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Vol. 26
Index 1

INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

July - September 1987



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

This 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-87-7 COMMONWEALTH EDISON COMPANY (Braidwood Nuclear Power Station, Units 1 and 2), Docket Nos. 50-456-OL, 50-457-OL; OPERATING LICENSE; June 30, 1987; ORDER
- A The Commission conducts a review under 10 C.F.R. § 2.764(f) to determine if the effectiveness of two Licensing Board decisions that resolved all contested issues in the proceeding in favor of Applicant and that authorized the issuance of full-power operating licenses should be stayed. The Commission concludes that no safety reasons exist for staying the effectiveness of the Board's decisions, and that the decision authorizing issuance of full-power operating licenses should become effective, pending completion of the agency's adjudicatory appellate process.
- B Unless assigned by the Commission to hear cases under 10 C.F.R. § 2.205, licensing boards have no authority independently to impose civil penalties. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-82-31, 16 NRC 1233, 1238-39 (1982).
- C In its immediate effectiveness review of a board decision, the Commission, having responsibility for public health and safety, will consider a safety issue discussed by the board, even though the issue was not properly before the board.
- CLI-87-8 HOUSTON LIGHTING AND POWER COMPANY, et al. (South Texas Project, Units 1 and 2), Docket Nos. 50-498-OL, 50-499-OL; OPERATING LICENSE; July 15, 1987; MEMORANDUM AND ORDER
- A The Commission denies Billie Garde's motion to quash a subpoena that requires her appearance regarding a Government Accountability Project-initiated investigation into allegations concerning safety at the South Texas plant, and further denies Garde's request for oral argument on that motion. The Commission determines that Garde's arguments that the EDO lacks authority to issue subpoenas and that her compliance with the subpoena would compromise the public health and safety are without merit. The Commission does not reach the issue of the applicability of the attorney-client and work product privileges asserted by Garde because it lacks sufficient information at this time to make such a determination. The Commission concludes that Garde is required to testify and produce documents bearing on plant safety and therefore resets an appearance date for the subpoena.
- B The fact that an outside organization lacks confidence in certain NRC Staff to competently investigate safety allegations obtained by that organization's own investigation of plant safety does not result in the conclusion that divulgement of the information would compromise the public health and safety. In fact, the converse is true. Failure of the NRC to obtain the allegations would more likely compromise the public health and safety, particularly if the allegations are substantiated.
- C The Commission is authorized to issue subpoenas pursuant to § 161c of the Atomic Energy Act, and it further has the power to delegate this authority to the Executive Director for Operations consistent with § 209(b) of the Energy Reorganization Act and 10 C.F.R. § 1.40. This delegated responsibility has been incorporated in NRC Manual Chapter 103-0214.
- D The Commission's view is that assertion of the attorney-client privilege and work product doctrine by a subpoenaed witness prior to that individual's testimony is premature. The more appropriate time for a witness to invoke privileges is when testimony is obtained regarding specific questions posed and when the individual can explain the relationship of the privileges to the information sought.
- CLI-87-9 ADVANCED NUCLEAR FUELS CORPORATION (Import of South African Enriched Uranium Hexafluoride), Docket No. 11003928; EDLOW INTERNATIONAL COMPANY (Import of South African Uranium Ore Concentrate), Docket No. 11003929; EDLOW INTERNATIONAL COMPANY (import of

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South African Uranium Hexafluoride), Docket No. 11003930; EDLOW INTERNATIONAL COMPANY (Import of South African Enriched Uranium Hexafluoride), Docket No. 11003931; IMPORT LICENSES; September 21, 1987; DECISION

A The Commission interprets §309(a) of the Comprehensive Anti-Apartheid Act of 1986, 22 U.S.C. §5059(a), to: (1) bar the import of uranium ore and uranium oxide, regardless of its intended end use; and (2) permit the importation of South African-origin uranium ore and uranium oxide that are transformed into uranium hexafluoride, or other "substantially transformed" uranium compounds before they are imported into the United States.

B The Commission also concludes that uranium imports that do not fall within the prohibition of the Anti-Apartheid Act should not be barred on other grounds. In this regard, the proposed imports would not be inimical to the common defense and security of the United States or violate U.S. international legal obligations with respect to Namibia.

C The Commission directs the NRC Staff to act on the four pending import license applications in accordance with these conclusions.

D The Commission refuses to consider untimely filed submissions. The Commission has made clear that participants in its proceedings are expected to comply with applicable time limits. If parties cannot act within the specified time period, extensions are to be sought prior to the expiration date. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), CLI-86-5, 23 NRC 125, 126 (1986).

E The Commission concludes that the proper interpretation of §309(a) of the Comprehensive Anti-Apartheid Act of 1986 is one that gives effect to the plain language of the statute — that Congress intended to bar only uranium ore and uranium oxide; the bar does not extend to other forms of uranium.

F The Commission concludes that South African-origin uranium ore or uranium oxide that is transformed into uranium hexafluoride or into enriched uranium hexafluoride in other countries should not be considered South African uranium ore or uranium oxide and is therefore not barred from importation. The Customs Service and the courts have commonly employed a three-part test in determining whether a product has been substantially transformed. They look to see whether as a result of the manufacturing processes a new and different article emerges, having a (1) distinctive name, (2) character, or (3) use that is different from that originally possessed by the article or material before being subject to the manufacturing process. See, e.g., 19 C.F.R. §10.14(b). Applying these criteria, the Commission finds that uranium hexafluoride and enriched uranium hexafluoride are substantially transformed uranium products.

CLI-87-10 EDLOW INTERNATIONAL COMPANY (Import License for Enriched Uranium from a Country Not Specified), Docket No. 11002967; TRANSNUCLEAR, INC. (Import License for Enriched Uranium from a Country Not Specified), Docket No. 11003111; WESTINGHOUSE ELECTRIC CORPORATION (Import License for Enriched Uranium from a Country Not Specified), Docket No. 11001002; EDLOW INTERNATIONAL COMPANY (Import License for Nuclear Source Material from a Country Not Specified), Docket No. 11000168; INTERNATIONAL ENERGY ASSOCIATES LTD. (Import License for Enriched Uranium Hexafluoride from South Africa), Docket No. 11003688; SEPARATIVE WORK UNIT CORPORATION (Import License for Enriched and Natural Uranium from a Country Not Specified), Docket No. 11002957; BRAUNKOHLER TRANSPORT, USA (Import License for Natural and Enriched Uranium from a Country Not Specified), Docket No. 11003204; ADVANCED NUCLEAR FUELS CORPORATION (Import License for Natural and Enriched Uranium from a Country Not Specified), Docket No. 11003365; PHIBRO-SALOMON, INC. (Import License for Natural and Enriched Uranium from South Africa), Docket No. 11002933; NEW YORK NUCLEAR CORPORATION (Import License for Enriched Uranium from a Country Not Specified), Docket No. 11003097; TRANSNUCLEAR, INC. (Import License for Special Nuclear Material from a Country Not Specified), Docket No. 11002593; IMPORT LICENSES; September 21, 1987; ORDER

A The Commission determines that since the issues raised in Petitioners' request for revocation of eleven existing uranium import licenses are identical to the issues raised by those same Petitioners with respect to four pending uranium import licenses, the guidance provided by the Commission in its September 21, 1987 decision on the pending South African-origin uranium import license applications resolves the issues with respect to the existing licenses. See Advanced Nuclear Fuels Corp. (Import of South African Enriched Uranium Hexafluoride), CLI-87-9, 26 NRC 109. The Commission therefore directs the NRC Staff to review the existing licenses and to issue immediately effective orders to revoke, suspend, or modify those

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licenses to ensure that the licenses bar imports of uranium ore and uranium oxide from South Africa and all uranium imports from parastatal organizations.

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- ALAB-869 VERMONT YANKEE NUCLEAR POWER CORPORATION (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA (Spent Fuel Pool Amendment); OPERATING LICENSE AMENDMENT; July 21, 1987; DECISION
- A In an appeal brought by an applicant under 10 C.F.R. § 2.714a(c), the Appeal Board affirms the Licensing Board's admission of most of one contention but reverses the Board insofar as it admitted two other contentions.
- B Under 10 C.F.R. § 2.714a(c), an applicant may appeal a licensing board order on the question of whether a petition for intervention and/or request for a hearing should have been wholly denied.
- C A single failure is defined in the Commission's regulations as an occurrence which results in the loss of capability of a component to perform its intended safety functions. 10 C.F.R. Part 50, Appendix A, "Definitions and Explanations."
- D When the staff's review of a matter is not complete, it should say so and advise the licensing board and parties of when it reasonably expects to complete that review.
- E For the doctrines of res judicata and collateral estoppel to apply so as to bar litigation of an issue, the issue to be precluded must be the same as that involved in the prior proceeding and must have been actually raised, litigated, and adjudged. Additionally, the issue must have been material and relevant to the disposition of the first action, so that its resolution was necessary to the outcome of the earlier proceeding. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 536-37 (1986).
- F An active component requires mechanical movement to perform its safety function, whereas a passive component does not. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1164 n.355 (1984).
- G At the contention admission stage, boards should determine only if the contention has basis and specificity, as required by 10 C.F.R. § 2.714(b), and should not reach the merits. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 547-49 (1980).
- H General Design Criteria and other regulations embody minimum requirements. Standard Review Plan provisions, "regulatory guides," and the like offer staff guidance on how regulatory requirements can be met. Applicants, however, may demonstrate that other means not specified in the staff guidance will accomplish the same goals. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-725, 17 NRC 562, 567 n.7, 568 n.10 (1983).
- I The Commission's regulations permit boards in operating license proceedings to examine and decide "[m]atters not put into controversy by the parties," but only after a determination that "a serious safety, environmental, or common defense and security matter exists." 10 C.F.R. § 2.760a.
- J A licensing board invoking its section 2.760a sua sponte authority must set forth such a determination "in a separate order which makes the requisite findings and briefly states the reasons for raising the issue." Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614, 615 (1981). The Commission itself then reviews the determination and decides if the sua sponte issue should remain in the proceeding. See id., CLI-81-36, 14 NRC 1111 (1981). See also Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-81-54, 14 NRC 918, 922-23 & n.4 (1981).
- K 10 C.F.R. § 2.714a contains a limited exception to the general rule prohibiting interlocutory appeals. A petitioner may appeal a board ruling that denies the entirety of its petition to intervene, or

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for a hearing. 10 C.F.R. § 2.714a(b). So too, a party other than such petitioner (usually an applicant) may appeal a board ruling granting intervention or a hearing, on the issue of whether such request "should have been wholly denied." 10 C.F.R. § 2.714a(c).

- L The terms and spirit of 10 C.F.R. § 2.714a(c) allow appeal boards to exercise discretion concerning the need and desirability of reviewing other contentions, once one admissible contention is found. Compare Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-150, 6 AEC 423, 424, 426 n.9 (1973) (once board found that petitioner had at least one admissible contention, there was no "need" to examine any others) with Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 & n.3 (1973) (in applicant's appeal from licensing board admission of three contentions, appeal board found two contentions admissible and expressed no view as to the third). Cf. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 373 (1973) (in intervenor's section 2.714a(b) appeal from a licensing board rejection of his five contentions, appeal board examined and found admissible all five contentions).
- M One purpose of the basis and specificity requirements for contentions is to assure the hearing process is not improperly invoked and issues raised are appropriate for litigation in the particular proceeding. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21, modified on other grounds, CLI-74-32, 8 AEC 217 (1974).
- N 10 C.F.R. § 51.104 provides generally that matters within the scope of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 [hereinafter "NEPA"], may be raised in NRC hearings.
- O The need for an environmental impact statement in a spent fuel pool proceeding must be determined on a case-by-case basis. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-12, 24 NRC 1, 12, rev'd on other grounds sub nom. San Luis Obispo Mothers for Peace v. NRC, 799 F.2d 1268 (9th Cir. 1986).
- P An environmental assessment is a concise statement usually prepared to "[a]id the Commission's compliance with NEPA when no environmental impact statement is necessary." 10 C.F.R. § 51.14(a).
- Q Only when the Commission makes a "no significant hazards" determination does the categorical exclusion in 10 C.F.R. § 51.22(c)(9) apply so as to preclude an environmental impact statement.
- R NEPA does not require NRC consideration of severe, beyond design-basis accidents because they are, by definition, highly improbable — i.e., remote and speculative — events. San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1301 (D.C. Cir. 1984), *aff'd en banc*, 789 F.2d 26, cert. denied, — U.S. —, 107 S. Ct. 330 (1986).
- S To the extent that the Commission ever considers the environmental impact and risks of a beyond design-basis accident, it does so as an exercise of discretion under its Interim Policy on "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969," 45 Fed. Reg. 40,101 (1980) [hereinafter "NEPA Policy Statement"]. San Luis Obispo, 751 F.2d at 1301.
- T Nothing in the language of the NEPA Policy Statement, 45 Fed. Reg. 40,101, indicates that it was intended to apply to a license amendment proceeding.
- U Before the NEPA Policy Statement is even invoked, there must be some basis for requiring an EIS other than a claim of increased risk from a beyond design-basis accident scenario.
- V Contentions that assert an EIS is required because of claims of increased risk from beyond design-basis accident scenarios are not litigable — as a matter of law under NEPA, and as a matter of discretion under the NRC's NEPA Policy Statement.
- W In general, environmental contentions should be evaluated to whether the NRC staff (not an applicant) has fulfilled its obligations under NEPA. See Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 793-94 (1978).
- X Conditional contentions are prohibited. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 466-67 (1982), rev'd in part, CLI-83-19, 17 NRC 1041 (1983).
- Y Some environmental contentions can be formulated and admitted before issuance of the relevant staff document — namely, those unlikely to be affected by the staff's forthcoming analysis, and those based on information required to be provided in an applicant's "environmental report" (ER). Catawba, CLI-83-19, 17 NRC at 1049.
- Z Unreviewed licensing board decisions do not have precedential effect as to issues of law. Duke Power Co. (Cherokee Nuclear Station, Units 1, 2, and 3), ALAB-482, 7 NRC 979, 981 n.4 (1978).

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- AA Licensing boards should await the issuance of a staff environmental assessment before determining that it is inadequate. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 330-31 (1981).
- BB An ER is required for a construction permit and operating license, but not for a license amendment application. 10 C.F.R. §§ 51.50, 51.53. The information that must be included in an ER is described in 10 C.F.R. §§ 51.45, 51.51, 51.52.
- CC The following technical issues are discussed: Single failure criterion; Residual heat removal system; Spent fuel pool cooling; General Design Criterion 61; General Design Criterion 44; Active and passive components.
- ALAB-870 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445-OL, 50-446-OL; OPERATING LICENSE; August 27, 1987; MEMORANDUM AND ORDER
- A The Appeal Board denies a request by Texas Utilities Electric Company (TU), lead applicant and majority owner of the Comanche Peak nuclear facility, for interlocutory review of a Licensing Board discovery order. The protective order restricts access to certain documents sought by an intervenor from Tex-La Electric Cooperative of Texas, Inc., a minority owner and co-applicant of the plant, to TU's licensing counsel and precludes licensing counsel from disclosing the contents of the documents to any principals of TU or other counsel representing TU in litigation against Tex-La.
- B An appeal board will exercise its discretionary authority to direct certification of an interlocutory order of a licensing board "only where the ruling below either (1) threaten(s) the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, (can)not be alleviated by a later appeal or (2) affect(s) the basic structure of the proceeding in a pervasive or an unusual manner." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).
- C Appeal boards have repeatedly pointed out that "discovery rulings of licensing boards are not promising candidates for the exercise of our discretionary authority to review interlocutory orders." Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-608, 12 NRC 168, 170 (1980). See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-780, 20 NRC 378, 381 (1984).
- D Like a referral by a licensing board pursuant to 10 C.F.R. § 2.730(f), a petition requesting the invocation of an appeal board's discretionary directed certification authority must also be filed promptly after the interlocutory ruling at issue is handed down.
- ALAB-871 COMMONWEALTH EDISON COMPANY (Braidwood Nuclear Power Station, Units 1 and 2), Docket Nos. 50-456-OL, 50-457-OL (Emergency Planning); OPERATING LICENSE; August 28, 1987; DECISION
- A On sua sponte review of a Licensing Board partial initial decision in this operating license proceeding (LBP-87-13, 25 NRC 449 (1987)), the Appeal Board finds no error necessitating corrective action and affirms the result reached by the Licensing Board.
- ALAB-872 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OL, 50-425-OL; OPERATING LICENSE; September 15, 1987; DECISION
- A On appeal by the intervenor in this operating license proceeding from a portion of a Licensing Board decision, in favor of the applicants, LBP-87-28, 24 NRC 263 (1986), and various interlocutory rulings of that Board, the Appeal Board affirms each of the challenged rulings. The Appeal Board also denies the intervenor's request to reopen the record. Finally, the Appeal Board conducts a sua sponte review of the remainder of LBP-87-28 as well as the entirety of a second decision in applicant's favor, LBP-86-41, 23 NRC 901 (1986), as modified, ALAB-859, 25 NRC 23 (1987), and finds no error that warrants corrective action.
- B The Commission's Rules of Practice require an appellant's brief to identify clearly errors of fact or law that are the subject of the appeal. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must be set out. 10 C.F.R. 2.762(d)(1). The brief must also contain sufficient information and cogent argument to alert the other parties and the appellate tribunal to the precise nature of and support for the appellant's claims. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), ALAB-843, 24 NRC 200, 204 (1986).

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- C The Appeal Board does not generally entertain matters that are not fully briefed. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49-50 (1981), *aff'd sub nom. Township of Lower Alloways Creek v. Public Service Electric & Gas Co.*, 687 F.2d 732 (3d Cir. 1982). It is not sufficient for a party merely to repeat a contention and its purported basis, or to reassert proposed findings or arguments and information rejected by the Licensing Board. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-841, 24 NRC 64, 69, *reconsideration denied*, ALAB-844, 24 NRC 216 (1986); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-827, 23 NRC 9, 11 (1986).
- D Parties whose briefs fail to conform to Commission requirements must bear the risk of any shortcomings in their briefs.
- E The movant of a motion for summary disposition has the burden of proving the absence of genuine issues of material fact even if the motion is unopposed. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 752-54 (1977).
- F Absent a serious substantive issue as to which a genuine problem has been demonstrated, arguments that could have been presented below, but were not, will not be entertained on appeal. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 348 (1978).
- G To be admitted in a licensing proceeding, a contention must have its basis set forth with reasonable specificity. 10 C.F.R. 2.714(b).
- H To prevail on a request to reopen a record, a movant must show (1) its motion is timely; (2) the motion addresses a significant safety or environmental issue; and (3) a materially different result would be or would have been likely had the newly proffered evidence been considered. 10 C.F.R. 2.734. See also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-865, 25 NRC 430, 441 (1987).
- I The following technical issues are discussed: Cumulative effects of radioactive releases; Seismic design (impact of Charleston earthquake); Construction quality assurance; Groundwater contamination through grouted wells; Reliability of Limitorque motor operators for valves; Degradation of polymers used in electric cable insulation; Surveillance and maintenance program for electric cables.
- ALAB-873 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OLA, 50-323-OLA; OPERATING LICENSE AMENDMENT; September 18, 1987; MEMORANDUM AND ORDER
- A The Chairman of the Appeal Panel summarily denies, as interlocutory, an intervenor's appeal from a Licensing Board's order rejecting a late-filed contention of the intervenor in this operating license amendment proceeding.
- B 10 C.F.R. 2.714a permits an interlocutory appeal from an order rejecting one or more contentions at the threshold only if the effect of the rejection is to deny in its entirety a petition for leave to intervene in the proceeding.
- ALAB-874 COMMONWEALTH EDISON COMPANY (Braidwood Nuclear Power Station, Units 1 and 2), Docket Nos. 50-456-OL, 50-457-OL; OPERATING LICENSE; September 25, 1987; MEMORANDUM AND ORDER
- A The Appeal Board dismisses, on ground of mootness, intervenors' appeal from the Licensing Board's reaffirmance of its earlier denial of a late-filed contention and vacates both Licensing Board orders reflecting that rejection.
- B Where an appeal from a licensing board order is dismissed on the ground that the controversy underlying the order has become moot, it is established practice to vacate the licensing board order. See, e.g., Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), ALAB-656, 14 NRC 965 (1981); Rochester Gas and Electric Corp. (Sterling Power Project Nuclear Unit No. 1), ALAB-596, 11 NRC 867 (1980).

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LBP-87-22 COMMONWEALTH EDISON COMPANY (Braidwood Nuclear Power Station, Units 1 and 2), Docket Nos. 50-456-OL, 50-457-OL (ASLBP No. 79-410-03-OL); OPERATING LICENSE, July 6, 1987; MEMORANDUM AND ORDER

LBP-87-23 ALFRED J. MORABITO (Senior Operator License for Beaver Valley Power Station, Unit 1), Docket No. 55-60755 (ASLBP No. 87-551-02-SP); SPECIAL PROCEEDING; August 25, 1987; MEMORANDUM AND ORDER

- A In a proceeding involving an Applicant's appeal of the denial of his senior operator's license, the Presiding Officer rules on motions concerning (1) burden of proof, (2) revision of operator license examination process, and (3) timing of proceeding in relation to the resolution of certain charges made by the Applicant to the NRC Office of Inspector and Auditor.
- B In a proceeding challenging the denial by the NRC Staff of a senior operator license, the burden of proof is on the license applicant to show that the examination has been incorrectly graded or administered.
- C Under 10 C.F.R. § 55.10(a)(6) (1987), one of the items needed for licensing is "[e]vidence that the applicant has learned to operate the controls in a competent and safe manner." This requirement may be fulfilled by the certification of the facility licensee. Such certification, however, has no bearing on whether an applicant has passed the examination required by 10 C.F.R. § 55.11(b) (1987).
- D In a proceeding challenging the denial of a senior operator license, once the applicant establishes a prima facie case that the Staff's grading or administration of the SRO examination was incorrect, the burden of going forward with evidence shifts to the Staff.
- E In a proceeding challenging the NRC Staff's denial of a senior operator license, the jurisdiction of the presiding officer is limited to determining whether the applicant should have been granted the license. If the applicant wishes to change the methods and procedures for examining and licensing nuclear power plant operators or senior operators, he can petition for such a change under the procedures of 10 C.F.R. § 2.800 et seq.
- F The schedule of a licensing proceeding should not be governed by the resolution by the NRC Office of Inspector and Auditor (OIA) of charges made to it and having some relationship to a license application. OIA reports directly to the Commission and is not technically involved in the licensing proceedings.

LBP-87-24 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OLA, 50-323-OLA (ASLBP No. 86-523-03-LA); OPERATING LICENSE AMENDMENT; September 2, 1987; MEMORANDUM AND ORDER

- A In this Memorandum and Order, the Licensing Board denies admission of a contention concerning the consequences of a loss of coolant in the spent fuel pools at Diablo Canyon Units 1 and 2, finding that intervenor had failed to demonstrate a nexus between the generic study it relied upon and the high-density restacking of the Diablo Canyon spent fuel pools.
- B If an issue sought to be introduced is a generic issue (i.e., involving a subject of general applicability to all reactors), a nexus must be established between the generic issue and the license application in question. The party may not simply point to a newly issued Regulatory Guide or a report on the subject.
- C Generally, a generic safety issue does not describe a regulatory requirement that a license applicant must satisfy unless and until the generic issue is reduced to a regulation in Title 10 of the Code of Federal Regulations.

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- D A contention based on a hypothesized event beyond the design basis of the plant is not admissible because the National Environmental Policy Act does not require that such an accident be considered.
- LBP-87-25 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OLA, 50-323-OLA (ASLBP No. 86-523-03-LA); OPERATING LICENSE AMENDMENT; September 11, 1987; INITIAL DECISION
- A In this Initial Decision, the Licensing Board finds Intervenor's contentions unfounded and authorizes the issuance of the license applied for.
- B NRC regulations permit sliding, tilting, and impacts of racks if impact loading is properly quantified and rack motions are suitably constrained.
- C Freestanding spent fuel storage racks have several advantages over anchored or braced racks. They reduce stress to the pool liner caused by thermal loads from heat generated by the spent fuel; they may slide, thus dissipating seismic energy; they require no welding for installation; and they can be inspected and replaced more simply than fixed racks.
- LBP-87-26 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3, (ASLBP No. 86-540-08-OL) (Emergency Planning); OPERATING LICENSE; September 17, 1987; MEMORANDUM AND ORDER
- A The Licensing Board denies Applicant's second renewed motion for summary disposition of the "legal authority" issues for failing to meet the requirements of 10 C.F.R. § 2.749; denies Applicant's motion for leave to file a reply to Intervenor's answer to Applicant's motion for summary disposition filed under § 2.749 for failing to make the necessary threshold showing; reviews applicable law on summary disposition; and interprets rulings made by the Commission in CLI-86-13, 24 NRC 22 (1986), involving the remand of the realism argument as it pertains to the "legal authority" issues, and the effect had on the motion for summary disposition.
- LBP-87-27 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445-OL-2, 50-446-OL-2 (ASLBP No. 79-430-06-OL) Docket No. 50-445-CPA (ASLBP No. 86-528-02-CPA); OPERATING LICENSE AND CONSTRUCTION PERMIT AMENDMENT; September 24, 1987; MEMORANDUM AND ORDER
- A In this case, in which the owners of the Comanche Peak Steam Electric Station are locked in litigation before other courts and regulatory bodies, a minority owner of the project sought a declaration from the Licensing Board that: (1) the lawyer for the majority owner should serve as a lawyer for the minority owner, or (2) that it was entitled to have its own lawyer in these proceedings without risk of civil liability for violating its obligations under the Ownership Agreement, entered into by all the owners of the project.
- B The Licensing Board chose not to deal with the issue as framed by the minority owner. Instead it dealt with its concern with the obligations of parties to respond to discovery requests. The Licensing Board stated that all the owners have independent responsibilities to respond fully to discovery requests and to keep the Board fully and accurately informed. This means that the majority owners, who need not provide counsel to minority owners, do have an obligation to keep them sufficiently informed as that they may meet their independent obligations.
- C The Licensing Board stated that it would deal with minority owners' need to be represented by attorneys on a case-by-case basis.
- D When a minority owner of a nuclear project is capable of hiring its own attorney, it is not entitled to a declaration that the attorney for the majority owner must represent it even against the will of the attorney. The Licensing Board did not consider whether or not the majority's attorney had a contractual obligation to represent the minority owner.
- E Multiple owners of a nuclear project have independent responsibilities to see to the completeness of responses to discovery requests and to the completeness of the record. The majority owner must keep the minority owners well-enough informed so that they may fulfill their obligation.

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

- DD-87-12 GENERAL ELECTRIC COMPANY (Puncture Analysis of Model GE-700 Shipping Cask), Docket No. 71-5942; REQUEST FOR ACTION; July 6, 1987; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Material Safety and Safeguards denies a Petition filed by Lindsay Audin requesting action with regard to the GE-700 shipping cask. The Petitioner requested that the Safety Analysis Report for the container be reviewed in order to reevaluate its puncture test analysis, and that the cask be used only in its nonextended mode until it can be shown that the extended mode complies with all of the requirements of 10 C.F.R. Part 71.
- B Generally, the proper forum for challenging a rule is the rulemaking proceeding. A petition under 10 C.F.R. § 2.206 requesting enforcement action is not a vehicle for challenging a Commission rule.
- C Where a petitioner has not provided the factual basis for a request with the specificity required by 10 C.F.R. § 2.206, action need not be taken on the request.
- D The following technical issue is / scussed: Assessment of Type B package design.
- DD-87-13 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit 2), Docket No. 50-247; POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit 3), Docket No. 50-286; REQUEST FOR ACTION; July 20, 1987; 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 the New York Public Interest Research Group, Inc., and seven community organizations (Petitioners) requesting the suspension of operations at Indian Point Units 2 and 3. Petitioners base this request on an alleged unacceptable risk to the health and safety of schoolchildren in the vicinity of the Indian Point facility in the event there is a radioactive emergency there.
- B The Federal Emergency Management Agency (FEMA) has the responsibility for evaluating and advising the NRC with respect to offsite emergency preparedness issues.
- C In practice, radiological emergency response plans are rarely if ever perfect and complete, and this is the reason for continuing FEMA and NRC oversight of this area.
- D Because of the potential impact of deficiencies on emergency preparedness, they are required to be promptly corrected through appropriate remedial actions including remedial exercises, drills, or other actions.
- E Even in those instances where the Commission can no longer make a reasonable assurance finding that adequate protective measures can and will be taken in a radiological emergency, emergency preparedness deficiencies may not require facility shutdown.
- DD-87-14 BOSTON EDISON COMPANY (Pilgrim Nuclear Generating Station), Docket No. 50-293; REQUEST FOR ACTION; August 21, 1987; INTERIM DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A Massachusetts State Senator William B. Golden and others (Petitioners) filed with the Nuclear Regulatory Commission a Petition requesting that Boston Edison Company be ordered to show cause why the Pilgrim Nuclear Generating Station should not remain closed or have its operating license suspended by NRC until the Licensee demonstrates that the issues raised by the Petitioners have been resolved. The Petitioners asserted as grounds for their request (1) numerous deficiencies in the Licensee's management, (2) inadequacies in the existing radiological emergency response plan, and (3) inherent deficiencies in the facility's containment structure. Insofar as it relates to the emergency preparedness and containment issues, the Petition is denied. A final decision with respect to the management issues is deferred.

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- B The Director discusses (1) containment design philosophy and licensing requirements, (2) containment design issues raised by Dr. S.H. Hanauer in the early 1970s, (3) the Chernobyl accident, and (4) the capability of the Pilgrim containment to withstand a severe accident.
- DD-87-15 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440, 50-441; REQUEST FOR ACTION; September 14, 1987; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A On November 7, 1986, Terry J. Lodge, on behalf of Sunflower Alliance, Inc. (Petitioner), submitted to the U.S. Nuclear Regulatory Commission (NRC) a Motion to reopen the record in the Perry Nuclear Power Plant operating license proceeding and consider new contentions related to emergency planning or, alternatively, for the Commission to issue an order to show cause why the facility's operating license should not be modified or revoked on the basis of alleged offsite emergency planning deficiencies. The deficiencies included the adequacy of certain care centers that are to support emergency planning efforts for the Perry facility; the adequacy of commitments with school districts for the provision of buses, personnel, and facilities for use during an emergency; and the adequacy of the Ashland County Medical Center for the decontamination and treatment of exposed emergency workers. On February 25, 1987, the NRC notified the Petitioner that the Motion would be considered as a Petition pursuant to 10 C.F.R. § 2.206.
- B The Director of the Office of Nuclear Reactor Regulation denied the Petition based largely upon the evaluation of the Federal Emergency Management Agency (FEMA) which evaluated each of the areas of emergency planning related to the issues raised and found the state of emergency planning adequate.
- C Written commitments from school districts to provide facilities, personnel, and equipment, particularly buses, in the event of an emergency are found sufficient. Legally binding documents to determine what response would be available in an emergency are not required. Public institutions are to be aware of the role they may be called upon to play in an emergency and to formally recognize that likelihood.

DIGESTS
ISSUANCE OF DENIAL OF PETITION FOR RULEMAKING

DPRM 87-3 WISCONSIN ELECTRIC POWER COMPANY, et al., Docket No. PRM 73-6, August 20, 1987.
DENIAL OF PETITION FOR RULEMAKING

- A The Nuclear Regulatory Commission is partially denying a petition for rulemaking submitted on behalf of Wisconsin Electric Power Company et al. which included three proposals: (1) elimination of the requirement that armed security personnel carry an extra pair of corrective lenses, (2) reduction of the mandated frequency of medical examinations for personnel under age 39, and (3) elimination of the requirement that armed security personnel undergo a medical examination within the 30-day period preceding the annual physical fitness test. The Commission has determined that granting the petition in its entirety would not result in maintenance of the present level of assurance that the national security and public health and safety would be protected. The Commission is denying the petition insofar as the first two proposals are concerned. However, the Commission intends to issue a rule that would implement the third part of the petition requesting deletion of a specified link between the timing of the medical examination and the physical fitness test.
- B The following technical issues are discussed: Physical qualifications for security personnel (10 C.F.R. Part 73, "Physical Protection of Plants and Materials," Appendix B, "General Criteria for Security Personnel").

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