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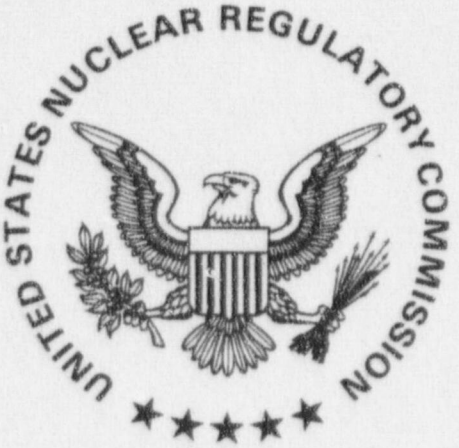
INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January – June 1998



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U.S. NUCLEAR REGULATORY COMMISSION

Prepared by the
Office of the Chief Information Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001
(301–415–6844)

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 Decisions on 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 pegination)
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 (operating license, operating license amendment, 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. Headers and Digests

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 Judges (ALJ), the Directors' Decisions (DD), and the Decisions on 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 alpha-numerical 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.

CASE NAME INDEX

CASE NAME INDEX

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

CLI-98-1 21st CENTURY TECHNOLOGIES, INC. (Fort Worth, Texas), Docket Nos. 030-30266, 030-30266-CivP (License No. 42-23850-02E) (EA 96-170) (Confirmatory Order); ENFORCEMENT ACTION; February 19, 1998; MEMORANDUM AND ORDER

A The Commission grants a motion filed jointly by the NRC Staff and the Licensee for termination of a Confirmatory Order proceeding initiated by the Licensee. The Licensee had requested a hearing on the Order, which modified the license to require that the Licensee develop and implement certain written procedures, and develop, and submit for NRC approval, training and audit plans. The joint motion was filed following a settlement agreement reached by the Licensee and the NRC Staff (and approved by the Licensing Board) in a related civil penalty proceeding, which was also initiated by the Licensee.

B The Commission finds that the fundamental issue is the same in both proceedings: whether certain conditions in the license issued to 21st Century Technologies are justified on health and safety grounds. The Commission therefore concludes that good cause exists to terminate the Confirmatory Order proceeding in view of the approved settlement and termination of the civil penalty proceeding. For this reason, and because the terms of the Settlement Agreement suggest that the Staff and the Licensee will be able to reach mutually agreeable license terms, the Commission declines to undertake *sua sponte* review of the Licensing Board's approval of that agreement.

C The Commission looks with favor upon settlements. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 205 (1997).

CLI-98-2 U.S. ENRICHMENT CORPORATION (Paducah, Kentucky), Docket No. 70-7001; REQUEST FOR ACTION; March 19, 1998; MEMORANDUM AND ORDER

A The Commission denies USEC's petition, submitted pursuant to 10 C.F.R. § 76.62(c), for review of the Director's Decision that partially denied USEC's request for an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The Commission rejects all technical bases for the petition asserted by USEC and allows the Director's Decision to become final.

CLI-98-3 LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; April 3, 1998; MEMORANDUM AND ORDER (Addressing NEPA Contentions)

A The Commission defers to and affirms the Board's finding in LBP-96-25, 44 NRC 331 (1996), that the proposed facility is unlikely to have a significant effect upon market prices for enrichment services, but also directed the Board not to give excessive weight to the price-effects finding, given the uncertainties of the future uranium enrichment market. The Commission further directed that the Board, in performing its ultimate cost-benefit balancing under NEPA, consider not only the facility's effects on market prices, but also the other benefits of the facility that are cited in the FEIS. The Commission affirms the Board's holding that the FEIS "no-action" section should be revised. Lastly, the Commission reverses the Board's holding that the FEIS not include any discussion of socioeconomic or "secondary" benefits, and instead holds that the NEPA cost-benefit analysis appropriately may consider and balance both negative and positive socioeconomic effects.

B The Commission also reverses in part and affirms in part the Atomic Safety and Licensing Board's Final Initial Decision, LBP-97-8, 45 NRC 367 (1997), ruling on environmental justice contentions. The Commission reverses the Board's requirement for a further investigation into racial discrimination in siting, and affirms the Board's requirement for further analysis of the disparate impacts on two impoverished African-American communities.

C The principal goals of an EIS are twofold: to compel agencies to take a "hard look" at the environmental consequences of a proposed project, and to permit the public a role in the agency's decision-making process. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989); *Hughes*

River Watershed Conservancy v. Glickman, 81 F.3d 437, 443 (4th Cir. 1996). The EIS is intended to foster both informed decision-making and informed public participation, and thus ensure that the agency does not act upon incomplete information. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).

D Although the statute itself does not mandate a cost-benefit analysis, NEPA is generally regarded as calling for some sort of a "weighing of the environmental costs against the economic, technological, or other public benefiits of a proposal. *See, e.g., Idaho By and Through Idaho Public Utilities Commission v. ICC*, 35 F.3d 585, 595 (D.C. Cir. 1994); *Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971). The EIS need not, however, always contain a formal or mathematical cost-benefit analysis. *See, e.g., Sierra Club v. Lynn*, 502 F.2d 43, 61 (5th Cir. 1974), *cert. denied*, 422 U.S. 1049 (1975). *See also* Council on Environmental Quality (CEQ) Regulations, 40 C.F.R. § 1502.23.

E NRC regulations direct the Staff to consider and weigh the environmental, technological, and other costs and benefits of a proposed action and its alternatives, and, to the "fullest extent practicable, quantify the various factors considered." 10 C.F.R. § 51.71(d). If important factors cannot be quantified, they may be discussed qualitatively. *Id.*

F Misleading information on the economic benefits of a project could skew an agency's overall assessment of a project's costs and benefits, and potentially result in approval of a project that otherwise would not have been approved because of its adverse environmental effects. *See, e.g., Hughes River Watershed Conservancy v. Glickman*, 81 F.3d at 446.

G In assessing how economic benefits are portrayed, a key consideration of several courts has been whether the economic assumptions of the FEIS were so distorted as to impair fair consideration of the project's adverse environmental effects. *Id.* at 466 (citing *South Louisiana Environmental Council, Inc. v. Sand*, 629 F.2d 1005, 1011 (5th Cir. 1980)).

H In NRC licensing adjudications, it is the licensing board that compiles the final environmental "record of decision," balances a proposed facility's benefits against its costs, and ultimately decides whether to license the facility. The adjudicatory record and board decision, and any Commission appellate decision, become, in effect, part of the FEIS. *See, e.g., Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705-07 (1985).

I To assist the NEPA cost-benefit analysis, the NRC ordinarily examines the need a facility will meet and the benefits it will create. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 346-47 n.5 (1996) (and cases cited therein).

J Although the Commission has the authority to reject or modify a licensing board's factual findings (*see Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 42 (1977); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 403-05 (1976)), it will not do so lightly (*see Catawba*, 4 NRC at 403).

K Under NEPA, the FEIS must include a statement on the alternatives to the proposed action. *See* 42 U.S.C. § 4332(2)(C)(iii). Generally, this includes a discussion of the agency alternative of "no action" (*see* 40 C.F.R. § 1502.14(d)), which is most easily viewed as maintaining the status quo. *Association of Public Agency Customers v. Bonneville Power Administration*, 126 F.3d 1158, 1188 (9th Cir. 1997).

L The extent of the "no-action" discussion is governed by a "rule of reason." *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991). The discussion need not be exhaustive or inordinately detailed. *Farmland Preservation Association v. Goldschmidt*, 611 F.2d 233, 239 (8th Cir. 1979). Such discussions typically are relatively short. *See, e.g., id.; Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1181 (9th Cir. 1990).

M The "no-action" analysis should contain a concise, descriptive summary comparing the advantages and disadvantages of the no-action alternative to the proposed action. *See* CEQ "Memorandum to Agencies: Answers to 40 Most Asked Questions on NEPA Regulations," 46 Fed. Reg. 18,026 (Mar. 1, 1981); *see also* 40 C.F.R. § 1502.14 (CEQ guidance). The section should state the principal reasons why the no-action option was eliminated from consideration.

N Socioeconomic benefits such as new jobs and tax revenues are frequently termed "secondary" benefits because they ordinarily are not the primary reason cited to justify a project. NEPA does not bar an examination of secondary benefits.

O A NEPA cost-benefit analysis for either reactor or nonreactor facilities, appropriately may consider and balance socioeconomic effects, both negative and positive.

P Executive Order 12898, 3 C.F.R. 859 (1995), on environmental justice, by its own terms, established no new rights or remedies. *See* E.O. 12898, § 6-609. Its purpose is to merely "underscore certain provision[s] of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment." *See* Memorandum for the Heads of All Departments and Agencies, 30 Weekly Comp. Pres. Doc. 279 (Feb. 14, 1994).

Q An inquiry into racial discrimination in siting would go well beyond what NEPA has traditionally been interpreted to require. No agency or judicial decision has invoked NEPA to consider claims of racial discrimination. The Council for Environmental Quality's draft guidance focuses exclusively on identifying and adequately assessing impacts of the proposed action on minority populations, low-income populations, and Indian Tribes. It makes no mention of a NEPA-based inquiry into racial discrimination.

R An agency inquiry into a license applicant's supposed discriminatory motives or acts would be far removed from NEPA's core interest: "the physical environment — the world around us, so to speak." *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983).

S Were NEPA construed broadly to require a full examination of every conceivable aspect of federally licensed projects, "available resources may be spread so thin that agencies are unable adequately to pursue protection of the physical environment and natural resources." *Id.* at 776. *See also Public Utilities Commission v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990). NEPA gives agencies broad discretion to keep their inquiries within appropriate and manageable boundaries. *See South Louisiana Environmental Council, Inc. v. Sand*, 629 F.2d at 1011.

T The site screening process is used by a license applicant to identify sites that may meet the stated goals of the proposed action. It is not uncommon for only one of many possible sites to be deemed reasonable. *See, e.g., Tongass Conservation Society v. Cheney*, 924 F.2d 1137, 1141-42 (D.C. Cir. 1991).

U CEQ's implementing guidance provides that an EIS must "[r]igorously explore . . . all *reasonable* alternatives." 40 C.F.R. § 1502.14(a) (emphasis added). For those alternatives that have been eliminated from detailed study, the EIS is required merely to "briefly discuss" why they were ruled out. *Id.* Where (as here) "a federal agency is not the sponsor of a project, the federal government's consideration of alternatives may accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project." *City of Grapevine v. DOT*, 17 F.3d 1502, 1506 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1043 (1994) (internal quotation marks omitted).

V Agency adjudications require advance notice of claims and a reasonable opportunity to rebut them. Our own longstanding practice requires adjudicatory boards to adhere to the terms of admitted contentions. *See, e.g., Brock v. Roadway Express, Inc.*, 481 U.S. 252, 264-65 (1987) (plurality opinion of Marshall, J.); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 553-54 (1978).

W Adverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny.

X "Disparate impact" analysis is our principal tool for advancing environmental justice under NEPA. The NRC's goal is to identify and adequately weigh, or mitigate, effects on low-income and minority communities that become apparent only by considering factors peculiar to those communities.

CLI-98-4 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML; MATERIALS LICENSE; April 16, 1998; MEMORANDUM AND ORDER

A The Commission temporarily stays the effectiveness of the Presiding Officer's Memorandum and Order, LBP-98-5, 47 NRC 119 (1998), thereby staying the effective date of the materials license that the NRC Staff issued to Hydro Resources, Inc.

B The Commission may issue a temporary stay to preserve the status quo without waiting for the filing of an answer to a motion for stay. 10 C.F.R. § 2.788(f). The issuance of a temporary stay is appropriate where petitioners raise serious questions that, if petitioners are correct, could affect the balance of the stay factors set forth in 10 C.F.R. § 2.788(e).

CLI-98-5 LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; April 30, 1998; ORDER

A The Commission grants the motion filed by the applicant, Louisiana Energy Services, to permit it to withdraw its license application and terminate the proceeding. This renders moot all remaining issues in this case. The Commission therefore dismisses the pending petitions for Commission review of the Atomic Safety and Licensing Board Orders, LBP-97-3, LBP-97-22, and the Board's March 3, 1995 unpublished

order ruling on LES's decommissioning funding estimate. The Commission also vacates these three Board orders.

B While unreviewed Board decisions do not create binding precedent, where as here the unreviewed rulings "involve complex questions and vigorously disputed interpretations of agency provisions," the Commission chooses as a policy matter to vacate them and thereby eliminate any future confusion and dispute over their meaning or effect. *Cf. Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13, 15 (1996).

C The *res judicata* or other preclusive effect of a previously decided issue is appropriately decided at the time the issue is raised anew.

CLI-98-6 INTERNATIONAL URANIUM (USA) CORPORATION (White Mesa Uranium Mill), Docket No. 40-8681-MLA (Alternate Feed Material); MATERIALS LICENSE AMENDMENT; April 30, 1998; MEMORANDUM AND ORDER

A The Commission denies three Petitioners' appeal of two orders by the Licensing Board which found that Petitioners lacked standing to participate in the proceeding.

B Proximity alone does not suffice for standing in materials licensing cases. *See, e.g.*, Final Rule, "Informal Hearing Procedures for Materials Licensing Cases," 54 Fed. Reg. 8269, 8272 (Feb. 28, 1989); *see generally Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115-17 (1995).

C For Petitioners to qualify for standing, their asserted injuries from the action that would be approved by the license amendment must be distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical. *See, e.g., Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998); *Warth v. Seldin*, 422 U.S. 490, 501, 508, 509 (1975); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994).

D If Petitioners fail to respond to a Presiding Officer's reasonable and clearly articulated requests for more specific information regarding Petitioners' claims of standing, the Presiding Officer is fully justified in rejecting the petitions for intervention.

E The Commission generally defers to the Presiding Officer's determinations regarding standing, absent an error of law or an abuse of discretion. *See Georgia Tech, supra*, 42 NRC at 116.

CLI-98-7 PRIVATE FUEL STORAGE, L.L.C. (Independent Spent Fuel Storage Facility), Docket Nos. 72-22-ISFSI, 72-22-ISFSI-PFS; INDEPENDENT SPENT FUEL STORAGE INSTALLATION; June 5, 1998; MEMORANDUM AND ORDER

A The Commission grants the petition filed by the applicant, Private Fuel Storage, L.L.C., for interlocutory review and reversal of the Chief Judge's ruling to create a separate board to consider all issues concerning its Physical Security Plan. While the Commission agrees with the Chief Judge that he has sufficient authority to establish multiple boards to adjudicate a single license application, and also agrees that assigning discrete issues to multiple boards may sometimes prove a useful tool for resolving proceedings expeditiously, it concludes that a second board was not called for here, given the procedural posture of the case. Once the initial Board rules on the admissibility of all pending contentions, including the security contentions, the Chief Judge may reconsider whether a second board would be desirable.

B The Commission does not readily review interlocutory licensing board rulings, but will do so if a particular ruling (1) "[t]hreatens the party adversely affected by it with immediate and serious irreparable impact" or (2) "[a]ffects the basic structure of the proceeding in a pervasive or unusual manner." 10 C.F.R. § 2.786(g)(1) and (2); *see Oncology Services Corp.*, CLI-93-13, 37 NRC 419 (1993).

C "[T]he Chief Administrative Judge of the Licensing Board Panel is empowered both (1) to establish two or more licensing boards to hear and decide discrete portions of a licensing proceeding; and (2) to determine which portions will be considered by one board as distinguished from another." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-916, 29 NRC 434, 438 (1989) (footnote omitted).

D The Commission expects the Chief Judge to exercise his authority to establish multiple boards only when: (1) the proceeding involves discrete and separable issues; (2) the issues can be more expeditiously handled by multiple boards than by a single board; and (3) the multiple boards can conduct the proceeding in a manner that will not burden the parties unduly.

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

CLI-98-8 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML; MATERIALS LICENSE; June 5, 1998; MEMORANDUM AND ORDER

A The Commission denies a petition for review of a Presiding Officer's order denying a stay request that Petitioners filed with the Presiding Officer, dismisses as moot a stay request that Petitioners filed directly with the Commission, and lifts a temporary stay that the Commission had issued in CLI-98-4, 47 NRC 111 (1998).

B The Commission is willing to entertain petitions for review of interlocutory rulings in Subpart L cases in the rare situations where such rulings (1) threaten a party with serious, immediate, and irreparable harm or (2) affect the basic structure of the proceeding in a pervasive or unusual manner.

C The Commission has the authority to consider a matter even if the party seeking interlocutory review has not satisfied the criteria for such review.

D The mere issuance of important rulings does not, without more, merit interlocutory review. *See Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 63 (1994). Even legal error does not necessarily justify interlocutory review. Instead, Petitioners need to demonstrate that they are threatened with "immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision." 10 C.F.R. § 2.786(g)(1).

E Section 2.1263 of the Commission's Informal Hearing Regulations provides that any request for a stay of Staff licensing action pending completion of an adjudication under Subpart L must be filed at the time a request for a hearing or petition to intervene is filed or within 10 days of the Staff's action, whichever is later. The Commission does not, however, construe section 2.1263 to preclude participants from later renewing their stay request, which was timely filed under this section, if they are subsequently threatened with serious, immediate, and irreparable harm.

F For purposes of interlocutory review, irreparable harm does not qualify as "immediate" merely because it is likely to occur before completion of the hearing. Such a reading of the word "immediate" would stretch the definition of that word quite beyond recognition.

G The Commission (and, earlier, the Appeal Board) have granted interlocutory review in situations where the question or order must be reviewed "now or not at all."

H An alleged failure by the NRC Staff to comply with section 106 of the National Historic Preservation Act does not "imply" the "irreparable" injury necessary for interlocutory review. To obtain such review, Petitioners are required to *show* the threat of irreparable harm, not merely to "imply" it.

I Absent a clear congressional statement, adjudicatory tribunals should not infer that Congress intended to alter equity practices such as the standards for reviewing stay requests. The National Historic Preservation Act contains no such clear congressional statement.

J A plaintiff seeking injunctive relief must prove irreparable harm; a mere violation of NEPA or other environmental statutes is insufficient to merit an injunction.

K The National Historic Preservation Act contains no prohibition against taking a "phased review" of a property. Section 470(f) of that statute provides, in relevant part, only that a federal agency shall, "prior to the issuance of any license . . . take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register." Nor does federal case law suggest any such prohibition. The regulations implementing section 470(f) are ambiguous on the matter.

L In such a fact-specific area of disagreement as the necessity for a stay, and at such an early stage of the proceeding, the appellate forum's deference to the trier of fact is quite high.

M Just as procedural rulings involving discovery and admissibility of evidence or the scheduling of hearings rarely meet the standard for interlocutory review, likewise the Presiding Officer's denial of Petitioners' motion for leave to file a reply brief does not rise to the level meriting the Commission's interlocutory review. On such interlocutory matters, the Commission generally defers to the Presiding Officer.

CLI-98-9 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML; MATERIALS LICENSE; June 5, 1998; MEMORANDUM AND ORDER

A The Commission affirms the Presiding Officer's decision not to recuse himself from the proceeding.

B This agency has an established practice of refusing to use procedural technicalities to avoid addressing disqualification motions.

C Section 2.704(c) of the Commission's Subpart G regulations is meant to ensure both the integrity and the appearance of integrity of the Commission's formal hearing process. *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-907, 28 NRC 620, 623 (1988) ("parties in an adjudicatory proceeding have a right to an impartial adjudicator, both in reality and in appearance to a reasonable observer"), *quoting Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-5, 21 NRC 566, 568-69 (1985). Because this rationale applies with equal force to Subpart L informal proceedings, section 2.704(c) should be applied to those proceedings as well.

D Where the Presiding Officer himself revealed all the facts on which Petitioners based their motion to disqualify him, and where the scope of Petitioners' challenge calls into question neither his probity nor objectivity, the Commission does not believe that the failure to file an affidavit as required by 10 C.F.R. § 2.704 is fatal to the motion. This conclusion is also consistent with the Commission's practice of refusing to use procedural technicalities as a means to avoid reaching the merits of a disqualification motion.

E Where a Presiding Officer's job discussions with a law firm representing a party to this proceeding ended more than 6 months before he was designated to sit in this proceeding, and where the firm toward which he is supposedly biased rejected his job application, the Commission sees no reason to conclude that the Presiding Officer's impartiality might reasonably be questioned under 28 U.S.C. § 455(a).

F The Commission generally applies a very high threshold for disqualification when considering recusal motions. *Joseph J. Macktal*, CLI-89-14, 30 NRC 85, 92 n.5 (1989).

G Where the Presiding Officer was not "seeking employment" with the law firm at or after the time he was designated as Presiding Officer in this proceeding, he did not violate 5 C.F.R. § 2635.604 of the Standards of Ethical Conduct promulgated by the Office of Government Ethics, which section applies only to executive branch employees seeking employment.

H Section 2635.606(b) of 5 C.F.R. of the Standards of Ethical Conduct provides that, even where an offer of employment is rejected or not made, an agency "may determine that an employee" who has sought but is no longer seeking employment "shall nevertheless be subject to a period of disqualification upon the conclusion of employment negotiations." However, this regulation merely gives "the agency designee" (here, Chief Judge Cotter) *the option* of disqualifying an employee of his office from working on a matter, even though the employee had not run afoul of any specific provision of the Office of Government Ethics' regulations.

I The Commission could exercise its inherent supervisory authority to disqualify the Presiding Officer. However, in the absence of any information that would present a concern as to the integrity of the process, the Commission declines to take such action.

CLI-98-10 TRANSNUCLEAR, INC. (Export of 93.3% Enriched Uranium), Docket Nos. 11004997, 11004998 (License Nos. XSNM-3012, XSNM-3013); EXPORT LICENSE; June 5, 1998; MEMORANDUM AND ORDER

A The Commission denies the Nuclear Control Institute's request for intervention and a hearing on two applications of Transnuclear, Inc., for licenses to export highly enriched uranium (HEU) to Canada. The Commission determines that the Petitioner is not entitled to intervene as a matter of right under the Atomic Energy Act, and that a hearing as a matter of discretion would not be in the public interest or assist the Commission in making the determinations required by the Atomic Energy Act of 1954, as amended, for issuance of the export licenses.

B Institutional interest in providing information to the public and the generalized interest of their memberships in minimizing danger from proliferation are insufficient for standing under section 189a.

C The third criterion under section 134a(3) requires that the United States government have in place an active program to develop a low-enriched uranium (LEU) fuel or target for use in the particular reactor to which the HEU exports are being made.

D The requirement under section 134a(3) of an active program for the development of an LEU fuel or target that can be used in the particular reactor to which the HEU exports are being made may be met where the Commission determines that the principals are acting in good faith toward concluding a formal agreement to complete the development of such a program.

E Judgments of the Executive Branch regarding the common defense and security of the United States involve matters of foreign policy and national security, and the Commission can properly rely upon those judgments.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

LBP-98-1 21ST CENTURY TECHNOLOGIES, INC. (Fort Worth, Texas), Docket No. 030-30266-CivP (ASLBP No. 97-729-01-CivP); ENFORCEMENT ACTION; January 12, 1998; MEMORANDUM AND ORDER

A In this civil penalty enforcement proceeding, the Licensing Board accepts the parties' proffered settlement agreement.

LBP-98-2 CONAM INSPECTION, INC. (Itasca, Illinois), Docket No. 30-31373-CivP (ASLBP No. 98-735-01-CivP) (EA 97-207) (License No. 12-16559-01) (Order Imposing Civil Monetary Penalty); CIVIL PENALTY; January 21, 1998; FIRST PREHEARING CONFERENCE ORDER (Telephone Conference, 1/14/98)

A The Atomic Safety and Licensing Board in a civil penalty proceeding issues an initial prehearing conference order setting forth rulings made during a telephone prehearing conference on January 14, 1998.

B Prepared testimony is generally used in licensing proceedings, but there is no requirement to do so in enforcement proceedings.

LBP-98-3 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); MATERIALS LICENSE; January 23, 1998; MEMORANDUM AND ORDER (Granting Temporary Stay of Staff Licensing Action and Ruling on Motions)

A Claims of irreparable injury to natural, historic, and religious resources from premining ground clearing activities present the type of potentially harmful activities the temporary stay provision (10 C.F.R. § 2.788(f)) was meant to prevent.

B Potentially harmful action may be stayed until such time as a ruling can be made on the merits of a motion to stay the effectiveness of a Staff licensing action, usually until such time as the other parties have been given an opportunity to provide their answers.

LBP-98-4 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); February 9, 1998; MEMORANDUM AND ORDER (Denying Petition to Intervene and Setting Schedules)

A By terms of section 2.713(a), the Commission's lack of tolerance for [undignified] conduct by attorneys applies equally to parties. Petitioners to become parties to NRC proceedings . . . are subject to the same requirements in their pleadings before [the ASLBP].

LBP-98-5 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); MATERIALS LICENSE; April 2, 1998; MEMORANDUM AND ORDER (Denying Motion for Stay and Request for Prior Hearing, Lifting of Temporary Stay, Denying Motions To Strike and for Leave To Reply)

LBP-98-6 POWER INSPECTION, INC., Docket No. 30-20644-CivP (ASLBP No. 98-737-02-CivP) (Re: Order Imposing Civil Monetary Penalty); ENFORCEMENT ACTION; April 20, 1998; MEMORANDUM AND ORDER (Dismissing Case)

LBP-98-7 PRIVATE FUEL STORAGE, L.L.C. (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI (ASLBP No. 97-732-02-ISFSI); INDEPENDENT SPENT FUEL STORAGE INSTALLATION; April 22, 1998; MEMORANDUM AND ORDER (Rulings on Standing, Contentions, Rule Waiver Petition, and Procedural/Administrative Matters)

A In this proceeding concerning the application of Private Fuel Storage, L.L.C., under 10 C.F.R. Part 72 to construct and operate an independent spent fuel storage installation (ISFSI), the Licensing Board rules on (1) the issues of standing and admissibility of contentions relative to pending hearing requests/intervention petitions either supporting or opposing the application; (2) a 10 C.F.R. § 2.758 rule waiver petition; and (3) various administrative and procedural matters, including the use of "lead" parties and informal discovery.

B Longstanding agency practice requires that an individual, group, business entity, or governmental entity that wants to intervene "as of right" as a full party in an adjudicatory proceeding concerning a proposed licensing action must establish that it (1) has filed a timely intervention petition or meets the standards that permit consideration of an untimely petition; (2) has standing to intervene; and (3) has proffered one or more contentions that are litigable in the proceeding. *See* 10 C.F.R. §§ 2.714(a)(1)-(2), (b)(2). Further, the Commission has recognized that, notwithstanding a potential party's failure to meet the elements necessary to establish its standing to intervene as of right, it is possible, as a matter of discretion, to afford that participant party status. *See Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614-17 (1976).

C Each intervention petition must be timely filed as prescribed in the notice of opportunity for hearing issued by the agency. For a petition that is not filed on time to be accepted for consideration, the participant seeking to intervene must demonstrate that a balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) support accepting the petition. Those factors include: (1) good cause, if any, for failure to file on time; (2) the availability of other means whereby the petitioner's interest will be protected; (3) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record; (4) the extent to which the petitioner's interest will be represented by existing parties; and (5) the extent to which the petitioner's participation will broaden the issues or delay the proceeding.

D Relative to the question of standing as of right for those seeking party status, the agency has applied contemporaneous judicial standing concepts that require a participant to establish (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996). Further, when an entity seeks to intervene on behalf of its members, that entity must show it has an individual member who can fulfill all the necessary elements and who has authorized the entity to represent his or her interests.

E In assessing a petition to determine whether the requisite standing elements are met, which the presiding officer must do even though there are no objections to a petitioner's standing, the Commission has indicated that a presiding officer is to "construe the petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

F A petitioner can be granted party status, as a matter of discretion, based upon the presiding officer's consideration of the following factors: (a) weighing in favor of allowing intervention are (1) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest; and (b) weighing against allowing intervention are (4) the availability of other means whereby petitioner's interest will be protected, (5) the extent to which the petitioner's interest will be represented by existing parties, and (6) the extent to which petitioner's participation will inappropriately broaden or delay the proceeding. *Pebbie Springs*, CLI-76-27, 4 NRC at 616.

G When the facility to be licensed is to be located on a reservation of a Native American tribe that is wholly within the borders of a state, that state's asserted health, safety, and environmental interests relative to its citizens living, working, and traveling near the proposed facility and in connection with its property adjoining the reservation and the proposed transportation routes to the facility are sufficient to establish its standing.

H Assertion of standing based on general interests of one Native American tribe or its members in vast "aboriginal lands" that encompass tribe's existing reservation and reservation of second tribe on which facility to be licensed is to be built is inconsistent with the congressionally recognized status of the two tribes as distinct entities with separate reservations some 75 miles apart. Standing for the first tribe must, therefore, be established based on contacts of individual tribal members with the reservation of second tribe where the facility is to be located.

I Assertion that individual engages in activities in "the vicinity" of the location of the facility to be licensed is too general to provide him with standing as of right individually or in a representational capacity. *See Atlas Corp.* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 426-27 (description of activities as "near,"

in "close proximity," or "in the vicinity" of facility in question insufficient to establish standing), *aff'd*, CLI-97-8, 46 NRC 21 (1997).

J Standing under 10 C.F.R. § 2.714 is not predicated on whether a petitioner wishes to take a position for or against a pending licensing application. Rather, it turns on the petitioner's ability to show that it has one or more cognizable interests that will be adversely impacted if the proceeding has one outcome rather than another. *See Nuclear Engineering Co.* (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

K Nothing in the general terms of 10 C.F.R. § 2.714 governing intervention petitions exempts a discretionary intervention request from its late-filing provisions.

L Under factor one of the five-factor late intervention balancing test in 10 C.F.R. § 2.714(a)(1), an attempt to justify late filing as a reasonable failure to anticipate that a state's university community would not be willing to discuss the scientific merits of a proposed instate facility does not account for the precept that the failure of some other group to "carry the ball" does not constitute good cause for late filing. *See Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 609 (1988), *reconsideration denied on other grounds*, CLI-89-6, 29 NRC 348 (1989), *aff'd, Citizens for Fair Utility Regulation v. NRC*, 898 F.2d 51 (5th Cir.), *cert. denied*, 498 U.S. 896 (1990).

M When lacking good cause for late filing under factor one of the five-factor late intervention balancing test set forth in 10 C.F.R. § 2.714(a)(1), a petitioner must make a particularly strong showing on the other four factors. *See, e.g., Duke Power Co.* (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-431, 6 NRC 460, 462 (1977) (citing cases).

N Ability to file 10 C.F.R. § 2.715(a) limited appearance statements or otherwise provide a group's expertise to other participants generally is not pertinent under factor two of five-factor late intervention balancing test set forth in 10 C.F.R. § 2.174(a)(1) because it gives insufficient regard to the value of adjudicatory participation rights. *See Duke Power Co.* (Amendment to Materials License SNM-1773 — Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150 & n.7 (1979).

O Under factor four of the five-factor late intervention balancing test set forth in 10 C.F.R. § 2.714(a)(1), NRC Staff interests generally are assumed not to be coextensive with those of a private petitioner. *See Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1174-75 & n.22 (1983).

P In the five-factor balancing test for late intervention petitions under 10 C.F.R. § 2.714(a)(1), factor two — other means to protect petitioner's interests — and factor four — adequacy of existing representation — are accorded less significance in the balance. *See Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 165 (1993).

Q Interest in presenting "sound science" to presiding officer is laudable, but provides no basis for standing either as an interest cognizable for standing purposes or as one that will be the subject of actual or imminent injury upon the grant or denial of a license. *See Sheffield*, ALAB-473, 7 NRC at 743 (legal and nuclear organizations seeking to support low-level waste site renewal application lack standing because no showing that granting or denying application would injure any cognizable interest of either organization or its members); *Allied-General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-228, 3 NRC 420, 422 (1976) (when no showing of injury to cognizable interests of its individual members by licensing action, asserted ability of civil liberties organization and its members to provide information and data on civil rights issues inadequate to provide basis for standing).

R Of the six *Pebble Springs* factors for assessing a discretionary intervention request, factors one, four, five, and six are basically coextensive with the last four factors of the late-filing standard of 10 C.F.R. § 2.714(a)(1), with *Pebble Springs* factor one — assistance in developing a sound record — having significant sway. *See Pebble Springs*, CLI-76-27, 4 NRC at 616-17.

S For a proffered legal or factual contention to be admissible, it must be pled with specificity. In addition, the contention's sponsor must provide (1) a brief explanation of the bases for the contention; (2) a concise statement of the alleged facts or expert opinion that will be relied on to prove the contention, together with the source references that will be relied on to establish those facts or opinion; and (3) sufficient information to show there is a genuine dispute with the applicant on a material issue of law or fact, which must include (a) references to the specific portions of the application (including the accompanying environmental and safety reports) that are disputed and the supporting reasons for the dispute, or (b) the

identification of any purported failure of the application to contain information on a relevant matter as required by law and reasons supporting the deficiency allegation. *See* 10 C.F.R. § 2.714(b)(2)(i)-(iii). A contention that fails to meet any one of these standards must be dismissed, as must a contention that, even if proven, would be of no consequence because it would not entitle a petitioner to any relief. *See id.* § 2.714(d)(2).

T An adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process. *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). Similarly, a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. *See* 10 C.F.R. § 2.758; *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974). This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991). By the same token, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue. *See Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33.

U The scope of an adjudicatory proceeding is specified by the notice of hearing/opportunity for hearing and contentions that deal with matters outside that defined scope must be rejected. *See, e.g., Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); *Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).

V Any issues of law or fact raised in a contention must be material to the grant or denial of the license application in question, i.e., they must make a difference in the outcome of the licensing proceeding so as to entitle the petitioner to cognizable relief. *See* 10 C.F.R. § 2.714(d)(2)(ii); 54 Fed. Reg. 33,168, 33,172 (1989). This requirement of materiality embodies the notion that an alleged error or deficiency regarding a proposed licensing action must have some significance relative to the agency's general responsibility and authority to protect the public health and safety and the environment. *See Seabrook*, LBP-82-106, 16 NRC at 1656 (safety contention "must either allege with particularity that an applicant is not complying with a specified [safety] regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent" (footnote omitted)); *see also Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1946 (1982).

W The bald assertion that a matter ought to be considered or that a factual dispute exists so as to merit further consideration of a matter is not sufficient. *See Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 246 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994); *see also Connecticut Bankers Ass'n v. Board of Governors*, 627 F.2d 245, 251 (D.C. Cir. 1980). Nor does mere speculation provide an adequate basis for a contention. *See Yankee Nuclear*, CLI-96-7, 43 NRC at 267. Instead, a petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention. *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995).

X With respect to documentary or other factual information or expert opinion alleged to provide the basis for a contention, the Board is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention. In the case of a document, the Board should review the information provided to ensure that it does indeed supply a basis for the contention. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990); *see also Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 241 (1989) ("where a contention is based on a factual underpinning in a document that has been essentially repudiated by the source of that document, the contention may be dismissed unless the intervenor offers another

independent source"); *Yankee Nuclear*, LBP-96-2, 43 NRC at 90 ("[a] document put forth by an intervenor as the basis for a contention is subject to scrutiny both for what it does and does not show"). By the same token, an expert opinion that merely states a conclusion (e.g., the application is "deficient," "inadequate," or "wrong") without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion as it is alleged to provide a basis for the contention.

Y In framing contentions regarding a proposed licensing action, the focus of a petitioner's concern should be the license application. *See* 10 C.F.R. § 2.714(b)(2)(iii). In this regard, a contention that fails directly to controvert the license application at issue or that mistakenly asserts the application does not address a relevant issue is subject to dismissal. *See Rancho Seco*, LBP-93-23, 38 NRC at 247-48; *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-91-21, 33 NRC 419, 424 (1991), *appeal dismissed*, CLI-92-3, 35 NRC 63 (1992).

Z Although licensing boards generally are to litigate "contentions" rather than "bases," it has been recognized that "[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases." *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988).

AA Incorporation by reference of one or more of the contentions of other petitioners is permitted in agency proceedings, albeit subject to the five late-filing factors set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) if adoption by reference is sought after the time for filing contentions has expired.

BB As set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v), the factors that must be balanced in determining whether to admit a late-filed contention are (1) good cause, if any, for failure to file on time; (2) the availability of other means whereby the petitioner's interest will be protected; (3) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record; (4) the extent to which the petitioner's interest will be represented by existing parties; (5) the extent to which the petitioner's participation will broaden the issues or delay the proceeding. *See, e.g., Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1046-47 (1983).

CC Relative to the first factor set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) that must be balanced in determining whether to admit a late-filed contention, unavailability of proprietary documents does not provide good cause for delay in filing a contention when review of nonproprietary materials timely available indicates proprietary information was not necessary to the development of the late-filed contention. *See Catawba*, CLI-83-19, 17 NRC at 1043, 1045 (if contention's factual predicate otherwise available, unavailability of document does not constitute good cause for late filing); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 26 (1996); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 69 (1983).

DD Relative to the first factor set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) that must be balanced in determining whether to admit a late-filed contention, lacking good cause for delay in filing a contention, a petitioner must make a compelling showing on the other four factors. *See Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986). Factors two — no other means to protect the petitioner's interests in the contentions — and four — extent to which other parties can represent those interests — are, however, to be accorded less weight than factors three and five. *See id.* at 245.

EE Relative to the five factors set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) that must be balanced in determining whether to admit a late-filed contention, in connection with factor three — sound record development — the Commission has directed that the proponent of a late-filed contention should, with as much particularity as possible, "'identify its prospective witnesses, and summarize their proposed testimony.'" *Id.* at 246 (quoting *Mississippi Power and Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982)).

FF The standard for seeking a waiver of a rule or regulation in an adjudication is set forth in 10 C.F.R. § 2.758(b), which provides: "The sole ground for petition for waiver or exception shall be that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted." Procedurally, section 2.758(b) requires that the petition must be accompanied by an affidavit (1) identifying the specific aspect or aspects of the subject matter of the proceeding as to which the application

of the rule would not serve the purposes for which it was adopted, and (2) setting forth with particularity the "special circumstances" alleged to justify the waiver or exception requested.

GG Paragraphs (c) and (d) of section 2.758 state that a party's failure to make a prima facie showing on the section 2.758(b) rule waiver standard precludes further consideration of the matter, while a presiding officer that finds a prima facie showing has been made must certify the petition to the Commission for its consideration.

HH In connection with a 10 C.F.R. § 2.758 rule waiver petition, a petitioner seeking to establish a prima facie case that "special circumstances" exist such that the rule would not serve the purposes for which it was adopted must make three showings. First, relative to establishing the requisite "special circumstances" exist to support the waiver, the petitioner must allege facts not in common with a large class of facilities that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding for the rule sought to be waived. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231, 235 (1989). Put another way, the circumstances alleged must be unique to the particular facility at issue. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72-74 (1981). Speculation about future events is, however, an inadequate basis to establish the necessary "special circumstances." *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 24-26, *rev'd in part on other grounds*, CLI-88-10, 28 NRC 573 (1988).

II Also with respect to the need to demonstrate "special circumstances" in requesting a rule waiver pursuant to 10 C.F.R. § 2.758, the petitioner must show application of the rule will not serve the purposes for which it was adopted. *See Seabrook*, CLI-89-20, 30 NRC at 235. Explicit statements in the statement of considerations are a primary source for determining the purposes for which the rule or regulation was adopted. *See, e.g., Seabrook*, CLI-88-10, 28 NRC at 598-600; *Seabrook*, ALAB-895, 28 NRC at 12. Further, in ascertaining a rule's purposes and whether those purposes would be impaired, it is permissible to consider future events the agency logically would have anticipated in promulgating its rules. *See Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-83-37, 18 NRC 52, 59 (1983). On the other hand, in seeking to establish that the rationale for the rule has been undercut, conjectural statements that merely highlight the uncertainty surrounding future events are not, in and of themselves, sufficient. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-89-10, 29 NRC 297, 301, *rev'd*, ALAB-920, 30 NRC 121, *rev'd*, CLI-89-20, 30 NRC 231 (1989). Moreover, it has been established that a valid purpose for which the rule or regulation was adopted, within the meaning of 10 C.F.R. § 2.758, includes eliminating Staff case-by-case review of a generic issue in individual applications and removing such an issue from adjudication in any operating license proceeding. *See Seabrook*, ALAB-895, 28 NRC at 14, 16-17; *see also Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 547 (1986).

JJ The third showing that must be made by a 10 C.F.R. § 2.758 rule waiver petition is that the circumstances involved are "unusual and compelling" such that it is evident from the petition and other allowed papers that a waiver is necessary to address the merits of a "significant safety problem" relative to the rule at issue. *Seabrook*, CLI-89-20, 30 NRC at 235. Justifying a waiver, therefore, requires that a petitioner establish the issue raised is a significant safety problem, even if there clearly are special circumstances that undercut the rationale for the rule. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-920, 30 NRC 121, 129 (1989). Safety issues that are "conceivable" or "theoretical" do not fulfill this requirement, however. *See Seabrook*, CLI-89-20, 30 NRC at 243-44. Further, any claim of significance must be viewed in the context of any other protective measures that are in place to prevent safety problems. *See id.* at 244.

KK In accordance with 10 C.F.R. § 2.714(f)-(g), a presiding officer is authorized to control the general compass of the hearing by consolidating issues and limiting party participation to avoid the presentation of irrelevant, duplicative, or repetitive evidence. When some of a petitioner's admitted contentions challenging an application have been adopted by other intervenors, other contentions proposed by different parties challenging the application have been consolidated because of their related subject matter, and one of the parties has filed a single contention expressing general support for the application, it is appropriate to designate "lead" parties for the litigation of the various admitted contentions.

LL The party assigned the role of lead party has primary responsibility for litigating a contention. Absent some other presiding officer directive, the party with the lead role in support of a contention is to

conduct all discovery on the contention; file or respond to any dispositive or other motions regarding the contention; submit any required prehearing briefs on the issue; prepare prefiled direct testimony, conduct any redirect examination, and provide any surrebuttal testimony regarding the contention; and prepare posthearing proposed findings of fact and conclusions of law on the contention. The party that has the lead role in opposing a contention has similar duties, with its hearing responsibilities including conducting witness cross-examination and recross-examination and preparing rebuttal testimony as appropriate. For any given contention, the lead party is responsible for consulting with the other "involved" parties (i.e., any party that adopted its contention, filed a contention that has been consolidated, or has opposed the same contention) regarding litigation activities, but the ultimate litigating responsibility for the contention rests with the lead party.

MM During an informal discovery process that includes the exchange of relevant documents and interviews with individuals with relevant information, parties are expected to be *specific* in their information requests and provide access to requested information and knowledgeable individuals to the *maximum* degree possible. Failure to participate in the informal discovery process consistent with the presiding officer's directives may result in appropriate Board sanctions.

LBP-98-8 PRIVATE FUEL STORAGE, L.L.C. (Independent Spent Fuel Storage Installation), Docket Nos. 72-22-ISFSI, 72-22-ISFSI-PSP (ASLBP Nos. 97-732-02-ISFSI, 97-732-02-ISFSI-PSP); INDEPENDENT SPENT FUEL STORAGE INSTALLATION; April 23, 1998; MEMORANDUM AND ORDER (Denying Motion for Reconsideration)

LBP-98-9 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML) (Re: Leach Mining License); MATERIALS LICENSE; May 13, 1998; MEMORANDUM AND ORDER (Ruling on Petitions and Areas of Concern; Granting Request for Hearing; Scheduling)

A Three petitioners in this 10 C.F.R. Part 2, Subpart L proceeding were admitted as parties after considering whether they had suffered injury in fact, whether they had filed timely petitions, and whether they had stated at least one valid area of concern. 10 C.F.R. § 1205(h). Other petitions for a hearing were denied.

B Petitioners may have standing if they reside close enough to a planned project so that there is a reasonable apprehension of injury from implementation of the project. When the Staff of the Commission delays issuance of the full license that is applied for, the Staff's reluctance to act without further information is an indication of the reasonableness of petitioners' apprehensions of injury.

C Even though a license is conditioned so that certain activities cannot be taken without further Staff approval, the scope of the license is not narrowed. A petitioning organization has standing to request a hearing if any of the activities under the license may cause injury to its interests or to one of its members.

D A petitioning organization is not entitled to standing unless its member, on whom it relies for representational standing, specifies with particularity how the activities of the project will cause the member an injury.

E An area of concern is relevant or germane to a proceeding if it falls within the scope of the challenged license application. The standards for admitting an area of concern are more lenient than for admitting contentions in Subpart G proceedings.

F A party may ask a judge to participate in public meetings designed to facilitate settlement of the case. If a party seeks settlement negotiations in the judge's chambers, it must ask the Commission to authorize those negotiations.

G In a Subpart L case, a presiding officer may propose ways of narrowing issues, of setting deadlines for completion of aspects of a case, of identifying issues for settlement on legal briefs, and for eliciting procedural suggestions from the parties.

H An organization seeking standing as the representative of one of its members must submit a written statement authorizing it to be the representative and stating other facts necessary to establish standing. Unless there are special circumstances, the Presiding Officer has discretion to consider written statements that do not meet the formal requirements for an affidavit.

I A presiding officer may make reasonable arrangements to assure that the admission of multiple parties will not cause unnecessary redundancy in the presentation of the case. The parties may be required to make reasonable arrangements to coordinate their presentations.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

LBP-98-10 PRIVATE FUEL STORAGE, L.L.C. (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI (ASLBP No. 97-732-02-ISFSI); INDEPENDENT SPENT FUEL STORAGE INSTALLATION; May 18, 1998; MEMORANDUM AND ORDER (Ruling on Motions for Reconsideration of LBP-98-7)

A In this proceeding concerning the application of Private Fuel Storage, L.L.C., under 10 C.F.R. Part 72 to construct and operate an independent spent fuel storage installation (ISFSI), the Licensing Board rules on motions for reconsideration and/or clarification of its decision in LBP-98-7, 47 NRC 142 (1998), admitting parties and contentions.

B In the context of the record before the presiding officer, including the arguments of the participants, if the presiding officer's reasons for rejecting an intervenor's contentions " 'may reasonably be discerned,' " *Motor Vehicle Manufacturers Ass'n of the United States v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (quoting *Bowman Transportation, Inc. v. Arkansas-Best Freight Systems, Inc.*, 419 U.S. 281, 286 (1974)), the presiding officer has provided an adequate explanation for that decision.

C If a party seeks to rely on information as a basis for admitting or rejecting a contention that clearly falls outside the stated scope of its original arguments, this is an impermissible ground for seeking reconsideration. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-2, 45 NRC 3, 4 (1997) (reconsideration motions may not rest on a "new thesis").

D When similar aspects of other contentions have been rejected, consistency concerns counsel that the presiding officer consider a renewed argument regarding a comparable component of an admitted contention to ensure the presiding officer has not overlooked a similar matter. *See Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 687 (1983) (reconsideration asks that the deciding body take another look at existing evidence because evidence has been misunderstood or overlooked).

E Attaching a document in support of a contention without any explanation of its significance does not provide an adequate basis for a contention. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 338 (1991).

LBP-98-11 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML) (Re: Leach Mining and Milling License); MATERIALS LICENSE; May 26, 1998; MEMORANDUM AND ORDER (Denial of Motion to Disqualify Presiding Officer)

A An administrative judge rules that he should not be disqualified as a judge because of employment negotiations that had been terminated over 6 months previously with the law firm that represents Licensee in this case. He states that the motion for disqualification inappropriately relies on 5 C.F.R. § 2635.604(a), which bars a government employee from serving in a matter if it will have a "direct and predictable effect on the financial interests" of an employee that "*is seeking*" employment.

LBP-98-12 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-LA (ASLBP No. 98-736-01-LA); LICENSE AMENDMENT; June 12, 1998; MEMORANDUM AND ORDER (Decision on Standing)

A In this Memorandum and Order concerning the application of Yankee Atomic Electric Company for approval of its license termination plan, the Licensing Board denies petitions for hearing and intervention on grounds of lack of standing.

B Setting forth specific aspects of subject matter of the proceeding for which intervention is sought is not related to establishing standing requirements.

C Filings not authorized by rules of procedure or leave of the Board are not considered in decisions.

D Not all governmental or quasi-governmental entities are entitled to participate in NRC adjudicative proceedings.

LBP-98-13 PRIVATE FUEL STORAGE, L.L.C. (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI (ASLBP No. 97-732-02-ISFSI); INDEPENDENT SPENT FUEL STORAGE INSTALLATION; June 29, 1998; MEMORANDUM AND ORDER (Ruling on State of Utah Physical Security Plan Contentions)

A In this proceeding concerning the application of Private Fuel Storage, L.L.C., under 10 C.F.R. Part 72 to construct and operate an independent spent fuel storage installation, the Licensing Board rules on the admissibility of contentions concerning the Applicant's physical security plan (PSP).

B For a proffered legal or factual contention to be admissible, it must be pled with specificity. In addition, the contention's sponsor must provide (1) a brief explanation of the bases for the contention; (2)

a concise statement of the alleged facts or expert opinion that will be relied on to prove the contention, together with the source references that will be relied on to establish those facts or opinion; and (3) sufficient information to show there is a genuine dispute with the Applicant on a material issue of law or fact, which must include (a) references to the specific portions of the application (including the accompanying environmental and safety reports) that are disputed and the supporting reasons for the dispute, or (b) the identification of any purported failure of the application to contain information on a relevant matter as required by law and reasons supporting the deficiency allegation. *See* 10 C.F.R. § 2.714(b)(2)(i)-(iii). A contention that fails to meet any one of these standards must be dismissed, as must a contention that, even if proven, would be of no consequence because it would not entitle a petitioner to any relief. *See id.* § 2.714(d)(2).

C An improperly based challenge to a license application includes one that is rooted in a misreading or misinterpretation of the license application. *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 300, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part on other grounds*, CLI-95-12, 42 NRC 111 (1995).

D There are two distinct inquiries involved in connection with the formulation of Intervenor PSP contentions: (1) whether to provide access to the security plan so the Intervenor can use it to draw up its contentions; and (2) what is the information — documentary, expert opinion, or otherwise — necessary to support the admission of the Intervenor's proffered contentions.

E The Board-mandated requirements in *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-51, 16 NRC 167, 177 (1982), that an intervenor group obtain the services of a security expert and subject itself to a protective order as conditions of obtaining access to a security plan so it could then "develop" more specific contentions are prudent precautions in light of the potential sensitivity of the information in a security plan. Without those requirements, a Board would lack assurance that the individuals reviewing a plan on behalf of a petitioner both understand the need to afford the plan confidential treatment and are serious about formulating and pursuing contentions relating to the plan, as opposed to simply seeking access as a matter of curiosity.

F An intervening State fulfills the *Catawba* preconditions for access when it (1) subjects itself to a Board-approved protective order governing its access to and disclosure of the information in the PSP; and (2) for access purposes provides the functional equivalent of a security plan "expert" by proffering one of the NRC-approved State officials designated by the State Governor under 10 C.F.R. § 73.21(c)(1)(iii), as having a "need to know" such that he or she should have PSP access and thereby become responsible for maintaining the requisite "information protection system" that will protect against unauthorized disclosures from the plan. *See id.* § 73.21(a).

G In assessing whether to give an intervenor access to a security plan, there is no question about the seriousness of the intervenor's interest in challenging the plan when it commits, in the event the individual supporting its contentions is found not to be an expert, to obtain such an expert for the litigation of any admitted contentions (or to withdraw those contentions).

H Once having PSP access, any contention an intervenor formulates is then subject to the same basis and specificity requirements as other contentions. Expert opinion support is not required for a contention, at least as long as there is other supporting information sufficient to provide the contention with an admissible basis.

I When the individual put forth by an intervenor as sponsoring a contention is found not to provide "expert" support for the contention, in assessing the contention the presiding officer must then consider whether the other supporting information provided is sufficient to establish that the contention is admissible.

J Although a revised rule will not become effective for six months, for the purpose of determining the admissibility of an intervenor's contention, the rule's adoption by the Commission gives it a regulatory force a presiding officer cannot disregard. *See Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974).

LBP-98-14 HYDRO RESOURCES, INC. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML) (Re: Leach Mining and Milling License); MATERIALS LICENSE; June 30, 1998; MEMORANDUM AND ORDER (ENDAUM and SRIC's Motion for Reconsideration of LBP-98-9)

A Intervenors' Motion for Reconsideration is denied.

B In a Subpart L proceeding in which there are many areas of concern, the completeness of an application can be determined in the context of the areas of concern rather than as a separate area of concern. Incompleteness or contradictions in the application may be part of intervenor's case for its other areas of concern.

C A Presiding Officer determines areas of concern. During the proceeding, proof may be submitted to supplement the application. Hence, the Presiding Officer's determination does not depend solely on whether an application is complete or orderly.

D Material issues will be considered in a Subpart L proceeding, even if there must be some delay because some of the information concerning those issues is not yet available. The method of managing a case and scheduling the determination of issues is within the discretion of the Presiding Officer, who may choose to use a prehearing conference to obtain information relevant to this responsibility.

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

DD-98-1 NORTHEAST UTILITIES (Millstone Nuclear Power Station, Units 1, 2, and 3; and Haddam Neck Plant), Docket Nos. 50-245, 50-336, 50-423, 50-213 (License Nos. DPR-21, DPR-65, NPF-49, DPR-61); February 11, 1998; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By a petition dated March 3, 1997, submitted by Albert A. Cizek (Petitioner), Petitioner requested that the licenses of the three Millstone nuclear reactors and the Haddam Neck nuclear reactor held by Northeast Utilities (NU or Licensee) be modified by placing certain conditions on the operating licenses of each of these facilities. The conditions would call for automatic and specific enforcement sanctions based upon the occurrence of certain violations or events. Petitioner alleged that the license conditions were warranted based on the Licensee's poor past performance including knowing, willful, and reckless past violations of NRC requirements.

B The Director of the Office of Nuclear Reactor Regulation issued a Director's Decision on February 11, 1998, concluding that the petition contained no information of which the NRC was not already aware and denying Petitioner's request for specific enforcement-related license conditions. The Director concluded that a mechanistic enforcement approach is neither necessary nor appropriate to encure regulatory compliance at the Millstone and Haddam Neck facilities. Extensive efforts have been and are being taken by the Licensee to ensure that future operation of the Millstone units and the decommissioning of the Haddam Neck facility are accomplished safely. The NRC Staff has in place an extensive oversight program to ensure that the Licensee meets its objectives.

DD-98-2 NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant; Prairie Island Independent Spent Fuel Storage Installation), Docket Nos. 50-282, 50-306, 72-10; REQUEST FOR ACTION; February 11, 1998; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Directo of the Office of Nuclear Reactor Regulation denies a petition filed by the Prairie Island Indian Commu. y pursuant to 10 C.F.R. § 2.206. The petition asked that the NRC: (1) find that the Licensee violate NRC regulations by using an independent spent fuel storage installation before establishing conditions for afely unloading TN-40 dry storage containers, (2) suspend the license until all significant issues concerni. he unloading process have been resolved, (3) provide the Petitioners with an opportunity to participate fully in reviewing the unloading procedures for the casks, and (4) update the relevant technical specifications to incorporate mandatory unloading procedure requirements for the TN-40 dry storage containers.

DD-98-3 NORTH ATLANTIC ENERGY SERVICE CORPORATION (Seabrook Station, Unit 1), Docket No. 50-443 (License No. NPF-86); REQUEST FOR ACTION; March 17, 1998; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denied a petition filed by The Seacoast Anti-Pollution League. The petition requested that the NRC: (1) suspend the operating license for Seabrook Station until such time as a thorough root-cause analysis of the reasons underlying the development of leaks in piping of the "B" train of the residual heat removal (RHR) system is conducted; (2) review weld documentation and inspection documentation in the leakage area; (3) review the qualification of the piping involved; (4) review the plant's quality assurance procedures for welds and piping; (5) address past allegations of improper welding and installation of substandard piping at Seabrook Station in its review and relate the alleged piping and weld deficiencies to other plant systems; and (6) delay the restart of Seabrook Station following repairs to the RHR piping system, pending completion of all requested actions. The Director concluded that no evidence was found of improper welding practices or substandard piping that contributed to pipe leakage or that would result in generic implications to other plant systems and that would require suspension of Seabrook's operating license.

DIGESTS

ISSUANCES OF DIRECTORS' DECISIONS

DD-98-4 NORTHEAST UTILITIES (Millstone Nuclear Power Station, Units 1, 2, and 3), Docket Nos. 50-245, 50-336, 50-423 (License Nos. DPR-21, DPR-65, NPF-49); REQUEST FOR ACTION; June 1, 1998; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By a petition dated February 2, 1998, submitted by the Citizens Awareness Network (CAN) and the Nuclear Information and Resource Service (NIRS) (Petitioners), Petitioners requested that the NRC take immediate action to revoke Northeast Utilities' (NU's or Licensee's) license to operate the Millstone nuclear power plants Units 1-3 due to both ongoing NU management intimidation and harassment of the NU workforce, as well as persistent NU defiance of NRC regulations and directives to create a questioning attitude that would allow NU employees to challenge NU management on safety issues without fear of harassment or reprisal. Petitioners also requested that the NRC refer the Nuclear Oversight Focus 98 List (list), the existence of which Petitioners believed buttressed their above claims, and reported NU management attempt to destroy the list to the Department of Justice (DOJ) due to a potential coverup.

B In a Director's Decision dated June 1, 1998, the NRC denied Petitioners' requests as described above. With regard to the request for license revocation, the Decision stated that, based on the NRC Staff's examination of NU's responses to NRC requests for information as well as independent NRC investigative efforts, the NRC Staff concluded that the wording at issue in the list was due to poor word choice rather than an effort by NU management to inhibit or suppress NU employees' ability to speak out on safety concerns. The Staff also concluded that the recall and destruction of the list by NU was an attempt to avoid continued dissemination of a document widely viewed to have been misinterpreted. The Staff noted the extensive efforts NU has made in the area of employee concerns, including the NRC-ordered use of an independent third-party organization to oversee NU efforts in this area. Petitioners' request for license revocation was therefore denied. Finally, the Decision explained that NU's recall of the list was not inappropriate given the facts, and that NU had no obligation to provide the list to the NRC. Accordingly, Petitioners' request to refer the list's recall to DOJ was also denied.

DD-98-5 SOUTHERN CALIFORNIA EDISON COMPANY, *et al.* (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361, 50-362; REQUEST FOR ACTION; June 5, 1998; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director, Office of Nuclear Reactor Regulation, denies a petition filed by Patricia Borchmann requesting that the Nuclear Regulatory Commission (NRC) take immediate action to prevent the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 from restarting. In support of the requested action the Petitioner asserted a variety of safety issues concerning the SONGS units, including the adequacy of the emergency evacuation plans for SONGS, the size of the SONGS pressurizers, the condition of the SONGS Unit 1 membrane under the spent fuel pool (SFP) and SFP leak detection monitoring, loss-of-coolant accident dose calculations, the potential for criticality accidents due to the use of high-density storage racks in the SFP, the NRC's failure to comprehensively address issues that have been raised and the withholding of certain data, the production of tritium, and the cumulative effects of low-level radiation.

DD-98-6 SOUTHERN CALIFORNIA EDISON COMPANY, *et al.* (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361, 50-362; REQUEST FOR ACTION; June 11, 1998; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director, Office of Nuclear Reactor Regulation, denies a petition filed by Stephen Dwyer requesting that an investigation be conducted to determine if San Onofre Nuclear Generating Station (SONGS) Unit 2 has experienced degradation in the steam generator supports similar to that found in Unit 3, that further seismic analysis be performed for the SONGS steam generators, and that a retrofitting upgrade of the steam generator supports be accomplished at this time. As basis for the requests, the Petitioner stated that the ability of the SONGS steam generators to withstand a major seismic event is seriously compromised by the degradation observed in the SONGS Unit 3 steam generator internal tube supports during its 1997 refueling outage.

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