

NUREG-0750
Vol. 35
Index 1

INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January - March 1992



U.S. NUCLEAR REGULATORY COMMISSION

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NUREG-0750

Vol. 35

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Available from

Superintendent of Documents
U.S. Government Printing Office
Post Office Box 37082
Washington, D.C. 20013-7082

A year's subscription consists of 12 softbound issues,
4 indexes, and 2-4 hardbound editions for this publication.

Single copies of this publication
are available from National Technical
Information Service, Springfield, VA 22161

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

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U.S. NUCLEAR REGULATORY COMMISSION

Prepared by the
Division of Freedom of Information and Publications Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(202/492-8925)

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Foreword

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

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

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

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

1. Case Name Index

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

2. Digests and Headers

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

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

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

3. Legal Citations Index

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

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

4. Subject Index

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

5. Facility Index

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

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CLI-92-1 TEXAS UTILITIES ELECTRIC COMPANY (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445-OL&CPA, 50-446-OL, OPERATING LICENSE; January 17, 1992; MEMORANDUM AND ORDER

- A** The Commission denies a motion to reopen the record because Petitioners were not parties to the proceeding, and their motion did not address the five factors necessary for late intervention. Even if they had addressed and satisfied the late intervention standards, they have not satisfied the reopening requirements.
- B** Petitioners are barred from seeking a reopening of the record because they were not parties to the proceeding itself.
- C** Petitioners have never been parties to the Comanche Peak proceeding; at this time they may only become parties by filing a petition for late intervention under 10 C.F.R. § 2.714(a)(1) and satisfactorily addressing the five factors contained therein. Unless and until Petitioners' petition for, and are granted, intervention in the proceeding, they cannot move to reopen the record.
- D** Because the NRC has not yet issued the license for Unit 2, there remains in existence an operating license "proceeding" that was initiated for Comanche Peak by the 1979 Federal Register notice.
- E** The petition before us clearly does not satisfy NRC requirements for consideration of a late-filed petition for leave to intervene. Quite simply, Petitioners have not even addressed the five factors contained in 10 C.F.R. § 2.714(a)(1)(D)-(v).
- F** Even if Petitioners could satisfy the requirements for late intervention, their present petition clearly fails to satisfy the requirements of section 2.734 for reopening the record.
- G** Because the license for Comanche Peak Unit 1 has already issued, Petitioners may seek enforcement action under section 2.206. Therefore, the pleading is referred to Staff for consideration under section 2.206 inasmuch as the pleading relates to Unit 1.

CLI-92-2 SACRAMENTO MUNICIPAL UTILITY DISTRICT (Rancho Seco Nuclear Generating Station), Docket No. 50-312-OLA (Precision-Only License); OPERATING LICENSE AMENDMENT; February 6, 1992; MEMORANDUM AND ORDER

- A** The Commission considers the Environmental Conservation Organization's appeal of a Licensing Board order that denied the organization's petition for leave to intervene in a proceeding involving an amendment that, if granted, would convert the Rancho Seco operating license into a "possession-only" license (POL). The Commission finds that the Petitioner has failed, on appeal, to demonstrate that it has standing to intervene in the proceeding. The Commission therefore directs the Staff, after it makes the findings necessary for the issuance of a license amendment, to issue the POL, subject to a two-stage administrative stay to allow orderly processing of anticipated judicial challenges to this action.
- B** The Commission regulations in 10 C.F.R. § 2.762 apply only to appeals from "initial decisions," i.e., decisions of a licensing board that dispose of a major portion of, or conclude, the proceeding before that board, such as a decision to grant, suspend, revoke, or amend a license.
- C** The Commission's regulations in section 2.714a allow for an immediate appeal from decisions granting and/or denying in whole a petition for leave to intervene.
- D** Section 2.714a contains a completely different provision for appeal than section 2.762. Section 2.762(b) provides that the brief in support of the notice of appeal may be filed within 30 days of the notice of appeal. Section 2.714a requires the appellant's brief to be submitted with the notice of appeal, within 10 days of the Licensing Board's decision.

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- E When the Commission adopted 10 C.F.R. § 2.714a, it contemplated less stringent requirements for briefs filed under section 2.714a because these briefs must be filed in a shorter time frame and — presumably — will address much narrower issues than an appeal from the final decision of an entire licensing process.
- F While there is a clear benefit to the reviewing body in having the assistance of the items specified in 10 C.F.R. § 2.762 — such as a Table of Contents and a table of cases — in the brief submitted, the Commission does not find that these items are required under its rule.
- J Prior Commission case law requires that all briefs — including those filed under 10 C.F.R. § 2.714a — shall contain a "statement of the case" or "statement of facts" including "an exposition of that portion of the procedural history of the case related to the issue or issues presented by the appeal." Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-388, 5 NRC 640, 641 (1977). However, the Commission can exercise its discretion and waive that requirement on occasion.
- H All parties who appear before the Commission "bear full responsibility for any misapprehension of [their] position caused by the inadequacy of [their] brief . . ." Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 NRC 277, 278 (1982).
- I NRC regulations provide that "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party to [the] proceeding" should file a petition to intervene setting forth that interest and the "possible effect of any order that may be entered in the proceeding on the petitioner's interest." 10 C.F.R. § 2.714(a) and (d).
- J The NRC has "long held that judicial concepts of standing will be applied in determining whether a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under section 189 of the Atomic Energy Act." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLJ-83-25, 18 NRC 327, 332 (1983).
- K The NRC has held that, in order to satisfy "judicial" standing, a petitioner must demonstrate that it could suffer an actual "injury in fact" as a consequence of the proceeding and that this interest is within the "zone of interests" to be protected by the statute under which the petitioner seeks to intervene. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLJ-85-2, 21 NRC 282, 316 (1985).
- L It is true that NEPA does protect some economic interests; however, it only protects against those injuries that result from environmental damage.
- M A petitioner's loss of employment that results directly from a licensee's decision not to operate a nuclear facility and that does not result in environmental damage, does not fall within the "zone of interests" protected by NEPA and cannot support a petitioner's standing to challenge the agency's action.
- N There is Commission precedent for rejecting an assertion of "informational interests" as grounds for standing. Edlow International Co. (Agent for the Government of India on Application to Export Special Nuclear Material), CLJ-76-6, 3 NRC 563, 572 (1976).
- O "Interest" means an interest affected by the outcome of the proceeding, not an interest in the proceeding.
- P A petitioner seeking to intervene cannot demonstrate standing simply by asserting a loss of information if it is not allowed to participate in a proceeding.
- Q The NRC's stay procedures apply only when there is an order in existence to be stayed. If there is no order in existence to be stayed, the proper motion is a motion to hold in abeyance.
- CLJ-92-3 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA, 50-425-OLA; OPERATING LICENSE AMENDMENT, February 12, 1992; MEMORANDUM AND ORDER
- A The Commission considers the Petitioner's appeal of a licensing board decision dismissing its contentions and denying its petition to intervene on amendments to operating license requirements pertaining to emergency diesel generators. The Commission dismisses the appeal for the Petitioner's failure to file a brief supporting its appeal; however, certain technical issues related to operation of the diesel generators are referred to the NRC Staff for further review.
- B Participants in NRC proceedings, whether acting pro se or represented by counsel, are expected to become familiar with the applicable rules of practice.
- C Appeals from a licensing board order having the effect of dismissing all of a prospective party's contentions and denying intervention lie under 10 C.F.R. § 2.714a.

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D The necessity of a brief supporting an appeal has long been emphasized in the NRC's appellate practice; mere recitation of a party's prior position in the proceeding and its general dissatisfaction with the outcome of the proceeding is no substitute for a brief that identifies and explains the errors of the licensing board in its order below.

E If a licensing board believes from its involvement in a proceeding that serious safety issues remain to be addressed, in circumstances in which the remaining intervenor has been dismissed, the board may refer any outstanding concerns to the NRC Staff for appropriate action.

F If an adjudicatory proceeding is terminated, the Commission may refer remaining safety issues of potential concern to the NRC Staff for review pursuant to the Commission's general supervisory authority and responsibility for safety matters.

CLJ-92-4 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OLA-3 (License Transfer); OPERATING LICENSE AMENDMENT; February 26, 1992; MEMORANDUM AND ORDER

A The Commission concludes that the proposed license transfer is not an "amendment" as that term is normally construed but a "license transfer," which is a separate and distinct action under the Atomic Energy Act. However, the AEA does not require a pre-effectiveness or "prior" hearing for a license transfer. In addition, the Commission determines that a pre-effectiveness discretionary hearing is not appropriate under the facts of this case. Finally, the Commission denies Petitioners' requests (1) to hold this action in abeyance pending resolution of the question of LIPA's existence under New York state law and (2) for an administrative or "housekeeping" stay pending judicial challenge. Therefore, when the Staff has conditioned the transfer as the Commission directs herein to assure that the results of any post-effectiveness hearing will not be prejudiced, the Staff may approve the immediately effective transfer of the Shoreham license from LILCO to LIPA.

B A "transfer of license" cannot be accomplished solely by an amendment to an operating reactor license.

C A "transfer of control" invokes only the hearing rights afforded by the first sentence of section 189a(1). The AEA does not require the offer of a prior hearing on an application to transfer control of a license before the transfer is made effective.

D Given the limited scope of activities that LIPA can undertake until a ruling on the decommissioning plan, its inability to operate the plant from both a legal and a practical standpoint, the reduced hazard from a plant that operated only at low power for a short time, and the evident availability of qualified personnel to maintain the plant in the interim, the Commission finds that the transfer does not raise any public health and safety issues that warrant a prior hearing as a matter of discretion.

E When an action is taken subject to a post-effectiveness hearing, the action must be conditioned on reverting to its previous condition if the hearing does not ratify the action taken. In this case, the Staff should condition the transfer of the POL (1) on the license's reverting to LILCO if LIPA ceases to exist or otherwise is found to be unqualified to hold the license and (2) on LILCO's providing certification to the NRC Staff that it will retain and maintain adequate capability and qualifications to take over the license promptly in the event that either of these situations occurs.

F Once a transfer is finalized through the post-effectiveness hearing process, there remains the need -- for administrative purposes -- to have the license changed to reflect the name of the new licensee. Such an amendment, which presumes an effective transfer, presents no safety questions and clearly involves no significant hazards considerations.

G Petitioners request that this action be held in abeyance until the resolution of the question of LIPA's existence under New York state law. Given the reversion of the license back to LILCO mandated here under those circumstances, and the fact that Petitioners did not immediately file such an action in state court, so there is no indication from the state court that there could be some merit in petitioner's argument, the Commission denies Petitioners' request.

H Petitioners request that the Commission stay the transfer's effectiveness pending their expected challenge in the Court of Appeals. The D.C. Circuit has observed "that tribunals may properly stay their own orders when they have ruled on admittedly difficult legal questions . . ." *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977). The Commission does

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- not perceive a difficult legal question here, particularly in view of the Commission's prior interpretation and the deference customarily accorded an agency's interpretation of its organic statute.
- 1 Petitioners fail to convince the Commission that they will suffer any irreparable injury should it deny the stay. LIPA cannot do anything under this license that LILCO could not do. Both the Second District and LILCO may have serious economic interests at risk. The courts have held consistently that mere economic loss does not constitute irreparable injury. It is the Commission's intent to avoid making decisions based solely on economic reasons. Thus, the balance of equities in this matter does not tilt in Petitioners' favor, and the Commission denies Petitioners' request for a stay pending appeal.
- CLI-92-5 FEWELL GEOTECHNICAL ENGINEERING, LTD. (Thomas E. Murray, Radiographer), Docket No. 30-30870-OM (Byproduct Material License); ENFORCEMENT ACTION, March 5, 1992; ORDER
- A The Commission vacates on the grounds of mootness the Atomic Safety and Licensing Board's Initial Decision (LBP-91-29) which modified an order issued by the NRC Staff to Fewell Geotechnical Engineering, Ltd. Staff's original order modified Fewell Geotechnical Engineering, Ltd.'s license by barring Mr. Thomas E. Murray from working as a radiographer under the license for a period of 3 years.
- B Decisions before will normally be vacated when prior to the outcome of the appellate process, through happenstance, the proceeding becomes moot. See *United States v. Munisigwear, Inc.*, 340 U.S. 36, 3rd Cir. (1950); *Consumers Power Co. (Palisades Nuclear Power Facility)*, CLI 82-18, 16 NRC 50, 51 (1982).
- CLI-92-6 OHIO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1) and CLEVELAND ELECTRIC ILLUMINATING COMPANY and TOLEDO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1; Davis-Besse Nuclear Power Station, Unit 1), Docket Nos. 50-440-A, 50-346-A (Suspension of Antitrust Conditions); ANTI-TRUST; March 5, 1992; ORDER
- A The Commission denies Applicants' motion for reconsideration of CLI-91-15, 34 NRC 269 (1991), in which the Commission sua sponte exercised its inherent supervisory power over an adjudicatory proceeding initiated by Applicants' request for amendments that would remove certain antitrust license conditions pertaining to the Perry and Davis-Besse nuclear plants. CLI-91-15 directed the Atomic Safety and Licensing Board to suspend consideration of all matters, except for two issues referred to as the "bedrock" legal issues.
- B In general, the NRC Staff is only one party to a Commission adjudicatory proceeding. The Staff does not occupy a favored position and its presentations are subject to the same scrutiny as those of other parties. See *Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3)*, ALAB-304, 3 NRC 1, 6 (1976); *Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3)*, ALAB-268, 1 NRC 383, 399 (1975). On some questions, such as interpretation of statutes or judicial decisions, the Staff's submissions have no more weight than those of any other party. *Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2)*, CLI-76-17, 4 NRC 451, 462 (1976).
- C When a case turns on a question of law, the Licensing Board and the Commission, on review, are capable of correcting party bias by providing independent decisions. In addition, a party dissatisfied with the outcome of a final Commission decision can seek review from an appropriate court, which is fully capable of correcting bias when a case turns on a question of law. *Gulf Oil Corp. v. FPC*, 563 F.2d 588, 612 (3d Cir. 1977), cert. denied, 434 U.S. 1062 (1978).
- CLI-92-7 LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; March 5, 1992; MEMORANDUM AND ORDER
- A The Commission decides issues before it relating to its hearing order that set forth standards by which this application for a license to construct and operate a uranium enrichment facility would be judged. Both the Applicant and the sole Intervenor in the proceeding sought reconsideration of various portions of the hearing order. The Commission clarifies that the existing 10 C.F.R. Part 140 be applied to the license application solely as guidance. The Commission orders that the final Commission rule on material control and accounting for enrichment facilities, instead of the proposed rule, shall be applied to this proceeding; that the hearing shall proceed as directed in the order; and that all other requests for reconsideration are denied.
- B Congress dictated that the Price-Anderson Act liability insurance requirements will not be applied to uranium enrichment facilities. See Atomic Energy Act, § 193(e).

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- C Of the existing NRC regulations under 10 C.F.R. Part 140, only sections 140.15-140.17 and Part 140, Appendix A are applicable to this proceeding, and then only as guidance or models as to proof of liability insurance.
- D An intervenor's objection to the use of the word "reconsideration" in a hearing order that relates to Commission consideration of the hearing standards raises solely a semantic problem, as long as the nature of the reconsideration offered by the Commission is sufficient to meet the intervenor's objections and the Commission's obligations.
- E When standards set forth in a hearing order to govern an adjudication have not been established by rulemaking, the Commission may provide an opportunity for parties to challenge the standards by seeking reconsideration.
- F The status of an unchallenged hearing standard would not be similar to that of a proposed standard; an unchallenged standard would be, without more, fully applicable to the matter before the board.
- G It should be evident from the terms of a hearing order that require, among other things that petitions for reconsideration "must contain all relevant facts and arguments to support the petition," that the Commission intends to initiate a process in which each objection would be fully considered de novo and the parties provided with the Commission's reasoned decision.
- H For purposes of siting and design of a uranium enrichment facility against accidental atmospheric releases of uranium hexafluoride, the Commission established plant boundary limits that were intended to be generally equivalent to the Commission's reactor siting criteria found in 10 C.F.R. Part 100.
- I The Commission's objective in applying the Part 100 siting criteria to a uranium enrichment facility, is equivalency to Part 100; it was never the intent to set levels below which no adverse effects would occur from hydrogen fluoride.
- J The Commission chose the approach of performance-based design standards for the contemplated enrichment facility. Those standards established "principal design criteria which are commensurate with their safety function." 53 Fed. Reg. at 13,278.
- K The Commission's design criteria for the contemplated enrichment facility did not include a performance-based safeguards standard directed at common defense and security.
- L The need for safeguards against unauthorized activities at uranium enrichment facilities was addressed primarily through creation of a new section 74.33 in NRC's existing material control and accounting regulations.
- M The new section 74.33 of 10 C.F.R. includes as a performance-based requirement that each uranium enrichment licensee must establish, implement, and maintain an NRC-approved material control and accounting system.
- N Specific requirements for the use of physical security measures in achieving material control and accounting objectives is unnecessary; physical security measures may be included in an applicant's program, but the applicant is free to develop its program in any manner as long as it meets the general performance objectives.

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LBP-92-1 NEW YORK POWER AUTHORITY (James A. FitzPatrick Nuclear Power Plant), Docket No. 50-333-OM (ASLBP No. 91-645-02-OM) (Facility Operating License No. DPR-59) (EA 91-053) and DAVID M. MANNING (Senior Reactor Operator) Docket No. 55-8615-SC (ASLBP No. 91-646-02-SC) (Senior Reactor Operator License No. SOP-10561-1) (EA 91-054); ENFORCEMENT ACTION; January 21, 1992; MEMORANDUM AND ORDER (Terminating FitzPatrick Proceeding)

LBP-92-2 CERTIFIED TESTING LABORATORIES, INC., Docket No. 030-12145-CivP (ASLBP No. 91-622-01-CivP) (Materials License No. 29-14150-01) (EA 89-079); CIVIL PENALTY; January 29, 1992; INITIAL DECISION (Order Imposing a Civil Monetary Penalty)

A The Licensing Board, in an Initial Decision, determines that a civil monetary penalty sought to be imposed by the NRC Staff against a Licensee involved in industrial radiography should be reduced from \$8000 to \$5000. The Board ruled that various reports and statements by the Licensee were not intentionally false, as claimed by the Staff, but that the Licensee's system of records was inappropriate and inadequate for complying with the recordkeeping requirements of the license. As a result, the Board reduced the penalty from Severity Level II to Severity Level III.

B Accurate reports are material to the NRC's licensing scheme for industrial radiography. Inaccurate reports are thus material whether or not the NRC would be led to take action on the basis of the erroneous information.

C In reviewing a civil penalty sought to be assessed by the Staff, a licensing board may determine whether the proposed severity level and penalty are appropriate or, alternatively, whether the proceeding should be dismissed or the penalty imposed, mitigated, or remitted. A board may not increase the penalty sought by the Staff.

D Because of the demonstrated potential dangers of radiographic operations to the public health and safety and the importance of audit reports to NRC's system of regulation, a failure to prepare correct reports can be of safety significance. In this case, the preparation of inaccurate audit reports some time after the audit had taken place was inappropriate for complying with the license requirement and amounted to a breakdown in control of licensed activities.

E The promptness and extent to which a licensee takes corrective action is a factor that a licensing board may consider in determining the amount of a civil penalty.

F The following technical issue is discussed: Industrial radiography.

LBP-92-3 ARIZONA PUBLIC SERVICE COMPANY, et al. (Palo Verde Nuclear Generating Station Units 1, 2, and 3), Docket Nos. 50-528-OLA-3, 50-529-OLA-3, 50-530-OLA-3 (ASLBP No. 92-654-01-OLA-3) (Automatic Closure Interlock for Shutdown Cooling Valves); OPERATING LICENSE AMENDMENT; March 4, 1992; MEMORANDUM AND ORDER FINDING MITCHELL PETITIONERS IN DEFAULT (Dismissal of Proceeding)

A The Atomic Energy Act does not confer the automatic right of intervention upon anyone. The Commission may condition the exercise of that right upon the meeting of reasonable procedural requirements.

B Prior to the first prehearing conference, the petitioner must file a supplement to his or her petition to intervene which sets forth the contentions the petitioner seeks to have litigated and the basis for each contention. 10 C.F.R. § 2.714.

C Pursuant to 10 C.F.R. § 2.707, the Licensing Board is empowered, on the failure of a party to comply with any prehearing conference order, to make such orders in regard to the failure as are just.

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- D Dismissal of a party is the ultimate sanction applicable to an intervenor. Where a party fails to carry out the responsibilities imposed by the fact of its participation in the proceeding, such a party may be found to be in default and the Licensing Board may make such orders in regard to the failure as are just. 10 C.F.R. §§ 2.707, 2.718.
- LBP-92-3A SAFETY LIGHT CORPORATION, et al. (Bloomshurg Site Decontamination), Docket No. 030-05980, 030-05981, 030-05982, 030-08335, 030-08444 (ASLBP Nos. 89-590-01-OM, 90-398-01-OM-2); MODIFICATION OF ORDER, March 16, 1992; ORDER (Ruling on Licensees' Motion to Compel Deposition Discovery from the NRC Staff)
- LBP-92-4 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 1), Docket No. 50-550-OLA-3 (ASLBP No. 91-650-13-OLA-3); OPERATING LICENSE AMENDMENT; March 18, 1992; MEMORANDUM AND ORDER (Ruling on Intervention Petition)
- A In this Memorandum and Order, the Licensing Board finds that the petitioners lack standing to intervene in this operating license amendment proceeding and, therefore, it denies the petitioners' intervention petition.
- B The Commission long ago held that "contemporaneous judicial concepts of standing" are to be used in determining whether a petitioner has alleged a sufficient "injury" within the meaning of section 189(a) of the Atomic Energy Act and the agency's regulations to intervene as a matter of right in an NRC licensing proceeding. *Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2)*, CLI-76-27, 4 NRC 610, 613-14 (1976).
- C To establish standing, a petitioner must demonstrate an injury in fact from the action involved and an interest arguably within the zone of interests protected by the statutory provisions governing the proceeding. See *Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2)*, CLI-89-21, 30 NRC 325, 329 (1989); *Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC 327, 332 (1983).
- D The same injury in fact and zone of interest requirements must be met regardless of whether the petitioner is an individual or an organization seeking to intervene in its own right. *Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4)*, ALAB 952, 33 NRC 521, 529 (1991).
- E When an organization seeks to intervene as the authorized representative of one of its members, the standing of the organizational petitioner is, *inter alia*, dependent upon that individual member having standing in his own right. *Turkey Point*, 33 NRC at 530-31. See also *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 342-43 (1977).
- F Current judicial standing doctrine holds that the injury in fact requirement has three components: injury, cause, and remedial benefit. See *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982).
- G To meet the injury in fact test in proceedings other than those for construction permits and operating licenses, injury to individuals living in reasonable proximity to a plant must be based upon a showing of "a clear potential for offsite consequences" resulting from the challenged action. *St. Lucie*, 30 NRC at 329.
- H Standing cannot be properly predicated upon the denial of a purported procedural right that is uncoupled from any injury caused by the substance of the challenged license amendment. See *United Transp. Union v. ICC*, 891 F.2d 908, 918 (D.C. Cir. 1989), cert. denied, 110 S. Ct. 3271 (1990).
- LBP-92-5 JOSE A. RUIZ CARLO, Docket No. 030-20541-OM (ASLBP No. 92-658-04-OM) (Byproduct Material License No. 52-21350-01) (EA 91-171); ENFORCEMENT ACTION; March 24, 1992; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Proceeding)
- LBP-92-6 DAVID M. MANNING (Senior Reactor Operator), Docket No. 55-8613-SC (ASLBP No. 91-646-02-SC) (Senior Reactor Operator License No. SCP-10561-1) (EA 91-054); ENFORCEMENT ACTION; March 31, 1992; MEMORANDUM AND ORDER (Terminating Proceeding)

DIGESTS
ISSUANCE OF DIRECTOR'S DECISIONS

DD-92-1 ARIZONA PUBLIC SERVICE COMPANY, et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), Docket Nos. 50-528, 50-529, 50-530; REQUEST FOR ACTION; March 16, 1992; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director of the Office of Nuclear Reactor Regulation denies a petition filed by Messrs. David K. Colapinto and Stephen M. Kohn, requesting action with regard to the Palo Verde Nuclear Generating Station Units 1, 2, and 3. Specifically, the Petition alleged that: a hydrogen leak in the main generator of Unit 2 could pose a fire hazard; fire pumps at the plant have malfunctioned and cannot pump water in the event of a fire; the cooling towers are crumbling and are unsafe; the plant has been operating outside of safety regulations under "justifications for continued operation"; the Licensee has not identified the electrical circuit breakers for fire protection such that, in the event of a fire, it would not know what equipment could be damaged; it is rumored that Unit 2 has a primary-to-secondary leak of 2 gallons per minute; the Licensee has willfully operated Palo Verde Nuclear Generating Station in violation of unspecified licensing requirements and willfully failed to report unspecified safety violations to the NRC through Licensee event reports; the Licensee has never moved the portable hydrogen recombiner from one unit to another, has no procedure to do so, and has no backup recombiner; the Licensee failed to correctly implement a design change for the reactor control element drive mechanisms on Unit 3; the Licensee has engaged in widespread harassment and retaliation against employees who raise safety concerns. The Petitioners request emergency action to shut down Palo Verde Units 1, 2, and 3, and that the NRC appoint a special investigative team to monitor and inspect conditions at the plant.

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