2.3
 3.5.3

PENNSYLVANIA POWER AND LIGHT CO., ET AL.

{SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2}, LBP-80-18, 11 NRC 906(1980)

2.11.2.2
 3.1.1
 6.15.8.1

PETITION FOR EMERGENCY AND REMEDIAL ACTION

CLI-73-6, 7 NRC 400(1978)

1.8
 6.16.2
 6.16.3
 6.20.2
 6.26

PHILADELPHIA ELECTRIC CO.

{FULTON ENGINEERING STATION, UNITS 1 AND 2}, ALAB-206, 7 AEC 841(1974)
 {FULTON GENERATING STATION, UNITS 1 AND 2}, LBP-79-23, 10 NRC 220(1979)

{PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3}, ALAB-158, 6 AEC 999(1973)

{PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3}, ALAB-165, 6 AEC 1145(1973)

{PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3}, ALAB-221, 8 AEC 95(1974)

{PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3}, ALAB-540, 9 NRC 428(1979)

{PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3}, ALAB-546, 9 NRC 636(1979)

{PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3}, CLI-73-10, 6 AEC 173(1973)

{PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3}, CLI-74-32, 8 AEC 217(1974)

2.9.7
 3.1.2.5
 6.6
 6.24
 5.7.1
 5.11.2
 5.7.1
 5.5.4
 5.5.4
 2.9.3.1
 2.9.4.1.4
 2.10.2

PITTSBURGH-DES MOINES STEEL CO.

ALAB-441, 6 NRC 725(1977)

5.8.12
 5.12.2

PORTLAND GENERAL ELECTRIC CO.

{PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2}, ALAB-273, 1 NRC 492(1975)

{PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2}, CLI-76-27, 4 NRC 610(1976)

2.9.7
 5.8.1
 2.9.4
 2.9.4.1.1
 2.9.4.2

PORTLAND GENERAL ELECTRIC CO. ET AL.

{TROJAN NUCLEAR PLANT}, ALAB-451, 6 NRC 889(1977)

{TROJAN NUCLEAR PLANT}, ALAB-496, 8 NRC 308(1978)

{TROJAN NUCLEAR PLANT}, ALAB-524, 9 NRC 65(1979)

3.1.2.5
 6.1.6
 6.16.1
 2.9.9.2.2
 5.8.4.1
 5.7.1

MEMO AND ORDER

PORTLAND GENERAL ELECTRIC CO. ET AL.

{TROYAN NUCLEAR PLANT}, LBP-77-69, 6 NRC 1179(1977)

6.1.6

POTOMAC ELECTRIC POWER CO.

{DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-218, 8 AEC 79(1974)

2.9.5.6

2.9.5.7

6.9.1

6.20.3

POWER AUTHORITY OF THE STATE OF NEW YORK

{GREENE COUNTY NUCLEAR PLANT}, ALAB-434, 6 NRC 471(1977)

2.9.7

{GREENE COUNTY NUCLEAR PLANT}, ALAB-439, 6 NRC 640(1977)

5.12.2.1

PROJECT MANAGEMENT CORP.

{CLINCH RIVER BREEDER REACTOR PLANT}, ALAB-326, 3 NRC 406(1976)

5.12.2.1

{CLINCH RIVER BREEDER REACTOR PLANT}, ALAB-330, 3 NRC 613(1976)

5.12.2.1

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

{SEABROOK STATION, UNITS 1 AND 2}, LBP-74-36, 7 AEC 877(1974)

1.9

3.5

3.5.3

PUBLIC SERVICE CO. OF OKLAHOMA ET AL.

{BLACK FOX STATION, UNITS 1 AND 2}, ALAB-505, 8 NRC 527(1978)

5.7.1

6.1.1

PUBLIC SERVICE CO. OF INDIANA

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-371, 5 NRC 409(1977)

3.3.1

5.12.2.1

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-393, 5 NRC 767(1977)

5.12.2.1

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-405, 5 NRC 1190(1977)

3.15

5.12.2.1

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-437, 6 NRC 630(1977)

5.7.1

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, ALAB-530, 9 NRC 201(1979)

4.1

{MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2}, CLI-80-10, 11 NRC 438(1980)

2.9.3.1

2.9.4.1.1

2.9.4.2

6.24

6.24.1.3

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-271, 1 NRC 478(1975)

3.15

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-293, 2 NRC 660(1975)

5.12.2.1

3.3.1

3.3.4

5.8.2

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-295, 2 NRC 668(1975)

3.3.1

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-338, 4 NRC 10(1976)

5.7

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-349, 4 NRC 235(1976)

5.7.1

3.7.3.3

3.17

5.4

5.18

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-350, 4 NRC 365(1976)

5.18

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-356, 4 NRC 525(1976)

5.6.1

5.7

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-366 5 NRC 39(1977)

6.15.3.1

{SEABROOK STATION, UNITS 1 AND 2}, ALAB-423, 6 NRC 115(1977)

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5.6.5

{SEABROOK STATION, UNITS 1 AND 2}, CLI-76-17, 4 NRC 451(1976)

6.16.1

{SEABROOK STATION, UNITS 1 AND 2}, CLI-77-8, 5 NRC 503(1977)

3.1.2.1.1

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PUBLIC SERVICE CO. OF NEW HAMPSHIRE

(SEABROOK STATION, UNITS 1 AND 2), CLI-77-8, 5 NRC 503(1977)

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5. 19.3
6. 15
6. 15.2
6. 15.3.1
6. 15.4.1
6. 15.4.2
3. 5.2.2

(SEABROOK STATION, UNITS 1 AND 2), LBP-75-9, 1 NRC 243(1975)

PUBLIC SERVICE CO. OF NEW HAMPSHIRE ET AL.

(SEABROOK STATION, UNITS 1 AND 2), (197d)

2. 9.9.5
2. 9.9.6
3. 6

(SEABROOK STATION, UNITS 1 AND 2), ALAB-495, 8 NRC 304(1978)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-499, 8 NRC 319(1978)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-513, 8 NRC 694(1978)

6. 17.1
6. 15.4
6. 15.4
3. 1.2.1
5. 6.1

(SEABROOK STATION, UNITS 1 AND 2), ALAB-520, 9 NRC 48(1979)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-548, 9 NRC 640(1979)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-557, 10 NRC 153(1979)

(SEABROOK STATION, UNITS 1 AND 2), ALAB-623, 12 NRC 670(1980)

(SEABROOK STATION, UNITS 1 AND 2), CLI-78-1 7 NRC 1(1978)

3. 11.1.1
3. 11.1.6
5. 15.2
6. 15.4
6. 26
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(SEABROOK STATION, UNITS 1 AND 2), CLI-78-14, 7 NRC 952(1978)

5. 12.3
6. 8
6. 15.3
6. 15.8.4
5. 19.1
6. 15.4
6. 15.8.1
4. 7
6. 15.8.4

(SEABROOK STATION, UNITS 1 AND 2), CLI-78-15, 8 NRC 1(1978)

(SEABROOK STATION, UNITS 1 AND 2), CLI-78-17, 8 NRC 179(1978)

PUBLIC SERVICE CO. OF OKLAHOMA ET AL.

(BLACK FOX STATION, UNITS 1 AND 2), CLI-80-35, 12 NRC 409(1980)

(BLACK FOX STATION, UNITS 1 AND 2), LBP-77-18, 5 NRC 671(1977)

6. 23.1
2. 11.2.2
3. 12.4.1

PUBLIC SERVICE ELECTRIC AND GAS CO.

(ATLANTIC GENERATING STATION, UNITS 1 AND 2), LBP-78-5, 7 NRC 147(1978)

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), LBP-77-9, 5 NRC 474(1977)

(SALEM NUCLEAR GENERATING STATION, UNIT 1), ALAB-588, 11 NRC 533(1980)

2. 8.1.3
2. 9.3.3.3
5. 12.2.1

PUBLIC SERVICE ELECTRIC AND GAS CO. ET AL.

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2), ALAB-460, 7 NRC 204(1978)

4. 3

PUERTO RICO ELECTRIC POWER AUTHORITY

(NORTH COAST NUCLEAR PLANT, UNIT 1), ALAB-605, 12 NRC 153(1980)

1. 10

PUERTO RICO WATER RESOURCES AUTHORITY

(NORTH COAST NUCLEAR PLANT, UNIT 1), ALAB-313, 3 NRC 94(1976)

2. 7
6. 5.2

PUGET SOUND POWER AND LIGHT CO.

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-572, 10 NRC 693(1979)

3. 15

PUGET SOUND POWER AND LIGHT CO. ET AL.

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-552, 10 NRC 1(1979)

2. 9.3.3.3

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PUGET SOUND POWER AND LIGHT CO. ET AL.

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), ALAB-556, 10 NRC 30 (1979)

3.1.4.1
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5.2

ROCHESTER GAS AND ELECTRIC CORP. ET AL.

(STERLING POWER PROJECT, UNIT 1), ALAB-502, 8 NRC 383 (1978)

3.7.3.2
5.1
6.15.4.1
6.15.4.2

(STERLING POWER PROJECT, UNIT 1), ALAB-507, 8 NRC 551 (1978)

(STERLING POWER PROJECT, UNIT 1), ALAB-596, 11 NRC 867 (1980)

6.13
1.9

SACRAMENTO MUNICIPALITY UTILITY DISTRICT

(RANCHO SECO NUCLEAR GENERATING STATION), ALAB-655 14 NRC 799 (1981)

2.9.5.7
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5.6.3

SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL.

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), CLI-80-28, 11 NRC 817 (1980)

6.3.1

SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL.

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), LBP-78-6, 7 NRC 209 (1978)

2.9.3.3.3

SOUTH CAROLINA ELECTRIC AND GAS CO. ET AL.

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), ALAB-643 13 NRC 898 (1981)

2.9.3.3.3
5.7.1

SOUTHERN CALIFORNIA EDISON CO.

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), ALAB-199, 7 AEC 478 (1974)

5.7.1

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), ALAB-212, 7 AEC 986 (1974)

3.3.2.4

SOUTHERN CALIFORNIA EDISON CO. ET AL.

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), LBP-77-35, 5 NRC 1290 (1977)

3.1.2.2
6.20.1

TENNESSEE VALLEY AUTHORITY

(BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2), ALAB-164, 6 AEC 1143 (1973)

2.8.1.2

(BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2), ALAB-237, 8 AEC 654 (1974)

5.2

(BROWNS FERRY NUCLEAR PLANT, UNITS 1 AND 2), ALAB-341, 4 NRC 95 (1976)

2.9.3.3.2

(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), ALAB-409, 5 NRC 1391 (1977)

2.9.3.3.3

(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), ALAB-418, 6 NRC 1 (1977)

5.9.1

(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), ALAB-467, 7 NRC 459 (1978)

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5.13.4

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5.12.1

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5.5

5.4

5.6.1

5.8.15

5.1

1.7.1

2.5.3

3.5

(BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 AND 3) LBP-73-29, 6 AEC 682 (1973)

TEXAS UTILITIES GENERATING CO.

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-260, 1 NRC 51 (1975)

5.6.3

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-23, 14 NRC 159 (1981)

3.4.2

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), LBP-81-51, 14 NRC 896 (1981)

2.9.5.7

TEXAS UTILITIES GENERATING CO. ET AL.

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), ALAB-621 12 NRC 578 (1980)

3.15

TOLEDO EDISON CO.

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-25, 4 AEC 633 (1971)

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MEMO AND ORDER

TOLEDO EDISON CO.

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-290, 2 NRC 401(1975)
(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-297, 2 NRC 727(1975)

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5.12.2.1
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TOLEDO EDISON CO. AND CLEVELAND ILLUMINATING CO.

(DAVIS-BESSE STATION, UNITS 1, 2, 3; PERRY PLANT, UNITS 1, 2), ALAB-430, 6 NRC 457(1977)

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5.10.3

TOLEDO EDISON CO. ET AL.

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), ALAB-385, 5 NRC 621(1977)

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5.7.1
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3.18.2

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), ALAB-622, 12 NRC 667(1980)

UNION ELECTRIC CO.

(CALLAWAY PLANT, UNITS 1 AND 2), ALAB-352, 4 NRC 371(1976)

6.20.3

USERDA

(CLINCH RIVER BREEDER REACTOR PLANT), CLI-76-13, 4 NRC 67(1976)

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(CLINCH RIVER BREEDER RE PLANT), ALAB-345, 4 NRC 212(1977)

(CLINCH RIVER BREEDER RE PLANT), ALAB-369, 5 NRC 129(1977)

VERMONT YANKEE NUCLEAR POWER CORP.

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-124 6 AEC 358(1973)

3.1.1
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4.4.2

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-141, 6 AEC 576(1973)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-194, 7 AEC 431(1974)

6.16.1
6.16.1.1
6.20.1

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-217, 8 AEC 61(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-229, 8 AEC 425(1974)

6.16.2
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3.16.1

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-392, 5 NRC 759(1977)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-421, 6 NRC 25(1977)

(VERMONT YANKEE NUCLEAR POWER STATION), CLI-74-40, 8 AEC 809(1974)

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3.16.1

(VERMONT YANKEE NUCLEAR POWER STATION), CLI-74-43, 8 AEC 826(1974)

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TOLEDO EDISON CO.

(DAVIS-BESSE NUCLEAR POWER STATION), ALAB-290, 2 NRC 401(1975)
 (DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-297, 2 NRC 727(1975)

(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), ALAB-314, 3 NRC 98(1976)
 (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), LBP-77-7, 5 NRC 452(1977)

TOLEDO EDISON CO. AND CLEVELAND ILLUMINATING CO.

(DAVIS-BESSE STATION, UNITS 1, 2, 3; PERRY PLANT, UNITS 1, 2), ALAB-430, 6 NRC 457(1977)

TOLEDO EDISON CO. ET AL.

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), ALAB-385, 5 NRC 621(1977)

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), ALAB-622, 12 NRC 667(1980)

UNION ELECTRIC CO.

(CALLAWAY PLANT, UNITS 1 AND 2), ALAB-352, 4 NRC 371(1976)

USERDA

(CLINCH RIVER BREEDER REACTOR PLANT), CLI-76-13, 4 NRC 67(1976)

(CLINCH RIVER BREEDER RE PLANT), ALAB-345, 4 NRC 212(1977)

(CLINCH RIVER BREEDER RE PLANT), ALAB-369, 5 NRC 129(1977)

VERMONT YANKEE NUCLEAR POWER CORP.

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-124 6 AEC 358(1973)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-138, 6 AEC 520(1973)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-141, 6 AEC 576(1973)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-194, 7 AEC 431(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-217, 8 AEC 61(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-229, 8 AEC 425(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-392, 5 NRC 759(1977)

(VERMONT YANKEE NUCLEAR POWER STATION), ALAB-421, 6 NRC 25(1977)

(VERMONT YANKEE NUCLEAR POWER STATION), CLI-74-40, 8 AEC 809(1974)

(VERMONT YANKEE NUCLEAR POWER STATION), CLI-74-43, 8 AEC 826(1974)

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 5.12.2.1
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 5.10.3
 5.6.3
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 5.7.1
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 5.8.1
 5.1
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VERMONT YANKEE NUCLEAR POWER CORP.

(VERMONT YANKEE NUCLEAR POWER STATION), CLI-76-14, 4 NRC 163 (1976)

5.6.2
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VIRGINIA ELECTRIC AND POWER CO.

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-342, 4 NRC 98 (1976)

2.9.3.3.3
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2.9.4.1.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-551, 9 NRC 704 (1979)

2.9.7.1
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(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), ALAB-568, 10 NRC 554 (1979)

(SURREY NUCLEAR POWER STATION, UNITS 1 AND 2), CLI-80-4, 11 NRC 405 (1980)

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5.19.1
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6.15.1.1

WASHINGTON PUBLIC POWER SUPPLY SYSTEMS ET AL.

(WPPSS NUCLEAR PROJECTS 3 AND 5 ALAB-501, 8 NRC 381 (1978)

5.6.1
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WASHINGTON PUBLIC POWER SUPPLY SYSTEM

(WPPSS NUCLEAR PROJECTS 1 AND 4 ALAB-265, 1 NRC 374 (1975)

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(WPPSS NUCLEAR PROJECTS 3 AND 5 CLI-77-11, 5 NRC 719 (1977)

3.1.1
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(WPPSS NUCLEAR PROJECTS 3 AND 5 LBP-77-16, 5 NRC 650 (1977)

WESTINGHOUSE ELECTRIC CORP.

(EXPORT TO SOUTH KOREA), CLI-80-30, 12 NRC 253 (1980)

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6.29.2.1
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(EXPORTS TO THE PHILLIPINES), CLI-80-14, 11 NRC 631 (1980)

(EXPORTS TO THE PHILLIPINES), CLI-80-15, 11 NRC 672 (1980)

WISCONSIN ELECTRIC POWER CO.

(KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2), CLI-75-2, 1 NRC 39 (1975)

(KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2), CLI-74-45, 8 AEC 928 (1974)

(POINT BEACH NUCLEAR PLANT, UNIT 2), ALAB-82, 5 AEC 350 (1972)

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6.15.8.1
6.15.8.2

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-39 14 NRC 819 (1981)

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-44 14 NRC 850 (1981)

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-45 14 NRC 853 (1981)

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3.1.2.4
3.1.2.4
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(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-46 14 NRC 862 (1981)

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-55 14 NRC 1017 (1981)

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(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), LBP-81-62, 14 NRC 1747 (1981)

WISCONSIN PUBLIC SERVICE CORP. ET AL.

(KEWAUNEE NUCLEAR PLANT) LBP-78-24, 8 NRC 70 (1978)

6.23.3.1
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MEMORANDUM

BOSTON EDISON CO.

(PILGRIM NUCLEAR STATION, UNIT 1), ALAB-191 7 AEC 417 (1974)

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COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), ALAB-222, 8 AEC 229 (1974)	3. 1. 3 3. 3. 1 3. 3. 2. 3
CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2 AND 3), CLI-77-2, 5 NRC 13 (1977)	3. 7 6. 5. 4. 1
CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), ALAB-115 6 AEC 257 (1973) (MIDLAND PLANT, UNITS 1 AND 2), ALAB-118, 6 AEC 263 (1973)	5. 10. 2. 2 2. 11. 5
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PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), ALAB-566, 10 NRC 527 (1979)	3. 3. 5. 2 3. 7. 1 6. 9. 1
PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), ALAB-333, 3 NRC 804 (1976)	2. 9. 4 2. 9. 4. 1. 1
POTOMAC ELECTRIC POWER CO. (DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2), ALAB-277, 1 NRC 539 (1975)	3. 3. 1 3. 3. 1. 1 3. 3. 1. 2 3. 3. 2. 1 3. 4. 4
PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), CLI-80-31, 12 NRC 264 (1980)	3. 4 6. 15. 2

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