

NUREG-0750
Vol. 19
Index 2

INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January - June 1984



U. S. NUCLEAR REGULATORY COMMISSION

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**INDEXES TO
NUCLEAR REGULATORY
COMMISSION ISSUANCES**

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U. S. NUCLEAR REGULATORY COMMISSION

Foreword

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

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

- Case name (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-84-1 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-323; OPERATING LICENSE; January 16, 1984; ORDER

A The Commission denies the intervenors' request for a stay of fuel loading and pre-criticality testing at the Diablo Canyon plant.

CLI-84-2 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Unit 1), Docket No. 50-275; OPERATING LICENSE; January 25, 1984; MEMORANDUM AND ORDER

A Acting on the applicant's request, the Commission authorizes further pre-criticality tests (hot system testing) at the Diablo Canyon plant on the ground that the tests will provide valuable information regarding plant design, construction and operation without presenting any significant public health and safety concerns.

CLI-84-3 METROPOLITAN EDISON COMPANY (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP; SPECIAL PROCEEDING; March 28, 1984; MEMORANDUM AND ORDER

A In response to an Appeal Board memorandum (ALAB-724, 17 NRC 559 (1983)), concerning the treatment to be accorded the issues raised in a Board Notification (BN-83-47), the Commission decides that the issue of whether the power-operated relief valve should be safety-grade, because of the potential for using it to mitigate the consequences of design basis steam generator tube accidents, has no reasonable nexus to the TMI-2 accident and is, therefore, outside the scope of the proceeding. The Commission also decides that the information in the Board Notification is not significant enough to warrant reopening the record sua sponte, even if it were within the scope of the proceeding.

B The following technical issue is discussed: Uses of power-operated relief valve in depressurization in the event of a steam generator tube rupture.

CLI-84-4 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-323; EMERGENCY PLANNING; April 3, 1984; ORDER

A The Commission requests the views of the parties on a series of specific questions relating to the need to consider the complicating effects of earthquakes on emergency planning for the Diablo Canyon nuclear plant because of its location in an area of relatively high seismicity. Additionally, the Commission determines that consideration of the issue is unnecessary with respect to low-power operation because it pertains primarily to offsite emergency planning requirements which are not essential to low-power licensing decisions.

B Current regulations do not require the consideration of the impacts on emergency planning of earthquakes which cause or occur during an accidental radiological release. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-81-33, 14 NRC 1091, 1091-92 (1981).

CLI-84-5 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; April 13, 1984; MEMORANDUM AND ORDER

A The Commission reinstates the low-power license for Unit 1 of the Diablo Canyon facility that authorizes the licensee to conduct tests at up to 5% of rated power, following the successful completion of programs established to verify the design of the plant, and the NRC staff's determination that there are no outstanding safety considerations warranting a delay in low-power operation. Intervenors' request for a stay of license reinstatement is denied by the Commission.

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- B** Speculation about a nuclear accident does not, as a matter of law, constitute the imminent, irreparable injury required for staying a licensing decision. *New York v. NRC*, 550 F.2d 745, 756-57 (2d Cir. 1977); *Virginia Sunshine Alliance v. Hendrie*, 477 F. Supp. 68, 70 (D.D.C. 1979).
- CLI-84-6 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**, et al. (Seabrook Station, Unit 2), Docket No. 50-444; **CONSTRUCTION PERMIT EXTENSION**; March 29, 1984; **ORDER**
- A** The Commission denies a request of the Connecticut Division of Consumer Counsel to intervene in the construction permit extension proceeding for Unit 2 of the Seabrook facility on the ground that the proffered contentions of the petitioner fall outside the scope of the proceeding.
- B** An intervention petitioner in an NRC licensing proceeding must have an interest that will be affected and proffer specific contentions within the scope of the proceeding. 10 C.F.R. § 2.714; *BPI v. AEC*, 502 F.2d 424 (D.C. Cir. 1974); see generally, *Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983).
- C** The zone of interests which must be affected to give a petitioner standing to intervene in an NRC licensing proceeding does not include general economic considerations. See, e.g., *Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2)*, ALAB-470, 7 NRC 473 (1978).
- D** The contention of a proposed intervenor in an NRC licensing proceeding must relate directly to the subject of the proceeding and not to immaterial or generic problems.
- E** Under Section 185 of the Atomic Energy Act and 10 C.F.R. § 50.55, the scope of a construction permit extension proceeding is limited to direct challenges to the permit holder's asserted reasons that show "good cause" justification for the delay. *Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 & 2)*, CLI-82-29, 16 NRC 1221, 1229 (1982). To be admissible in such a proceeding, a contention must either challenge the permit holder's reason for delay or show that other reasons, not constituting good cause, are the principal basis for the delay. *Id.* at 1230.
- F** The two-pronged test for determining whether a contention is within the scope of a construction permit extension proceeding is: The construction delays at issue have to be traceable to the permit holder and they must be dilatory. If both prongs are met, the delay is without good cause. *Washington Public Power Supply System (WPPSS Nuclear Project No. 2)*, ALAB-722, 17 NRC 546, 551 (1983).
- CLI-84-7 METROPOLITAN EDISON COMPANY**, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP; **SPECIAL PROCEEDING**; May 4, 1984; **ORDER**
- A** In this special proceeding pertaining to the restart of Three Mile Island, Unit 1, the Commission denies an intervenor's motion requesting that the Commission mandate completion prior to restart of certain previously ordered long-term actions that supplement a set of short-term actions required to provide assurance that the facility can be operated without endangering the health and safety of the public. The Commission, however, reviews sua sponte the licensee's schedule for completion of the long-term actions and finds it reasonable. It rules that the long-term actions need not be completed prior to start-up but notes that they must be completed as promptly as possible.
- CLI-84-8 LONG ISLAND LIGHTING COMPANY** (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-4 (Low Power); **OPERATING LICENSE**; May 16, 1984; **ORDER**
- A** The Commission determines that General Design Criterion 17, 10 C.F.R. Part 50, Appendix A, pertaining to the availability of onsite and offsite electric power systems for nuclear power plants, is applicable to low-power operation under 10 C.F.R. § 50.57(c), and vacates a Licensing Board's order to the extent it is contrary. The Commission provides guidance for the conduct of a hearing in the event of the applicant's submission of a modified application seeking an exemption under 10 C.F.R. § 50.12(a) from regulatory requirements for a low-power license including General Design Criterion 17.
- B** Absent special circumstances, the Commission is reluctant to assume the functions of an existing licensing board of compiling and analyzing a factual record and making an initial determination based on the record. *Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 and 5)*, CLI-77-11, 5 NRC 719, ??? (1977).
- C** The use of exemption authority under 10 C.F.R. § 50.12 is extraordinary and is based upon a finding of exceptional circumstances, considering the equities of the situation.

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CLI-84-9 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1).
Docket No. 50-322-OL; OPERATING LICENSE; June 5, 1984; MEMORANDUM AND
ORDER

A The Commission responds to a certification to it by the Appeal Board of two issues concerning (1) the relative scope of the terms "important to safety" and "safety-related" for the purpose of evaluating the acceptability of quality assurance programs established under 10 C.F.R. Part 50; and (2) the conditions under which NEPA would require the Commission to prepare a separate environmental impact statement (EIS) for low-power operation. The Commission declines to reach any final decision on the first, finding that it would be more suitably addressed by rulemaking. It answers the second by ruling that where an EIS for full-power operation has been prepared and adjudicated, the pendency of an adjudication on the emergency planning issue material to full-power operation does not form a basis for an additional NEPA obligation to prepare a separate environmental evaluation of a proposal to issue a low-power operating license to that plant where that issue does not constitute a significant changed circumstance.

B In the usual case, NEPA does not require any separate environmental analysis of a proposal to issue a low-power operating license. *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*, ALAB-728, 17 NRC 777, 793-95 (1983), aff'd, CLI-83-32, 18 NRC 1309 (1983). It is well-established NEPA law that separate environmental statements are not required for such intermediate, implementing steps where an environmental impact statement has been prepared for the entire proposed action and there have been no significant changed circumstances. *Environmental Defense Fund, Inc. v. Andrus*, 619 F.2d 1368, 1377 (1980) (and cases cited therein).

CLI-84-10 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor).
Docket No. 50-142-OL; FACILITY LICENSE RENEWAL; June 8, 1984; ORDER

A The Commission declines to grant a staff request to initiate a rulemaking proceeding which would propose to amend 10 C.F.R. § 73.40(a) by adopting the staff's interpretation of that section and thereby modify effectively the Licensing Board's ruling that the section requires the licensee in this facility license renewal proceeding to take some measures to protect the facility from potential sabotage.

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ALAB-758 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2). Docket Nos. 50-443-OL, 50-444-OL; OPERATING LICENSE; January 24, 1984; DECISION

A The Appeal Board affirms, on different grounds, the Licensing Board's denial of an untimely petition for leave to intervene in this operating license proceeding.

B It is the responsibility of the Director of Nuclear Reactor Regulation, and not the Licensing Board, to make the finding required by 10 C.F.R. 50.57(a)(1) as a precondition to the issuance of an operating license for a nuclear plant. Commonwealth Edison Co. (Zion Station, Units 1 and 2). ALAB-226, 8 AEC 381, 410-11 (1974).

ALAB-759 PUBLIC SERVICE ELECTRIC AND GAS COMPANY, et al. (Hope Creek Generating Station, Unit 1). Docket No. 50-354-OL; DISQUALIFICATION; January 25, 1984; MEMORANDUM AND ORDER

A Upon consideration of an order (referred to it by an administrative judge) denying an intervenor's motion that he recuse himself from further service as a member of the Licensing Board for this operating license proceeding, the Appeal Board rules that the judge must be replaced on the Licensing Board by another member of the Licensing Panel.

B Licensing Board members are governed by the same disqualification standards that apply to federal judges. Houston Lighting and Power Co. (South Texas Project, Units 1 & 2). CLI-82-9, 15 NRC 1363, 1365-67 (1982).

C An administrative trier of fact is subject to disqualification if he has a direct, personal, substantial pecuniary interest in a result; if he has a "personal bias" against a participant; if he has served in a prosecutive or investigative role with regard to the same facts as are in issue; if he has prejudged factual — as distinguished from legal or policy — issues; or if he has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues. Consumers Power Co. (Midland Plant, Units 1 and 2). ALAB-101, 6 AEC 60, 65 (1973).

D The current statutory foundation for the Commission's disqualification standards is found in 28 U.S.C. 144 and 455.

E The current Section 455(a) of 28 U.S.C. imposes an objective standard for recusal, i.e., whether a reasonable person knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2). CLI-82-9, 15 NRC 1363, 1366, citing Fredonia Broadcasting Corp. v. RCA Corp., 569 F.2d 251, 257 (5th Cir. 1978). And, as a general proposition, recusal under this section must rest upon extrajudicial conduct. 15 NRC at 1367.

F 28 U.S.C. 455(b)(2) requires a judge to disqualify himself in circumstances where, inter alia, in private practice the judge served as a lawyer "in the matter in controversy." Disqualification in such circumstances may not be waived. See 28 U.S.C. 455(e); SCA Services Inc. v. Morgan, 557 F.2d 110, 117 (7th Cir. 1977).

G The doctrines of res judicata and collateral estoppel apply in operating license proceedings. See Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2). ALAB-182, 7 AEC 210, modified on other grounds. CLI-74-12, 7 AEC 203 (1974).

ALAB-760 TENNESSEE VALLEY AUTHORITY (Hartsville Nuclear Plant, Units 1B and 2B). Docket Nos. STN 50-519, STN 50-521; CONSTRUCTION PERMIT; January 27, 1984; MEMORANDUM AND ORDER

A On motion of the applicant following the cancellation of Units 1B and 2B of its proposed four-unit (1A, 2A, 1B and 2B) Hartsville Nuclear Plant, the Appeal Board terminates, with re-

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spect to those two cancelled units, the limited jurisdiction previously retained over this construction permit proceeding involving all four units.

ALAB-761 UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY (Clinch River Breeder Reactor Plant), Docket No. 50-537-CP; CONSTRUCTION PERMIT; February 29, 1984; MEMORANDUM AND ORDER

- A** Acting on appeals by two intervenors from Licensing Board actions (following termination of the Clinch River project and the Licensing Board's dismissal of the intervenors from the proceeding for a construction permit (CP) for the project) that, inter alia, limited the intervenors' participation in the Limited Work Authorization (LWA) proceeding (on remand to consider issues of site redress) to giving limited appearance statements, the Appeal Board vacates the Licensing Board action limiting LWA participation and denies the remainder of the appeals.
- B** Under 10 C.F.R. § 50.10(e), an applicant for a construction permit may seek early approval of certain types of site preparation activity by requesting issuance of an LWA.
- C** A licensing board is required to issue an initial decision in a case involving an application for a construction permit even if the proceeding is uncontested. 10 C.F.R. § 2.104(b)(2) and (3).
- D** Licensing boards have the authority to regulate the course of a proceeding and to limit an intervenor's participation to issues in which it is interested. 10 C.F.R. §§ 2.718, 2.714(e) and (f).
- E** Parties may not dart in and out of proceedings on their own terms and at their convenience and expect to enjoy the benefits of full participation without responsibilities. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 907 (1982).

ALAB-762 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL, 50-444-OL; OPERATING LICENSE; March 16, 1984; MEMORANDUM AND ORDER

- A** Finding the standard for interlocutory review of a licensing board ruling not met, the Appeal Board denies an intervenor's request for directed certification of the Licensing Board's denial of its motion for dismissal of the operating license application for Unit 2 of the Seabrook facility sought on the ground that that Unit is only 22 percent completed.
- B** In the exercise of its directed certification authority conferred by 10 C.F.R. 2.718(i), an appeal board will step into a proceeding still pending below only upon a clear and convincing showing that the licensing board ruling under attack 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. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), ALAB-742, 18 NRC 380, 383 (1983); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).
- C** The Commission's regulations are devoid of any specific requirement that the reactor reach a particular stage of completion before the filing of an operating license application.

ALAB-763 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-323; OPERATING LICENSE; March 20, 1984; DECISION

- A** Following the conduct of evidentiary hearings by the Appeal Board on the adequacy of the applicant's efforts to verify the design of the Diablo Canyon facility, the Appeal Board decides that the actions taken by the applicant provided adequate confidence that Unit 1's structures, systems and components are designed to perform satisfactorily in service and that any significant design deficiencies in that unit resulting from defects in the applicant's design quality assurance program have been remedied. The Appeal Board thus concludes that there is reasonable assurance that Unit 1 can be operated without endangering the health and safety of the public.
- B** The Appeal Board withholds decision with respect to the adequacy of the design verification program for Unit 2.
- C** In order for the applicant to prevail on each factual issue, its position must be supported by a preponderance of the evidence. See Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 360 (1978), reconsideration denied.

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ALAB-467, 7 NRC 459 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 405 n.19 (1976).

D To determine that an applicant's verification programs are sufficient to verify the adequacy of a plant's design, the applicant's efforts must be measured against the same standard as that set forth in the Commission's quality assurance criteria, 10 C.F.R. Part 50, Appendix B: whether the verification program provides "adequate confidence that a [safety-related] structure, system or component will perform satisfactorily in service." If the applicant's verification efforts meet this standard, then there will be reasonable assurance with respect to the design of the facility that it can be operated without endangering the health and safety of the public.

E The Commission's regulations do not require that all pertinent quality assurance or quality control documents be consolidated and integrated into a single manual or set of manuals.

F The following technical issues are discussed: Sampling Techniques (statistical and judgmental) and Scope; Instrument Tubing Supports; Containment Uplifting; Modeling for Seismic Analysis (including the use of soil springs, fixed-base analysis, response of one building as input into model of another, lumped mass-spring model, finite element models, degrees of freedom); Soil Analysis (Seismic Refraction Tests and Cross-hole; and Up-hole Testing Techniques); Seismic Response Spectra; Fire Protection; Jet Impingement Analysis; Circuit Breakers (nameplate rating); Design Drawings and Analyses (conformance with plant as built); Component Cooling Water System Heat Removal Capacity; Small Bore Piping and Support Design (computer-based analysis and span criteria); Design Error Rate (adequate confidence versus perfection); Hosgri Fault; Westinghouse Quality Assurance Program; Causes of Quality Assurance Failures.

ALAB-764 CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OM&OL, 50-330-OM&OL; OPERATING LICENSE; March 30, 1984; MEMORANDUM AND ORDER

A The Appeal Board affirms the Licensing Board's refusal to quash subpoenas aimed at employees of a nonparty to this operating license proceeding.

B A nonparty to an operating license proceeding may appeal immediately an otherwise interlocutory discovery order. Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 686 n.1 (1979).

C A board may issue a subpoena upon a showing of only "general relevance" and "shall not attempt to determine the admissibility of evidence." See 10 C.F.R. § 2.720; see also 10 C.F.R. § 2.740(b)(1).

D That the press enjoys a qualified privilege not to reveal its sources in certain circumstances is beyond doubt. *Branzburg v. Hayes*, 408 U.S. 665, 709-10 (1972) (Powell, J., concurring); *United States v. Cuthbertson*, 630 F.2d 139, 147 (3d Cir. 1980), cert. denied, 449 U.S. 1126 (1981); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 436-37 (10th Cir. 1977); *Carey v. Hume*, 492 F.2d 631, 636 (D.C. Cir.), cert. dismissed, 417 U.S. 938 (1974); *Baker v. F&F Investment*, 470 F.2d 778, 783 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973).

E Courts traditionally have been loath to create a new testimonial privilege or to extend an existing one, "since such privileges obstruct the search for truth." *Branzburg v. Hayes*, supra, 408 U.S. at 690 n.29. See *Herbert v. Lando*, 441 U.S. 153, 175 (1979).

F All citizens have a "general duty . . . to provide evidence when necessary to further the system of justice." *Wright v. Jeep Corp.*, 547 F. Supp. 871, 875 (E.D. Mich. 1982). See *Branzburg v. Hayes*, supra, 408 U.S. at 688.

G The qualified First Amendment privilege of the press has been consistently and strictly limited to those reasonably characterized as part of the media. Compare, e.g., the following case: where the privilege has been recognized: *United States v. Cuthbertson*, supra; *Silkwood v. Kerr-McGee Corp.*, supra; *Baker v. F&F Investment*, supra; *Solargen Electric Motor Car Corp. v. American Motor Corp.*, 506 F. Supp. 546 (N.D.N.Y. 1981); *In re Consumers Union of the United States, Inc. (Starks v. Chrysler Corp.)*, 32 Fed. R. Serv. 2d 1373 (S.D.N.Y. 1981); *Apicella v. McNeil Laboratories, Inc.*, 66 F.R.D. 78 (E.D.N.Y. 1975); with *Wright v. Patrolmen's Benevolent Ass'n*, 72 F.R.D. 161 (S.D.N.Y. 1976).

H The "scholar's privilege" — an alleged outgrowth of the journalist's First Amendment privilege — is of doubtful validity under modern case law, at least as applied to non-scholars.

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See *Wright v. Jeep Corp.*, supra, 547 F. Supp. at 875-76. See also *In re Dinnan*, 661 F.2d 426, 427-31 (5th Cir. 1981), cert. denied, 457 U.S. 1106 (1982).

I Where the courts have recognized a journalist's privilege, they have balanced "the potential harm to the free flow of information that might result against the asserted need for the requested information." *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 596 (1st Cir. 1980) (footnote omitted). See *Branzburg v. Hayes*, supra, 408 U.S. at 710; *United States v. Cuthbertson*, supra, 630 F.2d at 148; *Carey v. Hume*, supra, 492 F.2d at 636-39; *Solargen Electric Motor Car Corp. v. American Motor Corp.*, supra, 506 F. Supp. at 550.

J The principal factors to consider in determining to give recognition to the journalist's privilege are whether the requested information is relevant and goes to the heart of the matter at hand, and whether the party seeking the information has tried to obtain it from other possible sources. *Silkwood v. Kerr-McGee Corp.*, supra, 563 F.2d at 438; *Baker v. F&F Investment*, supra, 470 F.2d at 783.

K Boards assume protective orders will be obeyed unless a concrete showing to the contrary is made. One who violates a protective order risks serious sanction. See *Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2)*, ALAB-735, 18 NRC 19, 25 (1983).

L Imposition of a protective order can be a pragmatic accommodation of the need for discovery and the protection of the asserted interests of the persons against whom discovery is directed.

ALAB-765 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; OPERATING LICENSE, March 30, 1984; MEMORANDUM AND ORDER

A The Appeal Board affirms (1) the Licensing Board's assertion of jurisdiction over an intervenor's contentions concerning the applicant's 10 C.F.R. Part 70 application for a license to receive and store new, unirradiated fuel outdoors at the Limerick site, and (2) dismissal of the contentions for lack of basis and specificity.

B A Special Nuclear Materials License is required for a person to "receive title to, own, acquire, deliver, receive, possess, use, or transfer special nuclear material." 10 C.F.R. § 70.3. Such authorization is essentially subsumed within a license to operate a commercial power reactor, issued pursuant to 10 C.F.R. Part 50.

C If a utility wants (or needs) to receive and store new fuel before an operating license is issued, the utility must obtain a Part 70 license.

D Under the Commission's Rules of Practice, licensing boards may "preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, and to perform such other adjudicatory functions as the Commission deems appropriate." 10 C.F.R. § 2.721(a).

E Appeal boards are delegated authority to perform the Commission's review functions in Part 50 and other licensing proceedings specified by the Commission. 10 C.F.R. § 2.785(a).

F Under 10 C.F.R. § 2.721(a), only the Commission can define the scope of a proceeding before a licensing board, or decide that a formal adjudicatory-type proceeding should be instituted.

G Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239a, mandates a hearing for any licensing action where requested by a person "whose interest may be affected." But a formal, "on the record" adjudicatory-type hearing under Section 554 of the Administrative Procedure Act (APA), 5 U.S.C. § 554 — like those conducted by licensing boards — is not required for so-called materials licenses. See *Kerr-McGee Corp. (West Chicago Rare Earths Facility)*, CLI-82-2, 15 NRC 232, 244-62 (1982), aff'd sub nom. *City of West Chicago v. NRC*, 701 F.2d 632 (7th Cir. 1983). The Commission can delegate authority to adjudicate such matters informally to an agency official, such as the Director of the Office of Nuclear Material Safety and Safeguards. See, e.g., *Kerr-McGee Corp. (West Chicago Rare Earths Facility)*, CLI-82-21, 16 NRC 401 (1982).

H Licensing boards may assert jurisdiction over Part 70 issues raised in conjunction with an ongoing Part 50 licensing proceeding. See *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2)*, CLI-76-1, 3 NRC 73, 74 (1976). See also, e.g., *Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2)*, LBP-83-38, 18 NRC 61, 63

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(1983); Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 228-30 (1979).

I It is not clear what, if any, notice requirements pertain to materials license cases. See Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 157-59 (1982).

J Section 2.714(b) of 10 C.F.R. requires an intervenor in a proceeding to set forth the bases for its contention(s) with reasonable specificity. Where the laws of physics deprive a proposed contention of any credible basis, the contention will not be admitted. Compare Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980).

K Parties in Commission proceedings have a duty to alert the Boards and all other parties of any significant new information related to the proceeding. See Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1394 (1982).

L Under Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), all five factors enumerated in 10 C.F.R. § 2.714(a)(1) must be considered and balanced before an untimely intervention petition may be granted or a late-filed contention admitted. This is so even where a party has succeeded in making a strong showing on the first of those factors (good cause).

M The following technical issues are discussed: Criticality Potential of New Fuel; Handling and Storage of New Fuel at the Reactor Site; Radiation Hazard from New Fuel.

ALAB-766 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP (Emergency Planning); RESTART, April 2, 1984; MEMORANDUM AND ORDER

A The Appeal Board declines, for lack of jurisdiction, to reconsider ALAB-697, its decision in this special restart proceeding affirming the Licensing Board's finding that certain emergency plans for the nuclear reactor are adequate.

B Under settled principles of finality of adjudicatory action, once an appeal board has finally determined a discrete issue in a proceeding, its jurisdiction is terminated with respect to that issue, absent a remand order. 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).

C When the Commission declines to review an appeal board decision, a final agency determination has been made resulting in the termination of appeal board jurisdiction. Seabrook, supra, 8 NRC at 695.

D Appeal Board jurisdiction over previously determined issues is not necessarily preserved by the pendency before it of other issues in a proceeding. North Anna, supra, 9 NRC at 708-09; Seabrook, supra, 8 NRC at 695-96.

ALAB-767 WASHINGTON PUBLIC POWER SUPPLY SYSTEM, et al. (WPPSS Nuclear Project No. 3), Docket No. 50-508-OL; OPERATING LICENSE; April 10, 1984; DECISION

A The Appeal Board affirms the Licensing Board determination made on remand that an untimely petitioner for intervention in this operating license proceeding has made an adequate showing under 10 C.F.R. 2.714(a)(1) that it "may reasonably be expected to assist in developing a sound record," in support of the Licensing Board's previous grant of late intervention.

B A late petitioner can establish that its participation may reasonably be expected to assist in developing a sound record by (1) identifying specifically at least one witness it intends to present; and (2) providing sufficient detail respecting that witness' proposed testimony to permit the Board to reach a reasoned conclusion on the likely worth of that testimony on one or more of its contentions. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1181 (1983).

ALAB-768 DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414; OPERATING LICENSE; April 17, 1984; MEMORANDUM AND ORDER

A The Appeal Board dismisses a referral by the Licensing Board of a ruling rejecting portions of an untimely contention advanced by intervenors in this operating license proceeding. The Appeal Board finds that the Licensing Board ruling can await appeal from that Board's final decision without causing truly exceptional delay or expense, and that Appeal Board involvement in the proceeding at this time is not compelled by any public interest.

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- B** All nuclear power facilities are required to have an onsite electric power system to permit the functioning of structures, systems, and components important to safety in the event that the facility's offsite electric power system is inoperative. 10 C.F.R. Part 50, Appendix A, General Design Criterion 17.
- C** Interlocutory review of licensing board action on specific contentions, whether in admitting or rejecting them, is generally disfavored. See *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, ALAB-687, 16 NRC 460, 465 (1982), rev'd in part on other grounds, CLI-83-19, 17 NRC 1041 (1983).
- D** An intervenor aggrieved by threshold licensing board action on one of its contentions customarily must await the board's initial decision before seeking appeal board review. On appeal from an initial decision under 10 C.F.R. 2.762(a), an intervenor can assert that a licensing board ruling on the admissibility of a contention was erroneous. See, e.g., *Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2)*, ALAB-599, 12 NRC 1, 2 n.1 (1980), and cases cited.
- E** In the absence of a potential of truly exceptional delay or expense, the risk that a licensing board's interlocutory ruling may eventually be found to have been erroneous, and that because of the error further proceedings may have to be held, is one which must be assumed by that board and the parties to the proceeding. *Commonwealth Edison Co. (Zion Station, Units 1 and 2)*, ALAB-116, 6 AEC 258, 259 (1973).
- ALAB-769 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL; OPERATING LICENSE; April 23, 1984; MEMORANDUM AND CERTIFICATION TO THE COMMISSION
- A** The Appeal Board certifies to the Commission questions concerning the terms "important to safety" and "safety-related" as used in the Commission's quality assurance regulations, and another question concerning the need for additional environmental evaluation under the National Environmental Policy Act prior to the issuance of a license for low-power operation of the Shoreham plant.
- B** The General Design Criteria (GDC) establish minimum standards for those structures, systems and components considered important to safety, i.e., those that "provide reasonable assurance that the facility can be operated without undue risk to the health and safety of the public." 10 C.F.R. Part 50, Appendix A, Introduction.
- C** Appendix B to 10 C.F.R. Part 50 delineates the quality assurance requirements for the design, construction and operation of various structures, systems and components of a nuclear power reactor. These quality assurance requirements apply to all activities affecting the safety-related function of these structures, systems and components. 10 C.F.R. Part 50, Appendix B, Introduction.
- D** Licensing boards have discretion to admit late-filed contentions and appeal boards are not readily disposed to overturn such board determinations. See *Washington Public Power Supply System (WPPSS Nuclear Project No. 3)*, ALAB-747, 18 NRC 1167, 1171 (1983).
- ALAB-770 COMMONWEALTH EDISON COMPANY (Byron Nuclear Power Station, Units 1 and 2), Docket Nos. STN 50-454, STN 50-455; OPERATING LICENSE; May 7, 1984; MEMORANDUM AND ORDER
- A** Retaining jurisdiction over the proceeding and the applicant's appeal from the Licensing Board's initial decision, LBP-84-2, 19 NRC 36 (1984), denying an operating license for Byron, the Appeal Board remands the record in this operating license proceeding to the Licensing Board for further evidentiary hearing on the issue of quality assurance and the rendering of a supplemental initial decision which is to include: (1) its findings based upon the additional evidence adduced; and (2) any necessary changes in the ultimate findings and conclusions reached earlier by the Board as a result of that additional evidence.
- B** An appeal board acting upon an appeal from a licensing board decision may remand the record to the board for further hearing while retaining jurisdiction over the proceeding. In such circumstances, there is no necessity for a party to file a new notice of appeal after completion of further proceedings by the licensing board. See generally *Ford Motor Co. v. NLRB*, 305 U.S. 364, 373 (1939); Local Rule 13(d) of the Court of Appeals for the District of Columbia Circuit; *Quincy Cable TV, Inc. v. Federal Communications Commission*, 730 F.2d 1549 (D.C. Cir. 1984).

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- C So long as legitimate uncertainty remains respecting whether a nuclear facility has been properly built, a licensing board is obliged to withhold authorization for an operating license.
- D Under Commission regulations, owners of a nuclear power facility are responsible for establishing and carrying out an effective quality assurance program. See Criterion I of Appendix B to 10 C.F.R. Part 50.
- E The Commission has long held that as a general proposition issues should be dealt with in the hearings and not left for later (possibly more informal) resolution. The post-hearing approach should be employed sparingly and only in clear cases — for example, where minor procedural deficiencies exist. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103 (1983), citing Consolidated Edison Co. of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951 & n.8, 952 (1974). See also Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978).
- F The following technical issue is discussed: Quality Assurance.
- ALAB-771 WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS Nuclear Project No. 1), Docket No. 50-460-CPA; CONSTRUCTION PERMIT AMENDMENT; May 15, 1984; DECISION
- A The Appeal Board affirms the Licensing Board's decision, LBP-84-9, 19 NRC 497 (1984), granting summary disposition to the applicant on the single admitted contention challenging the good cause for obtaining a construction permit extension.
- B Under Commission regulations, if construction of a nuclear power plant is not complete by the latest date specified in the construction permit, the permit expires and all rights thereunder are forfeited. 10 C.F.R. § 50.55(b); Atomic Energy Act of 1954, § 185, 42 U.S.C. § 2235.
- C "Upon good cause shown, the Commission will extend the completion date for a reasonable period of time." 10 C.F.R. § 50.55(b).
- D A timely filed application for extension of an existing construction permit automatically extends the permit until the extension application is determined. 10 C.F.R. § 2.109.
- E Hearings are mandated for applications for initial construction permits and, therefore, such applications may not be disposed of summarily, even if uncontested. See section 189 of the Atomic Energy Act, 42 U.S.C. § 2239; 10 C.F.R. §§ 2.749(d), 2.104(b)(2), (3). Permit amendment cases, however, are not subject to the mandatory hearing requirement and summary disposition limitation. See Washington Public Power Supply System (WPPSS Nuclear Project, Nos. 1 & 2), CLI-82-29, 16 NRC 1221, 1231 (1982) (hearing on extension request to be held only if petitioner can satisfy requirements of 10 C.F.R. § 2.714); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 407 n.5 (1975). Cf. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-41, 15 NRC 1295 (1982).
- F Summary disposition of a contention may be granted based on pleadings alone, or pleadings accompanied by affidavits or other documentary information, where there is no genuine issue as to any material fact that warrants a hearing.
- G To be admissible, a contention in a construction permit extension case must either challenge the applicant's reasons for delay or seek to show that other reasons, not constituting good cause, are the principal basis for delay. CLI-82-29, supra, 16 NRC at 1230.
- H Permit extension proceedings are not intended to permit periodic relitigation of health, safety, or environmental questions between the time a construction permit is granted and the time the facility is authorized to operate. Id. at 1228.
- I A two-pronged test for determining whether a contention is within the scope of a permit extension proceeding is: (1) the construction delays at issue have to be traceable to the applicant and (2) the delays must be "dilatatory," i.e., the intentional delay of construction without a valid purpose. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 551, 552 (1983), cited with approval in Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984).
- J Intentional delay of construction by a construction permit holder for financial reasons constitutes a valid business purpose and is not dilatatory for the purpose of determining a contention within the scope of a permit extension proceeding. Similarly, questions about the need for power, cost of completion and financial consequences are not admissible contentions. CLI-84-6, supra, 19 NRC at 978-79 & n.2.

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- K** It is not the mission of the adjudicatory boards to superintend utility management when it makes business judgments. *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752, 757-58 (1978).
- L** Under 10 C.F.R. § 50.55(b) of the Commission's regulations, the completion date specified in a construction permit may be extended for a reasonable period of time. The purpose behind this "reasonable period of time" requirement is to ensure that the applicant does not select a completion date that frustrates the NRC's regulatory oversight. Selection of a date that permits examination of a new extension request in a timely fashion is consistent with 10 C.F.R. § 50.55.
- ALAB-772 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP (Management Phase); SPECIAL PROCEEDING; May 24, 1984; DECISION
- A** Acting on the appeals of three intervenor groups from the Licensing Board decisions concluding that the licensee has demonstrated its managerial capability and technical resources to operate Unit 1 of the Three Mile Island reactor in a safe manner, the Appeal Board remands the proceeding to the Licensing Board for further hearing on, inter alia, the adequacy of licensee's training program. In addition, the Appeal Board grants an intervenor group's motion to reopen the record for a hearing on allegations of improper leak rate practices at TMI-1.
- B** Parties in NRC adjudicatory proceedings have an obligation to apprise the boards of significant new information. See *Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-143, 6 AEC 623, 625-26 (1973).
- C** Under the Atomic Energy Act, licensees are required to comply with Commission requirements for the protection of the public health and safety. See section 103b of the Atomic Energy Act, 42 U.S.C. § 2133b.
- D** Under the Atomic Energy Act, the Commission is authorized to consider a licensee's character or integrity in deciding whether to continue or revoke its operating license. See section 182a of the Atomic Energy Act, 42 U.S.C. § 2232a. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281, 291 (1980). See also *Consumers Power Co.* (Midland Plant, Units 1 and 2), CLI-83-2, 17 NRC 69, 70 (1983); id., ALAB-106, 6 AEC 182, 184 (1973).
- E** A licensee of a nuclear power plant has a great responsibility to the public, one that is increased by the Commission's heavy dependence on the licensee for accurate and timely information about the facility and its operation. *Hamlin Testing Laboratories, Inc. v. AEC*, 357 F.2d 632, 638 (6th Cir. 1966); *Petition for Emergency and Remedial Action*, CLI-78-6, 7 NRC 400, 418-19 (1978).
- F** The value of testimony by a witness at NRC proceedings is not undermined merely by the fact that the witness is a hired consultant of a licensee. See *Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1091 (1983).
- G** Parties who fail to file proposed findings of fact and conclusions of law on a matter may be deemed to be in default and to have waived any further right to pursue the issue. 10 C.F.R. § 2.754. See *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, 23 (1983).
- H** Where credibility of evidence turns on the demeanor of a witness, the appeal board gives the judgment of the trial board which saw and heard the testimony particularly great deference. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 404 (1976).
- I** Demeanor evidence is of little value where other testimony, documentary evidence, and common sense suggest a contrary result. See *Millar v. FCC*, 707 F.2d 1530, 1539-40 (D.C. Cir. 1983); *Local 441, IBEW v. NLRB*, 510 F.2d 1274, 1276 (D.C. Cir. 1975).
- J** Ethics and technical proficiency are both legitimate areas of inquiry in the consideration of a licensee's overall management competence.
- K** An active role in reviewing and auditing licensee training programs and examinations is contemplated for the NRC staff under Commission regulations. See generally 10 C.F.R. §§ 55.10(a)(6), 55.33(a)(4). See also 10 C.F.R. Part 55, Appendix A; NUREG-0660 (May 1980), Task I.A.2; Reg. Guide 1.8, "Personnel Qualification and Training," 2d proposed rev. 2 (1980), §§ 2.2.2, 2.2.7.

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- L** The promulgation of more stringent regulations, applicable to all licensees, supersedes less stringent requirements imposed by a licensing board in a particular proceeding.
- M** A licensing board may alter the usual order of presentation of evidence and require an intervenor that would normally follow a licensee to proceed with its case first. This course of action is appropriate where, for example, the intervenor has failed to comply with discovery requests and orders. See Northern States Power Co. (Minnesota) (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300-01 (1977), cited with approval in Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 338 (1980); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 175, 188 (1978); 10 C.F.R. § 2.731; 10 C.F.R. Part 2, Appendix A, § V(d)(4); 5 U.S.C. § 556. The burden of proof on licensee, however, remains unchanged in these circumstances. See Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-315, 3 NRC 101, 105 (1976).
- N** Where an intervenor raises a particular contention challenging a licensee's ability to operate a nuclear power plant in a safe manner, the intervenor necessarily assumes the burden of going forward with the evidence to support that contention. See Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 345 (1973).
- O** When a party is permitted to enter a case late, it is expected to take the case as it finds it. It follows that when a party that has participated in a case all along simply changes representatives in midstream, knowledge of the matters already heard and received into evidence is imputed to it.
- P** The NRC's Rules of Practice permit non-attorneys to appear and represent their organizations in agency proceedings. See 10 C.F.R. § 2.713(b). Compare 49 C.F.R. §§ 1103.2, 1103.3 (Interstate Commerce Commission); 2d Cir. § 46(d); 3d Cir. R. 9; Fed. Cir. R. 7(a).
- Q** Although the NRC adjudicatory boards do not hold lay representatives to as high a standard as they do lawyers, all representatives have a responsibility to comply with and be bound by the same agency procedures as all other parties, even where a party is hampered by limited resources. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981). See, e.g., Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952, 956-57 (1982).
- R** An adjudicatory board should call upon independent experts to assist the board itself only in the most extraordinary circumstances — i.e., when a board simply cannot otherwise reach an informed decision on the issue involved. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1146 (1981).
- S** Technical specifications for a nuclear facility are part of the operating license for the facility and are legally binding. See Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 272-73 (1979).
- T** In order to prevail on a motion to reopen the record, the proponent of the motion must show that the motion is timely, that it addresses a significant issue, and that it may alter the outcome. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980).
- U** Documents such as a Congressional report on an accident generally must be proffered in a timely manner and sponsored by a witness in order to be admitted into evidence. See Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 477 (1982).
- V** In a special proceeding, where the Commission has specified the issues for hearing, a licensing board is obliged to resolve all such issues, even in the absence of active participation by intervenors.
- W** NRC adjudicatory boards lack the authority to direct the staff in the performance of its duties. See Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980).
- X** In the proper circumstances, an adjudicatory board is empowered to call and examine witnesses of whom the board is aware and who are likely to have (factual) information necessary for the proper resolution of the issues before it. See generally 10 C.F.R. § 2.718. Compare Summer, *supra*, 14 NRC at 1152-57.

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- Y** Because the independence of adjudicatory boards is essential to preserve the integrity of the hearing process, the board in an operating license adjudication is not bound by a decision of the Director of Inspection and Enforcement in an enforcement action. *South Texas*, supra, 12 NRC at 289.
- Z** Replacing corporate managers can result in a change in overall corporate philosophy and management.
- AA** Under appropriations legislation for the NRC for fiscal years 1980 and 1981, the Commission is precluded from providing financial assistance to intervenors. See *Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit No. 1)*, ALAB-625, 13 NRC 13, 14-15 (1981).
- BB** The following technical issues are discussed: Training and testing of licensed and non-licensed personnel; Staffing and work hours; Maintenance (deferral, record keeping, priorities, overtime); Corporate Organization (command and administrative structure, financial/technical relationship).
- ALAB-773 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL (Emergency Planning); OPERATING LICENSE; June 13, 1984; DECISION**
- A** Upon appeal of a Licensing Board order requiring that the Federal Emergency Management Agency (FEMA) release to an intervenor in this operating license proceeding certain agency documents concerning FEMA's emergency preparedness determinations for the facility, the Appeal Board reverses, determining that the documents are privileged under the executive or deliberative process privilege and the intervenor has not made a showing of need sufficient to override the privilege.
- B** Pursuant to 10 C.F.R. § 2.740(b)(1) of the Commission's regulations, parties may generally obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding.
- C** Under Commission regulations, no full-power operating license for a nuclear power reactor can issue unless the NRC finds that there is reasonable assurance that adequate protective measures both on and off the facility site can and will be taken in the event of a radiological emergency. 10 C.F.R. § 50.47(a)(1).
- D** With regard to the adequacy of offsite emergency measures, the NRC must base its findings on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether state and local emergency plans are adequate and whether there is reasonable assurance they can be implemented. 10 C.F.R. § 50.47(a)(2).
- E** Under a Memorandum of Understanding entered into by the Commission and FEMA in 1980, FEMA has the responsibility for reviewing emergency plans and agrees to provide the NRC with findings and determinations on the current status of emergency preparedness around particular plant sites for use in NRC licensing proceedings. 45 Fed. Reg. 82,713 (1980).
- F** In connection with applications for operating licenses, the NRC reviews FEMA findings and determinations on the status of emergency planning around a plant and then makes its own decisions with regard to the overall state of emergency preparedness.
- G** The executive (or deliberative process) privilege protects from public disclosure governmental documents reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated. *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318 (D.D.C. 1966), aff'd, 384 F.2d 979 (D.C. Cir.), cert. denied, 389 U.S. 952 (1967). See also *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975); *United States v. Leggett & Platt, Inc.*, 542 F.2d 655, 658-59 (6th Cir. 1976), cert. denied, 430 U.S. 945 (1977).
- H** The executive privilege may be invoked in NRC proceedings. *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, CLI-74-16, 7 AEC 313 (1974); *Consumers Power Co. (Midland Plant, Units No. 1 & 2)*, ALAB-33, 4 AEC 701 (1971).
- I** The executive privilege is qualified and can be overcome by an appropriate showing of need. A balancing test is applied to determine whether a litigant's demonstrated need for a document outweighs the asserted interest in confidentiality. *Carl Zeiss Stiftung*, supra, 40 F.R.D. at 327.

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- J** The government agency bears the burden of demonstrating that the executive privilege is properly invoked, but the party seeking the withheld information has the burden of showing that there is an overriding need for its release. *Smith v. FTC*, 403 F. Supp. 1000, 1016 (D. Del. 1975); *United States v. AT&T*, 86 F.R.D. 603, 610 (D.D.C. 1979).
- K** The executive privilege is not limited to policymaking, but may attach to the deliberative process that precedes most decisions of government agencies. *Russell v. Dep't. of the Air Force*, 682 F.2d 1045, 1047 (D.C. Cir. 1982).
- L** The executive privilege does not protect purely factual material unless it is inextricably intertwined with privileged communications, or the disclosure of the factual material would reveal the agency's decisionmaking process. *Sterling Drug Inc. v. Harris*, 488 F. Supp. 1019, 1024 (S.D.N.Y. 1980); *Russell*, supra, 682 F.2d at 1048.
- M** The executive privilege protects both intra-agency and inter-agency documents and may even extend to outside consultants to an agency. *Lead Industries Ass'n v. OSHA*, 610 F.2d 70, 83 (2d Cir. 1979), citing *Soucie v. David*, 448 F.2d 1067, 1078 n.44 (D.C. Cir. 1971); *Wu v. National Endowment for Humanities*, 460 F.2d 1030, 1032 (5th Cir. 1972), cert. denied, 410 U.S. 926 (1973). Cf. *National Small Shipments Traffic Conference, Inc. v. ICC*, 725 F.2d 1442, 1449 (D.C. Cir. 1984) ("[b]ecause . . . consultants operate as the functional equivalent of regular staff, they constitute agency insiders").
- ALAB-774 METROPOLITAN EDISON COMPANY, et al.** (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-SP (Management Phase); SPECIAL PROCEEDING; June 19, 1984; MEMORANDUM AND ORDER
- A** The Appeal Board denies the motion of an intervenor to reopen the record in the management phase of this special proceeding. It finds that the information on which the motion is predicated is insufficient to warrant reopening under the well-established, three-part test for reopening a closed record.
- B** The filing of a document in NRC licensing proceedings is deemed to be complete as of the time of deposit of the document in the mail or with a telegraph company. 10 C.F.R. § 2.701(c).
- C** The three-part test for reopening a closed record considers whether (1) the motion is timely, (2) it addresses significant safety (or environmental) issues, and (3) a different result might have been reached had the newly proffered material been considered initially. *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*, ALAB-598, 11 NRC 876, 879 (1980).
- D** Under section 186a of the Atomic Energy Act, any license may be revoked for, among other things, any material false statement in the application or any statement of fact required under section 182 of the Act. 42 U.S.C. § 2236a. This provision of the statute can be violated by omission as well as by an affirmative statement. *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, CLI-76-22, 4 NRC 480, 489 (1976), aff'd sub nom. *Virginia Electric and Power Co. v. NRC*, 571 F.2d 1289 (4th Cir. 1978).
- E** Adjudicatory boards have long required parties in proceedings before them to inform the boards and other parties of any new information that is "relevant and material to the matters being adjudicated." *Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2)*, ALAB-143, 6 AEC 623, 625 (1973). See also *Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3)*, ALAB-677, 15 NRC 1387, 1394 (1982).
- F** The term "material" in "material false statement" means material in the traditional evidentiary sense — i.e., whether it is "capable of influencing a decisionmaker, not whether the statement would, in fact, have been relied on." *North Anna*, supra, 4 NRC at 487.
- G** In case a licensee or an applicant has a reasonable doubt concerning the materiality of information in relation to its Board Notification obligation or duties under section 186 of the Atomic Energy Act, supra, the information should be disclosed for the board to decide its true worth. *McGuire*, supra, 6 AEC at 625 n.15; *Consumers Power Co. (Midland Plant, Units 1 and 2)*, ALAB-691, 16 NRC 897, 914 (1982), review declined, CLI-83-2, 17 NRC 69 (1983).
- H** Before submitting information as a Board Notification or under section 186 of the Atomic Energy Act, supra, an applicant or a licensee generally is entitled to a reasonable period of time for internal corporate review of the documents under consideration. An obvious exception exists for reports and the like that could have an immediate effect on matters currently

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being pursued at hearing, or that disclose possible serious safety or environmental problems requiring immediate attention. An applicant or a licensee is obliged to report the latter to the NRC staff without delay, pursuant to myriad regulatory requirements. See e.g., 10 C.F.R. § 50.72.

- I Deliberate planning by a licensee or an applicant to make a material false statement, even where not carried to fruition, would be evidence of bad character. See Midland, CLI-83-2, supra, 17 NRC at 70. A party, however, has a right to assert a reasonable position in opposition to any claimed obligation.
- ALAB-775 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE: June 28, 1984; MEMORANDUM AND ORDER
- A Determining that the standards to reopen the record have not been satisfied, the Appeal Board denies the motions of joint intervenors to reopen the record in this operating license proceeding on the issues of design quality assurance, construction quality assurance, and the applicant's character and competence to operate the Diablo Canyon facility.
- B The proponent of a motion to reopen a closed record must satisfy a three-part test: the motion must be timely, addressed to a significant safety or environmental issue, and establish that a different result would have been reached initially had the material submitted in support of the motion been considered. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983). See also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974).
- C For a reopening motion to be timely presented, the movant must show that the issue sought to be raised could not have been raised earlier. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1764-65 (1982).
- D In order for new evidence of asserted (design or construction) quality assurance deficiencies to raise a significant safety issue for the purpose of reopening a record, the evidence must establish that uncorrected errors endanger safe plant operation, or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to the plant's capability of being operated safely. Diablo Canyon, ALAB-756, supra, 18 NRC at 1345.
- E At a minimum, the new material in support of a motion to reopen 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.
- F To satisfy the requirement that new evidence must be capable of affecting a previous decision, the proponent of a motion to reopen must submit evidence that is relevant, material, and reliable in support of the motion. Embodied in this requirement is the notion that evidence presented in affidavit form must be given by competent individuals with knowledge of the facts or by experts in the disciplines appropriate to the issues raised.
- G Because the competence (or even the existence) of unidentified individuals is impossible to determine, statements of anonymous persons — so-called anonymous affidavits — cannot be considered as evidence to support a motion to reopen a closed record.
- ALAB-775A 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 8, 1984; ORDER
- ALAB-776 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE: June 29, 1984; DECISION
- A Upon the appeals of the applicant and the NRC staff, the Appeal Board vacates the condition on the Licensing Board's authorization of a full power operating license for the Diablo Canyon facility that the staff first must obtain the "final" findings of the Federal Emergency Management Agency (FEMA) on the adequacy of state offsite emergency response plans. The Appeal Board rules that the interim findings on the adequacy of the state plan presented by a

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FEMA expert witness at the hearing fully satisfy the requirements of the Commission's regulations.

B The Commission's regulations do not require the staff to obtain from FEMA "final" findings of the adequacy of state offsite response plans before a full power operating license can issue. See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 380 (1983); Cincinnati Gas & Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760, 775 (1983); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1066 (1983). Rather, preliminary FEMA reviews and interim findings presented by FEMA witnesses at licensing hearings are sufficient as long as such information permits the Licensing Board to conclude that offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. 10 C.F.R. 50.47(a)(1). See San Onofre, supra, 17 NRC at 38 n.57; Zimmer, supra, 17 NRC at 775 n.20.

C With respect to the adequacy of offsite emergency capabilities, the NRC must base its finding on a review of FEMA findings and determinations as to whether state and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented. 10 C.F.R. 50.47(a)(2). In any Commission licensing proceeding, a FEMA finding constitutes a rebuttable presumption of adequacy and ability to implement. *Id.*

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LBP-84-1 KANSAS GAS & ELECTRIC COMPANY, et al. (Wolf Creek Generating Station, Unit 1), Docket No. 50-482 (ASLBP No. 81-453-03-OL); EMERGENCY PLANNING; January 5, 1984; MEMORANDUM AND ORDER

- A** The Licensing Board issues a memorandum and order which, inter alia, grants Intervenor's motion to add a contention out-of-time.
- B** As to late-filed contentions, all five factors in 10 C.F.R. § 2.714(a)(1) should be applied by a Licensing Board, including the Appeal Board's three-part test for good cause.
- C** While the basis of a contention must be set forth with reasonable specificity, the contention need not allege noncompliance with a regulation and need not specify how that regulation has been violated in the absence of any explanation by, as here, emergency planning authorities that determinations had been made in compliance with the regulation.
- D** It is not the function of a licensing board to reach the merits of a contention at the time the admissibility of a contention is being considered.
- E** A basis for a contention is set forth with reasonable specificity if the applicants are sufficiently put on notice so that they will know, at least generally, what they will have to defend against or oppose, and if there has been sufficient foundation assigned to warrant further exploration of the proposed contention.

LBP-84-2 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; January 13, 1984; INITIAL DECISION

- A** When governing statutes or regulations require a licensing board to make particular findings before granting an applicant's requests, a board may not delegate its obligations to the Staff. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-298, 2 NRC 730, 737 (1975). The post-hearing approach should be employed only in clear cases — for example, where minor procedural deficiencies are involved (Consolidated Edison Co. of New York (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 951-52 (1974)), but not where the issue involved is a very extensive quality assurance reinspection program for which the Staff and the applicant have yet to agree on a full set of standards.
- B** The remedy most responsive to the circumstances of this case where, though construction nears completion, the Board finds that the Applicant has not demonstrated that it has met its quality assurance obligations, and the remedy least harsh to the Applicant, yet still appropriate, is to decide the issue now. This permits the parties to test immediately on appeal the quality of the decision. To reserve jurisdiction and to postpone final decision, in face of the impending completion of construction, would impose unilaterally upon the parties, particularly the Applicant, the Board's own view of the facts, law and appropriate remedy. Unless Applicant could mount a difficult interlocutory appeal from such a determination (to postpone the decision), it would have been denied due process.
- C** The Board avoided describing the reach of the denial of license on quality assurance grounds, as res judicata or collateral estoppel with respect to the quality assurance issues because neither concept, as ordinarily understood, neatly fits the unusual situation to be found in the continuum of a licensing proceeding with many aspects. The Board did not foreclose future proceedings on the quality assurance issue and had no jurisdiction to do so.
- D** The Board did not agree with the Applicant that its intentional overestimation of assumed traffic times under adverse weather conditions in an emergency and intentional underestimation of average generic sheltering values of the structures in the EPZ are conservative. Therefore the Board required the Applicant to make realistic estimates of these factors. Any variance from

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realistic estimates of these factors could lead a decisionmaker away from actions affording radiological dose savings.

- E The following technical issues are discussed: Quality assurance program, Steam generator tube integrity, Flow-induced vibrations, Bubble-collapse water hammer, Occupational radiation exposure As Low As Reasonably Achievable (ALARA), Linear hypothesis about health effects of radiation, Supralinear hypothesis about health effects of radiation, Severe accident analysis, Groundwater contamination, Groundwater velocity, Seismic design, Capability of faults, Strain gage tests, Emergency plans, Evacuation times, Average generic sheltering values.
- LBP-84-3 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; January 20, 1984; MEMORANDUM AND ORDER
- A The Licensing Board denies intervenor's motion to reopen the record.
- B The purpose of reopening the record is for a party to submit or to develop evidence. A motion not made for that purpose does not provide grounds for reopening the record.
- C A licensing board will not conduct its own investigation of quality assurance allegations without proof that Staff offices are unable to conduct such an investigation adequately. Boards are primarily responsible for conducting hearings and should not readily undertake investigative functions.
- D Newspaper allegations of quality assurance deficiencies, unaccompanied by evidence, ordinarily are not sufficient grounds for reopening an evidentiary record. Such articles do not demonstrate the existence of a "significant safety issue" or a "breakdown of the quality assurance program."
- LBP-84-4 UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY (Clinch River Breeder Reactor Plant), Docket No. 50-537-CP (ASLBP No. 75-291-12); CONSTRUCTION PERMIT; January 20, 1984; MEMORANDUM OF FINDINGS
- A In a Memorandum of Findings the Licensing Board concludes that:
- (1) the suitability of the proposed site for the Clinch River Breeder Reactor Plant (CRBRP) for a reactor of the general size and type proposed has been reaffirmed;
 - (2) from the evidence of record, the CRBRP can be constructed and operated in a manner that would have satisfied the NRC's mandate that the CRBRP achieve a level of safety comparable with that of light water reactor plants. Further, core disruptive accidents need not be included within the spectrum of design basis accidents for the CRBRP;
 - (3) a comprehensive and detailed quality assurance program was in place and functioning (prior to the termination of the CRBRP program) in accordance with the requirements of Appendix B to 10 C.F.R. Part 50; and
 - (4) environmental and emergency planning matters were appropriately addressed.
- LBP-84-5 PUBLIC SERVICE ELECTRIC & GAS COMPANY (Salem Nuclear Generating Station, Unit 1), Docket No. 50-272-OLA; OPERATING LICENSE AMENDMENT; January 25, 1984; ORDER DISMISSING PROCEEDING
- LBP-84-6 DUQUESNE LIGHT COMPANY, et al. (Beaver Valley Power Station, Unit 2), Docket No. 50-412 (ASLBP No. 83-490-04-OL); OPERATING LICENSE; January 27, 1984; REPORT AND ORDER ON SPECIAL PREHEARING CONFERENCE HELD PURSUANT TO 10 C.F.R. § 2.751a
- A In this Report and Order the Licensing Board concludes that a hearing is not required and dismisses the proceeding.
- B As an independent regulatory agency, the Nuclear Regulatory Commission is not subject to the requirements of Exec. Order No. 11,988, Floodplain Management, 42 Fed. Reg. 26,591 (1977).
- C The Licensing Board cannot decide the validity of actions that are yet to happen. Speculation concerning what the NRC Staff may do in an environmental impact statement that has not been issued does not provide an adequately specific basis for an admissible contention.
- D In order for an organization to obtain representational standing on the basis of the interests of a member, it must be established that the member has authorized the organization to represent his interests in the proceeding. It is unwarranted for the Licensing Board to infer such au-

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thorization when the affidavit of the member is devoid of any statement that he wants the organization to represent him.

E The filing and acceptance of the petition of the State of Pennsylvania pursuant to 10 C.F.R. § 2.715(c) permits it to participate in the adjudicatory hearing only if one is held. When no petitioner has submitted a litigable contention so as to necessitate the holding of a hearing, the filing and acceptance of the Pennsylvania petition to participate under the provisions of § 2.715(c) does not trigger a hearing.

F When none of the concerns sought to be litigated by a petitioner for intervention are within the scope of an operating license proceeding, the petitioner has failed to submit an admissible contention, and his petition for intervention will be denied.

LBP-84-7 CAROLINA POWER & LIGHT COMPANY and NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY (Shearon Harris Nuclear Plant, Units 1 and 2), Docket Nos. 50-400, 50-401 (ASLBP No. 82-468-01-OL); OPERATING LICENSE; January 27, 1984; MEMORANDUM AND ORDER

A The Licensing Board rules on several motions for summary disposition concerning health effects associated with normal operation of a nuclear power plant, granting them in part and denying them in part. The Board found that under the circumstances they would be warranted in calling their own expert witness to the evidentiary hearing in order to ensure substantive consideration of the issues.

B Because the proponent of a motion for summary disposition has the burden of demonstrating the absence of a genuine issue of material fact, it does not necessarily follow that a motion supported by affidavits will automatically prevail over an opposition not supported by affidavits. The Board must scrutinize the motion to determine whether the movant's burden has been met.

C An opponent of a summary disposition motion must set forth specific facts showing that there is a genuine issue of fact. It would frequently not be sufficient for an opponent to rely on quotations from or citations to published work of researchers who have apparently reached conclusions at variance with the movant's affiants. Such public work is typically produced with other objectives in mind and may not focus directly on the precise issue in contention. While a licensing board may, in its discretion, consider publications referenced in opposition to (or in support of) a motion for summary disposition to determine whether a movant has met its burden, it is under no obligation to do so.

D The Commission's decision in Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264 (1980) has the effect of differentiating health effects contentions from other contentions in the summary disposition context. An opponent of summary disposition in the health effects area must have some new (post-1975) and substantial evidence that casts doubt on the BEIR Report estimates. Furthermore, he must be prepared to present that evidence through qualified witnesses at the hearing.

E Adjudicatory boards should give the Staff every opportunity to explain, correct, or supplement its testimony before resorting to outside experts of their own, and must articulate good reason to suspect the validity and completeness of the Staff's work. A board must be satisfied that it has no realistic alternative to call in a board witness, that it simply cannot otherwise reach an informed decision on the issue involved.

F The following technical issue is discussed: Cancer Risk Estimates.

LBP-84-8 TEXAS UTILITIES GENERATING COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; OPERATING LICENSE; January 30, 1984; MEMORANDUM

LBP-84-9 WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS Nuclear Project No. 1), Docket No. 50-460-CPA (ASLBP No. 83-485-02-CPA); CONSTRUCTION PERMIT AMENDMENT; February 1, 1984; MEMORANDUM AND ORDER

A In a proceeding to determine whether Applicant has demonstrated "good cause" for the construction completion date in the construction permit to be extended, the Licensing Board grants Applicant's and NRC Staff's motions for summary disposition in Applicant's favor.

B Where the Applicant has demonstrated valid reasons for delaying construction, the Board will permit the construction completion date to be extended without reaching a judgment on the advisability of completing the plant.

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C The reasonableness of the period of the requested construction completion date extension cannot be challenged on grounds of insufficiency.

D A consideration of the health, safety or environmental effects of delaying construction cannot be heard at the construction permit extension proceeding, but must await the operating license stage.

LBP-84-10 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; OPERATING LICENSE; February 8, 1984; MEMORANDUM AND ORDER

A Based on a review of the history of the case, the Licensing Board concludes that Applicant had a fair opportunity to prove its case concerning quality assurance for design and that there is no reason to correct a previous decision to clarify that the Board's conclusions were based on the record.

B Criterion XVI of Appendix B to Part 50 requires the prompt identification of design deficiencies, but it does not require that those deficiencies be called "nonconformances." No particular terminology is mandated.

C Criterion XVI of Appendix B to Part 50 is consonant with 10 C.F.R. § 50.55(e). The former requires a system for promptly identifying deficiencies, including design deficiencies. The latter requires the prompt reporting to the NRC of serious deficiencies.

D Absent some special procedural consideration, proposed findings of fact may make new arguments about record evidence. Allegedly contrary precedent is not persuasive.

E Motions for reconsideration are for the purpose of pointing out an error the Board has made. Unless the Board has relied on an unexpected ground, new factual evidence and new arguments are not relevant in such a motion.

F Applicant is not subject to the same standards for reopening the record as are intervenors. It is neither logical nor proper to close down a multi-billion-dollar nuclear plant because of a deficiency of proof. However, repeated failures of proof would jeopardize intervenor's right to due process and would require the denial of a license.

G The following technical issues are discussed: Pipe support stability; U-bolts cinched up around pipes; U-bolts made of SA-36 steel, clamping force; Local pipe stresses from pipe supports; U-bolts, over-tensioning; Relationship of ASME Code and AWS Code, pipe supports, Richmond Inserts, axial torsion.

LBP-84-11 CAROLINA POWER & LIGHT COMPANY (H.B. Robinson Steam Electric Plant, Unit 2), Docket No. 50-261-OLA (ASLBP No. 83-484-03-LA); OPERATING LICENSE AMENDMENT; February 10, 1984; ORDER DISMISSING PROCEEDING

A The Licensing Board dismisses this proceeding finding that the withdrawal of all remaining contentions by the sole intervenor has eliminated the basis for which the adjudicatory hearing was ordered.

LBP-84-13 HOUSTON LIGHTING AND POWER COMPANY, et al. (South Texas Project, Units 1 and 2), Docket Nos. STN 50-498-OL, STN 50-499-OL (ASLBP No. 79-421-07-OL); OPERATING LICENSE; March 14, 1984; PARTIAL INITIAL DECISION

A The Licensing Board issues a Partial Initial Decision which resolves various quality assurance/quality control issues raised by the Commission in CLI-80-32, 12 NRC 281 (1980), together with Intervenor's contentions related to those QA/QC issues. The Board also denies a motion to reopen the record. The Board rules that, subject to possible modification in later phases of the proceeding, there is currently no basis for concluding (1) that the reasonable assurance findings contemplated by 10 C.F.R. § 50.57 cannot be made, or (2) that HL&P currently lacks managerial competence or character sufficient to preclude an eventual award of operating licenses for the facility. The Board is requiring a report in Phase II of the proceeding concerning QA/QC activities performed following the assumption of duties by a new architect-engineer/construction manager and a new construction contractor.

B Character and competence are fundamental requirements for an operating license applicant. They are implicit in, and hence stem from the Atomic Energy Act, specifically Sections 103 and 182a, 42 U.S.C. §§ 2133(b)(2) and 2232(a).

C There is a marked distinction between the competence and character requirements for an operating license applicant. Although the factors which comprise character or competence may overlap, they nevertheless constitute separate and distinct (and cumulative) requirements.

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- D** Issues which may bear upon management competence include: (1) whether an applicant's staff and management have sufficient technical and managerial expertise and experience (i.e., demonstrated knowledge, judgment, and skill) to construct the plant properly and operate it safely, (2) whether an applicant's staff and management are organizationally structured so as to permit and encourage the unhindered application of their expertise and experience, and (3) whether an applicant's programs and procedures require the application of that expertise and experience and are consistent with goals of the Commission's regulations and the Atomic Energy Act. That third issue may also be characterized as the adequacy of an applicant's written quality assurance/quality control program(s).
- E** Character is, among other things, a measure of the likelihood that an applicant will apply its technical competence to effect the Commission's health and safety (or environmental) standards.
- F** The character of an operating license applicant is comprised of many traits relevant to the construction or operation of a nuclear plant. Among those traits are truthfulness and candor, the manner in which the applicant has reacted to construction noncompliances or nonconformances, its assumption of responsibility for the facility under construction, and the degree to which it attempts to stay informed about the facility.
- G** In evaluating an applicant's character and competence, all relevant circumstances must be considered, including reformation of character and improvement in competence.
- H** Failure of one or more individuals to demonstrate adequate competence or character does not per se indicate a lack of organizational competence or character (and vice versa). In evaluating the competence or character of an organization, such factors as the role of particular individuals in the organization, the responsibilities they exercise, the seriousness and frequency of any deficiencies attributable to them, and the steps taken by the organization when deficiencies are discovered must be balanced.
- I** The presence or absence of intent, or of knowledge of falsity of a statement, is irrelevant to the technical question of whether or not a material false statement has been made. *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, CLI-76-22, 4 NRC 480, 483, 486-87 (1976), *aff'd*, 571 F.2d 1289 (4th Cir. 1978). On the other hand, such intent and knowledge are pertinent to the effect of false statements on an applicant's character.
- J** The circumstance that a deficiency was properly reported under 10 C.F.R. § 50.55(e) is not relevant to whether the deficiency represented a violation of the quality assurance requirements of 10 C.F.R. Part 50, Appendix B.
- K** The quality assurance criteria of 10 C.F.R. Part 50, Appendix B, particularly Criteria II and V, apply to construction activities such as surveying.
- L** The quality assurance criteria of 10 C.F.R. Part 50, Appendix B, control implementation as well as the establishment of a QA program. A failure in implementation may constitute a violation of Appendix B.
- M** To the extent that surveying represents a construction activity rather than a test, it is not governed by 10 C.F.R. Part 50, Appendix B, Criterion XI ("Test Control").
- N** A motion to reopen a record must be timely and must address significant safety (or environmental) issues. Where the record of a proceeding (or at least of a major phase thereof) is closed, the information sought to be included in the record must be material and significant — i.e., to have at least the potential for altering a result which might otherwise be reached. To meet this standard, the proponent must offer new and significant factual information. The "timeliness" test is subsidiary to that of materiality or significance.
- LBP-84-14 MAINE YANKEE ATOMIC POWER COMPANY** (Maine Yankee Atomic Power Station), Docket No. 50-309-OLA (ASLBP No. 80-437-02-LA), OPERATING LICENSE AMENDMENT, March 9, 1984, ORDER
- A** Upon review of an Agreement reached among the parties, the Licensing Board grants intervenors' motions to withdraw their contentions and requests for hearing, and authorizes the issuance of a license amendment.
- LBP-84-15 CAROLINA POWER & LIGHT COMPANY and NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY** (Shearon Harris Nuclear Plant, Units 1 and 2), Docket Nos.

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50-400, 50-401 (ASLBP No. 82-468-01-OL); OPERATING LICENSE; March 15, 1984; MEMORANDUM AND ORDER

- A On requests for reconsideration, the Licensing Board rejects certain health effects contentions relating to estimates of genetic damage and cancer caused by radiation because a previously expected Board witness had become unavailable and because it appeared that the Interveners' proposed witnesses could not shed any additional light on the contentions. The Board also rules on several other contentions and procedural questions.

LBP-84-15A ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE (TRIGA-Type Research Reactor). Docket No. 50-170 (ASLBP No. 81-451-01-LA); FACILITY LICENSE RENEWAL; (Cobalt-60 Storage Facility). Docket No. 30-6931 (ASLBP No. 82-469-01-SP); BYPRODUCTS MATERIAL LICENSE RENEWAL; March 15, 1984, ORDER

- A In this Order, the Licensing Board grants the joint motions of Licensee, NRC Staff and Intervenor resolving all remaining issues and dismisses the proceeding.

LBP-84-16 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2). Docket Nos. 50-352-OL, 50-353-OL, OPERATING LICENSE; March 16, 1984; MEMORANDUM AND ORDER

- A In a written confirmation of an oral ruling, the Board, exercising jurisdiction over a proposed Part 70 license, denies a motion to admit contentions, a motion to stay receipt of new fuel at the Limerick site, and a petition to intervene and request for hearing addressed to the Director of Nuclear Material Safety and Safeguards.

- B Licensing boards established to conduct hearings on operating licenses also have jurisdiction over issues arising under applications for Part 70 licenses to receive and store unirradiated fuel at the nuclear power plant. This jurisdiction can be asserted on the grounds of 10 C.F.R. § 2.717(b), which grants the presiding officer in an operating license proceeding the power to modify "as appropriate for the purpose of the proceeding" any Staff order "related to the subject matter of the pending proceeding." Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226 (1979). In affirming the Diablo Canyon Licensing Board's assertion of jurisdiction over a materials license proceeding, the Commission said, "that license is integral to the Diablo Canyon project Given that Board's familiarity with the Diablo Canyon project, it made good practical sense for it to hear and decide the related issues raised by the Part 70 materials license application." Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-76-1, 3 NRC 73, 74 n.1 (1976).

- C Section 2.717(b), which grants the presiding officer in an operating license proceeding the power to modify "as appropriate for the purpose of the proceeding" any Staff order "related to the subject matter of the pending proceeding," does not postpone the board's jurisdiction over the related order until the Staff has actually issued the order. The purpose of Section 2.717(b) clearly is to permit integration of an operating license proceeding with Staff orders on matters related to that proceeding. Common sense says that this integration can take place, indeed is often more efficient if it takes place, before the Staff issues an order on a related matter. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-38, 18 NRC 61, 63 (1983).

- D Though it is unusual for a judicial body to exercise jurisdiction where it is not sought by the petitioner, a board's exercise of jurisdiction over a petition addressed to the Director of Nuclear Material Safety and Safeguards to intervene on a proposed Part 70 license is not an act of Constitutional dimensions. It makes sense for the board to rule on the petition, for it knows the parties and the circumstances of the case. If the board were to decline jurisdiction now and let the petition follow the path the intervenor intended it to, it would, given past practice, likely be the licensing board delegated the responsibility of conducting a hearing on the subject of the petition.

- E The admissibility of the Interveners' Part 70 motions, though filed several months after the Applicant filed for a Part 70 license, and years after the start of the operating license hearings, is not to be measured by the criteria for late-filed contentions in 10 C.F.R. § 2.714(a)(1) and Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), for the Applicant did not comply with a standing order in this proceeding to serve all relevant papers on the Board and parties. An intervenor should be expected to foresee that an Applicant would have to receive unirradiated fuel before low-power testing and that such

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fuel would have to be outside at the site for a finite time, but not that the Applicant would request that a fuel license be issued before a low-power operating license, or that the fuel might be stored outside for months, or that there would have to be a security plan tailored to such storage because the normal facility security plan would not be implemented as a prerequisite.

F Despite a standing Board order to serve on the Board and parties papers related to the operating license hearing, the Applicant did not serve its new fuel license application and amendments thereto, thus delaying the Intervenor's responses to the application. The delay has enabled the Applicant to argue that the Intervenor's responses were late-filed. Had the Applicant's argument been accepted, the Applicant, by merely delaying the service of relevant information, would in effect have tightened the standards for admitting contentions. Thus the circumstance here is an exception to the Commission's general belief that manipulation of the availability of licensing documents (here the device of limited service contrary to expectations) was unlikely to occur. See *Catawba*, supra, 17 NRC at 1047.

G Staff counsel did not learn of the Applicant's application for a Part 70 license until an amended application was filed months later. Staff counsel then informed the Board and the Intervenor of the amended application, thus giving the Intervenor their first information about the original application, but by then the Applicant was already in a position to argue that the Intervenor's filings in response to the original application were late. It may sometimes be difficult for Staff counsel to be relevantly informed. However, the Staff appears before us in these proceedings as one body. Counsel should be informed when its client is considering a Part 70 application. Indeed, the Staff should assure that the Board and all parties in a nuclear facility proceeding, as well as its own counsel, are given prompt notice that a Part 70 license related to the facility is being considered.

H Section 50.91(a)(4), which makes the issuance of an operating license amendment effective before any required hearing only if no significant hazards considerations are involved, does not imply that an intervenor's petition for a hearing on a proposed amendment to a new fuel license could, by virtue of its being filed, stay the effectiveness of any Staff issuance of the amendment.

I Final orders on motions related to Part 70 licenses to receive and store unirradiated fuel issued during an operating license hearing are appealable upon issuance. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-76-1, 3 NRC 73, 74 (1976). Appeals should be directed to the Commission, unless the Commission specifically delegates appellate jurisdiction to the Appeal Board. *Id.* at 74 n.1; 10 C.F.R. § 2.785.

J The following technical issues are discussed: New Fuel Stored Outside — Criticality Accidents, Criticality Monitoring, Non-Criticality Accidents, Security Plan.

LBP-84-17 KANSAS GAS & ELECTRIC COMPANY, et al. (Wolf Creek Generating Station, Unit No. 1), Docket No. 50-482 (ASLBP No. 81-453-03-OL); OPERATING LICENSE; March 26, 1984; MEMORANDUM AND ORDER

A The Licensing Board denies an admittedly untimely petition for leave to intervene filed during the course of a hearing which was being held to consider the sole controverted issue of emergency planning. After balancing the factors set forth in 10 C.F.R. § 2.714(a)(1), the Board concluded that the petition, seeking to raise quality assurance/quality control matters, should not be granted.

B In order to determine whether an untimely petition for leave to intervene should be allowed, the Board must balance the five factors set forth in 10 C.F.R. § 2.714(a)(1).

C "Good cause" for a late filing depends wholly upon the substantiality of the reasons assigned for not having filed at an earlier date. *South Carolina Electric and Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981).

D If the controlling facts relating to the excuse for the untimely filing are not controverted by the petitioner's affidavits, the Board must take them as true. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 13 (1977), aff'd, CLI-78-12, 7 NRC 939 (1978).

E Petitioners for leave to intervene, as well as intervenors, are required to diligently uncover and apply all publicly available information. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 117, aff'd, ALAB-743, 18 NRC 387 (1983).

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- F** If it is the petitioner's position that its newly acquired organizational existence was sufficient to justify belated intervention, such an explanation for the tardy filing cannot carry the day because the necessary consequence would be that parties to the proceeding would never be determined with certainty until the final curtain fell. No adjudicatory process could be conducted in an orderly and expeditious manner if subjected to such a handicap. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979).
- G** Where no good excuse is tendered for the tardy filing, the petitioner's demonstration on the four other factors in 10 C.F.R. § 2.714(a)(1) must be particularly strong. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977).
- H** The second and fourth factors in 10 C.F.R. § 2.714(a)(1) are of relatively minor importance in the weighing process. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982).
- I** It is the petitioner's ability to contribute sound evidence — rather than asserted legal skills — that is of significance in considering a late-filed petition to intervene. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 n.14 (1982).
- J** Even though we are told that four of its co-counsel actively participated in the construction hearings, we cannot conclude that the petitioner's participation could reasonably be expected to assist in developing a sound record since the issue that it would litigate here bears no resemblance to any contested issue that confronted the Licensing Board in the construction permit proceeding. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 401 (1983).
- LBP-84-17A WASHINGTON PUBLIC POWER SUPPLY SYSTEM, et al. (WPPSS Nuclear Project No. 3), Docket No. 50-508-OL (ASLBP No. 83-486-01-OL); OPERATING LICENSE; April 19, 1984; MEMORANDUM AND ORDER**
- A** A petitioner whose late-filed petition to intervene has met the requirements of 10 C.F.R. § 2.714(a)(1) need not meet any further qualifications to have its admitted contentions litigated. It is not to be treated differently than a petitioner whose petition to intervene was timely filed.
- LBP-84-18 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-OL, 50-353-OL; OPERATING LICENSE; April 20, 1984; SPECIAL PREHEARING CONFERENCE ORDER**
- A** To admit contentions on undeveloped portions of emergency plans is to risk unnecessary litigation. But to deny the contentions is to unfairly ignore the insufficient development of those portions. Fairness and efficiency seem to dictate that rulings on such contentions be deferred. The principal aims in such deferrals are to encourage negotiation, to avoid unnecessary litigation, and to make necessary litigation as focused as possible. Cf. Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Station, Unit 1), ALAB-727, 17 NRC 760, 772-74, 776 (1983).
- B** Though a board's findings on emergency planning are necessarily predictive, nothing "dictates" that a board make its findings on emergency planning before the plans are adopted by county and local organizations. Section 50.47(a)(2) of 10 C.F.R. says, in part, "in any licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability." Since under the procedures of some States, plans are not submitted to FEMA for formal review until after they've been adopted, the quoted passage implies there might be proceedings in which a board, making its findings after FEMA's, would be making its findings after the plans were adopted.
- C** The contents of implementing procedures, being highly detailed and related more to emergency preparedness than to the soundness of the emergency plans, are not to be litigated. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076 (1983). But Waterford does not say that everything planners might choose to relegate to implementing procedures is thereby beyond litigation, but only items at the level of the ministerial detail appropriate to such documents.
- D** Neither the Commission's regulations nor the guidance in NUREG-0654 require that radioprotective drugs be distributed to the general public. See, e.g., Union Electric Co. (Callaway Plant, Unit 1), ALAB-754, 18 NRC 1333, 1334 (1983). FEMA guidance leaves to the

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States the responsibility of deciding whether to distribute potassium iodide (KI) at all, even to emergency workers. *Id.* at 1335. But licensing boards may rule on, and have ruled on, the reasonableness of States' decisions not to administer KI to the general public. See *id.* at 1335, and the case it affirms, LBP-83-71, 18 NRC 1105, 1109 n.13 (1983). Several licensing boards have compiled full records on the costs and the benefits of distributing KI to the general public. See, e.g., Callaway, LBP-83-71, 18 NRC 1105. The reasons behind State policies against distributing KI to the public are now quite familiar to licensing boards, and their rulings are uniform: "[S]tate policies against . . . distribution [to the general public] have not been found contrary to requirements for providing adequate protective measures for emergency planning purposes." Callaway, ALAB-754, 18 NRC at 1335, quoting LBP-83-71, 18 NRC at 1109. There is no point in compiling yet another record on this well-settled issue.

E Litigation of the general issue of human response to radiation danger, with testimony by experts instead of workers with specific responsibilities under the plans, would be a pointless battle between experts, the Intervenor's abstractly and inconclusively arguing that humans are less willing to face radiation dangers than they are other sorts of dangers, and the Applicant's experts abstractly and inconclusively arguing the contrary. However, with contentions which focus on the responses of specific groups of people with specific responsibilities under the emergency plans, there is more than mere speculation on which to rest a finding about the degree to which such personnel can be relied on in a radiological emergency. Even more important, it would be possible to determine how critical the functions these personnel will be trained to perform are to the implementation of the plans. Indeed, one possible efficient and probative approach for the litigation of such specific contentions would be an examination of the sensitivity of the effect on the success of the plans of less-than-full participation by the specific named groups, and/or any provisions in the plans to compensate for varying degrees of non-participation by those groups.

F The emergency plans include much that aims to give adequate notification and instruction to the transient population in the plume exposure emergency planning zone (EPZ). Nonetheless, in the event of an emergency, some members of this population might not hear the sirens, or know what they meant, or have radios, or be familiar with the roads in the plume EPZ. Thus, these persons might have to depend more on their own resources in finding out what to do than permanent residents of the plume EPZ would have to. Yet, the plans cannot reasonably be expected to provide more for this population than they already do. If everyone were left to figure out for himself what to do after the sirens sounded, and picked up later if he didn't figure it out, there would be, in effect, no emergency plans at all. On the other hand, the plans cannot be required to be specific to every individual, or again, there would be no acceptable plans at all. What NUREG-0654 calls "a best effort" will sometimes have to do. See, e.g., NUREG-0654, Appendix 3, Section C.4.d.

G The phrase, "transient population," which Section IV.D.2 of 10 C.F.R. Part 50, Appendix E, uses to define the group for which there is to be some special means of notification, does not refer only to people who take up temporary residence in the plume EPZ, as the use of the same phrase in NUREG-0654, Section II.G.2 shows. There, many of the devices suggested as means to notify the "transient population" would apply to temporary residents and temporary non-residents alike.

H The following technical issues are discussed: Communications System; Dedicated Telephone Switch; Order of Telephone Notifications; Listing in Emergency Plans of Names and Numbers of Offsite Management; Installation and Testing of Sirens; Effectiveness of Route-Alerting; Route-Alerting Sector Maps; Notification of Transient Population in Plume Exposure Emergency Planning Zone; Adjustments in Size of Plume Exposure Emergency Planning Zone; Evacuation Time Estimates; Effect of Traffic Congestion Outside Plume Exposure Emergency Planning Zone on Evacuation; Mobilization of National Guard; Human Response to Radiation Danger; Letters of Agreement; Self-Reading and Permanent Record Dosimeters for Emergency Workers; Livestock Farmers as Emergency Workers; School Personnel as Emergency Workers; Potassium Iodide for the General Public; Specialized Plans for Special Facilities.

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LBP-84-19 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; April 23, 1984; SECOND ORDER FOLLOWING PREHEARING CONFERENCE

A In an operating license amendment proceeding, the Licensing Board admits an intervenor and two of its contentions relating to the suspension of technical specifications to perform certain tasks.

B Under Section 189a of the Atomic Energy Act, where the Commission determines that a license amendment involves no significant hazards consideration, the amendment may be issued and made immediately effective in advance of any required hearing.

C Where an amendment is issued and made immediately effective under a determination of no significant hazards consideration, a timely filed contention will not be considered moot, even if the contested action has been completed.

LBP-84-20 CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OM&OL, 50-330-OM&OL (ASLBP Nos. 78-389-03-OL, 80-429-02-SP); MODIFICATION ORDER AND OPERATING LICENSE; May 7, 1984; MEMORANDUM AND ORDER

A The Licensing Board admits two of three proposed contentions based upon allegations made in complaint filed by a third party in a civil lawsuit against the Applicant.

B The Licensing Board declines to utilize its general authority to shape the course of a proceeding, 10 C.F.R. § 2.718(e), as foundation to accept a proposed late-filed contention or to consider what is in essence a motion to reopen the record, in the face of explicit Commission standards governing those situations.

C The specificity and basis requirements for a proposed contention, 10 C.F.R. § 2.714(b), are satisfied where the contention is based upon allegations in a sworn complaint filed in a judicial action (notwithstanding that the allegations are contested), and the applicable passages therein are specifically identified. Further basis is found in several documents, although they may be subject to multiple interpretations.

D In balancing the five factors considered in determining the admissibility of late-filed contentions, 10 C.F.R. § 2.714(a), a licensing board must consider all five factors but need not give the same weight to each factor; where a proponent demonstrates "good cause" for late filing, the showing required on the other factors is diminished.

E Where proposed new contentions were proffered prior to close of the record in the segment of the proceeding in which the matters were litigated, but the ruling upon the contentions takes place subsequent to the record's closing, the choice of governing standards is based upon the status of the record at the time the proposed contentions were first offered: whether the contention was timely proffered, and whether it presents important information regarding a significant issue.

LBP-84-21 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; May 30, 1984; MEMORANDUM AND ORDER

A The Licensing Board grants Applicants' unopposed motion to authorize fuel loading and certain precriticality testing prior to a Board decision on safety and environmental issues. The Board finds that it is not required to decide the merits of any of the issues pending before it as a precondition to favorable action on the motion and that the proposed activities will not pose any danger to the public.

LBP-84-22 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor), Docket No. 50-142-OL; FACILITY LICENSE RENEWAL; June 5, 1984; MEMORANDUM AND ORDER

A Licensing Board declines to enter sanctions against counsel or pursue remedies against his client for material misrepresentation on the grounds that the misrepresentation was made against a background of confusion, was not intended to deceive, and did not benefit counsel's client. The Licensing Board holds that another party lacks standing to request a hearing on sanctions for lack of a direct palpable injury to it caused by counsel's misrepresentation and may not pursue remedies against counsel's client in the absence of a contention.

B Intent to deceive is relevant to the question of whether sanctions should be entered against counsel on account of a material misrepresentation.

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- C A party to a proceeding who has not suffered a direct, palpable injury as a result of counsel's misrepresentation lacks standing to request a hearing on the question of sanctions.
- D Parties and their counsel must adhere to the highest standards of disclosing all relevant and material factual information to the Licensing Board.
- E In litigation involving highly complex technology, many decisions regarding materiality of information can only be made jointly by a party and its counsel.
- F Counsel's obligations to disclose all relevant and material factual information to the Licensing Board under the Atomic Energy Act are not substantially different from those laid out by the ABA's Model Rules of Professional Conduct. In discharging his obligations, counsel may verify the accuracy of factual information with his client or verify the accuracy of the factual information himself.
- G The test of materiality is whether the information is capable of influencing the decisionmaker, not whether the decisionmaker would, in fact, have relied on it. Determinations of materiality require careful, commonsense judgments of the context in which the information appears and the stage of the licensing proceeding involved.
- LBP-84-23 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; June 21, 1984, MEMORANDUM AND ORDER
- A In an operating license amendment proceeding, the Licensing Board denies Licensees' motion for reconsideration or, in the alternative, for certification to the Appeal Board, of an order admitting Intervenor contentions.
- B Where the party has raised no new issues nor cited new information, it has offered no basis for the Board to reconsider its order.
- C Legislative history supports the determination that hearings on license amendments be held, if properly requested, even after irreversible actions have been taken upon a finding of no significant hazards consideration.
- D The grant of a request for certification is an exception to the general rule against interlocutory appeals and is to be resorted to only in "exceptional circumstances." Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-382, 5 NRC 603, 606 (1977).
- E Interlocutory review is undertaken only where the ruling below either (1) threatens the party adversely affected with immediate and serious irrevocable 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).
- F The erroneous admission of a contention, where a hearing may be required in any event, does not affect the basic structure of the proceeding in a pervasive or unusual manner, or cause an irreparable impact which cannot be alleviated by a later appeal, so as to permit interlocutory review.
- LBP-84-24 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; June 22, 1984, PARTIAL INITIAL DECISION
- A This operating license proceeding was contested with respect to a broad quality assurance contention, two relatively narrow technical contentions, and numerous emergency planning contentions. The Licensing Board decides the quality assurance contention (with certain reservations) and the technical contention concerning embrittlement of the reactor pressure vessel in the Applicants' favor. The other technical contention, concerning meteorology and accident analyses, is decided against the Staff and the Applicants and in favor of the Intervenor. Notwithstanding the findings adverse to the Staff and Applicants, the Board finds that, subject to the resolution of certain unresolved issues over which it retains jurisdiction, the reasonable assurances requisite to authorization of a low-power operating license are present. Accordingly, this Partial Initial Decision authorizes the Director of Nuclear Reactor Regulation to issue such a license, on condition that the unresolved issues are first resolved in favor of the Applicants. A separate Licensing Board will decide the emergency planning contentions at a later date.
- B Licensing boards are authorized to establish reasonable time limits for the examination of witnesses, including cross-examination, under 10 C.F.R. §§ 2.718(c) and 2.757(c); the Com-

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mission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981) and relevant judicial decisions.

- C Under 10 C.F.R. § 2.740(b)(1) discovery is available after a contention is admitted and it may be terminated a reasonable time thereafter. Litigants are not entitled to further discovery as a matter of right with respect to information relevant to a contention which first surfaces long after discovery on that contention has been terminated.

LBP-84-25 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; OPERATING LICENSE; June 29, 1984; MEMORANDUM AND ORDER

- A Pursuant to a stipulation that authorizes a grant of summary disposition unless a hearing is necessary for the Board to reach a reasoned decision, the Board grants summary disposition of nine issues, including five issues discussed by the Board in a previous decision.

- B Summary disposition may be granted with respect to issues explicitly left open by the Board in a memorandum and order. The previous decision of the Board provides the framework for consideration of the motion.

- C The parties may provide the Board with greater authority to grant summary disposition through a stipulation. For example, the Board may be authorized to grant summary disposition whenever it decides that it can reach a reasoned decision without conducting a hearing. That standard permits the Board to grant summary disposition in some circumstances in which it would otherwise be required to find that there is a genuine issue of fact requiring trial.

- D The following technical issues are discussed: Applicability of AWS Code to ASME Pipe Supports; ASME Code — Simultaneous Effect of AWS Code Provisions; Preheat; Weave Welding; Downhill Welding; Cap Welding.

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- DD-84-1 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 1). Docket No. 50-440; REQUEST FOR IMMEDIATE ACTION; January 9, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Inspection and Enforcement denies a petition requesting an independent analysis of a crane accident during construction of Perry Unit 1, access by the general public to the plant, and initiation of show-cause proceedings to revoke the construction permit. The Director found that adequate analyses of the accident had been performed and that appropriate corrective actions had been taken.
- B The staff will not initiate immediate action to grant the relief requested in a § 2.206 petition in the absence of a demonstration that an imminent hazard to public health and safety exists which warrants immediate relief.
- C Show-cause proceedings may be initiated if a substantial health and safety issue is raised, but the Commission will not institute such proceedings to explore the purely economic impacts of licensed activities.
- DD-84-2 CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2). Docket Nos. 50-329, 50-330; CONSTRUCTION PERMIT; January 12, 1984; SUPPLEMENTAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Inspection and Enforcement grants a portion of a petition granted in part and denied in part on October 6, 1983 (DD-83-16, 18 NRC 1123).
- DD-84-3 CINCINNATI GAS & ELECTRIC COMPANY, et al. (William H. Zimmer Nuclear Power Station, Unit 1). Docket No. 50-358; REQUEST FOR ACTION; January 13, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Inspection and Enforcement denies a petition submitted by Thomas Devine of the Government Accountability Project on behalf of the Miami Valley Power Project requesting action with respect to the William H. Zimmer Nuclear Power Station.
- DD-84-4 GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Three Mile Island Nuclear Station, Unit 2). Docket No. 50-320; REQUEST FOR ACTION; February 17, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Reactor Regulation denies a petition submitted by Marvin Lewis requesting that the Commission postpone the lifting of the reactor pressure vessel head at the Three Mile Island Nuclear Station, Unit 2.
- B Based upon the staff's reviews and experience to date, there does not appear to be an undue risk to public health and safety from the possible formation of pyrophoric materials in the pressure vessel.
- DD-84-5 BOSTON EDISON COMPANY (Pilgrim Nuclear Power Station). Docket No. 50-293; REQUEST FOR ACTION; February 27, 1984; INTERIM DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Inspection and Enforcement grants in part and denies in part a petition submitted by the Massachusetts Public Interest Research Group requesting that the NRC take action with respect to the state of emergency planning at Pilgrim facility. Among the specific relief requested was the initiation of the 4-month period specified by the Commission's regulations within which to correct the alleged deficiencies at the Pilgrim facility and consideration by the Commission as to whether the state of emergency preparedness in conjunction with the alleged poor safety record at the Pilgrim facility warrants immediate shutdown or operation of the facility at reduced power.

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- B** The Federal Emergency Management Agency takes the lead in offsite emergency planning and reviews and assesses State and local emergency plans for adequacy. The NRC assesses the licensee's site emergency plans for adequacy and makes decisions with regard to the overall state of emergency preparedness.
- C** The Commission's regulations preclude an Emergency Planning Zone (EPZ) radius significantly in excess of 10 miles. An EPZ of about 10 miles is considered large enough to provide a response base which would support activity outside the planning zone should this ever be needed.
- D** The Commission has adopted an approach to emergency planning in which evacuation is only one of several possible responses to an emergency. It is unlikely that evacuation of the entire plume EPZ would be required in the event of an accident. Pending a final determination regarding the adequacy of evacuation time estimates, it is reasonable to conclude that the public health and safety will be reasonably assured in the interim by continued licensee compliance with Commission requirements regarding emergency planning and other health and safety requirements aimed at keeping the probability of serious accidents very low.
- DD-84-6 COMMONWEALTH EDISON COMPANY (AND ALL LIGHT-WATER REACTORS)** (LaSalle County Station, Units 1 and 2), Docket No. 50-373; IMMEDIATE ACTION REQUEST; March 16, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A** The Director of the Office of Nuclear Reactor Regulation denies petitions by Edward M. Gogol alleging that there are severe errors, defects and loopholes in the integrated leak rate testing (ILRT) methodology now in use. The petitions sought a variety of relief including requests for immediate action such as placing the LaSalle Unit 1 of the Commonwealth Edison Company in cold shutdown, ceasing further construction and licensing activities with respect to LaSalle Unit 2 and Byron Unit 1 and shutting down reactors with insufficient evidence of adequate containment leak rate testing.
- B** Should a petitioner pursuant to 10 C.F.R. § 2.206 wish to initiate a rulemaking, the procedures set forth in 10 C.F.R. § 2.802 should be followed.
- C** The Director will not institute proceedings in response to a petition under 10 C.F.R. § 2.206 to consider an issue the Commission is treating generically through rulemaking.
- D** The Commission's requirements for integrated leak rate testing are set out in 10 C.F.R. § 50.54(o) and Appendix J to 10 C.F.R. Part 50. While the Commission's requirements for integrated leak rate testing continue to provide reasonable assurance that the public health and safety is adequately protected, the NRC Staff has under way a review of leak rate testing requirements to see whether modifications to these requirements are appropriate. The Commission has placed leak rate testing for water-cooled power reactors on its Regulatory Agenda.
- DD-84-7 WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS Nuclear Project No. 2),** Docket No. 50-397; REQUEST FOR SHOW-CAUSE PROCEEDING; March 19, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A** The Director of the Office of Inspection and Enforcement denies a petition of the Coalition for Safe Power requesting that the Nuclear Regulatory Commission institute show-cause proceedings pursuant to 10 C.F.R. § 2.202 to determine whether the construction permit for the Washington Public Power Supply System Nuclear Project No. 2 (WNP-2) should be revoked, a stay of construction imposed, the pending application for an operating license denied, and hearings instituted before an Atomic Safety and Licensing Board. The petition alleged as its supporting bases deficiencies primarily in the construction and management of the WNP-2 facility.
- B** It would be unreasonable to hinge the grant of an NRC operating license upon a demonstration of error-free construction. What is required is a careful consideration of whether all ascertained construction errors have been cured and whether the errors indicate that there has been a breakdown in quality assurance procedures of sufficient dimension to raise legitimate doubt as to the overall integrity of the facility and its safety-related structures and components. Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983).
- C** An order to show cause is appropriate in those instances in which the NRC concludes, based upon alleged violations by the licensee or potentially hazardous conditions or other facts, that enforcement action should be taken but that a basis could reasonably exist for not taking

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- the enforcement action proposed. See 10 C.F.R. § 2.202(a)(1) and 10 C.F.R. Part 2, Appendix C, § IV.
- D Sufficient grounds must be present for the NRC to institute a show-cause proceeding. The standard to be applied in determining whether to issue a show-cause order is whether substantial health or safety issues have been raised.
- DD-84-8 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Unit 1), Docket No. 50-275; OPERATING LICENSE SUSPENSION REQUEST; March 26, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Inspection and Enforcement denies a petition under 10 C.F.R. § 2.206 filed by the joint intervenors in the Diablo Canyon operating license proceeding. The joint intervenors contended that the low-power license for Diablo Canyon Unit 1 should be revoked or at least remain suspended on the basis of the licensee's failure to report a 1977 audit of the quality assurance program of the licensee's prime piping contractor. Although the Director finds that the failure to report the audit constituted a material false statement under the Atomic Energy Act, the Director did not find revocation or suspension of the license to be an appropriate remedy for the reporting failure.
- B Section 50.55(e) does not require the reporting of every design or construction deficiency, but requires holders of construction permits to evaluate identified deficiencies and report significant deficiencies as defined by the regulation.
- C The licensee is found to have made a material false statement by not reporting an audit of its prime piping contractor's quality assurance program where quality assurance was an issue being heard in the operating license proceeding and the audit on its face appeared to contradict the licensee's testimony in the proceeding.
- D The fact that an item is not reportable under 10 C.F.R. § 50.55(e) may not obviate reporting under the "full disclosure" standards of section 186 of the Atomic Energy Act.
- E Not every violation of Commission requirements mandates the severe sanction of license revocation. The choice of sanctions for violations of NRC requirements rests within the sound discretion of the Commission.
- F In view of the minimal significance of the material false statement (i.e., failure to report) here, and upon consideration of enforcement actions for other material false statements, a Notice of Violation is the most appropriate enforcement action for the failure to report the quality assurance audit.
- DD-84-9 SHIPMENTS OF HIGH LEVEL NUCLEAR POWER PLANT WASTE; SPENT FUEL SHIPMENTS; April 13, 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 request from the Sierra Club that the NRC halt all dry cask shipments of spent fuel in certain model casks until appropriate analyses are performed of an incident involving possible oxidation of spent fuel shipped to Battelle Columbus Laboratories.
- DD-84-10 VERMONT YANKEE NUCLEAR POWER CORPORATION (Vermont Yankee Nuclear Power Station), Docket No. 50-271; REQUEST FOR SHOW-CAUSE ORDER; April 16, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Reactor Regulation denies a petition pursuant to 10 C.F.R. § 2.206 from the Vermont Public Interest Research Group and the Vermont Yankee Decommissioning Alliance requesting issuance of an order to the Vermont Yankee Nuclear Power Corporation to show cause why its license should not be suspended pending resolution of certain issues related to intergranular stress corrosion cracking of reactor piping at the Vermont Yankee facility.
- DD-84-11 THE DETROIT EDISON COMPANY (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341; EMERGENCY PLANNING; April 20, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Reactor Regulation concludes that the concerns raised by Monroe County, Michigan, as supplemented by information submitted by Joan Mumaw and Michael Barrett and by John Minock on behalf of Citizens for Employment and Energy, regarding the County's expertise and resources to carry out its responsibilities under the emergency plan for the Enrico Fermi Atomic Power Plant, Unit 2 have been satisfactorily re-

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solved and adequately addressed in the emergency plans for the facility, and that no further action is required to resolve the County's concerns.

B The Federal Emergency Management Agency (FEMA) takes the lead in offsite emergency planning and reviews, assesses State and local emergency plans for adequacy and makes decisions with regard to the overall state of emergency preparedness.

C It is the experience of FEMA and the NRC in evaluating well over 100 full-scale emergency preparedness exercises at nuclear power plants that volunteer emergency workers willingly participate in and respond to simulated radiological emergencies as they do to actual emergencies involving toxic and hazardous materials.

D NRC regulations and guidance emphasize declaring an emergency based on plant conditions before there is a release of radioactive material. NRC regulations also include a design objective for offsite authorities to have the capability to promptly alert and notify the public following the occurrence of an emergency requiring offsite protective measures.

DD-84-12 GPU NUCLEAR CORPORATION (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289, REQUEST FOR ACTION, April 27, 1984; INTERIM DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies in part a petition dated January 20, 1984, filed by Ellyn R. Weiss and Robert D. Pollard on behalf of the Union of Concerned Scientists requesting that the Commission continue the suspension of the Three Mile Island Nuclear Station, Unit 1 operating license until alleged deficiencies in the plant's Emergency Feedwater System are rectified.

DD-84-13 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; IMMEDIATE ACTION REQUEST; April 25, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of Nuclear Reactor Regulation denies a Petition filed by Del-Aware Unlimited, et al., which requested revocation, suspension or modification of the construction permits for the Limerick Station based on (1) alleged inadequacies in the NRC staff's draft environmental statement related to operation of the Limerick Station, (2) alleged changed circumstances regarding the supply of supplemental cooling water for the facility and (3) that certain physical impacts of construction of the Point Pleasant Diversion Project have been allegedly overlooked.

B The Director will not consider issues raised in a Petition pursuant to 10 C.F.R. § 2.206 which are clearly a matter for consideration in the operating license proceeding currently in progress.

C Section 2.206 should not be used by a party to a licensing proceeding to request relief on a matter within the jurisdiction of the presiding officer in that proceeding.

D Suspension, modification or revocation of permits or licenses may be appropriate based upon substantially changed circumstances. NEPA does not require that a decision based upon environmental impact statements be reconsidered whenever information developed subsequent to the action becomes available, unless the new information will clearly mandate a change in the result.

DD-84-14 POWER AUTHORITY OF THE STATE OF NEW YORK (James A. FitzPatrick Nuclear Power Plant), Docket No. 50-333; IMMEDIATE ACTION REQUEST; May 8, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a petition submitted by Ellyn R. Weiss and Robert D. Pollard on behalf of the Union of Concerned Scientists requesting that operation of the James A. FitzPatrick Nuclear Power Plant be suspended pending the determination of the adequacy of the pipe supports at the facility to withstand normal operating loads and seismic events.

B The obligation to make a Part 21 report to the NRC does not arise until it is determined that a defect within the meaning of Part 21 exists.

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DPRM-84-1 OHIO CITIZENS FOR RESPONSIBLE ENERGY, MARVIN I. LEWIS, MAPLETON INTERVENORS, Docket Nos. PRM-50-32, 50-32A, 50-32B, ELECTROMAGNETIC PULSE; June 22, 1984; DENIAL OF PETITIONS FOR RULEMAKING

- A The Nuclear Regulatory Commission denies three petitions for rulemaking requesting that the Commission amend its rules of practice to require applicants for construction permits and operating licenses for nuclear power plants to provide for design features to protect against the effects of electromagnetic pulse (EMP). The petitions are denied because the requested amendments are unnecessary for the protection of public health and safety, are contrary to sound administrative practice, and are inconsistent with the established national policy that the protection of the United States against hostile enemy acts is the responsibility of the nation's defense establishment.
- B Based upon results of studies done by the NRC and for the NRC (Sandia National Laboratory Report, NUREG/CR-3069, "Interaction of Electromagnetic Pulse with Commercial Nuclear Power Plant Systems") there is no reason to believe that an EMP would prevent any commercial nuclear power plant from achieving a safe shutdown condition. In addition, the rationale behind the issuance of 10 C.F.R. § 50.13, which was upheld in the U.S. Court of Appeals, was that Congress did not intend to implement legislation that would require nuclear power plants to be capable of warding off the effects of hostile enemy acts. This rationale has been reevaluated in light of the petitions and at this time the Commission finds no information to support a change in policy.

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