

NUREG-0750
Vol. 20
Index 2

**INDEXES TO
NUCLEAR REGULATORY
COMMISSION ISSUANCES**

July - December 1984



U. S. NUCLEAR REGULATORY COMMISSION

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**INDEXES TO
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Foreword

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

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

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

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

1. Case Name Index

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

2. Digests and Headers

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

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

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

3. Legal Citations Index

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

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

4. Subject Index

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

5. Facility Index

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- CLI-84-11 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP; SPECIAL PROCEEDING; July 26, 1984; DECISION
- A The Commission reviews five issues decided by the Appeal Board in ALAB-729, 17 NRC 814 (1983) on plant design and procedures in this restart proceeding. The Commission decides four of the issues on the basis of the record in the proceeding, finding with respect to each that the existing evidence provides reasonable assurance of safe operation. The Commission refers a fifth issue (pertaining to environmental qualification of electrical equipment) to the staff for specified action, subject to possible further decision by the Commission.
- B The Commission's generic rulemaking on environmental qualification of equipment does not preclude challenges to the continued operation of plants where it is alleged those plants cannot be safely operated because of specific environmental qualification deficiencies.
- C The boards must closely examine any accident sequence which in their judgment poses an unacceptable risk to the public health and safety. Probabilistic or numerical calculations or any other mitigative actions deemed necessary by the boards may be included in such an examination. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), CLI-81-12, 13 NRC 838, 843-44 (1981).
- D When reasonable questions are raised regarding the reliability of a plant system, a board has discretion to examine that system, even if it is safety-grade, to determine whether it poses an unacceptable risk to public health and safety. In making such an examination, a board may use the best available data, even if not plant-specific.
- CLI-84-12 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; August 10, 1984; DECISION
- A The Commission determines that the circumstances in this case do not provide a basis for departure from its decision in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-81-33, 14 NRC 1091 (1981), that (1) NRC regulations do not require consideration of the impacts of earthquakes on emergency planning, and (2) the determination of whether to amend the regulations to include the consideration of earthquakes should be addressed as a generic matter. The Commission decides to initiate such a rulemaking and, further, determines that the issuance of a full-power operating license in this proceeding need not be delayed until its conclusion.
- B The Commission will not license a nuclear power plant unless it can make the statutorily required finding that operation of the plant will not result in undue risk to public health and safety.
- CLI-84-13 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; August 10, 1984; MEMORANDUM AND ORDER
- A The Commission determines to make effective, without prejudice to the pending appeals and petitions for review of the various licensing and appeal board decisions in this proceeding, the Licensing Board's fourth and final Partial Initial Decision authorizing the issuance of a full-power license for the Diablo Canyon Nuclear Power Plant Unit 1, LBP-82-70, 16 NRC 756 (1982), and, further, concludes that the license conditions imposed by the Board have been fulfilled and all other matters resolved so that the license may be issued.
- CLI-84-13A PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; September 12, 1984; ORDER

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- CLI-84-14 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; August 20, 1984; ORDER
- A The Commission decides not to review the Appeal Board's conclusions contained in ALAB-763, 19 NRC 571 (1984), concerning the adequacy of the operating license applicant's quality assurance program, except for a matter relating to the propriety of the Appeal Board's exclusion of certain contentions from the reopened hearing that was the subject of ALAB-763. The Commission indicates its agreement with the Appeal Board's exclusion of those contentions, but modifies the Board's reasoning for that action.
- CLI-84-15 RULEMAKING ON THE STORAGE AND DISPOSAL OF NUCLEAR WASTE (Waste Confidence Rulemaking), Docket Nos. PR-50, PR-51 (44 Fed. Reg. 61,372); RULEMAKING; August 22, 1984; DECISION
- A The Commission sets out its findings in this waste confidence rulemaking proceeding called for by the Court of Appeals for the District of Columbia Circuit in *Minnesota v. NRC*, 602 F.2d 412 (1979). In general, the Commission finds that it can, with reasonable assurance, reach favorable conclusions with respect to the safe storage and disposal of high-level radioactive waste and spent fuel. Specifically the Commission finds reasonable assurance that: (1) safe disposal of high-level radioactive waste and spent fuel in a mined geologic repository is technically feasible; (2) one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007-09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of existing commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time; (3) high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel; (4) if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating license at that reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations; and (5) safe independent onsite or offsite spent fuel storage will be made available if such storage capacity is needed.
- CLI-84-16 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-4 (Low Power); OPERATING LICENSE; September 7, 1984; ORDER
- A The Commission calls for the views of the parties concerning a September 5, 1984 Licensing Board Order (LBP-84-35A, 20 NRC 920) in this operating license proceeding.
- CLI-84-17 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP (Restart); SPECIAL PROCEEDING; September 11, 1984; ORDER
- A The Commission denies a request by the Licensee to stay the reopened management hearings in the Three Mile Island, Unit 1, restart proceeding based upon its determination that the stay criteria are not satisfied and it grants an intervenor's motion to lift the stay of the reopened hearings on certain other allegations.
- B The four factors to be considered in deciding whether to grant a stay request, as set forth in 10 C.F.R. § 2.788(e), are: (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits; (2) Whether the party will be irreparably injured unless a stay is granted; (3) Whether the granting of a stay would harm other parties; and (4) Where the public interest lies.
- C The most significant factor in deciding whether to grant a stay request is "whether the party requesting a stay has shown that it will be irreparably injured unless a stay is granted." *Westinghouse Electric Corp. (Export to the Philippines)*, CLI-80-14, 11 NRC 631, 662 (1980).
- D Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury. *Consumers Power Co. (Midland Plant, Units 1 and 2)*, ALAB-395, 5 NRC 772, 779 (1977), quoting *Renegotiation Board v. Bannerkraft Co.*, 415 U.S. 1, 24 (1974).
- CLI-84-18 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP (Restart); SPECIAL PROCEEDING; September 11, 1984; ORDER
- A In order to determine whether further hearings are required in this special restart proceeding for Unit 1 of the Three Mile Island (TMI) nuclear power plant and the scope of any

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such hearings, the Commission (1) decides to review certain portions of the Appeal Board decisions in ALAB-772, 19 NRC 1193 (1984), and ALAB-738, 18 NRC 177 (1983), and (2) requests the views of the parties regarding additional hearings. The Commission also announces its intention to determine whether the plant must remain shut down pending more hearings, should it find such hearings are required.

CLI-84-19 MISSISSIPPI POWER & LIGHT COMPANY, MIDDLE SOUTH ENERGY, INC., and SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION (Grand Gulf Nuclear Station, Unit 1), Docket No. 50-416; OPERATING LICENSE; October 25, 1984; ORDER

A To avoid giving the erroneous impression that by designating its full-power authorization for the Grand Gulf facility a "license amendment" (to a previously issued facility license authorizing low-power operation) it intended to create new hearing rights under § 189a of the Atomic Energy Act of 1954, as amended, the Commission orders the Staff to replace the "license amendment" with a separate full-power license.

CLI-84-20 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-4; DISQUALIFICATION; September 21, 1984; MEMORANDUM

A The Chairman of the NRC, finding that the standards for disqualification have not been met, denies on the merits and as untimely a motion filed by intervenors to the Shoreham licensing proceeding that sought his recusal.

CLI-84-21 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket Nos. 50-322-OL, 50-322-OL-4; OPERATING LICENSE; November 21, 1984; MEMORANDUM AND ORDER

A Upon review of the Licensing Board's September 5, 1984 Order authorizing fuel loading and precritical and cold critical testing at the Shoreham Nuclear Power Station, Unit 1, the Commission determines that the order may become effective only after another Licensing Board in this proceeding resolves certain issues remanded to it in ALAB-788, 20 NRC 1102 (1984) in favor of the applicant (or determines that they are not material to low-power testing), and the Staff resolves any remaining uncontested issues. The effectiveness of any Licensing Board order regarding the remanded (ALAB-788) issues is delayed by the Commission until 7 days after issuance.

B Every health and safety regulation is not necessarily applicable to fuel loading and to every phase of low-power operation. Rather, simple logic and common sense indicate that some regulations should have no application to fuel loading or some phases of low-power operation.

C In determining whether to grant a stay, the Commission or the adjudicatory boards consider (1) whether the moving party has made a strong showing that it is likely to prevail on the merits; (2) whether the party will be irreparably injured unless a stay is granted; (3) harm to other parties should a stay be granted; and (4) where the public interest lies. 10 C.F.R. § 2.788(e).

D The Commission is obligated under the Administrative Procedure Act and under principles of fair and efficient administration to act with reasonable dispatch on requests for licenses.

CLI-84-22 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP (Restart); SPECIAL PROCEEDING; December 13, 1984; ORDER

A The Commission denies the Intervenor's motion to defer a decision on restart of Three Mile Island Unit 1 pending investigation of alleged radiation effects of the March 1979 Unit 2 accident on the health of the local population, finding the motion and its supporting data insufficient to call into question results of previous scientific studies that indicated such radiation releases will pose minimal risks to the population.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING APPEAL BOARDS

ALAB-777 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-4 (Low Power); OPERATING LICENSE: July 20, 1984; MEMORANDUM AND ORDER

- A** Acting on a referral by the Licensing Board of its ruling denying intervenors' motion for disqualification of all three members of one of three Licensing Boards considering issues in this operating license proceeding, the Appeal Board finds the disqualification motion both legally and factually insubstantial and affirms the Licensing Board's denial of the motion.
- B** A supporting affidavit is required to accompany a motion for disqualification of an adjudicatory board member even where the factual underpinnings of the motion are matters of public record. 10 C.F.R. 2.704(c); Duquesne Light Co. (Beaver Valley Power Station, Units 1 and 2), ALAB-172, 7 AEC 42, 43 n.2 (1974); Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-225, 8 AEC 379, 380 (1974). See also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-749, 18 NRC 1195, 1197 n.1 (1983).
- C** Motions for disqualification or recusal must be submitted as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. Seabrook, supra, 18 NRC at 1198, quoting from *Marcus v. Director, Office of Workers' Compensation Programs*, 548 F.2d 1044, 1051 (D.C. Cir. 1976).
- D** An administrative trier of fact (like a federal judge) is subject to disqualification if he or she has a direct, personal, substantial pecuniary interest in a result; if he or she has a personal bias against a participant; if he or she has served in a prosecutive or investigative role with regard to the same facts as are in issue; if he or she has prejudged factual — as distinguished from legal or policy — issues; or if he or she has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues. Public Service Electric and Gas Co. (Hope Creek Generating Station, Unit 1), ALAB-759, 19 NRC 13, 20 (1984); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-101, 6 AEC 60, 65 (1973). See also *Houston Lighting and Power Co. (South Texas Project, Units 1 and 2)*, CLI-82-9, 15 NRC 1363, 1365-67 (1982); *Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970).
- E** In order to provide a basis for disqualification on prejudgment grounds, the asserted prejudgment (or appearance of prejudgment) must relate to factual, as distinguished from legal or policy, issues. *Southern Pacific Communications Co. v. AT&T*, 740 F.2d 980, 990-91 (D.C. Cir. 1984).
- F** The fact that a member of an adjudicatory tribunal may have a crystallized point of view on questions of law or policy is not a basis for his or her disqualification. *Midland*, supra, 6 AEC at 66; *Northern Indiana Public Service Co. (Bailly Generating Station, No. 1)*, ALAB-76, 5 AEC 312, 313 (1972). See also *Southern Pacific Communications Co. v. AT&T*, supra.

ALAB-778 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; PART 70 LICENSE: July 23, 1984; MEMORANDUM AND ORDER

- A** The Appeal Board affirms the Licensing Board's oral ruling denying the intervenor's motion for a hearing in connection with the applicant's revised request for authority under 10 C.F.R. Part 70 to ship, receive and store new fuel at the Limerick site prior to receipt of an operating license for the plant. The Appeal Board also denies the intervenor's request for a stay of any movement of new fuel from the outdoor storage area to inside the plant.
- B** A licensing board ruling that removes any possible adjudicatory impediments to the issuance of a 10 C.F.R. Part 70 license by the Director of the Office of Nuclear Material Safety

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- and Safeguards (NMSS) is immediately appealable. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-765, 19 NRC 645, 648 n.1 (1984).
- C A Part 70 materials license does not permit operation of a reactor at any power level, or even loading of the fuel into the reactor vessel.
- D Proof of service should accompany all filings with the Commission. A certificate of service should show the names and addresses of the persons served, the manner of service (e.g., deposit in the U.S. mail), the date of service, and averment of the person making service. See 10 C.F.R. §§ 2.712(e), 2.701(b). All filings must also be submitted to the Commission's Public Document Room or Secretary. 10 C.F.R. § 2.701(a).
- E Even though represented in proceedings by a non-lawyer, a party is expected to comply with the rules of practice. See Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-563, 10 NRC 449, 450 n.1 (1979).
- F An adjudicatory decision is usually the product of the arguments raised by the litigants. A party cannot be heard to complain later about a decision that fails to address an issue no one sought to raise.
- G Notwithstanding the absence of a hearing on an application for a materials license under 10 C.F.R. Part 70, the Commission's regulations require the staff to make a number of findings concerning the applicant and its ability to protect the public health and safety before issuance of the license. See 10 C.F.R. §§ 70.23, 70.31. Cf. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 89.-96 (1981), aff'd sub nom. Fairfield United Action v. NRC, 679 F.2d 261 (D.C. Cir. 1982).
- H An amendment to a Part 70 application gives rise to the same rights and duties as the original application.
- I A person whose interest may be affected by Part 70 licensing action is entitled to some form of adjudication of that interest, though it need not be a formal hearing before a licensing board. See section 189a(1) of the Atomic Energy Act, 42 U.S.C. § 2239a(1). The consistent agency practice, however, is for licensing boards, already presiding at operating license hearings, to act on requests to raise Part 70 issues involving the same facility. Limerick, supra, ALAB-765, 19 NRC at 651-52.
- J To be admissible for litigation in a licensing proceeding, the contention and its bases must be set forth with reasonable specificity. 10 C.F.R. § 2.714(b).
- K The following technical issues are discussed: Handling and Storage of New Fuel at the Reactor Site; Fire Protection of New Fuel at the Reactor Site.
- ALAB-779 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL; DISQUALIFICATION; August 3, 1984; MEMORANDUM
- A The Appeal Board explains, for the benefit of the parties and the Commission, its agreement with the determination of the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel not to refer to the Appeal Board his denial of intervenor's motion calling for his disqualification from participation in any matters concerning the Shoreham facility.
- B The Commission's regulation at 10 C.F.R. § 2.704(c) provides for referral to the Commission or Appeal Board of only those disqualification motions addressed to the presiding officer or a designated member of a licensing board.
- ALAB-780 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3 (Emergency Planning); OPERATING LICENSE; August 15, 1984; MEMORANDUM AND ORDER
- A The Appeal Board denies as interlocutory a party's appeal of a Licensing Board order denying that party's request for discovery. Treating the appeal as a motion for directed certification of the order, the Appeal Board denies the motion.
- B Section 2.730(f) of 10 C.F.R. generally prohibits interlocutory appeals. The single exception to that prohibition is found in 10 C.F.R. 2.714a, which allows an appeal from certain orders entered on petitions for leave to intervene in an adjudicatory proceeding.
- C An order granting discovery against a non-party to a proceeding has all of the attributes of finality insofar as that non-party is concerned and, thus, is appealable as a matter of right. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-116, 6 AEC 258, 258 (1973). See also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333 (1984).

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- D An order that denies discovery by quashing a subpoena addressed to a non-party is wholly interlocutory in character and, accordingly, is not immediately appealable. *Zion*, supra, 6 AEC at 258; 10 C.F.R. 2.730(f).
- E A Licensing Board ruling normally will qualify for discretionary interlocutory review only if it 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. *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, ALAB-405, 5 NRC 1190, 1192 (1977). Discovery rulings rarely meet those tests. *Consumers Power Co. (Midland Plant, Units 1 and 2)*, ALAB-634, 13 NRC 96, 99 (1981). See also *Houston Lighting and Power Co. (South Texas Project, Units 1 and 2)*, ALAB-608, 12 NRC 168, 170 (1980).
- ALAB-781 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; September 6, 1984; DECISION
- A Upon the appeals of intervenors and the Governor of California, the Appeal Board affirms (with respect to Unit 1) the initial decision of the Licensing Board authorizing the issuance of a full power license for the Diablo Canyon nuclear facility. Consideration of Unit 2 by the Appeal Board is postponed, pending the Board's completion of findings of fact for that unit.
- B Exceptions to an initial decision that are not briefed on appeal are deemed waived. See *Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1)*, ALAB-650, 14 NRC 43, 49 (1981), aff'd sub nom., *Township of Lower Alloways Creek v. Public Service Electric & Gas Co.*, 687 F.2d 732 (1982); *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, ALAB-461, 7 NRC 313, 315 (1978).
- C NRC regulations do not require specific consideration of the impacts of earthquakes on emergency planning. *Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3)*, CLI-81-33, 14 NRC 1091 (1981). See also *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*, ALAB-728, 17 NRC 777, 793 (1983); CLI-84-12, 20 NRC 249, 250 (1984).
- D The Commission's June 13, 1980 policy statement entitled "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969," 45 Fed. Reg. 40,101, does not mandate that the agency consider Class 9 accident sequences for plants, like Diablo Canyon, where the final Environmental Impact Statement has already been issued, unless there is a showing of special circumstances. In this instance, location of a nuclear power plant in a region of known seismicity is not a "special circumstance" under the policy statement.
- E The Commission's emergency response regulations, 10 C.F.R. 50.47(a)(2), do not require "final" Federal Emergency Management Agency (FEMA) findings on the adequacy of off-site emergency response plans before a license may be authorized. *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*, ALAB-776, 19 NRC 1373 (1984).
- F Central to the development of offsite emergency response plans under the Commission's regulations is the concept of emergency planning zones (EPZs), i.e., those areas around a plant for which planning is needed so that timely and effective actions can be taken to protect the public in the event of a radiological emergency. See 10 C.F.R. 50.47(c)(2); 10 C.F.R. Part 50, Appendix E; "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," NUREG-0654/FEMA-REP-1, Rev. 1 (November 1980) at 10. The Commission's regulatory scheme contemplates the establishment of two such zones: the plume exposure pathway that "shall consist of an area about 10 miles (16 km) in radius" and the ingestion pathway that "shall consist of an area about 50 miles (80 km) in radius." 10 C.F.R. 50.47(c)(2).
- G The Commission's regulations require that emergency response planning within the emergency planning zones meet the requirements set forth in 10 C.F.R. 50.47(b). Section 50.47(c)(2) further provides that "[t]he exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries."
- H Although the regulations provide that the exact size and configuration of a particular EPZ is to be determined with reference to site-specific factors, the wholesale enlargement of the

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Commission-prescribed EPZs by a state cannot preclude a licensing decision based upon the requirements of the NRC regulations. See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163, 1181 (1982), aff'd, ALAB-717, 17 NRC 346 (1983) (The Commission's regulations "clearly allow leeway for a mile or two in either direction, based on local factors. But it . . . clearly precludes a plume EPZ radius of, say, 20 or more miles.").

- I A party seeking to impose a radical departure from the Commission's prescribed EPZs should seek an exception to the rule pursuant to 10 C.F.R. 2.758.
 - J The standard applicable to appeal board review of a licensing board's factual findings is whether an appeal board's examination of the evidence convinces it that the record compels a different result. See Northern States Power Co. (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, 12 NRC 301, 304 (1980); Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 357 (1975).
 - K The Commission's emergency response regulations contemplate, in appropriate circumstances, predictive findings on emergency response planning so that operation of a facility need not be delayed unnecessarily by the hearing process. See San Onofre, supra, 17 NRC at 380 n.57. See generally Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1067 (1983).
 - L A Licensing Board must adequately confront the conflicting viewpoints of expert witnesses and resolve each issue before it. See generally Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-442, 6 NRC 33, 41 (1977).
- ALAB-782 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; September 6, 1984; MEMORANDUM AND ORDER
- A The Appeal Board dismisses the joint intervenors' motion to reopen the Diablo Canyon proceeding on seismic issues, finding that it lacks jurisdiction to consider the matter.
 - B Under the terms of 10 C.F.R. 2.206, a party may request the Director of Nuclear Reactor Regulation to institute a show-cause proceeding seeking to amend or revoke a nuclear power plant operating license.
 - C When a discrete issue has been decided by an appeal board and the Commission declines to review that decision, agency action is final with respect to the issue and appeal board jurisdiction is terminated. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-766, 19 NRC 981, 983 (1984); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 708-09 (1979); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 695 (1978).
 - D 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. See Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 707 (1979).
- ALAB-783 TENNESSEE VALLEY AUTHORITY (Hartsville Nuclear Plant, Units 1A and 2A), Docket Nos. STN 50-518, STN 50-520, and (Yellow Creek Nuclear Plant, Units 1 and 2), Docket Nos. STN 50-566, STN 50-567; CONSTRUCTION PERMIT; September 11, 1984; MEMORANDUM AND ORDER
- A Based upon the cancellation of Units 1A and 2A of the proposed Hartsville Nuclear Plant and the proposed two-unit Yellow Creek Nuclear Plant, the Appeal Board terminates the limited jurisdiction it previously retained over the construction permit proceedings involving these facilities.
- ALAB-784 KANSAS GAS AND ELECTRIC COMPANY, et al. (Wolf Creek Generating Station, Unit 1), Docket No. 50-482-OL; OPERATING LICENSE; September 13, 1984; DECISION
- A The Appeal Board affirms an earlier order of the Licensing Board that dismissed an intervenor as a party to this operating license proceeding based upon the Licensing Board's determination that the intervenor's single contention concerned the financial qualifications of an applicant and, under the Commission's rules, such issues are not litigable in such proceedings. The Appeal Board's action is predicated upon the Commission's promulgation of a new rule that, like its predecessor, removed consideration of an applicant's financial qualifications from operating license proceedings.

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- B Neither appeal boards nor licensing boards are empowered to entertain challenges to the legality of a Commission regulation. See 10 C.F.R. 2.758(a); see also Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89-90 (1974).
- ALAB-785 PHILADELPHIA ELECTRIC COMPANY Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; OPERATING LICENSE; September 26, 1984; DECISION
- A The Appeal Board affirms, in part, the Licensing Board's decisions in this operating license proceeding concerning the environmental impacts of the Limerick supplementary cooling water system, and remands two issues to the Licensing Board to afford the intervenor the opportunity to resubmit its contentions on those issues. Additionally, the Appeal Board denies the intervenor's motions to set aside the Licensing Board's decisions on the basis of new evidence.
- B Federal agencies are precluded from taking action that "substantially conflict[s]" with a comprehensive plan for the development and use of the water resources of the Delaware River Basin (DRB) when it has been adopted by the Delaware River Basin Commission (DRBC) with the concurrence of the Commission's federal representative. See DRB Compact, Pub. L. No. 87-328, § 15.1(s)1, 1961 U.S. Code Cong. & Ad. News (75 Stat. 688) 775, 807-08.
- C In the usual case, environmental hearings await the preparation and circulation of the staff's final environmental statement. See, e.g., Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539, 546 (1975).
- D Although an agency must ordinarily adhere to its own rules and established practices, it is always within the discretion of an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it. See *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 539 (1970), quoting *NLRB v. Monsanto Chemical Co.*, 205 F.2d 763, 764 (8th Cir. 1953).
- E A licensing board may direct the staff to publish its environmental documents by specific dates if, after affording the parties — including the staff — opportunity to be heard on the matter, it finds no further delay is justified. *Offshore Power Systems (Floating Nuclear Power Plants)*, ALAB-489, 8 NRC 194, 208 (1978). See also 49 Fed. Reg. 9352, 9361 & n.14, 9383-84 (1984) (the latter to be codified at 10 C.F.R. § 51.15).
- F NEPA does not address the timing of an environmental statement, as long as it is available by the time of the agency's recommendation or report on the proposed federal action. *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 93-94 (1st Cir. 1978).
- G The NRC could neither authorize a utility to withdraw water from the Delaware River in amounts that exceed that allocated by the DRBC, nor require the DRBC to make any particular allocation decision among the competing interests for the Delaware River. But the NRC is not precluded from examining the effects of the amount withdrawn for a nuclear power plant and acting to lessen the impact of a plant on the Delaware River.
- H The Commission has an independent responsibility to fulfill the purposes of NEPA to the fullest extent possible. 42 U.S.C. § 4332. See *Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 and 2)*, ALAB-506, 8 NRC 533, 544-49 (1978). But see *Bucks County Board of Commissioners v. Interstate Energy Co.*, 403 F. Supp. 805, 808 (E.D. Pa. 1975) (DRBC is "the federal agency designated to implement NEPA for all projects affecting the Delaware River Basin"). In carrying out its NEPA duties, the NRC need not perform a wholly independent analysis from scratch, but may rely, if it wishes, on scientific data and inferences drawn by other agencies.
- I To the extent that an application for an operating license reflects some actual changes in connection with the facility as it was contemplated at the time of issuance of the construction permit, such changes are within the scope of the operating license proceeding. On the other hand, if activity already authorized by the construction permit results in impacts not previously expected, that is a matter for resolution by the Director of Nuclear Reactor Regulation pursuant to 10 C.F.R. §§ 2.202, 2.206. See *Consumers Power Co. (Midland Plant, Units 1 & 2)*, ALAB-674, 15 NRC 1101 (1982).
- J NEPA does not require the NRC to consider those environmental impacts of a water diversion project solely attributable to a separate entity otherwise unassociated with the nuclear plant, when the total impacts have already been evaluated by another agency with oversight of

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the entire project. See *Henry v. FPC*, 513 F.2d 395 (D.C. Cir. 1975). See also *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976).

- K** Section 106 of the National Historic Preservation Act (NHPA) requires the head of any federal agency having authority to license any undertaking, prior to the issuance of any license, to take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such federal agency also must afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertaking. 16 U.S.C. § 470f.
- L** Section 110(f) of NHPA requires agencies to undertake in advance all possible planning and actions necessary to minimize any direct and adverse harm to a National Historic Landmark as a consequence of any federal approval. 16 U.S.C. § 470h-2(f).
- M** The requirement of the Fish and Wildlife Coordination Act, 16 U.S.C. § 662(a) — that an agency "first shall consult" with the U.S. Fish and Wildlife Service whenever any waters are proposed or authorized to be diverted pursuant to a federal license — does not prescribe exactly when and how this consultation is to occur, so long as it precedes any definitive agency action.
- N** Section 102 of NEPA, 42 U.S.C. § 4332(2)(C), requires consideration of alternatives only for major federal actions "significantly affecting the quality of the human environment."
- O** Section 7 of the Endangered Species Act (ESA), as amended in 1979, 16 U.S.C. § 1536(a)(2), provides that each federal agency must, in consultation with and with the assistance of the Secretary of the Interior or Commerce, insure that any agency action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of the habitat of such species. In fulfilling this requirement, each agency must use the best scientific and commercial data available.
- P** Section 7 of ESA does not require acquiescence to National Marine Fisheries Service views, just consultation. *Sierra Club v. Froehike*, 534 F.2d 1289, 1303-04 (8th Cir. 1976). Cf. *Lake Erie Alliance for the Protection of the Coastal Corridor v. Army Corps of Engineers*, 526 F. Supp. 1063, 1081 (W.D. Pa. 1981), *aff'd*, 707 F.2d 1392 (3d Cir.), *cert. denied*, ___ U.S. ___, 104 S. Ct. 277 (1983).
- Q** Congress did not design ESA to protect individual members of an endangered species, only the species as a whole. The smallest units afforded protection are "subspecies" and "any distinct population segment . . . which interbreeds when mature." 16 U.S.C. § 1532(16).
- R** The Commission's *ex parte* rules prohibit communications between the parties to contested proceedings, on the one hand, and, on the other, those with decisionmaking responsibilities — i.e., Commissioners, their staffs and advisers, members of adjudicatory boards, and their staffs and advisers. 10 C.F.R. § 2.780. See Administrative Procedure Act, 5 U.S.C. § 557(d). The "NRC staff" does not advise the Commission or the boards. Rather, it is a distinct and separate entity that is a party to a proceeding and may confer with other parties. See 10 C.F.R. § 2.102(a).
- S** Adjudicatory boards can act only on applications before them and cannot dictate changes in such applications that are a matter of management prerogative.
- T** An applicant is obliged to notify the board and the parties promptly of any significant changes in its application. *Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3)*, ALAB-677, 15 NRC 1387, 1391-94 (1982).
- U** Parties to an adjudicatory proceeding must be afforded an opportunity to challenge any newly amended, significant portion of an application under consideration. See *Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2)*, ALAB-778, 20 NRC 42, 48 (1984).
- V** In making its determinations, an adjudicatory board must decide only the federal questions before it, without being unduly influenced by the decisions of others with differing concerns and responsibilities. See *Kerr-McGee Corp. (West Chicago Rare Earths Facility)*, CLI-82-2, 15 NRC 232, 269 (1982), *aff'd sub nom. City of West Chicago v. NRC*, 701 F.2d 632 (7th Cir. 1983), and cases cited. See also *Cross-Sound Ferry Services, Inc. v. United States*, 573 F.2d 725, 732-33 (2d Cir. 1978).

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ALAB-786 LOUISIANA POWER & LIGHT COMPANY (Waterford Steam Electric Station, Unit 3), Docket No. 50-382-OL; OPERATING LICENSE; October 2, 1984; MEMORANDUM AND ORDER

- A The Appeal Board defers ruling on intervenors' motion to reopen the record on the issue of the adequacy of safety-related concrete construction at Waterford, pending receipt of certain information that it requests from the NRC staff.
- B A successful motion to reopen the record of an adjudicatory proceeding must be timely, address a significant safety or environmental issue, and show that a different result might have been reached had the newly proffered material been considered initially. It must also present more than bare allegations. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3); ALAB-753, 18 NRC 1321, 1324-25 (1983).
- C A newspaper article alone does not provide a basis for reopening a closed adjudicatory record. *Id.* at 1324-25.
- D At a minimum, new material in support of a motion to reopen a closed record must be set forth with a degree of particularity in excess of the basis and specificity requirements contained in 10 C.F.R. 2.714(b) for admissible contentions. Such supporting information must be more than mere allegations; it must be tantamount to evidence. And, if such evidence is to affect materially the previous decision, it must possess the attributes set forth in 10 C.F.R. 2.743(c) defining admissible evidence for adjudicatory proceedings (i.e., it must be relevant, material, and reliable). Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2); ALAB-775, 19 NRC 1361, 1366-67 (1984). See also *id.* at 1367 n.18.
- E The burden of satisfying the requirements for reopening a closed record is on the proponent of the motion and is a "heavy" one. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1); ALAB-462, 7 NRC 320, 338 (1978).
- F At a minimum, the staff has a duty to submit to an adjudicatory board by way of a Board Notification any information that is clearly relevant to a matter pending before the board. Such notification should be timely and include a discussion of its relevance.
- G As a general matter, the NRC's Executive Director for Operations determines which staff personnel testify at hearings. See 10 C.F.R. § 2.720(h)(2)(i).

ALAB-787 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-4 (Low Power); OPERATING LICENSE; October 5, 1984; MEMORANDUM AND ORDER

- A The Appeal Board determines that the Commission has not deprived it of jurisdiction to review the Licensing Board's disposition of the intervenors' physical security contentions in this operating license proceeding, and dismisses, as interlocutory, intervenors' appeal of the Licensing Board decision denying certain of those contentions.
- B Normally the Commission does not undertake an immediate effectiveness review of a licensing board initial decision in an operating license proceeding unless the decision authorizes facility operation at greater than five percent of rated power. See 10 C.F.R. 2.764(f)(1).
- C Commission immediate effectiveness reviews have no bearing upon the exercise by an appeal board of the general appellate review authority in 10 C.F.R. Part 50 proceedings that is conferred by 10 C.F.R. 2.785(a), 10 C.F.R. 2.764(g). If the Commission desires to preclude or to limit the exercise of that authority in a particular Part 50 proceeding, it must — and does — say so expressly. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147 (1979); *id.*, CLI-81-19, 14 NRC 304, 305 (1981); *id.*, CLI-81-34, 14 NRC 1097, 1098 (1981).
- D The Commission's rules of practice bar appeal of an interlocutory order that does not dispose of a major segment of a proceeding, or terminate the participational rights of a party. 10 C.F.R. 2.730(f). See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073, 1074-75 (1983), quoting Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975), and citing Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit No. 1), ALAB-635, 13 NRC 309, 310-11 (1981). By way of contrast, see Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-784, 20 NRC 845 (1984).

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ALAB-788 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1),
Docket No. 50-322-OL; OPERATING LICENSE; October 31, 1984; DECISION

- A The Appeal Board affirms the initial decision rendered by the Licensing Board in this operating license proceeding, LBP-83-57, 18 NRC 445 (1983), with the exception of three matters that are remanded to the Licensing Board: (1) the question whether the plant may be operated pending resolution of a specified unresolved safety issue; (2) resolution of certain issues associated with housekeeping; and (3) the issue of environmental qualification of electrical equipment. Additionally, the Appeal Board vacates as unnecessary a condition imposed by the Licensing Board requiring the applicant to adopt a particular definition of the regulatory term "important to safety."
- B The quality assurance requirements contained in 10 C.F.R. Part 50, Appendix B or their equivalent do not automatically apply to "important to safety" structures, systems and components of a nuclear power plant.
- C The Atomic Energy Act of 1954, as amended, makes clear the Commission's authority to regulate all items contained in a nuclear power plant in order to protect the public health and safety. See 42 U.S.C. 2201(i).
- D The NRC expects licensees to adhere to their obligations and commitments and will not hesitate to issue appropriate orders to make sure that such commitments are met. 10 C.F.R. Part 2, Appendix C, § IV E.
- E There is no express regulatory premise for requiring a single study directed exclusively to systems interactions at nuclear power plants. See generally Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 810-11 (1983). But, an applicant must demonstrate that safety systems are not compromised because of their interrelationship with nonsafety or other safety systems.
- F Where there is a generic unresolved safety issue (USI) involving a discerned safety problem, the staff is obliged to explain why the USI does not stand in the path of construction permit or operating license issuance. See Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 247-48 (1978) and Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 775 (1977).
- G Criterion XVIII of Appendix B to 10 C.F.R. Part 50 requires that a comprehensive system of planned and periodic audits be carried out to verify compliance with and determine effectiveness of the Appendix B quality assurance program. Random-sampling statistical methodology, however, is not mandated by this requirement.
- H Quality assurance review involves two separate, yet interrelated, inquiries, i.e., whether deficiencies have been uncovered and corrected, and whether a generic problem exists that could affect the confidence in the safety of the facility. See Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983).
- I Error-free construction of a nuclear power plant is not mandated for licensing. Rather, the Atomic Energy Act of 1954, as amended, and the Commission's implementing regulations require a finding of reasonable assurance that, as built, the facility can and will be operated without endangering the public health and safety. *Ibid.*
- J In examining claims of quality assurance deficiencies, an adjudicatory board must consider the implication of those deficiencies in terms of safe plant operation. *Ibid.*
- K In reviewing quality assurance, an adjudicatory board must be satisfied not only that construction defects have been corrected but that there has been no overall breakdown of quality assurance. See *ibid.* Numerous imperfections, even if minor, may be indicative of a more widespread or generic quality assurance problem.
- L Not every violation of a quality assurance implementing manual or procedure constitutes a violation of 10 C.F.R. Part 50, Appendix B. See 10 C.F.R. Part 2, Appendix C, § IV A.
- M Criterion XVIII of 10 C.F.R. Part 50, Appendix B does not establish requirements for the maximum amount of time allowed in tracing the data used in design calculation, but requires simply that records be identifiable and retrievable.
- N Criterion I of 10 C.F.R. Part 50, Appendix B requires that the persons and organizations performing quality assurance functions have sufficient authority and organizational freedom to identify quality problems; initiate, recommend, or provide solutions; and verify implementation of solutions.

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- O Mere demonstration that a licensing board erred is not sufficient to warrant appellate relief. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 8 NRC 741, 756 (1977). The complaining party must demonstrate actual prejudice — i.e., that the ruling had a substantial effect on the outcome of the proceeding. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1096 (1983).
- P Under the Commission's rules of practice, an adjudicatory board must use its powers to assure that the hearing is focused upon the matters in controversy and that the hearing process is conducted as expeditiously as possible, consistent with the development of an adequate decisional record. 10 C.F.R. Part 2, Appendix A, § V. Adjudicatory boards may impose time limits on cross-examination, require parties to pursue certain matters first, or limit evidentiary material to that information that is genuinely the subject of controversy.
- Q Certain matters may be left to the staff for post-hearing resolution where hearings would not be helpful and the adjudicatory board can make the findings requisite to issuance of a license. Consolidated Edison Co. of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951 (1974).
- R Regulatory guides do not set out mandatory regulatory requirements. Methods and solutions different from those set out in the guides can be acceptable if they provide a basis for the findings requisite to the issuance of a license. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-698, 16 NRC 1290, 1299 (1982), rev'd in part on other grounds, CLI-83-22, 18 NRC 299 (1983).
- S Seismic design response spectra set forth in Regulatory Guide (Reg. Guide) 1.60 are designed for applicability at essentially any location in the country and may be unnecessarily conservative for some plants. "Design Response Spectra for Seismic Design of Nuclear Power Plants," Reg. Guide 1.60 (Rev. 1) (Dec. 1973).
- T The mere pendency of confirmatory staff analyses regarding litigated issues does not automatically foreclose board resolution of those issues.
- U Section 189 of the Atomic Energy Act, 42 U.S.C. § 2239, which provides parties with an opportunity for a hearing, does not preclude the adoption of procedures for written cross-examination.
- V The Administrative Procedure Act (APA), 5 U.S.C. § 556(d), expressly authorizes agencies in certain licensing cases to adopt procedures for the submission of all or part of the evidence in written form as long as the parties are not prejudiced.
- W The APA does not give parties an unlimited right to submit rebuttal evidence and conduct cross-examination. Rather, these rights are bounded by a need for a full and true disclosure of the facts. *Ibid.*
- X The following technical issues are discussed: Safe Shutdown Earthquake; Quality Assurance Requirements, Important to Safety and Safety-Related; Turbine Bypass System; Reactor Core Isolation Cooling (RCIC) System; Standby Liquid Control (SLC) System; High Water Level Trip; Rod Block Monitor (RBM); Reactor Water Cleanup (RWCU) System; Systems Interaction; Unresolved Safety Issue (USI) A-17 (Systems Interaction); USI A-47 (Control System Failures); Probabilistic Risk Assessments (PRA); Event Tree/Fault Tree Methodology of a PRA; Housekeeping; Control of Calculations; Separation of Electrical Cables; Quality Assurance Organization; Water Hammer; Environmental Qualification; Post-Accident Monitoring; Passive Mechanical Valve Failure; Anticipated Transient Without Scram (ATWS); ASME Code; Single Failure Criterion; Scram; Seismic Design; Earthquake Motion (displacement, velocity, acceleration); Seismic Response Spectrum; Mark II Containment; Vacuum Breakers; Design Basis Loads; Containment Leakage Tests; Safety Relief Valves (SRVs) (Two-Stage and Three-Stage SRVs).
- ALAB-759 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2); Docket Nos. 50-352, 50-353; OPERATING LICENSE; November 5, 1984; MEMORANDUM AND ORDER
- A The Appeal Board denies intervenors' motions that seek a stay of the issuance of a low-power license for the Limerick facility. Treating the motions as requests to suspend the low-power license authorization (because the license had already issued by the time the Appeal

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Board received the motions), the Appeal Board finds that the stay criteria have not been satisfied and that one of the motions is untimely.

B In ruling on a stay request, appeal boards are required by the Commission's Rules of Practice to consider the same four factors traditionally applied by courts in deciding similar motions: (1) whether the moving party has made a strong showing that it is likely to prevail on the merits; (2) whether the party will be irreparably injured unless a stay is granted; (3) whether the granting of a stay would harm other parties; and (4) where the public interest lies. 10 C.F.R. § 2.788(e).

C The second factor contained in 10 C.F.R. § 2.788(e), irreparable harm, is often the most important in determining the need for a stay. United States Department of Energy (Clinch River Breeder Reactor Plant), ALAB-721, 17 NRC 539, 543-44 (1983), Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-437, 6 NRC 630, 632 (1977).

D The issuance of a low-power license does not begin an "inexorable" process that threatens the public safety. A full-power license will not and cannot be issued to any utility until it has demonstrated that the plant in question can be operated safely and in accordance with myriad regulatory requirements.

E If a safety problem is revealed at any time during low-power operation or as a result of the merits review of a party's appeal of authorization of that operation, the low-power license can be suspended. See, e.g., Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1), CLI-81-30, 14 NRC 950 (1981).

F The Commission's long-held view on economic concerns is that they are not within the proper scope of issues litigated in NRC licensing proceedings. A nuclear plant's possible effect on rates, the utility's solvency and the like are best raised before state economic regulatory agencies. Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975 (1984).

G Under 10 C.F.R. §§ 2.788(a) and 2.710, a party is obliged to seek a stay within 15 days of the service date of a licensing board decision.

H A party's motion for stay will be denied where the movant wholly fails to address the stay criteria of 10 C.F.R. § 2.788(e). See Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 270-71 (1978).

ALAB-790 VIRGINIA ELECTRIC AND POWER COMPANY (North Anna Power Station, Units 1 and 2), Docket Nos. 50-338-OLA-2, 50-339-OLA-2; OPERATING LICENSE AMENDMENT, November 20, 1984; MEMORANDUM AND ORDER

A Determining that, in the particular circumstances of the case, the appellant had sustained no present or potential injury by the Licensing Board's denial of its intervention petition, the Appeal Board dismisses its appeal from that denial.

B Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), requires a federal agency to prepare an environmental impact statement (EIS) in every recommendation or report on proposals for legislation or other major federal actions significantly affecting the quality of the human environment. If, however, after an initial environmental assessment, the agency determines that no significant impact will result from a proposed action, without additional analysis it may publish a statement indicating that such is the case.

C It is well-settled that in Commission practice as in judicial proceedings, only a party aggrieved may appeal. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-644, 13 NRC 903, 914 (1981), and cases there cited.

ALAB-791 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP (Restart Proceeding-Management Rev'nand); SPECIAL PROCEEDING, December 3, 1984; MEMORANDUM AND ORDER

A The Appeal Board, concluding that interlocutory appellate review is not warranted, denies intervenor's motion seeking directed certification and reversal of a Licensing Board-ruling that prevented intervenor from introducing into evidence the testimony of two former NRC Commissioners.

B The Ethics in Government Act prohibits former federal officials from attempting to influence their former agencies with respect to particular matters in which they were personally and substantially involved while government employees. 18 U.S.C. § 207(a).

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- C Failure of a party to address the standards for directed certification in responding to a motion seeking such review may be construed as a waiver of any argument regarding the propriety of directed certification. Cf. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-734, 18 NRC 11, 14 n.4 (1983).
- D In deciding whether to exercise its directed certification authority, an appeal board considers whether a licensing board 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. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 171 (1983), quoting Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).
- E Determinations regarding what evidence should be admitted rarely, if ever, have a pervasive or unusual effect on the structure of a proceeding so as to warrant interlocutory intervention by an appeal board. See Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-353, 4 NRC 381 (1976); Toledo Edison Co. (Dunns-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98 (1976). See also Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1113 (1982) (error must fundamentally alter the very shape of the proceeding to warrant interlocutory review).
- F The fact that an evidentiary ruling involves a matter that may be novel or important does not alter the strict standards for directed certification. See Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-741, 18 NRC 371 (1983).
- G The Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 456 (1981), neither explicitly nor implicitly relaxes the standards for directed certification. Rather, it simply exhorts the licensing boards to put before appeal boards legal or policy questions that, in their judgment, are significant and require prompt appellate resolution. North Anna, *supra*, 18 NRC at 375. See also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-780, 20 NRC 378, 382 (1984); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), ALAB-742, 18 NRC 380, 384 n.10 (1983).
- H The language regarding directed certification in § V(f)(4) of Appendix A to the Rules of Practice, like the Commission's Policy Statement, CLI-81-8, *supra*, 13 NRC at 456, does not relax the standards for directed certification.
- ALAB-792 LOUISIANA POWER & LIGHT COMPANY (Waterford Steam Electric Station, Unit 3), Docket No. 50-382-OL; OPERATING LICENSE; December 12, 1984; MEMORANDUM
- A The Appeal Board determines that it has jurisdiction to rule on intervenors' motion to reopen the record where the motion raises issues that have a reasonable nexus to other issues still pending before it.
- B Issues that cannot properly be raised in adjudication may be presented in a petition filed under 10 C.F.R. § 2.206 with the Director of Nuclear Reactor Regulation (NRR).
- C If an appeal board has previously considered an issue and (by either the action or inaction of the Commission) the determination amounts to final agency action on that issue, the appeal board has no jurisdiction over a subsequent attempt to raise that matter once again. Such requests are, in general, more properly directed to NRR, even though other issues in the same proceeding may still be pending before the board. When an issue sought to be considered anew, or to be reconsidered, has a reasonable nexus to a discrete matter still pending before an appeal board, the board has jurisdiction over it. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-782, 20 NRC 838, 840-42 (1984); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-706, 19 NRC 981, 983 (1984); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1329-30 (1984); Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-579, 11 NRC 223, 224-26 (1980); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 705-09 (1979); Public Service Co. of Indiana (Marble Hill Generating Station, Units 1 and 2), ALAB-530, 9 NRC 261, 262 (1979); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 695-96 (1978).
- D The fact that an appeal board's pending inquiry into an issue arises from a motion to reopen, rather than from an appeal from a Licensing Board decision, is of no moment to a

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determination of its jurisdiction over a related matter. Rather, as was stated in *North Anna*, supra, 9 NRC at 709, the decisive factor is whether, except for those limited issues as to which jurisdiction has been expressly retained, the case has been decided. The focus in determining jurisdiction is on whether and what issues remain before the board, not how they got there.

ALAB-793 COMMONWEALTH EDISON COMPANY (Byron Nuclear Power Station, Units 1 and 2), Docket Nos. STN 50-454, STN 50-455; OPERATING LICENSE; December 20, 1984; DECISION

- A** The Appeal Board affirms the Licensing Board's authorization of the issuance of operating licenses for the two-unit Byron facility. It does so by affirming the Licensing Board's initial decision (LBP-84-2, 19 NRC 36 (1984)) in part and the supplemental initial decision (LBP-84-41, 20 NRC 1203 (1984)) issued by that Board pursuant to the Appeal Board's decision (ALAB-770, 19 NRC 1163 (1984)) on the applicant's appeal of the initial decision.
- B** A party is always free to urge the affirmance of a trial tribunal's result on grounds other than those assigned by that tribunal. See, e.g., *Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2)*, ALAB-264, 1 NRC 347, 357 (1975).
- C** Utilities engaged in the construction of nuclear power plants are required by the Commission's regulations to have a quality assurance program that, among other things, verifies that activities affecting the safety-related functions of structures, systems, and components have been performed correctly. 10 C.F.R. Part 50, Appendix B, Criterion I.
- D** While it must retain ultimate responsibility for full compliance with all quality assurance requirements, an applicant may delegate to its construction contractors the establishment and execution of individual quality assurance programs. *Ibid.*
- E** An integral part of all acceptable construction quality assurance programs is confidence that the individuals carrying out the inspections have the qualifications to fulfill their responsibilities properly.
- F** It is of crucial importance in the assessment of the adequacy of a quality assurance program that there be satisfactory proof of the inspectors' qualifications. Normally, that proof will take the form of quality assurance documentation establishing that the individual in question has the training and experience appropriate to his or her assigned function and has passed any requisite qualifying examinations.
- G** Effective April 26, 1982, the Commission amended its regulations to prohibit the litigation of need for power and alternative energy source issues in operating license proceedings. 47 Fed. Reg. 12,940 (1982). The prohibition currently is found in 10 C.F.R. 51.53(c). See also 10 C.F.R. 51.23(e).
- H** Within this agency, only the Commission itself has the authority to invalidate one of its own rules or regulations. See 10 C.F.R. 2.758(fa); *Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1)*, ALAB-784, 20 NRC 845, 846 (1984); *Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2)*, ALAB-218, 8 AEC 79, 89 (1974).
- I** Undergirding the 1982 amendment prohibiting litigation of need for power and alternative energy sources issues at the operating license stage was the Commission's belief that, as a general matter, no useful purpose is served by considering such matters at that time. See 47 Fed. Reg. 12,940.
- J** All nuclear power plants must be designed and built to protect the public from the hazards of radioactive releases should the plant be subjected to movements in the earth's crust. *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2)*, ALAB-644, 13 NRC 903, 909 (1981), quoting *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2)*, ALAB-519, 9 NRC 42, 45 (1979).
- K** Under the Commission's regulatory scheme, protection from movements in the earth's crust is achieved in part through the requirement that the plant be designed to withstand the maximum vibratory ground motion (in terms of acceleration) that might result upon the occurrence of one of two different possible seismic events: the Safe Shutdown Earthquake (SSE) and the Operating Basis Earthquake (OBE). 10 C.F.R. 100, Appendix A, §§ III(c), (d).
- L** The SSE is the most powerful earthquake ever expected to occur at a plant site. The plant must be able to withstand the forces of the SSE without releasing dangerous quantities of radioactivity. *Diablo Canyon*, ALAB-644, supra, 13 NRC at 911.

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- M** The OBE is the strongest earthquake considered likely to occur during a plant's operating lifetime. The facility must be designed and built to function through the OBE without creating undue risk to the public health and safety. *Ibid.*
- N** The vibratory ground acceleration assigned to the OBE must be at least one-half that assigned to the SSE unless a lesser value is justified. 10 C.F.R. 100, Appendix A, §§ II, V(a)(2); Diablo Canyon. ALAB-644, *supra*, 13 NRC at 989-92.
- O** Before selecting the SSE and OBE that are to serve as the design bases for its proposed facility, a utility is required to investigate in sufficient scope and detail, *inter alia*, the structural geologic conditions of the site and surrounding region, including its geologic history. 10 C.F.R. 100, Appendix A, § IV.
- P** If there is a fault within 200 miles of a site that might be of significance in establishing the SSE, the applicant must further determine whether that fault is "capable." *Ibid.*
- Q** A fault is a large-scale dislocation or distortion within the earth's crust along which differential slippage of the adjacent earth materials has occurred parallel to the fracture plane. *Id.* § III(e).
- R** A capable fault is defined in 10 C.F.R. Part 100, Appendix A, § III(g) as a fault which has exhibited one or more of the following characteristics:
1. Movement at or near the ground surface at least once within the past 35,000 years or movement of a recurring nature within the past 500,000 years.
 2. Macro-seismicity instrumentally determined with records of sufficient precision to demonstrate a direct relationship with the fault.
 3. A structural relationship to a capable fault according to characteristics (1) or (2) of this paragraph such that movement on one could be reasonably expected to be accompanied by movement on the other.
- S** If there is a capable fault within 200 miles of a plant, it must then be evaluated for its potential for causing vibratory ground motion and surface displacement, and taken into account in establishing the SSE. *Id.* §§ IV(a)(7) and 18), IV(b).
- T** If an investigation both demonstrates that a particular fault is structurally associated with geologically old structural features (such as many of those found in the eastern region of the United States) and uncovers no affirmative evidence of capability, that fault shall be presumed to be not capable. *Id.* § III(g).
- U** Failure of a party to brief issues adequately deprives the adjudicatory boards precisely of that assistance which the Rules of Practice are designed to have an appellant provide, *i.e.*, to flesh out the bare bones exceptions with the precise portion of the record relied on in support of the assertion of error. 10 C.F.R. § 2.762(a), and to present the boards with sufficient information or argument to allow an intelligent disposition of the issues. See Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-270; 1 NRC 473, 475 (1975).
- V** Under its long-standing practice, the Appeal Board reviews, *sua sponte*, any final disposition of a licensing proceeding that either was or had to be founded upon substantive determinations of significant safety or environmental issues. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), ALAB-689; 16 NRC 887, 890 (1982); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-665; 14 NRC 799, 803 (1981), quoting Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571; 10 NRC 687, 692 (1979); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-509; 8 NRC 679, 683 n.8 (1978).
- W** The following technical issues are discussed: Quality Assurance Program (and Reinspection Program); Quality Assurance Inspector Certification and Qualification; Seismic Design (Operating Basis Earthquake (OBE) and Safe Shutdown Earthquake (SSE)); Capable Faults; Earthquake Ground Acceleration; Core Drilling; Refraction Seismography; Relative Age Dating of Fault; Absolute Age Dating of Fault; Scarp (or escarpment); Modified Mercalli Intensity Scale; Richter Scale; Cable Tray Hangers; Whole Body Counting and Strontium-90.
- ALAB-794 DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413-OL, 50-414-OL; OPERATING LICENSE, December 24, 1984; MEMORANDUM AND ORDER**
- A** The Appeal Board denies intervenors' application for a stay of the authorization of the low-power license issued in this operating license proceeding for Unit 1 of the Catawba facility.

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The Board determines that the stay criteria set forth at 10 C.F.R. 2.788(e) have not been satisfied.

- B** The established criteria to be applied in passing upon stay requests in NRC adjudicatory proceedings are set forth in 10 C.F.R. 2.788(e):
- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
 - (2) Whether the party will be irreparably injured unless a stay is granted;
 - (3) Whether the granting of a stay would harm other parties; and
 - (4) Where the public interest lies.
- C** The NRC's stay criteria are the same as those applied by the courts. See, e.g., *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).
- D** Under NRC Rules of Practice, stay applications may not exceed ten pages in length. See 10 C.F.R. 2.788(b).
- E** The second factor contained in section 2.788(e) of 10 C.F.R., irreparable harm, is often the most important in determining the need for a stay. *Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2)*, ALAB-789, 20 NRC 1443, 1446 (1984), and cases cited.

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LBP-84-26 KANSAS GAS & ELECTRIC COMPANY, et al. (Wolf Creek Generating Station, Unit 1), Docket No. 50-482-OL (ASLBP No. 81-453-03-OL); OPERATING LICENSE; July 2, 1984; INITIAL DECISION

- A** The Licensing Board issues an Initial Decision authorizing the issuance of an operating license for the Wolf Creek Generating Station, Unit No. 1, provided two conditions have been met prior to the issuance of the operating license.
- B** Having accepted the benefits of a stipulation, one is estopped from challenging it. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 767-68 (1975).
- C** At the operating license stage, a Licensing Board passes only upon contested matters. While a Licensing Board has the residual power to delve into any serious matter, even if no party has put it into issue, here the Board determines that there were no serious matters which it should raise sua sponte, and thus, the decision as to all other matters which need be considered prior to the issuance of this operating license is the responsibility of the NRC Staff and it alone. 10 C.F.R. §§ 2.104(c), 2.760a; 10 C.F.R. Part 2, Appendix A, VIII(b); Consolidated Edison Co. of New York (Indian Point, Units 1, 2 & 3), ALAB-319, 3 NRC 188 (1976).
- D** If the Licensing Board, pursuant to 10 C.F.R. § 2.754, directs that all parties should file proposed findings of fact, conclusions of law and briefs, any party failing to file these submissions shall be deemed in default. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-280, 2 NRC 3, 4 n.2 (1975).
- E** Emergency planning is a continuous process and a Licensing Board's findings are predictive.
- F** Minor details, which are not set forth in the emergency plans, are a proper subject for post-hearing resolution by the NRC Staff. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1106 (1983).
- G** The following technical issue is discussed: Emergency Plans.

LBP-84-27 KANSAS GAS & ELECTRIC COMPANY, et al. (Wolf Creek Generating Station, Unit 1), Docket No. 50-482-OL (ASLBP No. 81-453-03-OL); OPERATING LICENSE; July 26, 1984; MEMORANDUM AND ORDER

- A** Pursuant to Applicants' Motion for Clarification, concurred in by all parties, the Licensing Board clarifies its Initial Decision (LBP-84-26, 20 NRC 53) issued on July 2, 1984.

LBP-84-28 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; July 26, 1984; MEMORANDUM AND ORDER

- A** The Licensing Board, having admitted a broad emergency planning contention prior to the completion of State and local plans, grants Applicants' motion to require intervenors to "particularize" its contention by providing specificity and bases.
- B** When a broad contention has been admitted at an early stage in the proceeding, intervenors should be required to provide greater specificity and to particularize bases for the contention when the information required to do so has been developed.

LBP-84-29 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor), Docket No. 50-142-OL; FACILITY LICENSE RENEWAL; July 17, 1984; MEMORANDUM

- A** Licensing Board reviews allegations of misconduct made against technical members of the NRC Staff and concludes that although the information available to the Board does not conclusively show misconduct, that information does raise concerns for the integrity of the adjudicatory process. These concerns are brought to the Commission's attention for whatever action

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it deems necessary. Additionally, the Board recommends that the Commission take up a Staff proposal for rulemaking which it had earlier declined to entertain.

LBP-84-29A SUFFOLK COUNTY AND STATE OF NEW YORK MOTION FOR DISQUALIFICATION OF CHIEF ADMINISTRATIVE JUDGE COTTER (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-4 (ASLBP No. 84-503-01 Misc.); DISQUALIFICATION, August 1, 1984. MEMORANDUM AND ORDER

- A The Chief Administrative Judge of the Atomic Safety and Licensing Board Panel denies Intervenor Suffolk County's motion for recusal on the grounds that he has no adjudicatory responsibilities in connection with the Shoreham proceeding, and consequently no adjudicatory responsibility from which to recuse himself.
- B The rules governing motions for recusal and their resolution are generally the same for the administrative judiciary as for the judicial branch itself, and the Commission has followed that practice.
- C The Chief Administrative Judge of the Atomic Safety and Licensing Board Panel has no authority to decide any issue pending in the Shoreham proceeding, and consequently no adjudicatory responsibility from which to recuse himself.
- D The Chief Administrative Judge of the Atomic Safety and Licensing Board Panel has no authority to refuse to perform the administrative responsibilities of his position.

LBP-84-29B CAROLINA POWER & LIGHT COMPANY and NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY (Shearon Harris Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-400, 50-401 (ASLBP No. 82-472-03-OL); OPERATING LICENSE; August 3, 1984. FINAL SET OF RULINGS ON ADMISSIBILITY OF OFFSITE EMERGENCY PLANNING CONTENTIONS. RULING ON PETITION FOR WAIVER OF NEED-FOR-POWER RULE, AND NOTICE OF UPCOMING TELEPHONE CONFERENCE CALL

- A In this Memorandum and Order, the Licensing Board completes its rulings on the admissibility of the over 100 emergency planning contentions submitted by various intervenors.
- B Emergency plans are not called upon by regulation or guidance to give an account of materials available for evacuee decontamination. NUREG-0654 focuses on providing for decontamination of emergency workers, who would be likely to face greater contamination dangers than evacuees would. See the evaluation criteria under § II.K in NUREG-0654. However, the plans must show that the responsibility for evacuee decontamination has been assigned to organizations which will be adequately trained to carry out the task.
- C Any large decontamination of evacuees or vehicles at the border of the plume EPZ would very likely impede prompt evacuation of the most threatened part of the population around the plant. The desire to avoid purported safety measures that would impede evacuation is reflected in evaluation criterion II.J.10.h of NUREG-0654. It calls for siting the host areas, and thus the principal decontamination centers, "at least 5 miles, and preferably 10 miles, beyond the boundaries of the plume [EPZ]."
- D The emphasis in evaluation criteria II.M.1 and II.M.3-4 in NUREG-0654 is on planning for the decision to reenter, not on measures to be executed during reentry and recovery. Presumably, the thought behind this emphasis is that the decision to reenter is equivalent to a decision to relax protective measures (evaluation criterion M.1 in NUREG-0654, § II) and is therefore to be made with a degree of care which requires some advance thought. However, since reentry and recovery would not take place under the same time pressures protective actions would, planning for measures to be executed during reentry and recovery needn't be more than general.
- E A finding that there is reasonable assurance that the plans can be implemented is, under 10 C.F.R. § 50.47(a)(2), to be based largely on the plans, not the myriad details of the implementing procedures. Implementability is a characteristic of good plans, for even the best implementing procedures cannot rescue an ill-conceived plan. Thus it is to the adequacy of planning that all of the Commission's planning standards and evaluation criteria are directed, not the mechanical details of implementing procedures. An intervenor looking to introduce such procedures

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into litigation would have to point to some plan provision drafted in such a way that a board would have to look at the implementing procedures under it to determine whether there was reasonable assurance it could be implemented. Accord Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1106-07 (1983).

- F Sub-areas of the plume EPZ need not be perfectly regular, concentric rings, or parts thereof, any more than the EPZs themselves should be exactly 10 or 50 miles in radius. "The boundaries of the sub-areas shall be based upon the same factors as the EPZ, namely demography, topography, land characteristics, access routes, and local jurisdictions." NUREG-0654, Appendix 3, at 4-4.
- G State and local planning officials are not obliged to supply a written justification of their boundary-making until they are faced with an admitted contention on the subject. In particular, in the absence of such an admitted contention, officials need not justify in writing the exclusion from the plume EPZ of areas just inside the 10-mile limit. Section 50.47(c)(2) of 10 C.F.R. says that the plume EPZ shall be "about" 10 miles in diameter, not "at least."
- H Evacuation routes are not simply routes out of the plume EPZ, they are routes to public shelters. Thus in order to reach the nearest shelter, some routes may have to carry traffic toward the plant before they carry it away.

LBP-84-30 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL; OPERATING LICENSE; August 13, 1984; MEMORANDUM AND ORDER

- A The Licensing Board denies a petition, pursuant to 10 C.F.R. § 2.758(b), for exception to the regulations eliminating the financial qualifications review of electric utilities in operating license proceedings. In the alternative, the Board denies admission of an untimely financial qualifications contention. The Board also denies certification of the issue to the Commission.
- B A petition for waiver or exception to the Commission's regulations, pursuant to 10 C.F.R. § 2.758(b), should only be granted in "unusual and compelling circumstances." Northern States Power Co. (Monticello Nuclear Generating Plant, Unit 1), CLI-72-81, 5 AEC 25, 26 (1972).
- C In order to show that the rule precluding consideration of a utility's financial qualifications in an operating license proceeding should be waived in a particular proceeding, the party petitioning for waiver must show that the electric utility cannot recover its costs through the ratemaking process. Proposals to disallow a portion of a utility's costs are not a sufficient basis for the waiver of regulations because the outcome of such proposals is speculative.
- D Absent evidence that a State rate commission is systematically denying a utility recovery of its costs, disallowance of construction-related costs is not an appropriate basis for waiving the financial qualifications regulations in an operating license proceeding.
- E A party seeking waiver of the financial qualifications regulations must make a prima facie showing that the utility has been denied recovery of costs for safe plant operation.
- F Good cause for the late filing of a contention, which is based on a recently issued document, does not exist when the information contained in that document was publicly available at an earlier date.
- G With regards to the standards for the admission of a late-filed contention, a party cannot assist in the development of a sound record unless the contention presents a significant, triable issue.

LBP-84-30A TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; OPERATING LICENSE; August 24, 1984; MEMORANDUM

- A In this Memorandum, the Licensing Board concludes that a request for a license for fuel loading and precritical testing may be considered pursuant to 10 C.F.R. § 50.57(c) because the activities for which a license is sought fall within the activities for which a low-power license may be granted.
- B A licensing board may authorize the issuance of a license for fuel load and precritical testing provided that it makes the findings required by § 50.57(a) with respect to the contested activity sought to be authorized. However, the pendency of a broad quality assurance contention requires that the motion be accompanied by evidence concerning the status of those systems required to assure that criticality will not occur during the proposed activities.

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- C The following technical issues are discussed: Fuel load, Precritical testing, Boron equipment, Neutron monitoring equipment, Fuel-handling equipment, Reactor protection systems, Quality control, K_{eff} .
- LBP-84-31 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-OL, 50-353-OL (ASLBP No. 81-465-07-OL); OPERATING LICENSE; August 29, 1984; SECOND PARTIAL INITIAL DECISION
- A The Licensing Board issues a Second Partial Initial Decision finding in favor of the Applicant on all controverted issues prerequisite to authorizing a low power operating license. Offsite emergency planning issues are still pending for litigation.
- B The whole body of implementing procedures need not be ready for challenge in a hearing. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076 (1983). However, this does not mean that a Board cannot examine implementing procedures which are available and arguably necessary to determine whether certain provisions in the emergency plan meet NRC planning standards. Examination of such implementing procedures is with the adequacy of the plans foremost in mind, since the proper object of litigation is the adequacy of the plan.
- C Since findings of the licensing tribunal are deemed to amend the FES, amendment and recirculation of the FES are not normally required, unless the differences between the decision and the FES are truly substantial. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 371-72 (1975); Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 680 (1975). See also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 29 n.43 (1978).
- D The following technical issues are discussed: Onsite emergency planning, Environmental analysis of severe accidents, Quality control of welding, Environmental qualification of electrical equipment, Effect on plant structures of postulated petroleum and natural gas pipeline accidents; Cooling tower plumes, aircraft carburetor icing.
- LBP-84-32 CONSUMERS POWER COMPANY (Big Rock Point Plant), Docket No. 50-155-OLA (ASLBP No. 79-432-11-LA); OPERATING LICENSE AMENDMENT; August 29, 1984; INITIAL DECISION
- A In this Initial Decision, the Licensing Board authorizes the Licensee to add three more spent fuel racks to its spent fuel pool, expanding its capacity from 193 spent fuel assemblies to 441 assemblies upon the condition that the plant will not be operated should the heat load from the fuel and the temperature of the nearby lake prevent the Licensee from assuring that the makeup line to its pool will be able to keep the bulk pool temperature below 150°F. The Board also requires that there be a human factors analysis of the meter for the noble gas stack monitor and that Licensee advise emergency planning authorities to consider practicable means of improving emergency evacuation at time of a major event at the Castle Farms site.
- B The following technical issues are discussed: Spent Fuel Pool Inside Containment (Makeup Water Line); Temperature Analysis of Spent Fuel Pool; Zircaloy/Steam Reaction in Spent Fuel Pool; Concrete Integrity in Spent Fuel Pool; Radiation Exposure from Spent Fuel; Aircraft Risks; Seismic Stability of Gantry Crane; Emergency Planning, Size of EPZ; Radiation Monitoring; Emergency Planning, Summer/Winter Conditions; Emergency Planning, Children and Pregnant Women
- LBP-84-33 CINCINNATI GAS & ELECTRIC COMPANY, et al. (William H. Zimmer Nuclear Power Station, Unit 1), Docket No. 50-358-OL (ASLBP No. 76-317-01-OL); WITHDRAWAL OF OPERATING LICENSE APPLICATION; August 29, 1984; MEMORANDUM AND ORDER
- A Licensing Board grants Applicants' unopposed motion to withdraw their application for an operating license for the Zimmer Station and to terminate this proceeding, subject to the condition that Applicants implement, with Staff verification, their site restoration plan. The Board refuses to impose a condition, consented to by Applicants, that the grant of the motion be with prejudice to any future application by these Applicants for a nuclear reactor at this site on the ground that such a condition is unnecessary.

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- B** Dismissal of an operating license application with prejudice is a severe sanction which is reserved for unusual situations where it is necessary to prevent substantial prejudice to a party who opposed the application.
- LBP-84-34 ROCHESTER GAS & ELECTRIC CORPORATION** (R.E. Ginna Nuclear Plant, Unit 1), Docket Nos. 50-244-OLA (ASLBP No. 79-427-07-OLA); OPERATING LICENSE AMENDMENT; August 30, 1984; MEMORANDUM AND ORDER
- A** In this Memorandum and Order the Licensing Board dismisses the proceeding in view of the withdrawal of the sole Intervenor and the consequent removal of all issues requiring hearing.
- LBP-84-35 GEORGIA POWER COMPANY, et al.** (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OL, 50-425-OL (ASLBP No. 84-499-01-OL); OPERATING LICENSE; September 5, 1984; MEMORANDUM AND ORDER
- A** In this Memorandum and Order, the Licensing Board rules on the admissibility of Intervenor's contentions.
- B** Because Intervenor failed to make a prima facie showing of special circumstances justifying a waiver of 10 C.F.R. § 51.53(c) to permit reconsideration of the need-for-power issue at the operating license stage, 10 C.F.R. § 2.758(c) bars further consideration of the matter, and Intervenor's contention is dismissed.
- C** The Commission's determination that its rule barring litigation of financial qualifications issues in operating license proceedings remains in effect, despite the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *New England Coalition on Nuclear Pollution v. NRC*, 727 F.2d 1127 (D.C. Cir. 1984), bars consideration of Intervenor's financial qualifications contention.
- LBP-84-35A LONG ISLAND LIGHTING COMPANY** (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-4 (ASLBP No. 77-347-01C-OL) (Low Power); OPERATING LICENSE; September 5, 1984; ORDER
- A** Upon reconsideration, the Licensing Board grants summary disposition as to all issues relevant to proposed fuel loading, precriticality testing, and cold criticality testing. Although the site lacks a fully qualified onsite source of emergency AC power, no such power is needed to protect public health and safety during the requested activities; thus, they may be authorized without contravention of applicable regulatory criteria.
- B** Fuel loading, precriticality testing and cold criticality phases of proposed low-power program require no onsite emergency AC power.
- C** Although GDC 17 is applicable to low-power operations, it may be applied in view of a "rule of reason" where requested activities require no emergency AC power to protect public health and safety.
- LBP-84-36 TEXAS UTILITIES ELECTRIC COMPANY, et al.** (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445-OL-2, 50-446-OL-2 (ASLBP No. 79-430-06A-OL); OPERATING LICENSE; September 17, 1984; MEMORANDUM AND ORDER
- A** The Licensing Board orders the Office of Investigations (OI) to provide to the Board and parties, subject to protective order, a copy of each of the investigation reports that OI had offered to provide to the Board ex parte.
- B** In a case in which serious allegations of intimidation have been the subject of intensive hearings, it is not proper for the Licensing Board to receive reports of twenty-two related investigations ex parte, without providing the parties the opportunity to comment on the relevance of the reports. The proper way to handle the matter is to provide the materials under protective order to the parties, making whatever provisions are necessary in the circumstances to avoid release of the names of confidential informants. In the past, sensitive security matters have been handled in this way. So too should confidentiality matters.
- LBP-84-37 DUKE POWER COMPANY, et al.** (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413-OL, 50-414-OL (ASLBP No. 81-463-06-OL) (Emergency Planning); OPERATING LICENSE; September 18, 1984; SUPPLEMENTAL PARTIAL INITIAL DECISION ON EMERGENCY PLANNING
- A** In this Partial Initial Decision, the Licensing Board completes consideration of all emergency planning issues and authorizes the issuance of an operating license to Applicants subject to certain conditions.

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- B** A responsibility of the Licensing Board in deciding emergency planning issues is to determine if the planning is in conformity with regulatory standards. Although the Intervenor may "desire that the level of the emergency preparedness be enhanced to the maximum extent possible," the Licensing Board's role is not to require that measures be taken which exceed the requirements of the regulations and regulatory guides.
- C** The Commission's emergency planning regulations and regulatory guide require that informational brochures must advise the public by unobtrusive language that high levels of radiation are harmful to health and may be life-threatening. See 10 C.F.R. § 50.47(b)(7) and Part 50, Appendix E, § IV D.2; NUREG-0654/FEMA-REP-1, Rev. 1, § II.G.1.
- D** The Commission's emergency planning regulations and regulatory guide require that warning signs and decals must not be so general in their message that they do not state that the warning relates to a nuclear emergency. There should be made available to transients a source of local emergency information so that they too have the opportunity to become aware of how to cope in a nuclear emergency prior to the time an event may occur. See 10 C.F.R. § 50.47(b)(7) and Part 50, Appendix E, § IV D.2; NUREG-0654/FEMA-REP-1, Rev. 1, § II.G.2.
- E** The Commission's emergency planning regulations and regulatory guide do not require the inclusion within the plume emergency planning zone any portion of the City of Charlotte, North Carolina, whose city limits come within 9.7 miles of the plant. See 10 C.F.R. § 50.47(c)(2) and NUREG-0654/FEMA-REP-1, Rev. 1, § I.D.2.
- F** Although the Commission does not require that all aspects of emergency plans be complete before a final licensing decision is reached, where the planning for the evacuation of a theme amusement park, that can have in excess of 25,000 attending at a time, is being read-dressed and the process is not near completion, it is appropriate for the Licensing Board to require as a condition of licensing the plant that plans be completed within a specified time to the satisfaction of the NRC Staff.
- LBP-84-38 CONSUMERS POWER COMPANY (Big Rock Point Plant), Docket No. 50-155-OLA (ASLBP No. 79-432-11-LA), OPERATING LICENSE AMENDMENT, September 25, 1984; SUPPLEMENTAL INITIAL DECISION**
- A** In this Supplemental Initial Decision, the Licensing Board dismisses four remaining issues and authorizes the issuance of a license amendment.
- B** The following technical issues are discussed: Spent Fuel Pool Water Level Monitors; Containment Pressurization (from spent fuel pool); Motor-Operated Valves (irrelevant to spent fuel pool); Emergency Planning Pamphlet (content); Distribution of Emergency Planning Pamphlet; Cask Drop (adequacy of redundant support system).
- LBP-84-39 MISSISSIPPI POWER & LIGHT COMPANY, et al. (Grand Gulf Nuclear Station, Unit 1), Docket No. 50-416-OLA (ASLBP No. 84-497-04-OL); OPERATING LICENSE AMENDMENT, September 28, 1984; MEMORANDUM AND ORDER**
- A** In this Memorandum and Order, the Licensing Board dismisses the proceeding upon confirmation of the withdrawal of the only Intervenor.
- LBP-84-40 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440-OL, 50-441-OL (ASLBP No. 81-457-04-OL); OPERATING LICENSE, October 4, 1984; MEMORANDUM AND ORDER**
- A** In this Memorandum and Order the Licensing Board denies Intervenor's motion for summary judgment and dismisses its contention finding that Applicants are not required to install an automated standby liquid control system under Commission regulations dealing with anticipated transients without scram.
- B** Summary disposition may be granted against the party requesting summary disposition when all the relevant facts are agreed and the law dictates a result opposite the moving party's position.
- C** The Commission's regulations do not require an automated standby liquid control system to be installed in boiling water reactors that were not designed and constructed to incorporate such a system. 10 C.F.R. § 50.62(c)(14).
- LBP-84-40A VIRGINIA ELECTRIC AND POWER COMPANY (North Anna Power Station, Units 1 and 2), Docket Nos. 50-338-OLA-1, 50-339-OLA-1 (ASLBP No. 83-481-01-LA), Docket Nos.**

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50-338-OLA-2, 50-339-OLA-2 (ASLBP No. 83-482-02-LA); OPERATING LICENSE AMENDMENT, October 15, 1984; MEMORANDUM AND ORDER

A In Case OLA-1, involving an application for an amendment to the North Anna operating licenses to permit the receipt and storage of 500 spent fuel assemblies from the Surry facility, the Licensing Board rules that certain contentions, as recast by the Board into a consolidated contention, are admitted as issues in controversy, and admits the intervenor as a party. In Case OLA-2, involving an application for an amendment to the operating licenses to permit the expansion of the fuel pool storage capacity at the North Anna facility, the Licensing Board rejects the contentions, denies the petition for leave to intervene, dismisses the case, and authorizes the Director of Nuclear Reactor Regulation to issue an amendment to the North Anna operating licenses which revises the technical specifications to permit the expansion of the spent fuel storage capacity.

B Section 2.714 of 10 C.F.R. does not require the petition to detail the evidence which will be offered in support of each contention, and, in passing upon whether an intervention petition should be granted, it is not the function of a licensing board to review the merits of a contention. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

LBP-84-41 COMMONWEALTH EDISON COMPANY (Byron Nuclear Power Station, Units 1 and 2), Docket Nos. STN 50-454-OL, STN 50-455-OL (ASLBP No. 79-411-04-OL); OPERATING LICENSE, October 16, 1984; SUPPLEMENTAL INITIAL DECISION

A In this Supplemental Initial Decision, the Licensing Board concludes that the Applicant has demonstrated its ability or willingness to comply with applicable NRC regulations to maintain a quality assurance and quality control program, and to observe on a continuing and adequate basis the applicable quality control and quality assurance criteria plans. The Board authorizes the Director of Nuclear Reactor Regulation, upon making all requisite findings, to issue full-power licenses for Byron Nuclear Power Station, Units 1 and 2.

B As a general rule, the authority of licensing boards is limited to deciding matters in controversy among the parties. An operating license for a nuclear power plant may be issued at such time as the NRC renders the findings required by 10 C.F.R. § 50.57(a), and the Commission, subject to the immediate effectiveness provisions of 10 C.F.R. § 2.764, has vested the Director of Nuclear Reactor Regulation with the authority to make such findings.

C A licensing board may delegate a matter or issue to the NRC Staff when it is clear that the NRC Staff can adequately resolve it.

LBP-84-42 KERR-MCGEE CHEMICAL CORPORATION (West Chicago Rare Earths Facility), Docket No. 40-2061-ML (ASLBP No. 83-495-01-ML); MATERIALS LICENSE AMENDMENT, October 19, 1984; MEMORANDUM AND ORDER

A In a proceeding commenced to consider Staff's proposal to license onsite storage of thorium mill tailings, the Licensing Board, in considering objections to contentions, rules that Staff must consider permanent disposal of the mill tailings now and that the Applicant may file contentions in the proceeding even though it did not request a hearing.

B An applicant for a license amendment may file contentions challenging Staff's proposed action in a proceeding commenced at the request of another party despite the fact that applicant did not request a hearing.

C Commission's delegation to Licensing Board of authority to act on petitions to intervene and conduct any necessary proceedings pursuant to 10 C.F.R. Part 2, Subpart G, includes authority to accept contentions filed by applicant even though applicant did not request a hearing.

D Facts surrounding Staff's proposal to license onsite storage of mill tailings where applicant had applied for a license permitting onsite permanent disposal are strongly indicative of the conclusion that Staff's proposal amounts to segmentation prohibited by NEPA of an overall plan. Provisions of the CEQ's regulations (adopted by NRC) mandate that permanent disposal be considered now.

E Where no concrete proposal exists to add material to the mill tailings which are the subject of the proceeding, there is no requirement that Staff consider the addition of such material in its environmental impact statement.

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- F Consideration of alternative sites under NEPA is meaningful only when all alternatives considered meet the requirements of the Commission's regulations promulgated under the Atomic Energy Act.
- G Nothing in § 203 of UMTRCA suggests that a licensee must post a bond to cover the cost of adverse health and socioeconomic effects resulting from disposal of mill tailings.
- H EPA's regulations promulgated under UMTRCA provide a minimum level of protection which may not in all cases be deemed sufficient by NRC after the latter considers the level of risk posed by a specific tailings pile, economic costs, and other appropriate factors (§ 84(a), Atomic Energy Act).
- I Section 83(b)(1)(A)(ii) of the Atomic Energy Act provides that, if the State in which a permanent tailings disposal site is located elects not to become the owner of that site on license termination, the federal government must.
- J Criteria 9 and 10 of Appendix A to 10 C.F.R. Part 40 require that the financial cost of long-term maintenance and monitoring of disposal still be considered initially rather than deferred until shortly before license termination.
- K Part 51 of the Commission's regulations requires a cost-benefit balance which includes a consideration and balancing of qualitative as well as quantitative environmental impacts.
- LBP-84-43 PHILADELPHIA ELECTRIC COMPANY (Fulton Generating Station, Units 1 and 2), Docket Nos. 50-463-CP, 50-464-CP (ASLBP No. 76-300-01-CP); CONSTRUCTION PERMIT, October 23, 1984; INITIAL DECISION
- A In this Initial Decision, the Licensing Board dismisses the proceeding without prejudice as moot, subject to the condition that the Applicant is barred from filing a future application identical to the one dismissed.
- B An unparticularized, unsupported general allegation of harm to property values caused by Applicant's delay in dismissing its application is not of sufficient weight or moment to cause the Board to inquire further.
- C General allegations of psychological stress, even if factually supported, provide no basis for a legally cognizable claim for relief.
- D Costs incurred by the NRC Staff in reviewing an application subsequently withdrawn may not be billed to the applicant as a condition of dismissal, where those costs were incurred prior to the November 6, 1981 adoption of revised regulations.
- LBP-84-44 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; OPERATING LICENSE, October 25, 1984; MEMORANDUM AND ORDER
- A In this Memorandum, the Licensing Board requests information concerning certain technical issues.
- B The following technical issues are discussed: Safety factors derived from materials tests; Tests of materials (representativeness of sample tested); A36 and A307 steels as structural materials.
- LBP-84-45 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-4 (ASLBP No. 77-347-01C-OL) (Low Power); OPERATING LICENSE, October 29, 1984; INITIAL DECISION
- A Licensing Board grants 10 C.F.R. § 50.57(c) exemption to requirements of general design criteria to authorize license for low-power operation in reliance upon an "enhanced" off-site AC emergency power system in the absence of a fully qualified onsite system.
- B Pursuant to Commission direction, applicant for 10 C.F.R. § 50.57(c) exemption to portions of design criteria must show that the operation of the plant will be "as safe as" it would be were it in full compliance, and that equities of exigent circumstances favor the grant of the exemption.
- C An examination of "inconsistencies" in NRC regulations must include not only inconsistencies in their literal wording, but also inconsistencies in their application in practice.
- D If no core cooling is necessary to protect public health and safety during certain phases of Applicant's low-power testing program, no emergency AC power can be needed for that purpose, compliance with requirement for sufficient available emergency power is achieved, even in the absence of any emergency AC power sources whatsoever.

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- E** The safety limits of 10 C.F.R. § 50.46(b) are set conservatively to provide a safety margin. A plant is deemed safe if it can show that it meets these limits; it need exceed them by no particular margin of safety.
- F** NRC reactor safety standards are viewed in the functional sense. What must safety systems be able to do in order to protect public health and safety, and are they able to do it? A point-by-point comparison of each component of alternate systems is not appropriate.
- G** An exemption to the requirement for a fully qualified onsite emergency AC power source is granted for purposes of low-power operation where emergency power is available from "enhanced" offsite systems.
- H** Although, in lieu of a fully qualified source of onsite emergency AC power, normal offsite power sources will be relied upon, in part, for emergency power during low-power operations, there is no requirement or justification for imposing the seismic qualification of these normal offsite power sources.
- I** Where emergency AC power is to be supplied utilizing a system comprised of multiple separate power sources, the single failure criterion is applied to determine the impact of a single failure on the ability to provide power to the system as a whole, not on the ability of each component thereof.
- J** An exemption to GDC 17 may be authorized for low-power operation where applicant has shown that operation would be as safe as it would be if it were in full compliance, and that exigent circumstances favor the grant of the exemption.
- K** Where an exemption is sought from regulation requiring a qualified source of onsite emergency AC power, the offsite power "enhancements" provided as sources of additional emergency power need not be treated as vital.
- L** Cost to applicant of protracted litigation may be considered as an "economic and financial hardship" experienced by it relevant to an equitable "exigent circumstances" determination.
- M** The following technical issues are discussed: Emergency AC Power; General Design Criterion 17; LOCA at Low Power; Low-Power Operation; Offsite Electrical Power Grid; Safety Standards; Single Failure Criterion; Standby Gas Treatment System.
- LBP-84-46 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2). Docket Nos. 50-445, 50-446, OPERATING LICENSE; October 29, 1984; MEMORANDUM AND ORDER**
- A** In this Memorandum, the Licensing Board requests information on certain welding issues.
- LBP-84-47 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1). Docket No. 50-289-OLA (ASLBP No. 83-491-04-OLA) (Steam Generator Repair); OPERATING LICENSE AMENDMENT; October 31, 1984; INITIAL DECISION**
- A** In this Initial Decision, the Licensing Board authorizes the Director of Nuclear Reactor Regulation to issue to the Licensee, upon making requisite findings, an operating license amendment that revises technical specifications to recognize steam generator tube repair techniques other than plugging, specifically the kinetic expansion tube repair technique. The authorization is subject to satisfaction of conditions identified in the Initial Decision.
- B** If a licensing board directs all parties to file proposed findings of fact and conclusions of law and rules that they would be deemed in default for failure to file, an intervenor is deemed to be in default with respect to a contention if it fails to file proposed findings upon that issue. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-280, 2 NRC 3, 4 n.2 (1975).
- C** The following technical issue is discussed: Steam Generator Tube Repair.
- LBP-84-48 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2). Docket Nos. 50-445-OL-2, 50-446-OL-2 (ASLBP No. 79-430-06A-OL); OPERATING LICENSE; November 2, 1984; MEMORANDUM AND ORDER**
- A** The Licensing Board vacates its order of September 17, 1984 (LBP-84-36, 20 NRC 928).

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LBP-84-49 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2). Docket Nos. 50-424-OL, 50-425-OL (ASLBP No. 84-499-01-OL); OPERATING LICENSE; November 5, 1984; MEMORANDUM AND ORDER

A In this Memorandum and Order, the Licensing Board rules on Intervenor's objections to its Memorandum and Order deciding the admissibility of Intervenor's contentions. LBP-84-35, 20 NRC 887 (1984).

B The Licensing Board further rules that Intervenor's request for an investigation into Applicants' practices provides no basis for broadening an existing contention relating to Applicants' quality assurance program.

LBP-84-50 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2). Docket Nos. 50-445-OL-2, 50-446-OL-2 (ASLBP No. 79-430-06A-OL); OPERATING LICENSE; November 16, 1984; MEMORANDUM AND ORDER

A The Licensing Board refuses to honor a grant of privilege for some documents created by Joseph J. Lipinsky and said to be covered by attorney-client privilege. The Board finds that Applicants' lawyer could not properly represent Mr. Lipinsky, who had previously taken a position adverse to Applicants' and who therefore had an irreconcilable conflict of interest. In addition, the Board honors a limited claim of privilege for documents for which attorney work product privilege was claimed but denies the privilege for other documents for which the Board found an overriding interest in obtaining the documents because of their importance in the proceeding.

B Documents are not privileged pursuant to an attorney-client privilege if they were generated in the course of an attorney-client relationship that appeared to exist but could not exist because of an irreconcilable conflict-of-interest. An attorney-client relationship cannot be used to draw down a mask of secrecy over an attorney's relationship with an individual whose position was adverse to the position of another client whom the attorney continues to represent.

C A claim of work product privilege may be overridden with respect to documents for which there is an important evidentiary need.

LBP-84-51 GULF STATES UTILITIES COMPANY, et al. (River Bend Station, Units 1 and 2). Docket Nos. 50-458-OL, 50-459-OL (ASLBP No. 82-468-01-OL); OPERATING LICENSE; November 20, 1984; MEMORANDUM AND ORDER

A In this Memorandum and Order, the Licensing Board grants Intervenor's motion to withdraw its remaining contentions; grants Applicants' motion to withdraw their application as to Unit 2, and dismisses the proceeding.

LBP-84-52 DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2). Docket Nos. 50-413, 50-414 (ASLBP No. 81-463-06-OL); OPERATING LICENSE; November 27, 1984; PARTIAL INITIAL DECISION

A The Licensing Board issues a Partial Initial Decision resolving "foreman override" concerns in the Applicants' favor. The phrase "foreman override" denotes a situation where, for example, a foreman directs a welder to weld in violation of procedures in order to speed construction. See LBP-84-24, 19 NRC 1418, 1562-66 (1984). Following an evidentiary hearing, the Licensing Board found that instances of foreman override at Catawba had been isolated, and that in any event they did not represent a significant breakdown in quality assurance. In light of these findings and earlier findings favorable to the Applicants on various safety and emergency planning contentions, the Board authorizes the Director of Nuclear Reactor Regulation to issue full-power operating licenses for the Catawba Nuclear Station.

LBP-84-52A PORTLAND GENERAL ELECTRIC COMPANY, et al. (Trojan Nuclear Plant). Docket No. 50-344-OLA (ASLBP No. 84-498-05-OLA) (SFP Amendment); OPERATING LICENSE AMENDMENT; November 28, 1984; INITIAL DECISION

A In this Initial Decision the Licensing Board finds that the Licensee has adequately demonstrated that the expanded capacity of its spent fuel storage facility is designed to maintain discharges of radiation within specified limits and that such capacity is designed so that in case of accidents offsite radiation levels will not exceed 10 C.F.R. Part 100 guideline reference radiation dose values. The Board concludes that there is reasonable assurance that the Trojan Nuclear Plant can be operated without endangering the health and safety of the public under the expanded spent fuel pool capacity authorized by Amendment No. 88 to License No. NPF-1 issued by the NRC Office of Nuclear Reactor Regulation on June 8, 1984, affirms the issuance of the

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amendment, and additionally concluded that no modifications thereof or additional conditions are required.

LBP-84-53 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL; OPERATING LICENSE; November 30, 1984; MEMORANDUM AND ORDER RULING ON REMAND ISSUES

- A** Of three issues remanded to it by the Appeal Board — (1) housekeeping; (2) environmental qualification of nonsafety-related electrical equipment; and (3) control systems interaction — the Licensing Board finds that numbers (1) and (2) are adequately resolved by affidavits from the NRC Staff. Although the Appeal Board had remanded Issue No. (3) while under a significant factual misimpression (that two studies had not been done while, in fact, they had), it apparently wished to afford Intervenor some recent opportunity to come forward with litigable issues pertaining to the two studies. Thus, the Licensing Board grants the Intervenor additional time to frame such issues, although they could fairly be charged with delay. However, based on a balancing of the equities, the possible pendency of such issues does not provide a basis to stay the issuance of a low power operating license.
- B** The test for determining whether a stay of activities should be imposed pending disposition of a remand is less stringent for the proponent than is the test applicable for stay pending appeal. The test balances: (1) seriousness of the remanded issue; (2) traditional balancing of equities; and (3) any likely prejudice to further decisions that might be called for on the remand.
- C** Where facts material to a remanded issue had changed significantly during the pendency of appeal, parties were under some obligation to take steps to protect their interests in the interim.
- D** Where Intervenor had been in possession of documents setting forth the Applicant's and Staff's analyses for over a year, were on specific notice that the subject matter involved had been remanded to the Licensing Board for possible future adjudication for three weeks, were reminded (five days) prior to a scheduled conference of counsel that they would be expected to come to the conference prepared with specific substantive issues challenging the analysis, the Intervenor's failure to come so prepared cannot be viewed as reasonable.
- E** The following technical issues are discussed: Control systems interactions; Environmental qualification of nonsafety-related equipment.

LBP-84-54 GENERAL ELECTRIC COMPANY (GETR, Vallecitos), Docket No. 50-70-OLR (ASLBP No. 83-481-01-OLR); OPERATING LICENSE RENEWAL, December 17, 1984; MEMORANDUM AND ORDER

- A** Licensing Board denies request for readmission to a proceeding filed by petitioner to intervene which failed to respond to the Board's orders reactivating the proceeding after several years of inactivity and consequently was dismissed.
- B** Parties may not step into and out of NRC proceedings at will. United States Department of Energy (Clinch River Breeder Reactor Plant), ALAB-76), 19 NRC 487, 493 (1984); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-69), 16 NRC 897, 907 (1982). Where a party does not offer a sufficient excuse for its failure to respond to Board orders reactivating a proceeding (which failure led to its dismissal), it must satisfy the criteria related to untimely petitions to intervene in order to be readmitted.
- C** A party appearing pro se must notify the secretary of any change of its address.
- D** Service of documents upon a party is complete upon deposit in the United States Mail, properly stamped and addressed.

LBP-84-55 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445-OL, 50-446-OL (ASLBP No. 79-430-06-OL); OPERATING LICENSE; December 18, 1984; MEMORANDUM AND ORDER

- A** In this Memorandum, the Licensing Board decides certain welding issues.
- B** Significant inconsistencies in testimony and confidential background information are grounds for discounting the credibility of witnesses.
- C** Systematic violations of construction procedures may have independent significance regardless of their safety implications. When violations of procedures are tolerated, this adversely affects workers' perceptions of the seriousness of complying with other procedures.

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- D Permitting welders to determine whether there is adequate preheat by employing a "hand warm" test may not be an adequate procedure to assure compliance with the preheat requirements.
- E The following technical issues are discussed: Weave welding; Downhill welding; Weld rod control; Welding of misdrilled holes; Repair welding (misdrilled holes); Preheat, welding; Welding preheat.
- LBP-84-56 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445-OL, 50-446-OL (ASLBP No. 79-430-06-OL); OPERATING LICENSE; December 18, 1984; MEMORANDUM AND ORDER
- A Because a false statement made by Applicants' witnesses and other inconsistencies in Applicants' filings, the Licensing Board permits Intervenor and Staff to file additional discovery requests relating to the credibility of Applicants' witnesses.
- B Discovery may be reopened against Applicants as a remedy for a misrepresentation and for inconsistencies in testimony.

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DD-84-15 BOSTON EDISON COMPANY (Pilgrim Nuclear Power Station), Docket No. 50-293, REQUEST FOR ACTION; July 3, 1984; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Inspection and Enforcement denies the remaining portion of a petition under 10 C.F.R. § 2.206 which requested that the Nuclear Regulatory Commission take action to remedy alleged serious deficiencies in the offsite emergency response plans for the Pilgrim Nuclear Power Station. On February 27, 1984, the Director issued an Interim Decision, DD-84-5, 19 NRC 542, which denied relief on all issues except potential traffic bottlenecks to evacuation of the area surrounding the Pilgrim facility. The remaining issue was referred to the Federal Emergency Management Agency (FEMA) for evaluation. Based on FEMA's evaluation that traffic management issues have been adequately addressed by the Commonwealth of Massachusetts, the Director denies the remainder of the petition.

B Traffic management issues related to potential bottlenecks to evacuation have been adequately addressed by the Commonwealth of Massachusetts.

DD-84-16 DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414; REQUEST FOR ACTION; July 6, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Inspection and Enforcement denies a petition filed by the Government Accountability Project on behalf of the Palmetto Alliance which requested initiation of independent design, construction and management audits of Duke Power Company's construction of the Catawba Nuclear Station. In denying the requested relief, the Director determined that the quality assurance program for Catawba had not suffered a serious breakdown.

B Although licensees are not required to respond to petitions under 10 C.F.R. § 2.206 in the absence of a formal request by the staff under 10 C.F.R. § 50.54(f) of § 182 of the Atomic Energy Act, licensees may respond to such petitions at their own volition.

C A request for an investigation, particularly for an investigation of internal NRC personnel matters, does not fall squarely within the class of requests contemplated by 10 C.F.R. § 2.206.

D Neither the Atomic Energy Act nor the Commission's regulations mandate error-free construction. What is required is a finding of reasonable assurance that the facility, as built, can be operated without undue risk to public health and safety.

E Acceptability of licensee's quality assurance program under 10 C.F.R. Part 50, Appendix B, is discussed.

F A Notice of Violation under 10 C.F.R. § 2.201 is the primary enforcement tool used by the NRC to document noncompliance and to ensure corrective action and compliance with regulatory requirements. Under the enforcement policy, the Commission generally does not issue Notices of Violation in cases involving violations of lesser significance which the licensee has identified and has corrected or will correct.

DD-84-17 CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2), Docket Nos. 50-329, 50-330; REQUEST FOR ACTION; July 24, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Inspection and Enforcement denies a request by Billie Pirner Garde of the Government Accountability Project on behalf of the Lone Tree Council and others requesting that the Commission take action with respect to the Midland Plant.

B The Commission requires all licensees to develop and implement a quality assurance program to be applied to the design, fabrication, construction and testing of the structures, systems and components of its facility.

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- C The requirements imposed on licensees by Appendix B, together with the licensee's own quality assurance program, are usually sufficient to ensure that a power reactor is constructed in accordance with NRC requirements. However, in certain cases, construction quality weaknesses have been of such magnitude that the NRC has found that it needs to impose additional controls to ensure that the facility is being constructed in a quality manner. Under such circumstances, the NRC has required licensees to undertake a remedial program to ensure that the construction of the facility is in accordance with NRC requirements.
- DD-84-18 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289, REQUEST FOR LICENSE SUSPENSION, July 27, 1984, DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Inspection and Enforcement denies a petition filed by the City of Harrisburg, Pennsylvania requesting the institution of proceedings pursuant to 10 C.F.R. § 2.202 to suspend indefinitely the license of GPU Nuclear to operate the Three Mile Island Nuclear Station, Unit No. 1.
- B Petitioner's request pursuant to 10 C.F.R. § 2.206 is denied in the absence of any substantive information calling into question the adequacy of the plume exposure pathway Emergency Planning Zone (EPZ) as currently configured or the emergency evacuation planning efforts within the EPZ.
- C To the extent that various municipalities located in counties involved with emergency planning have not adopted and approved emergency plans, such action on their part is not necessary for and does not constitute an impediment to adequate emergency planning.
- DD-84-19 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-323, REQUEST FOR ACTION, August 20, 1984, INTERIM DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of Nuclear Reactor Regulation denies a request by the Government Accountability Project on behalf of two former employees at the Diablo Canyon facility that licensing be deferred until alleged intimidation and harassment on site is neutralized. The Director concluded that, even if the two petitioners were improperly terminated, harassment and intimidation and possible coverup of deficiencies were not such substantial problems at the site as to require deferral of a licensing decision. However, the Director also determined that a final determination on the petitions will be made upon completion of investigations into the harassment and intimidation of the petitioners.
- DD-84-20 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Unit 1), Docket No. 50-275, REQUEST FOR ACTION, August 20, 1984, DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of Nuclear Reactor Regulation denies a series of petitions filed by the Government Accountability Project on behalf of the San Luis Obispo Mothers for Peace which requested deferral of decisions to issue low-power and full-power licenses for the Diablo Canyon Unit 1 facility until a series of specified actions were taken.
- DD-84-21 MISSISSIPPI POWER & LIGHT COMPANY, MIDDLE SOUTH ENERGY, INC., SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION (Grand Gulf Nuclear Station, Unit 1), Docket No. 50-416, REQUEST FOR ACTION, August 31, 1984, DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Reactor Regulation denies a request by Cynthia Stewart on behalf of Jacksonians United for Livable Energy Policies that the Commission take action with respect to the Grand Gulf Nuclear Station, Unit 1.
- B The Commission has accepted industry criteria for evaluating the adequacy of on-shift operating experience for near-term operating license applicants.
- DD-84-22 GPU NUCLEAR CORPORATION (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289, REQUEST FOR ACTION, September 25, 1984, DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Reactor Regulation denies a request filed by Eilyn R. Weiss and Robert D. Pollard on behalf of the Union of Concerned Scientists requesting that the Commission initiate show-cause or further enforcement proceedings with respect to the Three Mile Island Nuclear Station Unit 1 Emergency Feedwater System.

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- DD-84-23 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 2). Docket No. 50-441. REQUEST FOR ACTION. November 15, 1984. DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Deputy Director of the Office of Inspection and Enforcement denies a petition submitted by Susan L. Hiatt on behalf of Ohio Citizens for Responsible Energy (OCRE) requesting issuance of a show-cause order to revoke or suspend Cleveland Electric Illuminating Company's construction permit for Perry Unit 2.
- B NRC regulations do not require that a construction permit be revoked or suspended for slowing or stopping construction when there is no current threat to the public health and safety by the licensee's actions.
- C A slowdown in construction does not itself give rise to a reporting obligation.
- DD-84-24 SHIPMENTS OF SPENT NUCLEAR FUEL. REQUEST FOR ACTION. November 30, 1984. DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Material Safety and Safeguards denies a petition filed by Mr. Lindsay Audin requesting that Certificates of Compliance for certain spent fuel shipping casks be modified to address oxidation phenomena and that additional analyses of transportation accident and sabotage scenarios be conducted.
- B The Director will not institute proceedings or undertake other actions in response to a petition under 10 C.F.R. § 2.206 to consider an issue the Commission is treating generically through rulemaking.
- DD-84-25 CONSUMERS POWER COMPANY (Big Rock Point Plant). Docket No. 50-155. REQUEST FOR SHOW-CAUSE ORDER. December 3, 1984. DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director, Office of Nuclear Reactor Regulation, denies a Petition filed by Mr. John O'Neill, II, requesting that the Commission issue a show-cause order requiring Consumers Power Company to demonstrate that it is financially qualified to operate an expanded spent fuel pool.

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DPRM-84-2 CRITICAL MASS ENERGY PROJECT, et al., Docket No. PRM-71-6; REQUEST FOR AMENDMENT OF REGULATIONS, November 2, 1984; DENIAL OF PETITION FOR RULEMAKING

- A The Commission denies a petition for rulemaking which requested that the Commission amend its regulations pertaining to emergency response and planning for transportation accidents involving radioactive materials. The petition is denied because the issues raised in the petition have been substantially resolved by subsequent Federal action.

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