

NUREG-0750  
Vol. 26  
Index 2

# INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

July - December 1987



**U. S. NUCLEAR REGULATORY COMMISSION**

Available from

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

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

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

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

NUREG-0750  
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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 1236, 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 where 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.

CLI-87-11 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 South African Uranium Hexafluoride), Docket No. 11003930; EDLOW INTERNATIONAL COMPANY (Import of South African Enriched Uranium Hexafluoride), Docket No. 11003931; IMPORT LICENSES; October 26, 1987; ORDER

A The Commission denies Intervenor's application for a stay, pending judicial review, of CLI-87-9, 26 NRC 109 (1987), which held that § 309(a) of the Anti-Apartheid Act bars the importation of uranium ore and uranium oxide but not other forms of uranium.

B The Commission finds that Intervenor has made no showing of irreparable injury sufficient to justify the issuance of a stay, nor have they demonstrated the likelihood that they will prevail on the merits of their appeal.

CLI-87-12 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3 (Emergency Planning); OPERATING LICENSE, November 5, 1987; MEMORANDUM AND ORDER

A The Commission reverses ALAB-832, 23 NRC 135 (1986), insofar as it allowed the admission of two continuations for evidentiary hearing on whether the Shoreham Plume Exposure Pathway Emergency Planning Zone should be expanded by a few miles to: (1) provide an adequate base for the expansion of emergency response efforts beyond the EPZ in very severe accidents; and (2) minimize the occurrence and effects of spontaneous evacuation from outside the EPZ. The Commission affirms the ALAB-832 remand to the Licensing Board for further consideration of evacuation plans for hospitals in the Shoreham EPZ.

B The NRC/EPA task force report (NUREG-0396), which formed the basis for the "EPZ" concept in NRC's emergency planning regulations, indicates clearly that the margins of safety provided by the recommended 10-mile radius were not calculated in any precise fashion but were qualitatively found adequate as a matter of judgment. EPZ shape and size can be somewhat different than the 10-mile circular radius implies without compromising emergency planning goals, as evidenced by the following statement in the report: "judgment . . . will be used in determining the precise size and shape of the EPZs considering local conditions such as demography, topography, and land use characteristics, access routes, local jurisdictional boundaries and arrangements with the nuclear facility operator for notification and response assistance." See 10 C.F.R. § 50.47(c)(2) (1987).

C Nothing in NUREG-0396 or in any part of the emergency planning rulemaking record compels a finding that EPZ adequacy is especially sensitive to where exactly the boundary falls, and any such conclusion would seem to be at odds with the overall thrust of the report. In particular, the NUREG-0396 analysis indicates that "adequate protective measures" in the context of emergency planning is not a precisely defined concept.

D NRC emergency planning requirements do not require that an adequate plan achieve a preset minimum radiation dose saving or a minimum evacuation time for the plume exposure pathway emergency planning zone in the event of a serious accident. Rather, those requirements are designed to achieve reasonable and feasible dose reduction under the circumstances; what may be reasonable or feasible for one plant site may not be for another. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-86-13, 24 NRC 22, 30 (1986).

E Implicit in the concept of "adequate protective measures" is the fact that emergency planning will not eliminate, in every conceivable accident, the possibility of serious harm to the public. Emergency planning can, however, be expected to reduce any public harm in the event of a serious but highly unlikely accident. Given these circumstances, it is entirely reasonable and appropriate for the Commission to hold that the rule precludes adjustments on safety grounds to the size of an EPZ that is "about 10 miles in radius." In the Commission's view, the proper interpretation of the rule would call for adjustment to the exact size of the EPZ on the basis of such straightforward administrative considerations as avoiding EPZ boundaries that run through the middle of schools or hospitals, or that arbitrarily carve out small portions of governmental jurisdictions. The goal is merely planning simplicity and avoidance of ambiguity as to the location of the boundaries.

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F Even though sheltering will quite likely be the preferred protective action for EPZ hospitals in the event of a serious accident at Shoreham, evacuation should not be prejudiced by the failure to plan in advance. Appendix E to 10 C.F.R. Part 50 requires evacuation time estimates for the EPZ without exceptions for special facilities such as hospitals. Moreover, hospitals, as a kind of "special facility," are specifically mentioned in the principal guidance document in this field, NUREG-0654, and there is no suggestion in this guidance that hospitals are to be treated specially as exempt from the evacuation planning requirement that applies to other segments of the population within the EPZ.

G A Commission conclusion that NRC regulations require Applicant to fulfill the same emergency planning obligations for Shoreham with regard to hospital evacuation as those imposed by the Licensing Board in connection with other like segments of the EPZ, such as nursing/adult homes, does not necessarily mean that the applicant's emergency plan is inadequate with respect to hospitals. Under 10 C.F.R. § 50.47(e)(1), the Licensing Board could still approve the utility plan if it found that the deficiencies related to the hospitals were not significant for Shoreham.

CLI-87-13 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL-1, 50-444-OL-1 (Onsite Emergency Planning and Safety Issues); OPERATING LICENSE; November 25, 1987; MEMORANDUM AND ORDER

A The Commission lifts its stay on issuance of a low-power operating license for Seabrook in the event such a license is authorized and dismisses as unripe all other pending motions seeking to stay low-power operations. The Commission also denies a request for an evidentiary hearing on summary review of the sufficiency of the Applicants' utility plan.

B In requiring Applicants to submit their utility emergency plan for summary review, the Commission did not open the door to an evidentiary prehearing on emergency planning issues. On summary review the Commission intended that the plan need demonstrate only that adequate emergency planning was not foreclosed.

C The Commission refers to the standards for submittal of a utility emergency plan that were elaborated in CLI-87-3, 25 NRC 875 (1987) and reemphasizes that a utility plan must include measures to compensate for the absence of state and local governmental planning and that it necessarily must be a good faith submittal.

D The Commission's rules provide that a full evidentiary hearing on the offsite emergency plan is available before full-power operations, but is not required before low-power operations. 10 C.F.R. § 50.47.

E On summary review, the Commission finds that the disputes about the adequacy of the Seabrook utility plan are, as was the case with Shoreham, litigation and political disputes. While the outcome of those disputes is uncertain, the Commission cannot conclude on the basis of the papers before it that they are categorically unresolvable.

F The Commission concludes that the other issues raised by Intervenor go beyond the summary review intended here. Those issues may be legitimate questions to be raised at the full-power hearings on the emergency plans.

G For its threshold determination, the Commission does not need certain information deleted by Applicants from the utility emergency plan. Deleted information that Staff and FEMA deem necessary for full-power review of the plan must be provided by the Licensees before low-power operation. Also, Applicants should state for the record their willingness to provide the detailed information to the other parties if necessary under appropriate protective orders.

H The Commission's decision to lift the stay on low-power operations is dictated by the Applicants' good-faith submittal of a utility emergency plan and in no way results from or depends on the recently published revision of the Commission's emergency planning regulations. 52 Fed. Reg. 42,078 (1987).

DIGESTS  
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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 repose (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-130, 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. (Dizble 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 an 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(f)(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 directed 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, 24 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. (Salern 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).
- ALAB-875 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL-1, 50-444-OL-1 (Onsite Emergency Planning and Safety Issues); OPERATING LICENSE; October 1, 1987; DECISION
- A The Appeal Board affirms in part, and reverses and remands in part, the Licensing Board's partial initial decision (LBP-87-10, 25 NRC 177), authorizing the issuance of a license for low-power operation (up to five percent of rated power) of Unit 1 of the Seabrook facility.



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- B An application for a stay pendente lite shall be no longer than ten pages, exclusive of affidavits. 10 C.F.R. 2.788(b).
- C Commission regulations explicitly authorize the issuance of a low-power operating license in advance of NRC or Federal Emergency Management Agency review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement state and local offsite emergency plans. 10 C.F.R. 50.47(d).
- D Appeal Boards lack the authority to strike down a Commission regulation. See ALAB-865, 25 NRC 430, 439. Within the agency, only the Commission itself has that power. See 10 C.F.R. 2.758(a); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 65, 67 n.3 (1978); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1402 (1977).
- E Under the Commission Rules of Procedure, a waiver or exception from an applicable rule or regulation in a licensing proceeding is allowed only where special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted. 10 C.F.R. 2.758(b).
- F Upon receipt of a petition for a waiver or exception from the application of a rule or regulation and all submissions in support of or in opposition to it, it becomes the presiding officer's duty to determine whether a prima facie showing has been made that application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted. Upon a finding of prima facie showing to that effect, the presiding officer must certify the matter of the grant of the petition directly to the Commission for ultimate action. 10 C.F.R. 2.756(d).
- G In the discharge of its responsibilities under the National Environmental Policy Act (NEPA), the Commission requires that environmental impact statements (EIS) be prepared by its staff with regard to every nuclear power facility.
- H Regulatory guides do not have the force of regulations. Regulatory guides are issued for the basic purpose of providing guidance to applicants with respect to, inter alia, acceptable modes of conforming to specific regulatory requirements. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772-73 (1977).
- I The Commission's Interim Policy Statement on "Nuclear Power Plant Accident Considerations under the National Environmental Policy Act of 1969," 45 Fed. Reg. 40,101 (1980), calling for the consideration in environmental impact statements of the more severe kinds of very low probability accidents is not required by NEPA but is a matter of Commission discretion. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 697-99 (1985) (citing *San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287, 1301 (D.C. Cir. 1984), vacated in part and reh'g en banc granted on other grounds, 760 F.2d 1320 (D.C. Cir. 1985)).
- J A facility's environmental review need not consider the effects of sabotage. See ALAB-819, 22 NRC at 697-701.
- K The following technical issues are discussed: Steam generator tube integrity; Degradation of heat transfer capability of cooling water systems because of accumulation of aquatic organisms or debris; Important to safety versus safety-related in the scope of quality assurance programs; Safety Parameter Display System; Consideration of severe accidents in environmental impact statements; Environmental qualification of equipment.
- ALAB-876 VERMONT YANKEE NUCLEAR POWER CORPORATION (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA (Spent Fuel Pool Amendment); OPERATING LICENSE AMENDMENT; October 2, 1987; MEMORANDUM AND ORDER
- A The Appeal Board denies a request for reconsideration of its earlier decision in ALAB-869, 26 NRC 15 (1987), rejecting a contention that had been admitted by the Licensing Board in this operating license proceeding.
- B Under the Commission's Rules of Procedure, appellate review of interlocutory Licensing Board decisions — such as an order granting a party's petition to intervene, or admitting contentions and thereby granting a request for hearing — is generally prohibited. 10 C.F.R. § 2.730(f). Under 10 C.F.R. § 2.714a(c), however, an applicant may appeal such an order "on the question whether the petition and/or the request for a hearing should have been wholly denied."

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- C The terms and spirit of 10 C.F.R. § 2.714a allow appeal boards to exercise discretion concerning the need and desirability of reviewing other contentions, once one admissible contention is found. ALAB-869, 26 NRC at 26.
- D Under the Commission's new "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors," 10 C.F.R. § 2.1101 et seq., the admission of a contention does not automatically trigger a formal hearing, but rather entitles the contention's proponent to file written statements and to present oral argument, after which a hearing may be ordered.
- E The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321, does not require NRC consideration of beyond design-basis accidents because they are, by definition, highly improbable — i.e., remote and speculative — events. ALAB-869, 26 NRC at 30-31 (citing *San Luis Obispo Mothers for Peace v. NRC*, 51 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)). 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"]. ALAB-869, 26 NRC at 31.
- F The NEPA Policy Statement does not apply to license amendment proceedings for the expansion of the capacity of spent fuel pools by reracking. *Ibid.*
- G The NEPA Policy Statement provides for consideration of the risks of a beyond design-basis accident scenario only where an environmental impact statement (EIS) is already otherwise required. *Ibid.*
- H As an independent agency, the Commission does not consider itself legally bound by substantive Council on Environmental Quality regulations. See *Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2)*, ALAB-819, 22 NRC 681, 700 & n.21 (1985) (citing *Baltimore Gas and Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 99 n.12 (1983)), review declined, CLI-86-5, 23 NRC 125 (1986).
- I An intervenor is bound by the literal terms of its own contention. *Id.* at 709.
- J The "special circumstances" exception in the NEPA Policy Statement — which provides that the Commission's direction to the staff to include severe accident considerations in future EISs was not to serve as a basis for opening, reopening, or expanding any previous or ongoing proceeding, in the absence of special circumstances — pertains only to proceedings already completed or under way as of June 1980. 45 Fed. Reg. at 40,103. Examples of such special circumstances include higher population density, proximity to man-made or natural hazard, unusual site configuration, unusual design features, etc. *Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2)*, CLI-80-8, 11 NRC 433, 434 (1980).
- K Major or novel questions of policy, law or procedure may be certified to the Commission for its ruling at an appeal board's discretion. 10 C.F.R. § 2.785(d).
- ALAB-877 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, October 8, 1987; MEMORANDUM AND ORDER
- A The Appeal Board denies an intervenor's motion for a stay pending appeal of a Licensing Board decision authorizing the issuance of license amendments for the expansion of the capacity of each of the spent fuel pools of the Diablo Canyon facility.
- B The four factors to be considered in deciding whether to grant a stay, as set forth in 10 C.F.R. 2.788(e), are: (1) whether the moving party has made a strong showing that it is likely to prevail on the merits; (2) whether the party will be irreparably injured unless a stay is granted; (3) whether the granting of a stay would harm other parties; and (4) where the public interest lies.
- C Although none of the factors to be considered in granting a stay is necessarily dispositive, the potential for irreparable injury and the likelihood of prevailing on the merits generally get primary attention.
- D A NEPA environmental assessment must identify the proposed action and include a "brief" discussion of the need for that action, the alternatives to it, and the environmental impacts of the proposal and the alternatives. 10 C.F.R. 51.30(a).
- E Upon completion of an environmental assessment, the NRC staff will determine whether (1) to prepare a full environmental impact statement ("EIS") or (2) to issue instead a finding to the effect that the proposed action will have no significant impact upon the environment (in which case an EIS is not necessary). See 10 C.F.R. 51.31, 51.32.

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- F To be admitted in a licensing proceeding, the basis of a contention must be set forth with reasonable specificity. 10 C.F.R. 2.714(b).
- G NEPA does not require NRC consideration in an EIS or elsewhere of highly improbable — i.e., remote and speculative — events. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-876, 26 NRC 276, 282 (1987) (citing *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)).
- ALAB-878 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 3 and 4), Docket Nos. 50-250-OLA-1, 50-251-OLA-1 (Vessel Flux Reduction); OPERATING LICENSE AMENDMENT; November 4, 1987; MEMORANDUM AND ORDER
- A The Appeal Board in this operating license amendment proceeding affirms, on sua sponte review, the licensing board's order (LBP-87-21, 25 NRC 958 (1987)) granting the applicant's motion to relinquish jurisdiction and terminate the proceeding.
- B The following technical issue is discussed: Acceptance criteria for the capability of the emergency core cooling system in response to a loss-of-coolant accident.
- ALAB-879 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL-1, 50-444-OL-1 (Onsite Emergency Planning and Safety Issues); OPERATING LICENSE; November 20, 1987; DECISION
- A The Appeal Board in the onsite emergency planning and safety phase of this operating license proceeding affirms the Licensing Board's rejection of the intervenors' motions to reopen the record and to admit two late-filed contentions concerning the adequacy of two siren systems designed to provide offsite public notification of a radiological emergency at the Seabrook site.
- B The Commission's regulations require emergency response plans to include, inter alia, a means to provide early notification and clear instructions to the populace within the plume exposure pathway emergency planning zone. 10 C.F.R. 50.47(b)(5).
- C To prevail on a motion to reopen a record, a movant must show, inter alia, that a significant safety issue is involved. 10 C.F.R. 2.734(a)(2). A contention that raises an entirely new issue and is filed after the record has been closed can be accepted for litigation only if it both (1) meets the reopening criteria set forth in 10 C.F.R. 2.734(a) and (2) survives a balancing of the five factors that, by virtue of 10 C.F.R. 2.714(a)(1), control the admission of late-filed contentions.
- D The movant has the burden to establish, prior to reopening the record, that the standards for reopening are met. The movant is not entitled to engage in discovery in an effort to produce evidence that will support a motion to reopen. Rather, the issue in each case is whether the available information meets the standards for reopening, i.e., timely raises a significant safety issue which might have affected a licensing board's decision, such that the record should be reopened and discovery initiated. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-85-7, 21 NRC 1104, 1106 (1985).
- E The following technical issues are discussed: Emergency notification sirens; Siren testing; Siren sound pressure level criteria; Ambient background sound pressure level measurements; Octave band.
- ALAB-880 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; December 21, 1987; DECISION
- A The Appeal Board affirms a licensing board decision authorizing the issuance of operating license amendments permitting the expansion of the spent fuel pool capacity of each of the facility's two units.
- B 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). The purposes of this rule are to assure the proper invocation of the hearing process and to provide adequate notice to other parties as to exactly what they will be called upon to litigate. See *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).
- C Like courts, appeal boards usually do not consider arguments that are raised for the first time during appellate review. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 348, reconsideration denied, ALAB-467, 7 NRC 459 (1978).
- D Under the Commission's requirements, an intervenor is not expected to prove, at the contention admission stage, that a proffered contention is true; the intervenor must, however, allege at least some

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- credible foundation for the contention. Cf. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1) CLI-80-16, 11 NRC 674, 675 (1980).
- E Under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), an environmental impact statement (EIS) is required for major Federal actions that significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).
- F Under section 102(2)(E) of NEPA, agencies are obliged to study alternatives to proposals that involve "unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E).
- G An appeal board will not consider a party's claims of error that are not developed in the party's brief on appeal. Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), ALAB-872, 26 NRC 127, 131-32 (1987).
- H General design criteria (GDC) are broadly stated engineering and safety goals that "constitute the minimum requirements for the principal design criteria of water-cooled nuclear power plants." "Regulations" set forth more detailed requirements, while less formal staff documents (such as "Regulatory Guides" and "Standard Review Plan" provisions) provide guidance for compliance with the GDC. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).
- I Accidents that contemplate "sequences of postulated successive failure more severe than those postulated for the design basis of protective systems and engineered safety features" are variously termed "beyond design-basis," "Class 9," or "severe" accidents. Offshore Power Systems (Floating Nuclear Power Plants), CLI-79-9, 10 NRC 257, 258 (1979); Interim Policy on "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969," 45 Fed. Reg. 40,101, 40,104 (1980) ["NEPA Policy Statement"]. See generally "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants," 50 Fed. Reg. 32,138 (1985). The Commission considers such accidents "to be so low in probability as not to require specific additional provisions in the design of a reactor facility." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 393 n.17 (1987).
- J Under the "rule of reason," NEPA does not require the consideration of Class Nine accidents in future EISs, nor does it require that final EISs be supplemented to take account of the Class Nine risk. *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).
- K NEPA does not require agency consideration of highly improbable — i.e., remote and speculative — events. Thus, an EIS need not be prepared to consider such events. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-869, 26 NRC 13, 30 (1987), reconsideration denied, ALAB-876, 26 NRC 277 (1987).
- L As an independent regulatory agency, the Commission does not consider substantive Council on Environmental Quality regulations as legally binding on it. 49 Fed. Reg. 9352, 9356 (1984). See *Baltimore Gas and Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 99 n.12 (1983); *Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2)*, ALAB-819, 22 NRC 681, 700 n.21 (1985), *aff'd in part and review otherwise declined*, CLI-86-5, 23 NRC 125 (1986), petitions for review pending sub nom. *Limerick Ecology Action, Inc. v. NRC*, No. 85-3431, et al. (2d Cir.).
- M In its NEPA Policy Statement, the Commission describes those circumstances in which the NRC staff, as a matter of discretion, is to consider the environmental impacts of a beyond design-basis accident. That policy statement, however, does not apply to license amendment proceedings for the expansion of the capacity of spent fuel pools by rereacking. Vermont Yankee, ALAB-869, 26 NRC at 31.
- N An environmental assessment is a concise statement usually prepared to aid the Commission's compliance with NEPA when no environmental impact statement is necessary. 10 C.F.R. § 51.14(a). See also ALAB-877, 26 NRC 287, 290-91 (1987).
- O Where a party's brief on appeal provides no references to the hearing transcript and underlying record and no specifics to support its generalized complaints, its appeal is subject to summary rejection. See 10 C.F.R. § 2.762(d)(1); *Vogtle*, 26 NRC at 131-32.
- P It is appeal board practice to review on its own initiative licensing board decisions, or portions thereof, that have not been appealed, as well as the underlying record. See *Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2)*, ALAB-859, 25 NRC 23, 27 (1987).

**DIGESTS**  
**ISSUANCES OF THE ATOMIC SAFETY AND LICENSING APPEAL BOARDS**

- Q        The following technical issues are discussed: High-Density Spent Fuel Racks; Spent Fuel Pool Loss of Coolant Accidents; Zircaloy Cladding Fire; Beyond Design-Basis Accidents; Consideration of Alternative Onsite Spent Fuel Pool Storage Facilities; Design Bases; Spent Fuel Pool Design Criteria.
- ALAB-881    GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-CH; SPECIAL PROCEEDING; December 31, 1987; MEMORANDUM AND ORDER
- A        In this discretionary hearing ordered by the Commission, the Appeal Board certifies to the Commission a question concerning the subject matter jurisdiction of the proceeding.

**DIGESTS**  
**ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS**

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 reworking 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.

**DIGESTS**  
**ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS**

- 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 issues 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.
- LBP-87-28 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; October 16, 1987; MEMORANDUM AND ORDER (Motion Requesting Judicial Review of Records)
- A In an informal proceeding involving an Applicant's appeal of the denial of his senior operator's license, the Presiding Officer denies a motion to review documents denied to the Applicant by the NRC

**DIGESTS**  
**ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS**

Staff in response to a Freedom of Information Act (FOIA) request. But the Presiding Officer determines that the Applicant may have a right to two of the requested documents on a basis other than the FOIA, and he defers action on those documents pending briefing by the parties (or, alternatively, provision of those documents by the Staff to the Applicant).

- B The Presiding Officer in an informal proceeding lacks authority to review the procedures followed or results reached by other NRC offices on FOIA requests. The Presiding Officer does have responsibility to request and receive from a party whatever documents he deems necessary for an adequate development of the record.
- C Discovery procedures are not available to parties in an informal proceeding. Proposed 10 C.F.R. § 2.1231(d).
- LBP-87-29 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; October 29, 1987; MEMORANDUM AND ORDER (Ruling on Applicant's Motion of October 5, 1987, for Reconsideration and Other Relief)
- A In this Memorandum and Order, the Licensing Board denies Applicant's motion for reconsideration of the Board's September 17, 1987 decision denying Applicant's motion for summary disposition of the legal authority issues. It also denies Applicant's request that the motion for reconsideration be referred to the Commission.
- B The Board grants Applicant's request for expedited consideration of the motion because of its effect on the furtherance of the proceeding and denies as moot a request to immediately set a schedule for further proceedings on issues remanded by CLI-86-13, 24 NRC 22 (1986).
- LBP-87-30 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3 (ASLBP No. 86-539-07-OL) (Emergency Planning); OPERATING LICENSE; November 6, 1987; MEMORANDUM AND ORDER (Ruling on Applicant's Motion for Summary Disposition of Contention 92)
- A The Licensing Board grants Applicant's motion for summary disposition of Contention 92, which alleges, in part, that there is no New York State emergency plan to deal with an emergency at the Shoreham Nuclear Power Station and that Applicant's plan fails to provide for coordination of Applicant's emergency response with New York State, assuming such a response would occur. The Licensing Board finds that the contention, as written, is clearly true and does not raise any other unresolved health and safety issue. Therefore, the motion for summary disposition should be granted, under 10 C.F.R. § 2.749, because there is no genuine issue as to any material fact and Applicant is entitled to a decision as a matter of law.
- LBP-87-31 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; November 24, 1987; MEMORANDUM AND ORDER (Need for Further Information and Requirement for Oral Presentation)
- A In an informal proceeding involving an Applicant's appeal of the denial of his senior operator's license, the Presiding Officer authorizes an oral presentation, outlines procedures for the presentation, and sets forth matters for both the Applicant and the NRC Staff to address at the presentation.
- LBP-87-32 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-5 (ASLBP No. 86-534-01-OL) (EP Exercise); OPERATING LICENSE; December 7, 1987; PARTIAL INITIAL DECISION
- A Board concludes that the February 13, 1986 Exercise of LILCO's offsite emergency plan for the Shoreham Station did not comply with IV.F.1 of Appendix E to 10 C.F.R. Part 50 in that the following portions of the plan were not tested: transmission of an EES message to and authentication of that message by the EBS radio station; school emergency plans; ingestion exposure pathway emergency plans; and coordination and communication between LERO and special facilities.
- B Paragraph IV.F.1 of Appendix E to 10 C.F.R. Part 50 requires that the initial full-participation exercise, which is required prior to operation in excess of 5% of power, must test as much of the plan as is reasonably achievable and must include participation by all response organizations within both the plume and ingestion exposure EPZs.
- C Where local government action or the lack of federal standards prevents the testing or evaluation of a portion of an emergency plan, testing of that portion is deemed to be not reasonably achievable.
- D The following technical issue is discussed: Statistical validity of FEMA's sampling technique.



DIGESTS  
ISSUANCES OF THE ADMINISTRATIVE LAW JUDGE

ALJ-87-6 GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Three Mile Island Nuclear Station,  
Unit 2), Docket No. 50-320 (ASLBP No. 86-534-01-OL) (Civil Penalty); CIVIL PENALTY; November 12,  
1987; MEMORANDUM AND ORDER

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 discussed: 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.

DIGESTS  
ISSUANCES OF DIRECTORS' DECISIONS

- 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 Ashtabula 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.
- DD-87-16 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440, 50-441; REQUEST FOR ACTION; October 7, 1987; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Reactor Regulation denies a petition submitted by the Toledo Coalition for Safe Energy, Sunflower Alliance, Inc., Susan B. Carter, and Steven Sass (Petitioners), requesting action with regard to the Perry Nuclear Power Plant, Unit 1, of the Cleveland Electric Illuminating Company, et al. (Licensees). The petition requested issuance to the Licensees of an order to show cause why the operating license for the Perry facility should not be suspended pending an exhaustive review by an independent study group of the applicability of the Reed Report (a 1975 General Electric (GE) reactor study) and associated GE interval data to the design and operation of the Perry facility. The petition denied the relief requested based on the results of an NRC Staff reevaluation of the issues raised in the Reed Report, specifically, NUREG-1285, "NRC Staff Evaluation of the General Electric Company Nuclear Reactor Study ("Reed Report") issued in July 1987 which concluded that the Reed Report does not identify any matters that would support a need to curtail the operation of any GE boiling water reactor plant.
- DD-87-17 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; REQUEST FOR ACTION; October 16, 1987; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Special Projects grants in part and denies in part a petition submitted by the Government Accountability Project (GAP) pursuant to 10 C.F.R. § 2.206 requesting that the Nuclear Regulatory Commission (NRC) take certain actions with respect to alleged serious construction and documentation deficiencies at the Comanche Peak Steam Electric Station (facility) of the Texas Utilities Electric Company, et al. (Licensees). The relief requested a suspension of construction of the facility, special NRC inspections to determine the extent of the problems, an independent management audit of the Licensees to assess the cause of alleged design and construction quality assurance problems, and an independent design and construction verification program for Comanche Peak.
- B The Director declined to suspend construction because reinspection and plant modification activities are being sufficiently controlled. The Director also declined to direct the Licensees to initiate an independent management audit and an independent design and construction verification program. To the extent the petition sought special NRC inspections at the facility, such inspections have been and are being conducted and, to this extent, the relief requested in the petition has been granted.

DIGESTS  
ISSUANCES OF DIRECTORS' DECISIONS

DD-87-18 PETITION FOR IMMEDIATE ACTION TO RELIEVE UNDUE RISKS POSED BY NUCLEAR POWER PLANTS DESIGNED BY THE BABCOCK & WILCOX COMPANY, Docket Nos. 50-313, 50-287, 50-302, 50-312, 50-346, 50-289, 50-269, 50-438, 50-270, 50-439; REQUEST FOR ACTION; October 19, 1987; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies the petition of Elynn F. Weiss and Robert D. Pollard filed on behalf of the Union of Concerned Scientists and other named Petitioners requesting the immediate suspension of the operating licenses of certain named Babcock & Wilcox (B&W) reactors and the construction permits of certain other named B&W reactors. The Petitioners allege that unique elements of these B&W-designed reactors make them inherently more dangerous than other pressurized water reactors. Petitioners request that reinstatement (or possible revocation) of such licenses and construction permits be contingent on the institution of a Staff safety reassessment program and proceedings to determine necessary corrective actions for each of the named reactors.

DD-87-19 DETROIT EDISON COMPANY, et al. (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341; REQUEST FOR ACTION; December 8, 1987; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies the petition filed by the Government Accountability Project pursuant to 10 C.F.R. § 2.206, requesting the U.S. Nuclear Regulatory Commission to take certain actions with regard to Detroit Edison Company's "employee concern" program at Fermi-2 Plant entitled SAFETEAM, due to the absence of a substantial health and safety issue that could cause the Staff to initiate show-cause proceedings.

DD-87-20 HOUSTON LIGHTING AND POWER COMPANY, et al. (South Texas Project, Units 1 and 2), Docket Nos. 50-498-OL, 50-499-OL; REQUEST FOR ACTION; December 13, 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 Larry Sinkin on behalf of Citizens Concerned About Nuclear Power, Inc. (CCANP) requesting that the record in the South Texas Nuclear Project (STNP) licensing hearings be reopened and that fuel loading be suspended. CCANP based its request on testimony of intimidation and harassment by NRC personnel before a Senate Committee, which CCANP claims sheds doubt on the credibility of NRC witnesses at the STNP licensing hearing.

B The Nuclear Regulatory Commission, having already considered and resolved in a licensing proceeding the issues that a petitioner raises, need not reconsider those issues if the petitioner provides no information relating the testimony before Congress with the specific facility and petitioner already had an opportunity to examine NRC witnesses to determine credibility at the prior hearing. Conjecture by petitioners is not enough.

C The standards for initiating a proceeding under 10 C.F.R. § 2.206 based on alleged defects in the earlier licensing hearing record is the same as that for a motion to reopen under 10 C.F.R. § 2.734 (i.e., requiring a demonstration that a different result would be reached).

DD-87-21 POTENTIAL IMPLICATIONS OF CHERNOBYL ACCIDENT FOR ALL NRC-LICENSED FACILITIES; REQUEST FOR ACTION; December 15, 1987; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation acts on a request by the Government Accountability Project (GAP) and others (together, Petitioners) that the NRC (1) suspend further licensing of nuclear facilities in the United States pending completion of a study and report on the accident at the Chernobyl plant, (2) review the findings of the final report for their applicability to facilities licensed by the NRC, and (3) request public comments on whether the record should be reopened to consider new issues raised in the final report that are material to any pending licensing proceeding or current license. To the extent that the Petitioners request that the Staff undertake a study and review, those requests have, in effect, already been granted. Petitioners' other requests are found to be without merit and are denied.

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").

DPRM-87-4 COMMITTEE TO BRIDGE THE GAP, Docket No. PRM 50-44, September 23, 1987; DENIAL OF PETITION FOR RULEMAKING

A The Nuclear Regulatory Commission is denying a petition for rulemaking submitted by the Committee to Bridge the Gap. The Petitioner, citing primarily the accident at the Chernobyl plant in the Soviet Union, requested that the NRC amend its regulations in 10 C.F.R. Part 50 to require that licensees whose reactors employ graphite as a neutron moderator or reflector and whose licensed power is greater than 100 MW: (1) formulate and submit for NRC approval fire response plans and evacuation plans in case of a reactor fire involving graphite and fuel; and (2) measure the "Wigner" energy stored in the graphite of their reactors and submit a revised safety analysis addressing the risks and consequences of a reactor fire. The Commission is denying the petition because the Petitioner has failed to demonstrate that the existing fire protection systems and emergency response plans, as considered and approved by the NRC, fail to provide an appropriate level of protection of the health and safety of the public. Moreover, the Commission has concluded that empirical measurement of stored energy in reactor graphite components is not practical nor is it necessary to ensure the health and safety of the public.

B The words "credible" and "incredible" have been used in many AEC/NRC safety analyses. As used by the Staff, these words have always been a qualitative statement of the likelihood or probability of an event or condition occurring.

C NRC-approved emergency plans in accordance with 10 C.F.R. § 50.54 and 10 C.F.R. Part 50, Appendix E, provide for response to fires, for training of firefighting personnel, and for periodic drills to demonstrate proper operation of the plan in accordance with procedures developed for each facility.

D Basic safety measures required to reduce the threat of fires as well as to mitigate the consequences of any fires that do occur (as reviewed and approved by the NRC Staff and as implemented for all licensed reactors), generally apply to all fires and provide acceptable protection for the health and safety of the public.

DIGESTS  
ISSUANCES OF DENIAL OF PETITION FOR RULEMAKING

E The following technical issues are discussed: Relevance of Chernobyl accident to NRC-licensed reactors; graphite fire credibility in NRC-licensed reactors; radiological hazard to the public from a graphite fire in NRC-licensed reactors; empirical measurement of stored energy in graphite components of reactors.

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