

NUREG-0750  
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Index 2

# INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

July - December 1991



U.S. NUCLEAR REGULATORY COMMISSION

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# INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

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**U.S. NUCLEAR REGULATORY COMMISSION**

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

## Foreword

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

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

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

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

### 1. Case Name Index

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

### 2. Digests and Headers

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

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

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

### 3. Legal Citations Index

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

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

### 4. Subject Index

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

### 5. Facility Index

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

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CLJ-91-10 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322, OPERATING LICENSE AMENDMENT; July 25, 1991; ORDER

A The Commission considers two emergency motions to stay the effectiveness of the Shoreham "possession-only" license (POL). Petitioners ask the Commission to order the Licensee to maintain the status quo at Shoreham: (1) to preserve U.S. Supreme Court Justice Stevens' jurisdiction to hear their appeal; and (2) to ensure that the Licensee does not take actions that it could take under the POL that would render full-power operation at Shoreham moot, pending the outcome of the D.C. Circuit's decision on the POL, which, if vacated, would revert back to a full-power license. The Commission denies both motions.

CLJ-91-11 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Rowe Nuclear Power Station), Docket No. 50-029 (10 C.F.R. § 2.206); REQUEST FOR ACTION, July 31, 1991; MEMORANDUM AND ORDER

A The Commission denies a Petition for Emergency Enforcement Action and Request for Public Hearing. It orders reports, plans, and tests to be shared openly among all the participants to resolve remaining uncertainties.

B The Commission always retains the power to take jurisdiction to consider and make the final decision on the issues raised in any petition. This power is exercised sparingly; however, a petition may present an enforcement question of sufficient public importance that the Commission concludes that it should make the decision.

C The Commission's rules on ex parte communications do not formally attach until a notice of hearing or other comparable order is issued.

D The mere filing of a petition requesting the Commission to issue an order does not invoke the ex parte rule; moreover, 10 C.F.R. § 2.206(c) specifically provides that the Commission retains the power to consult with the Staff on a formal or informal basis regarding the institution of proceedings.

E The final objective of a plant-specific PTS study is to justify continued operation of the facility by demonstrating that the likelihood of a through-wall crack during continued operation is acceptably low.

F Commission involvement in this matter is appropriate because the unique circumstances of the Yankee Rowe case have presented a situation that was not directly contemplated when the PTS rule and the steps to be followed when concerns arose were developed.

G The overall goal of the Commission at the time it adopted 10 C.F.R. § 50.61 was to limit the probability of core damage due to a PTS initiating event to one-tenth of the overall risk of core damage frequency, or approximately 1 in 100,000 per reactor year.

H The Commission affirms that the probability of PTS failure should be kept below the order of 1 in 100,000 per year, using best estimates of risk parameters.

I PTS probability is not the only criterion for determining the significance of PTS concerns. A balance between prevention (i.e., reducing the probability of a PTS event) and mitigation (reducing the conditional probability of a failure, given the occurrence of a PTS event) is also important.

J The following technical issues are discussed: 10 C.F.R. Part 50, Appendix G; 10 C.F.R. Part 50, Appendix H; Pressure vessel integrity; Pressurized thermal shock events; Safety standards; Unresolved safety questions.

CLJ-91-12 ARIZONA PUBLIC SERVICE COMPANY, et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), Docket Nos. 50-528-OLA-2, 50-529-OLA-2, 50-530-OLA-2, OPERATING LICENSE AMENDMENT; August 16, 1991; MEMORANDUM AND ORDER



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- A The Commission considers Licensees' appeal of a Licensing Board decision granting Petitioners' request for a hearing on one contention concerning pressurizer safety valves. The Commission declines to accept one of the two bases on which the Board relied in admitting the contention, but finds that the contention was properly admitted for litigation. The Commission therefore denies the appeal.
- B While the Licensing Board may appropriately view a petitioner's support for its contention in a light that is favorable to the petitioner, it cannot do so by ignoring the requirements set forth in 10 C.F.R. § 2.714(b)(2)(i), (ii), and (iii).
- C The Commission's regulations demand that all petitioners provide an explanation of the bases for the contention, a statement of fact or expert opinion upon which they intend to rely, and sufficient information to show a dispute with the applicant on a material issue of law or fact. 10 C.F.R. § 2.714(b)(2)(i), (ii), and (iii).
- D If any one of the requirements in 10 C.F.R. § 2.714(b)(2)(i), (ii), or (iii) is not met, a contention must be rejected.
- E The requirements in 10 C.F.R. § 2.714(b)(2)(i), (ii), and (iii) are designed to raise the Commission's threshold for admissible contentions and to require a clear statement as to the basis for the contentions and the submission of more supporting information and references to specific documents and sources that establish the validity for the contentions.
- F While petitioners cannot attack the methodology of the ASME Code requirements incorporated in the Commission's regulations at 10 C.F.R. § 50.55a, they can attack new proposed performance requirements. The two are not the same.
- G The question of whether a licensee's written commitment to resolve a concern that is a basis for an otherwise satisfactorily pleaded contention is a matter that ought properly to be addressed after admission of the contention. That commitment cannot be used to negate a petitioner's rationale for a contention.
- CLL-91-13 FLORIDA POWER AND LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 3 and 4); Docket Nos. 50-250-OLA-S, 50-251-OLA-S; OPERATING LICENSE AMENDMENT; September 11, 1991; MEMORANDUM AND ORDER
- A The Commission reviews an Appeal Board decision affirming a Licensing Board decision that dismissed, for lack of standing, the sole remaining intervenor in an operating license amendment proceeding concerning the Turkey Point plant. The Commission decides not to disturb the Appeal Board's decision, but explicitly rejects and overrules the Licensing Board's ruling that a Board may raise a sua sponte issue in an operating license or operating license amendment proceeding where all parties in the proceeding have withdrawn or been dismissed. The Commission also provides guidance on the requirements for organizations' standing.
- B Judicial concepts of standing are to be used to determine whether a petitioner has a sufficient interest to intervene in an NRC adjudicatory proceeding.
- C An organization that wishes to intervene in an NRC proceeding as of right must either demonstrate an injury in fact to the organization within the zone of interests of the governing statute, or it must establish standing as the representative of one or more members of the organization who can demonstrate such an injury within the zone of interests of the statute. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLL-83-25, 18 NRC 327 (1983); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLL-76-27, 4 NRC 610 (1976).
- D An organization whose objectives in regard to nuclear power are clearly defined and well advertised is not relieved of standing requirements. Pebble Springs, CLL-76-27, *supra*, 4 NRC at 613-14.
- E A would-be intervenor who cannot fulfill standing requirements, but who can nevertheless make a valuable contribution to the adjudicatory process, may request consideration of discretionary intervention. *Id.* at 614-17.
- F When there is no proceeding before a board, a board is deprived of the ability to gain the perspective on issues that is acquired by receiving the input of parties to a proceeding. In such circumstances, it is more appropriate to apply the expertise of the NRC's Staff and the informal Staff review process to the issues.
- G A licensing board does not have the authority to raise a sua sponte issue relating to an application for an operating license or amendments to an operating license when there is no proceeding before the board relating to the application.

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- H If, as a result of its involvement in a proceeding, a licensing board believes that there are serious safety issues that remain to be addressed, in circumstances where a single intervenor left in that proceeding voluntarily or involuntarily has withdrawn from the proceeding, the board should dismiss the case and refer the issues to the Staff for review.
- I Where there is only a single intervenor in a proceeding, the withdrawal of the intervenor brings the proceeding to a close. Public Service Co. of Colorado (Fort St. Vrain Independent Spent Fuel Storage Installation), October 29, 1990, published as an attachment to CLI-91-13.
- CLI-91-14 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Unit 1), Docket No. 50-443-OLA (Transfer-of-Ownership Amendment); OPERATING LICENSE AMENDMENT, November 15, 1991; MEMORANDUM AND ORDER
- A The Commission considers the petitioner's appeal of a licensing board decision denying its petition to intervene and for hearing on a proposed amendment to the operating license to permit a transfer of ownership. The Commission dismisses the appeal for the petitioner's failure to file its brief on time and affirms, though on different grounds, the licensing board's order denying the petitioner standing.
- B Briefs filed beyond the 10-day period prescribed for appeals in 10 C.F.R. § 2.714a are justifiable only if there is a showing of good cause for the failure to have filed on time.
- C Participants in NRC proceedings are expected to familiarize themselves with the applicable rules of practice and to adhere to deadlines.
- D The Commission applies contemporaneous concepts of standing in determining whether a petitioner has established a right to intervene and to a hearing in NRC proceedings; i.e., the petitioner must show that the proposed action will cause injury in fact to the petitioner's interest and that the injury is within the "zone of interests" protected by the applicable statute.
- E The petitioner must establish that he or she will suffer a distinct and palpable harm that constitutes the injury in fact, that the injury can be traced fairly to the proposed action, and that the injury is likely to be redressed by a favorable decision in the proceeding.
- F The petitioner failed to show that favorable action in the instant proceeding would abate its claimed injury where it appears that the petitioner's alleged harm would still occur from the grant of a separately noticed license amendment that the petitioner failed to challenge.
- CLI-91-15 OHIO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1) and CLEVELAND ELECTRIC ILLUMINATING COMPANY and TOLEDO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1; Davis-Besse Nuclear Power Station, Unit 1), Dockets Nos. 50-440-A, 50-346-A (Suspension of Antitrust Conditions); ANTI-TRUST, November 20, 1991; ORDLA
- A The Commission sua sponte exercises its inherent supervisory power over an adjudicatory proceeding initiated by applicants' request for amendments that would remove certain antitrust license conditions pertaining to the Perry and Davis-Besse nuclear plants. The Commission directs its Licensing Board to suspend consideration of all matters, except for two issues referred to as the "bedrock" legal issue.
- B The Commission notes that consideration of an issue of decisional bias is unprecedented in its proceedings and defers providing guidance where the "bedrock" legal issue has the potential to be dispositive of the proceeding.

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LBP-91-30 SACRAMENTO MUNICIPAL UTILITY DISTRICT (Rancho Seco Nuclear Generating Station), Docket No. 50-212-OLA (ASLBP No. 51-634-06-OLA); OPERATING LICENSE AMENDMENT; July 1, 1991; MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Contentions)

- A The Licensing Board rules on petition to intervene filed in opposition to an application for a possession-only license for the Rancho Seco power reactor filed in advance of a decommissioning application. The Licensing Board finds that petitioner lacks standing to cause a hearing to be held and has failed to advance an acceptable contention.
- B An allegation that a proposed license amendment might, if granted, permit a licensee to allow a plant to deteriorate to the point that future operation would be unsafe is too remote and speculative to support standing under the Atomic Energy Act.
- C NEPA does not require that the Commission review a licensee decision to cease operations of and decommission a power reactor.
- D By itself, an allegation that a proposed license amendment deprives one of the legally protected right to comment on an environmental impact statement (EIS) or to information essential to an organization's purposes contained in an EIS is not sufficient to state an injury in fact that falls within the zone of interests protected by NEPA. To support standing, such an allegation must be accompanied by an allegation of another injury.

LBP-91-31 CURATORS OF THE UNIVERSITY OF MISSOURI, Docket Nos. 70-00270, 30-02278-MLA (ASLBP No. 50-613-02-MLA) (RE: TRUMP-5 Project) (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247); MATERIALS LICENSE AMENDMENT; July 10, 1991; MEMORANDUM AND ORDER (Final Initial Decision)

- A This case involved an application for a license to conduct experiments, including procedures involving 10 curies of unencapsulated americium and about 2 curies of plutonium. In this decision and a prior decision, the Presiding Officer ordered relief (including the installation of fire sprinklers and modification of Licensee's procedures) to reduce the risk of a serious fire that might disperse nuclear materials and to help to provide an adequate assurance of safety. The Presiding Officer then found that, in light of the imposed conditions, Licensee had demonstrated that licensed activities would provide an adequate assurance of safety. Licensee, which handles nuclear materials in unencapsulated form, was found to have demonstrated that there was no credible fire that would disperse the nuclear materials, injuring members of the general public.
- B A special nuclear materials license conducting experiments with actinides in particulate form, using 10 curies of americium and 2 curies of plutonium, is not a plutonium processing facility under 10 C.F.R. § 70.4.
- C The Presiding Officer discusses advantages and disadvantages of Subpart L in complex technical cases.
- D The Presiding Officer ordered relief (including the installation of fire sprinklers and modification of Licensee's procedures) to reduce the risk of a fire that might disperse nuclear materials and to help to provide an adequate assurance of safety. The Presiding Officer then found that, in light of the imposed conditions, Licensee had demonstrated that licensed activities would provide an adequate assurance of safety. Licensee, which handles nuclear materials in unencapsulated form, was found to have demonstrated that there was no credible fire that would disperse the nuclear materials, injuring members of the general public.

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- E** Petitioners for oral argument or the submission of evidence other than as provided for in the written filings described in the rules must demonstrate that the argument or evidence is necessary for the adequacy of the record. 10 C.F.R. §§ 2.1233, 2.1235.
- F** New information must fall within an admitted area of concern or meet criteria for late filing. Additionally, permission to file additional evidence will be denied even if it is within the scope of an admitted area of concern unless the evidence is necessary for the adequacy of the record.
- G** Providing that Licensee can demonstrate an adequate assurance of safety, there is no NRC requirement of a buffer zone surrounding a laboratory in which experiments with unencapsulated plutonium and americium are being conducted.
- H** Providing that a licensee demonstrates an adequate assurance of safety with respect to its use of licensed materials, and your safety from fire, its compliance or noncompliance with local fire ordinances designed to protect people from ordinary fire hazards is not relevant to the appropriateness of issuing a license to it.
- I** A licensee that applies for a license amendment or renewal is an "applicant" and must comply with all regulations affecting applicants, they may not comply by filing a financial assurance for decommissioning pursuant to 10 C.F.R. §§ 30.35(c)(2) and 70.25(c)(2). See 10 C.F.R. §§ 30.35, 70.25.
- J** Issues decided by a presiding officer become binding in the case unless raised in a timely motion for reconsideration or because there is reasonable cause for late filing.
- K** The following technical issues are discussed: Adequacy of Staff review (found irrelevant); Adequacy of application standing by itself (found irrelevant); Administrative controls (special nuclear materials and byproduct materials); Special nuclear materials (fire sprinklers); Americium (unencapsulated); Basement laboratories (special nuclear materials and byproduct materials); Buffer zones (special nuclear materials and byproduct materials); Byproduct materials (fire protection, fire sprinklers); Decommissioning (special nuclear materials and byproduct materials); Disclosure of curie content (application for special nuclear materials license); Dispersion of unencapsulated actinides by fire; Emergency planning (special nuclear materials and byproduct materials, effective date of regulations); Entrapment of plutonium, americium; Experience to handle unencapsulated nuclear materials; Fire department response (radioactive materials); Fire exits (irrelevant to use of nuclear materials); Handling special nuclear materials and byproduct materials; HEPA filters (DOF testing in place); Laboratory construction (special nuclear materials and byproduct materials); Maximum credible fire (special nuclear materials and byproduct materials); Models of risk of fire involving nuclear materials (limited usefulness of models); Oral presentations (10 C.F.R. Subpart L); Plutonium (unencapsulated); Plutonium processing facility (10 C.F.R. § 70.4); Procedures (special nuclear materials and byproduct materials); Regulatory Guide 10.3, § 4.3; Responsibility of licensee for safety (special nuclear materials and byproduct materials); Role of other company in licensed project (special nuclear materials and byproduct materials); Special nuclear materials (fire protection); Staff order for submission of new application (effect of order on existing amendment proceeding); 10 C.F.R. Subpart L.
- LBP-91-32** LONG ISLAND LIGHTING COMPANY (Storham Nuclear Power Station, Unit 1), Docket No. 50-322-OLA-2 (ACLBP No. 91-631-03-OLA-2) (Possession-Only License); OPERATING LICENSE AMENDMENT; July 18, 1991; MEMORANDUM AND ORDER (Ruling on Staff Motion for Reconsideration)
- A** Claims of injury to an organization's ability to disseminate information, resulting from the agency's failure to prepare an environmental review, may satisfy standing requirements, where the information is essential to the organization's activities and the lack of the information nullifies its mission.
- LBP-91-33** GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424, 50-425 (ASLBP No. 91-647-OLA-2); OPERATING LICENSE AMENDMENT; July 25, 1991; MEMORANDUM AND ORDER (Conditional Granting of Petition for Leave to Intervene)
- A** In this Memorandum and Order, the Licensing Board conditionally grants the petition for leave to intervene. The grant is conditional because the Petitioner will not be permitted to participate as a party and its petition will be dismissed if the supplement to the petition for leave to intervene, listing contentions that it seeks to have litigated, fails to satisfy the requirements of 10 C.F.R. § 2.714(b)(2) and (d)(2).
- B** While no affidavits were appended to the petition for leave to intervene, attesting that at least one member authorized the Petitioner to represent his or her interests, authorization might be presumed and

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could well be appropriate where, as here, it appeared that the sole or primary purpose of the petitioner organization was to oppose nuclear power in general or the facility at bar in particular. *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396 (1979).

- C Under certain circumstances, even if a current proceeding is separate from an earlier proceeding, the Commission will refuse to apply its rules of procedure in an overly formalistic manner by requiring that petitioners, who participated in the earlier proceeding, must again identify their interests to participate in the current proceeding. *Consumers Power Co.* (Midland Plant, Units 1 and 2), CLJ-74-3, 7 AEC 7, 12 (1974).

LBP-91-34 CURATORS OF THE UNIVERSITY OF MISSOURI, Docket Nos. 70-00270, 30-02278-MLA (ASLBP No. 90-613-02-MLA) (RE: TRUMP-S Project) (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247); MATERIALS LICENSE AMENDMENT; August 5, 1991; MEMORANDUM AND ORDER (Classification and Correction in LBP-91-31)

- A The Presiding Officer determined that the relief issued in LBP-91-31 could be implemented sequentially, with Licensee implementing first one paragraph and then another, so long as at least one paragraph is in effect at all times. He also clarified his opinion concerning the prohibition that a vehicle using combustible fuels cannot be in the basement of MURR at the same time that actinides are actually in use in the laboratory. A few other minor corrections also were made.

- B The presiding officer has jurisdiction over a timely motion for reconsideration of a final initial decision, even though an appeal also has been filed. This is true both under Subpart I and Subpart G. 10 C.F.R. §§ 2.1259, 2.771.

LBP-91-35 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket Nos. 50-322-OLA (ASLBP No. 91-621-01-OLA); (Confirmatory Order Modification, Security Plan Amendment, and Emergency Preparedness Amendment); OPERATING LICENSE AMENDMENT; August 29, 1991; MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Corrections)

- A Amended 10 C.F.R. § 2.717(b) raises the threshold for the admission of contentions to require a petitioner to supply information showing the existence of a genuine dispute with the applicant on an issue of law or fact. It specifies what is required of a petitioner as part of its burden of going forward with information in support of a contention.

LBP-91-36 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-2, 50-425-OLA-2 (ASLBP No. 91-647-OLA-2); OPERATING LICENSE AMENDMENT; September 12, 1991; MEMORANDUM AND ORDER (Terminating Proceeding re Application to Amend Operating Licenses)

- A In this Memorandum and Order, the Licensing Board grants the Licensee's unopposed motion to terminate and, without condition, terminates the proceeding regarding the application to amend technical specifications of the operating licenses.

- B When a licensee has withdrawn its application to amend its operating licenses and moved to terminate the proceeding without condition, where the Licensing Board has not admitted any contentions as issues in controversy, and when there is no opposition to the motion, there is no reason to issue a notice of hearing. In such circumstances, a motion to terminate without condition will be granted.

LBP-91-37 WRANGLER LABORATORIES, LARSEN LABORATORIES, ORION CHEMICAL COMPANY and JOHN P. LARSEN, Docket No. 9999004-R (ASLBP No. 91-648-01-R) (General License Authority of 10 C.F.R. § 40.22) (EA 87-223); ENFORCEMENT ACTION; September 26, 1991; MEMORANDUM AND ORDER (Terminating Proceeding)

- A In a show-cause proceeding involving a challenge to the Staff's Order revoking Licensees' right to operate under a general license for small quantities of source material, the Licensing Board terminates the proceeding upon the withdrawal from further participation of the Licensees.

- B When an enforcement proceeding is terminated because of the withdrawal of the Licensees, prior decisions as to which no appeal was taken should not be vacated for mootness, under the doctrine articulated in *United States v. Munisingwear, Inc.*, 340 U.S. 36 (1950), and its progeny.

LBP-91-37A ARIZONA PUBLIC SERVICE COMPANY, et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), Docket Nos. 50-528-OLA-2, 50-529-OLA-2, 50-530-OLA-2 (ASLBP No. 91-633-05-OLA-2) (Allowable Setpoint Tolerance); OPERATING LICENSE AMENDMENT; September 30, 1991; MEMORANDUM AND ORDER (Terminating Proceeding)

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

LBP-91-38 OHIO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1) and CLEVELAND ELECTRIC ILLUMINATING COMPANY and TOLEDO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1; Davis-Besse Nuclear Power Station, Unit 1), Docket Nos. 50-440-A, 50-346-A (ACLBP No. 91-644-01-A) (Suspension of Antitrust Conditions) (Facility Operating Licenses Nos. NPF-58, NPF-3); ANTI-TRUST, Order of T. ICPI, PREHEARING CONFERENCE ORDER (Ruling on Hearing/Intervention Petitions and Issues/Concerns, Setting Schedule for Summary Disposition Motions and Responses)

- A In a prehearing conference order, the Licensing Board rules upon hearing requests and intervention petitions emanating from an NRC Staff determination to deny license amendment applications seeking the suspension of the antitrust conditions in its operating licenses for the Perry and Davis-Besse facilities. After determining that it has jurisdiction to consider the various hearing and intervention petitions, the Board grants the applicants' hearing requests and disposes of the four intervention petitions, one as a matter of discretion. The Board denies the other intervention petitions, which was late filed, as inadequate to merit intervening party status. The Board also admits the issues put forth by one of the license amendment applicants alleging improper congressional interference and prejudgment relating to the Staff's decisional process and establishes discovery rules for those issues. Finally, the Board establishes a schedule for the submission of a jointly formulated "backlog" legal issue regarding the continuing validity of the antitrust conditions in the Perry and Davis-Besse operating licenses to be followed by the filing of dispositive motions relative to that issue.
- B Agency regulations establish that, as a longstanding matter of statutory construction, when an applicant/licensee's request for licensing action is denied, it is considered an "interested person" within the meaning of section 189a of the Atomic Energy Act (AEA), 42 U.S.C. § 2239(a). See 10 C.F.R. §§ 2.103(b), 2.105(d), 2.108(b), 2.1205.
- C An applicant/licensee is a "person" within the meaning of the Atomic Energy Act. See 42 U.S.C. § 2014(e).
- D In a proceeding involving the terms and conditions of its own permit, an applicant/licensee has an "interest" that "may be affected" within the meaning of AEA section 189a, 42 U.S.C. § 2239(a).
- E A licensee request that the agency nullify certain conditions in its license is a request for an "amendment."
- F It is standard practice for the NRC Staff, acting pursuant to Commission delegation, to undertake a technical and legal assessment of a license amendment application and make a determination concerning site propriety of the request. See, e.g., 10 C.F.R. §§ 2.101(a)(1), 2.102(a); NRC Manual, ch. 0127-32. In the absence of a hearing request, the Staff's administrative determination regarding the application generally will be dispositive. If a hearing request is filed, then one of the sets of hearing procedures specified in 10 C.F.R. Part 2 (or other hearing procedures specified by the Commission in any particular instance) may be afforded to provide an independent adjudicatory determination regarding the merits of the application.
- G The narrow supervisory antitrust jurisdiction accorded the Commission under AEA section 105c, 42 U.S.C. § 2135(c), cannot be considered to circumscribe the Commission's more general authority, as reflected in AEA section 189a, 42 U.S.C. § 2239(a), and 10 C.F.R. § 50.90, to amend a facility license at the request of the licensee.
- H A filing deadline specified in a notice of opportunity for hearing is not tolled or otherwise affected by language in a notice establishing a license board that simply declares that hearing requests and intervention petitions can be filed. See 10 C.F.R. § 2.105(c).
- I A party that fails to provide good cause for submitting its intervention request after the specified filing date must make a compelling showing regarding the other four factors that govern the admission of late-filed intervention petitions. See, e.g., Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).
- J The fifth factor governing the admission of late-filed intervention petitions — the extent to which petitioner's participation in the proceeding will broaden the issues or delay the proceeding — is one "of immense importance to the overall balancing process." Long Island Lighting Co. (Shortham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 492 (1983).

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- K** An electric cooperative seeking to intervene in a proceeding regarding antitrust conditions in a facility operating license lacks "injury in fact" when it does not operate in licensee's geographic market or have any other significant relationship with licensee or its direct competitors.
- L** An "economic" interest in a facility generally is not sufficient to afford an intervenor standing in a Commission licensing proceeding regarding health and safety matters. See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984). In the context of an antitrust-related proceeding, however, such interests take center stage; indeed, they are matters that fall squarely within the "zone of interests" that the Congress sought to protect, as reflected in AEA section 105, 42 U.S.C. § 2135. See Detroit Edison Co. (Dinicco Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474-75 (1978).
- M** When the only injury a petitioner might suffer as a result of a proceeding is establishment of a bad precedent that might be relied upon in a future proceeding in which it could be involved, this is the sort of "generalized grievance" that is unduly remote and, therefore, insufficient to establish the "injury in fact" necessary to establish standing as of right. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332-33 (1983); Transnuclear Inc., CLI-77-24, 6 NRC 525, 531 (1977). See also Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), ALAB-304, 3 NRC 473, 474-75 (1978).
- N** A primary consideration in determining whether to grant discretionary intervention is the extent to which the petitioner's participation may be expected to assist in developing a sound record. See Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). See also Fermi, ALAB-470, 7 NRC at 675 n.4; Tuscon Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977).
- O** Until a municipality decides whether it will institute an electrical distribution system, any injury it purports to suffer as a consequence of a proceeding to suspend the antitrust conditions governing the activities of its potential supplier is too abstract and hypothetical to establish the "injury in fact" necessary to afford it standing as of right.
- P** In an antitrust proceeding relating to a commercial power reactor construction permit or operating license application, under AEA section 105(c)(5), 42 U.S.C. § 2135(c)(5), the authority of the Department of Justice (DOJ) to participate is unquestionable. In a regular license amendment proceeding, however, DOJ participation hinges upon its compliance with the standards governing intervention in such proceedings.
- Q** The Staff views relative to the matters to be litigated before a licensing board are to be accorded the same status of those of any other party and its biases can be scrutinized accordingly. See, e.g., Indian Point, ALAB-304, 3 NRC at 6; Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-268, 1 NRC 383, 399 (1975).
- R** In performing a review of an agency decision allegedly subject to bias, including improper legislative influence, the independent assessment that an adjudicatory decisionmaker (such as a licensing board) renders regarding the merits of the parties' legal positions will rectify any earlier impropriety. See Gulf Oil Corp. v. FPC, 563 F.2d 588, 611-12 (3d Cir. 1977), cert. denied, 434 U.S. 1062 (1978).
- S** To support a finding of improper legislative interference with an agency's decisionmaking process, in the context of a judicial or quasi-judicial proceeding, the "appearance of bias or pressure" may be sufficient, while in other circumstances a showing of actual influence may be necessary. D.C. Federation of Civic Ass'ns v. Volpe, 459 F.2d 1231, 1246-47 (D.C. Cir.), cert. denied, 405 U.S. 1030 (1972). See also Town of Orangetown v. Ruckelshaus, 740 F.2d 185, 188 (2d Cir. 1984).
- T** A Staff administrative review determination relative to a license amendment application is not an "adjudicatory" function because, among other things, restrictions prohibiting off-the-record, ex parte contacts, which are a hallmark of judicial decisionmaking, see Sierra Club v. Costle, 657 F.2d 298, 400 (D.C. Cir. 1981), are not applicable. As a matter of policy, Staff often conducts public meetings relating to its application review function, see 43 Fed. Reg. 28,058 (1979), but there is no statutory or regulatory requirement that it do so. See 10 C.F.R. § 2.102(a). See also id. § 2.4 (definition of "Commission adjudicatory employee").
- U** An applicant seeking a hearing following a Staff denial of its request for licensing action is not subject to the pleading requirements applicable to intervening parties under 10 C.F.R. § 2.713(b). Applicants

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in such circumstances must identify the issues they wish to litigate, which must be within the scope of the hearing.

LBP-91-39 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OLA-2 (ASLBP No. 51-631-03-OLA-2) (Possession-Only License); OPERATING LICENSE AMENDMENT; November 15, 1991; MEMORANDUM AND ORDER

A In this Memorandum and Order, the Licensing Board finds that none of the petitioner's proffered contentions are admissible and, therefore, it denies petitioner's intervention petition.

B The Commission has made it clear that the new pleading requirements of 10 C.F.R. § 2.714(b) are to be enforced vigorously and that licensing boards are not free to assume any missing information in a contention. See *Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3)*, CLJ-91-12, 34 NRC 149, 155-56 (1991).

C It is well settled that regulatory guides are just that -- guides, not regulations -- and compliance with them is not required. See, e.g., *Petition for Emergency and Remedial Action, C.J. 78-6, 7 NRC 400, 406-07 (1978)*; *Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2)*, ALAB-819, 22 NRC 681, 737 (1985); *Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1)*, ALAB-788, 20 NRC 1102, 1161 (1984).

D A motion for reconsideration of a portion of the Licensing Board's earlier ruling on petitioner's standing is not a proper subject for a contention as that term is used in 10 C.F.R. § 2.714(b). The petitioner's contentions must focus on the issues identified in the notice of hearing, the applicant's amendment application, and the staff's environmental responsibilities relating to that application, not on the petitioner's own standing to raise issues concerning these matters.

LBP-91-40 TULSA GAMMA RAY, INC., Docket No. 30-12319-CivP (ASLBP No. 90-618-03-CivP) (EA 89-223) (Materials License No. 35-17178-01); CIVIL PENALTY; December 10, 1991; INITIAL DECISION (Order Imposing a Civil Monetary Penalty)

A The Licensing Board, in an Initial Decision, determines that a civil penalty sought to be imposed by the NRC Staff against a licensee should be reduced from \$6,750 to \$4,275. The Board in particular based its ruling on what it considered to be excessive escalation applied by the Staff.

B Although various licensing decisions assert that a party, even though not represented by counsel, is not excused from the format requirements for proposed findings of fact (10 C.F.R. § 2.754), even where limited resources are a factor, these decisions relate to licensing proceedings where an intervenor elects to become a party. They are not controlling in a situation where no local public document room is reasonably available and where a licensee (which is facing a loss of resources through a civil penalty proceeding) alleges that it cannot afford to purchase transcripts. The licensing board in that situation should use its best efforts to understand and rule on the merits on the claims presented by the licensee.

C The Commission's program for categorizing violations for the purpose of assessing and determining the amount of civil penalties is set forth in 10 C.F.R. Part 2, Appendix C. In general, the "nature and extent of the enforcement action is intended to reflect the seriousness of the violation," and civil penalties are to be tailored to particular facts and circumstances of the violation.

D Prescribed base civil penalties are subject to adjustment for the severity level of the particular violation. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations. This authority has been construed to permit the severity level of the aggregated group to be equal to or greater than the severity level of the individual violations comprising the group. When aggregating violations, generally both the number of violations and their seriousness should be taken into account.

E After the severity level of a violation has been ascertained, the resultant civil penalty may also be escalated or mitigated, under defined circumstances.

F A total of nine violations, considered collectively, including some that in themselves demonstrate a degree of safety significance, may be deemed to constitute a management deficiency sufficient to warrant assessment of a civil penalty.

G The following technical issue is discussed: Industrial radiography.

LBP-91-41 LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-MI (ASLBP No. 91-611-02-MI) (Special Nuclear Materials License); MATERIALS LICENSE; December 19, 1991; MEMORANDUM AND ORDER (Ruling on Contentions)



## DIGESTS

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- A The Commission looks to the petitioner to fulfill the requirements of 10 C.F.R. § 2.714(b)(2)(i), (ii), and (iii). Should any of the requirements not be met, the contention must be rejected.
- B Section 2.714(b)(2) of 10 C.F.R. is satisfied where a petitioner has reviewed the pertinent portions of the application and specifically points out where petitioner differs with the applicant on the adequacy of the information provided, explains why the application is deficient, and identifies the factual information upon which it intends to rely.
- C A regulatory guide can be relied upon to support a contention alleging that an application is deficient. However, this is not accomplished by the mere reliance on a Staff letter to an applicant which requests additional information based on a regulatory guide citation. An adequate explanation is required from the petitioner.
- D There is no agency requirement that bases for a contention must be original with the petitioner.
- E It is improper to support a contention based upon a Staff letter seeking information on thirty-six numbered requests, when neither the Staff nor the petitioner has provided an explanation as to how the requests are relevant to the contention. Such a proffer is wholly unacceptable.

**DIGESTS**  
**ISSUANCES OF DIRECTORS' DECISIONS**

DD-91-4 TEXAS UTILITIES ELECTRIC COMPANY (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; REQUEST FOR ACTION; September 18, 1991; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a petition filed by Ms. Betty Brink, on behalf of Citizens for Fair Utility Regulation (CFUR), requesting action with regard to Comanche Peak Steam Electric Station, Units 1 and 2. Specifically, the Petition alleged that Texas Utilities Electric Company (TU Electric) had maintained and currently maintains waste disposal sites containing Class I hazardous chemicals on the site in violation of federal and local environmental statutes and regulations, that fires or explosions could occur, that the cooling water to the plant could be contaminated and corrode vital components of the plant's cooling system, and that in violation of 10 C.F.R. § 50.9, TU Electric failed to reveal environmental and safety-related information that was material to the licensing of the Comanche Peak plant. The Petitioner requests that a supplemental environmental impact statement be prepared pursuant to 10 C.F.R. § 51.20(a) and that appropriate action be taken against TU Electric for its violation of 10 C.F.R. § 50.9.

B The institution of proceedings pursuant to 10 C.F.R. § 2.206 is appropriate only where substantial health and safety issues have been raised. See Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLJ-75-8, 2 NRC 173, 176 (1975), and Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984).

DD-91-5 TEXAS UTILITIES ELECTRIC COMPANY (Comanche Peak Steam Electric Station, Unit 1), Docket Nos. 50-445; REQUEST FOR ACTION; September 27, 1991; DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

A The Director, Office of Nuclear Reactor Regulation, denies a Petition filed by Ms. Betty Brink requesting that a proceeding be instituted to determine if the operating license issued to Texas Utilities Electric Company (TU Electric) for the Comanche Peak Steam Electric Station, Unit 1, should be revoked, modified, or suspended. As bases for the request, the Petitioner asserts concerns regarding the continued failure of Borg-Warner check valves at Comanche Peak and the failure of TU Electric to take adequate corrective actions to resolve these check-valve failures.

B The NRC will not institute a show-cause proceeding when the petition fails to raise any substantial health or safety issue.

DD-91-6 FLORIDA POWER CORPORATION (Crystal River Nuclear Generating Plant, Unit 3), Docket No. 50-302; REQUEST FOR ACTION; November 3, 1991; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a petition filed by Lewis D. Putney, on behalf of Edward S. Wollesen, requesting action with regard to the Crystal River Unit 3 Nuclear Generating Plant (CR-3). Specifically, the Petition alleged that 1500 to 3000 safety-related instruments are not properly identified and are not in a proper calibration program, that the Security and Fire Protection Programs are insufficiently defined and are not auditable, that Florida Power Corporation has not adequately defined and does not know the exact requirements of the plant's Technical Specifications, that the uncontrolled Plant Review Committee Guidelines Manual includes mandatory instructions for nuclear operations, and that because no verification of calibration was performed when instrument calibration stickers were removed from plant instruments there is no assurance that the instruments are in calibration.

DIGESTS  
ISSUANCES OF DIRECTORS' DECISIONS

**DIGESTS**  
**ISSUANCES OF DIRECTORS' DECISIONS**

The Petitioner requests that the NRC institute a proceeding pursuant to 10 C.F.R. § 2.202 to suspend or revoke the operating license of CF-3 or take such other action as may be proper.

DD-91-7 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Unit 1), Docket No. 50-443 (License No. NPF-86) REQUEST FOR ACTION; December 27, 1991; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director, Office of Nuclear Reactor Regulation, denies a petition filed by Mr. Michael C. Sinclair of Graystone Emergency Management Associates requesting that the U.S. Nuclear Regulatory Commission withhold a *joint* determination on whether the directive in ALAB-941, 32 NRC 337 (1990), was satisfied in the Seabrook Station 1990 FEMA/NRC graded exercise. Mr. Sinclair contended that the directive would not be satisfied until there is documented evidence that the vast majority of the participating schools have adequately demonstrated the ability to effect their implementing procedures for the New Hampshire Emergency Plan. As basis for the request, Petitioner asserts that the Federal Emergency Management Agency's conclusions regarding the exercise, set forth in a March 1, 1991 letter, did not adequately address the Appeal Board's directive in ALAB-941.

B The institution of proceedings pursuant to 10 C.F.R. § 2.202 is appropriate only if substantial health and safety issues have been raised.

DD-91-8 ALL NUCLEAR POWER REACTORS; REQUEST FOR ACTION; December 31, 1991; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director, Office of Nuclear Reactor Regulation, denies a Petition filed by the Nuclear Control Institute and the Committee to Bridge the Gap requesting the Nuclear Regulatory Commission to institute an individual plant examination (IPE) program that would request licensees to evaluate the margin of nuclear power plants to withstand an attack by explosive-laden surface vehicles and by a larger number of attackers using more sophisticated weapons than specified in the current design-basis threat. As basis for the request, the Petitioners assert that there is a risk from terrorist activities beyond the design-basis threat, that the level of protection varies from plant to plant, that the ongoing IPE program would be a very useful and cost-effective point of departure for a similar evaluation of terrorist threats, and that vulnerabilities that are identified can be eliminated or their effects reduced.

B Section 73.55 of 10 C.F.R. requires licensees to establish and maintain an onsite physical protection system and security organization designed to protect against the design-basis threat of radiological sabotage as defined in 10 C.F.R. § 73.1(a)(1). This is accomplished by a combination of detection, interception, and physical protection.

C The design-basis threat provides a standard for judging the adequacy of physical protection systems, analogous to using design-basis accidents in judging the adequacy of safety systems. This design-basis threat of Part 73 is not an additional standard for judging the adequacy of safety systems pursuant to Part 50 requirements.

D The NRC will not institute a proceeding pursuant to 10 C.F.R. § 2.202 where the petition fails to raise any substantial health or safety issue.

E The Commission's regulations do not require licensees to design safety systems to be resistant to various acts of sabotage, although the diverse and redundant safety systems and structures at nuclear power plants provide some inherent protection against such acts.

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**ISSUANCE OF DENIALS OF PETITION FOR RULEMAKING**

DPRM-91-5 SIERRA CLUB OF NORTH CAROLINA, Docket No. PRM 61-1; June 25, 1991; DENIAL OF PETITION FOR RULEMAKING

- A The Nuclear Regulatory Commission (NRC) is denying a petition, as amended, for rulemaking submitted by the Sierra Club of North Carolina (PRM 61-1). The petition and amendment requested that the NRC amend its regulations in 10 C.F.R. Part 61 to permit the licensing of a zero-release low-level radioactive waste disposal facility within the saturated zone. The NRC is denying the petition for the following reasons: (1) The design of a zero-release engineered facility for extremely long time periods is beyond the current level of demonstrated technology known to the NRC Staff, and (2) the existing rule allows for saturated-zone disposal under a specific hydrologic condition; however, the effort to develop regulations for enhanced engineered saturated-zone disposal, under a broad range of hydrologic conditions, would be significant, and the NRC is not aware of interest in this type of disposal by State authorities.
- B The concept upon which 10 C.F.R. Part 61 is based is that the very slow release of radionuclides that meet regulatory requirements is acceptable. Therefore, designing a perpetual facility for "zero release" might require NRC to develop an entirely new regulation.
- C The following technical issues are discussed: Radioactive release (zero release), Fiber-reinforced polymer concrete, Saturated zone.

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