

January 14, 1999

For: The Commissioners

From: John F. Cordes, Acting Director /s/
Office of Commission Appellate Adjudication

Subject: ANNUAL REPORT ON COMMISSION ADJUDICATION

Purpose: To provide the Commission a perspective on the adjudicatory caseload and the Commission's role in adjudication during calendar year 1998.

INTRODUCTION

At the NRC, the Commission alone is authorized to review the decisions of presiding officers and Atomic Safety and Licensing Boards in agency adjudications. The Office of Commission Appellate Adjudication (OCAA) assists the Commission in this role. The Commission may exercise its appellate authority to review Board (or presiding officer) decisions either when a dissatisfied party seeks review or when the Commission, on its own initiative, determines that review is warranted. The Commission also has original jurisdiction to offer guidance, at any time, on novel or significant questions and to resolve occasional legal matters that must or should be resolved in the first instance directly by the Commission.

As part of OCAA's monitoring role over adjudicatory matters, I am providing the Commission this annual report on agency adjudications for calendar year 1998. This report updates information contained in the last report (SECY-98-014, Jan. 30, 1998), and is based upon the information in the attached charts. [Chart 1](#) presents information regarding the **twenty-five** substantive decisions (CLIs) issued by the Commission in 1998, [Chart 2](#) identifies the **twenty** final decisions issued by presiding officers or Licensing Boards in 1998, and [Chart 3](#) lists and describes the **twenty-four** new proceedings that the Commission referred to the Atomic Safety and Licensing Board Panel (ASLBP) in 1998. [Chart 4](#) provides a numerical breakdown of the proceedings referred to the ASLBP since OCAA's inception in July 1991 -- divided into substantive and procedural categories. Finally, [Chart 5](#) provides a breakdown of Commission decisions issued during that same period, divided into substantive and jurisdictional categories. ⁽¹⁾

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GENERAL OBSERVATIONS AND TRENDS

The past year, 1998, saw a dramatic increase in the adjudicatory workload of both the Commission and the ASLBP, continuing a trend that started in 1997. The number of new proceedings referred to the ASLBP (**24**, almost double last year's total of 13) was by far the highest since OCAA's inception in 1991, and the number of CLIs issued by the Commission (**25**, up from 15 last year) was the second highest. The **33** LBPs, including non-final orders, were the most in four years. Finally, the number of final Board (or presiding officer) decisions in 1998 (**20**), although lower than 1997's all-time high of 23, still equaled or exceeded all other annual totals since the inception of OCAA.

1. The ASLBP's Caseload

Although for some years we have reported regularly that the ASLBP's caseload continued to shift from reactor licensing matters to enforcement and materials licensing cases, this pattern reversed itself in 1998. The enforcement and materials categories remained essentially unchanged, while the number of reactor licensing matters increased ninefold. And though still small in number, reactor operator license proceedings tripled in the last year.

In all, a total of **12** reactor-related cases got started in 1998. In no prior year since OCAA's establishment in 1991 had the number exceeded 3. By contrast, the number of new enforcement and materials cases conformed to recent experience. There were **5** new enforcement cases in 1998 (the same as in 1997) and **6** new materials cases (there were 7 in 1997). If these patterns persist, of course, reactor adjudications will surge in the immediate future and enforcement and materials cases will merely tread water.

2. The Commission's Caseload

As the following figures indicate, the trends in the Commission's caseload largely track those of the ASLBP -- an increase in total published orders (LBPs and CLIs), a marked increase in reactor-related cases, and a general leveling-off of materials and enforcement actions.

The Commission's own caseload (as reflected in the number of CLIs it issued) took a marked turn upward, jumping from 15 to **25** CLIs, the most since 1993. This upswing was largely attributable to two cases -- the Hydro Resources materials licensing case, which generated **5** orders and the Calvert Cliffs relicensing proceeding, which generated **4**. Like the ASLBP's caseload, the Commission's cases reflected the arrival of a brand-new kind of case --

the reactor relicensing proceedings (5 CLIs in '98 involving the Calvert Cliffs and Oconee plants) -- as well as an increase in reactor license amendment decisions (4 in '98 compared with 0, 2 and 7 in '97, '96 and '95, respectively).

Looking at the increase in the Commission's own workload from a procedural perspective, the increase in CLIs is largely attributable to huge increases in appeals as of right under section 2.714a (7 this year, compared to 2, 1 and 1 during '97, '96 and '95, respectively) and in matters involving the Commission's actions on matters of original jurisdiction (10 this year, compared with 2, 2 and 5 during '97, '96 and '95, respectively). Similarly (though less important numerically), the Commission considered more discretionary appeals (4 in '98, compared with 0, 0 and 5 in '97, '96 and '95, respectively) and sua sponte matters (2 in '98, compared with 0, 1 and 1 in '97, '96 and '95, respectively). Notably, just 2 of the Commission's 1998 decisions could be characterized as "merits" decisions (as compared to 11 last year). The remainder addressed various procedural or threshold matters.

3. Increased Speed in Resolving Cases

Another caseload-related development is that the agency as a whole is resolving adjudicatory proceedings faster. Of the 15 cases referred to the Board prior to Labor Day in 1998, 12 were closed by year's end -- 1 on the merits, 6 by settlement, withdrawal or default, and 5 by denial of intervention. (By comparison, the Board and Commission closed 5 of 9 cases, 6 of 7 cases, and 0 of 3 cases in '97, '96 and '95, respectively.)

Although the Commission cannot control many of the factors that govern the speed with which its cases are resolved (e.g., the number and complexity of the issues, the willingness of parties to settle, the pace with which the Department of Justice pursues parallel criminal actions), nevertheless the increased speed with which the Commission has decided cases this year clearly reflects its heightened emphasis on both the importance of adjudications and the need for their expeditious resolution -- both of which concepts were reflected in the recent Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12. The Commission's willingness to become involved in cases earlier, to set proposed schedules for adjudications, to monitor Board action (or inaction) more closely, and generally to take a more active supervisory role has been effective in moving forward the agency's proceedings.

The Commission's heightened involvement in adjudications is reflected in its repeated offering of guidance to the Board (e.g., Calvert Cliffs, CLI-98-14; Oconee, CLI-98-17) and its taking sua sponte review of more Board orders (Seabrook, CLI-98-18; Hydro Resources, CLI-98-16). OCAA will continue to monitor the adjudicatory caseload and be on the lookout for opportunities where the Commission may appropriately exercise its supervisory role.

Assuming that the presiding officers and Boards follow the principles and guidelines enunciated in the Policy Statement (and also in the referral orders in the Calvert Cliffs and Oconee reactor license renewal proceedings (CLI-98-14 and -17)), we would anticipate that adjudicatory proceedings will be resolved even more quickly in the future. In the wake of the Louisiana Enrichment Services proceeding, which terminated in 1998 after 7 years of litigation, the ASLBP has committed itself to issuing decisions within sixty days after the parties file their closing pleading. Similarly, in our operating plan, OCAA has undertaken to complete its drafts of Commission decisions within sixty days of receipt of the final appellate brief (except in extremely complex proceedings), and more quickly than that if OCAA resources and the nature of the issues permit.

Moreover, the recent promulgation of streamlined procedural rules for hearings on license transfer applications (Subpart M) promises rapid resolution of those cases as well. Subpart M applications may strain OCAA resources, however, as Subpart M contemplates that the Commission itself will resolve contested applications on the merits, after a hearing; OCAA ordinarily provides drafting assistance to the Commission on such matters. Such applications are not referred to the ASLBP in the first instance. We are working with OGC to develop the most expeditious means of handling and staffing Subpart M cases.

Finally as to the Commission's expeditious treatment of cases, it is worth noting that, in four instances, the Commission issued orders almost immediately after being asked to do so -- in only 4, 3, 2, and 1 day (CLI-98-9, -19, -15, and -4, respectively). Such rapid turnaround times, however, are possible only in cases where the issues are not complex and the Commission's views are clear. OCAA plans to continue its emphasis on issuing speedy decisions whenever possible. Our effort to increase speed and efficiency, however, ought not necessitate a decrease in either decisionmaking quality or procedural fairness -- a point the Commission has made repeatedly in recent months (CLI-98-12, -14, -17).

4. Future Agency Caseload

We anticipate a continuing increase in the number of cases involving reactor relicensing and reactor decommissioning,⁽²⁾ together with the advent of reactor transfer proceedings (to be adjudicated under the Commission's new Subpart M rules). The age of many currently-operating reactors makes an upswing in the first two categories quite likely, and the restructuring of the electric industry makes a significant number of the third category highly probable.⁽³⁾ Also, the Commission's caseload could rise were Congress to assign the NRC additional responsibilities, such as regulating DOE nuclear facilities. The future materials and enforcement caseloads are difficult to predict, as they seem to rise and fall erratically over the years. Much depends on the level of controversy attendant to particular NRC actions.

Another unknown future variable is possible reform of the NRC's hearing process. A move toward more informal proceedings, for example, perhaps on

the Subpart L or Subpart M models, might generate additional proceedings as members of the public become aware that participation in the NRC process need not be overly costly or complex.

SIGNIFICANT DECISIONS IN 1998

In 1998, the Commission issued far more than the usual number of CLIs addressing significant issues:

Louisiana Energy Services, L.P., CLI-98-3, 47 NRC 77. The Commission addressed environmental justice, an issue of first impression before the agency, and concluded that NEPA does not require the NRC to consider a claim of discriminatory motives. Instead, "disparate impact" analysis is the agency's principal tool for advancing environmental justice under NEPA. The Commission also addressed and resolved other NEPA issues.

Private Fuel Storage, L.L.C., CLI-98-7, 47 NRC 307. Citing the interests of expediency and efficiency, the Commission reversed the Chief Judge's ruling which had created a separate Licensing Board to address issues involving the applicant's physical security plan.

Hydro Resources, Inc., CLI-98-9, 47 NRC 261. The Commission addressed an issue of first impression -- what standards does the Commission apply when determining whether to disqualify a Presiding Officer in a Subpart L proceeding.

Quivira Mining Co., CLI-98-11, 48 NRC 1 and International Uranium (USA) Corp., CLI-98-23, 48 NRC _____. In these two orders, the Commission rejected Envirocare's claim of standing to challenge a competitor's license amendment. The Commission found that neither NEPA nor the AEA provided statutory protection for economic harm unrelated to radiological or environmental effects.

Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18. The Commission issued its first policy statement on this subject in more than seventeen years. The Policy Statement addressed the need to provide both fair and expeditious adjudications, and offered the Licensing Boards specific guidance regarding contentions, hearing schedules, the parties' obligations, and discovery management.

Private Fuel Storage, L.L.C., CLI-98-13, 48 NRC 26. Amplifying earlier statements on environmental justice, the Commission clarified that "discrimination in the site selection process" is not a cognizable claim in our adjudicatory proceedings. The Commission also clarified that Part 50 financial qualifications are not applicable in toto to Part 72 ISFSI applicants, but should merely be used as guidance. Finally, the Commission affirmed the Licensing Board's rulings on standing and intervention.

Baltimore Gas & Elec. Co., CLI-98-14, 48 NRC 39 and Duke Energy Corp., CLI-98-17, 48 NRC 123. In these decisions referring the first two license renewal proceedings to the Licensing Board, the Commission established a proposed schedule for the proceedings and offered guidance to the Board.

Baltimore Gas & Elec. Co., CLI-98-15, 48 NRC 45. Here, the Commission definitively resolved issues regarding its inherent supervisory authority over adjudications -- particularly its authority to offer guidance and to set expedited schedules and customize procedures for individual proceedings.

Hydro Resources, Inc., CLI-98-16, 48 NRC 119. Exercising its inherent supervisory authority, the Commission issued a decision excluding from an NRC adjudicatory proceeding a controversy over the permitting authority of the Navajo Nation. The Commission reasoned that other regulatory bodies, such as the Navajo Nation, the states, or the EPA, are responsible for policing their own requirements.

Yankee Atomic Elec. Co., CLI-98-21, 48 NRC 185. The Commission set forth for the first time the scope of a License Termination Plan amendment proceeding, and explained how such a proceeding relates to decommissioning and ISFSI proceedings and to license terminations. After laying this groundwork, the Commission affirmed the Board's rejection of one petition to intervene and, in the alternative, dismissed the same petitioner's appeal on procedural grounds. The Commission reversed the Board's rejection of the remaining two intervention petitions. Finally, the Commission narrowed the issues that could be appropriately considered in this proceeding and offered guidance to the Board.

Baltimore Gas & Elec. Co., CLI-98-25, 48 NRC _____. In this first reactor license renewal proceeding, the Commission justified its decision to treat license renewal applications expeditiously and then upheld the Board's rejection of a petitioner on grounds that it had failed either to submit timely contentions or to meet the late-filed standards for its two untimely contentions. The Commission also explained why it had authority to modify its procedures either by Policy Statement or on a case-by-case basis.

SIGNIFICANT ISSUES CURRENTLY PENDING BEFORE THE COMMISSION

The Commission currently has before it an appeal of a Licensing Board decision (LBP-98-24) refusing to allow intervention in a Zion license amendment proceeding. Moreover, an appeal is expected imminently challenging the Board's December 29th decision (LBP-98-33) denying intervention in the proceeding on Duke Energy Corporation's request to renew the reactor license for its Oconee Nuclear Station. This proceeding involves the second reactor license renewal application received by the Commission. OCAA anticipates additional appeals or petitions for review in the next 30-60 days challenging expected Board or presiding officer decisions in the Ben-Haim, Hydro Resources, Private Fuels Storage, Yankee Atomic and other cases.

In addition, the Commission has recently received its first license transfer case under the new Subpart M (Seabrook), and we expect that the Commission will receive another such case (involving Pilgrim) soon. Each of these cases will require one or more adjudicatory decisions, each to be handled under the Commission's original jurisdiction..

SIGNIFICANT ISSUES CURRENTLY BEFORE THE ASLBP THAT MAY REACH THE COMMISSION

Private Fuel Storage (ISFSI). Private Fuel Storage seeks a license under 10 C.F.R. Part 72 to construct an independent spent fuel storage facility on the tribal land of the Skull Valley Band of Goshute Indians. This lengthy and complex proceeding currently involves 5 admitted parties, including Native American groups who oppose the Skull Valley Band's agreement with Private Fuel Storage, and the state of Utah, which is vigorously contesting the facility. Contested issues include financial qualifications, environmental justice, NEPA matters, the security plan, and numerous technical questions.

International Uranium (USA) Corp. (MLA-4 and -5). In the first of these two proceedings, the state of Utah, an admitted party, opposes a materials license amendment, issued June 1998, authorizing IUSA to receive, possess, and dispose of uranium-bearing material from the Ashland 2 FUSRAP (Formerly Utilized Sites Remedial Action Program) in New York. Utah's principal argument is that the license amendment does not comply with NRC requirements under 10 C.F.R. Part 40 and that IUSA's primary purpose in obtaining the material is to receive a "disposal fee" and thereby to act as a disposal facility, not to extract source material. A similar proceeding, MLA-5, is also ongoing and concerns IUSA's request for a license amendment to receive uranium-bearing material from the Ashland 1 and Seaway Area D FUSRAP sites. Various parties have sought to intervene.

Hydro Resources Inc. In this extremely complex Subpart L proceeding, various intervenors challenge an NRC license obtained by Hydro Resources, Inc., to conduct in situ uranium mining at a site in New Mexico. The intervenors raise numerous issues, including NEPA questions, environmental justice concerns, groundwater safety and the very validity of the unusual "performance-based" license issued by the NRC staff. The license is in effect, as the presiding officer and the Commission each denied a stay in the first half of 1998. The presiding officer has broken the proceeding into parts and likely will issue a series of merits decisions beginning in March.

SUMMARY OF ACTIVITIES OF THE ATOMIC SAFETY AND LICENSING BOARD PANEL

- The Board Panel issued **20** final decisions.
- The Board Panel established **24** new proceedings, **12** of which have been terminated.
- **14** cases were pending before the Board Panel as of 12/31/98:

Hydro Resources, Inc.
Yankee Atomic Elec. Co. (Yankee Nuclear Power Station)
Advanced Medical Systems (two consolidated cases)
Aharon Ben-Haim, Ph.D.
Private Fuel Storage, LLC
International Uranium (USA) Corp. (MLA-4)
International Uranium (USA) Corp. (MLA-5)
Shaun P. O'Hern
Michael A. Philippon
Cabot Performance Materials (MLA)
Cabot Performance Materials (MLA-2)
Special Testing Laboratories, Inc.
Shieldalloy Metallurgical Corp.

If the Commissioners would like any additional information on this memorandum or on any adjudicatory proceeding, I would be happy to provide it.

Enclosures: Charts 1-5

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NOTE: TO BE MADE PUBLICLY AVAILABLE IN 5 WORKING DAYS FROM THE DATE OF THIS PAPER

CHART 1

COMMISSION ADJUDICATORY DECISIONS, JANUARY - DECEMBER 1998					
Decision Number/Cite/Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
1)CLI-98-1 47 NRC 13 (2/19/98)	21 st Century Technologies, Inc. (Fort Worth, TX)	Enforcement / Civil Penalty Action Also original jurisdiction over challenge to staff's confirmatory order	None. The Commission (inter alia) declined to take sua sponte review of LBP-98-1, 47 NRC 1 (1998), approving settlement agreement.	Staff and licensee file joint motion to terminate proceeding.	Commission grants motion to terminate.
2)CLI-98-2 47 NRC 57 (3/19/98)	U.S. Enrichment Corp. (Paducah, KY)	Request for Amendment to Certificate of Compliance for Gas Diffusion Plant -- Part 76	Director's Decision 62 Fed. Reg. 65,823 (12/17/98) (unpublished in NRC Issuances).	USEC petitions for review and reversal of Director's Decision denying its application to amend its Certificate of Compliance.	Commission rejects petition for review and allows Director's Decision to become final.
3)CLI-98-3 47 NRC 77 (4/3/98)	Louisiana Energy Services (Claiborne Enrichment Center)	Materials License -- Part 70	LBP-96-25, 44 NRC 331 (1996) (NEPA issues); LBP-97-8, 45 NRC 367 (1997) (environmental justice issues).	Applicant and staff seek review and reversal of Board's dismissal of materials license application.	Commission affirms in part and reverses in part both LBP-96-25 and LBP-97-8, and remands the proceeding to the Board.
4)CLI-98-4 47 NRC 111 (4/16/98)	Hydro Resources, Inc.	Material License -- Part 40	LBP-98-5, 47 NRC 119 (4/2/98) denying stay.	Petitioner seeks a temporary stay of LBP-98-5 and a full stay of license's effectiveness.	Commission grants a temporary stay.
5)CLI-98-5 47 NRC 113 (4/30/98)	Louisiana Energy Services (Claiborne Enrichment Center)	Materials License -- Part 70	None.	Applicant seeks permission to withdraw application for licence.	Commission grants permission to withdraw application; also dismisses all pending petitions for review and vacates LBP-97-3 and LBP-97-22.
6)CLI-98-6 47 NRC 116 (4/30/98)	International Uranium (White Mesa)	Materials License Amendment -	LBP-97-12, 46 NRC 1 (7/23/97); LBP-97-14, 46 NRC 55 (9/4/97).	Petitioners appeal two orders finding lack of standing.	Commission denies the appeal.

	Uranium Mill) (MLA)	- Part 40			
7) CLI-98-7 47 NRC 307 (6/5/98)	Private Fuel Storage (ISFSI)	ISFSI License --Part 72	Notice of Establishment of a Second Board (3/26/98); LBP-98-8, 47 NRC 259 (4/23/98) denying reconsideration of 3/26 notice.	Applicant seeks reversal of the Chief Judge's decision to establish a second Board.	Commission reverses the Chief Judge regarding the establishment of a second Board.
8) CLI-98-8 47 NRC 314, (6/5/98)	Hydro Resources, Inc.	Materials License -- Part 40	LBP-98-5, 47 NRC 119 (4/2/98) denying stay.	Petitioner seeks a full stay of license's effectiveness.	Commission lifts its temporary stay (which the Commission had granted in CLI-98-4) and denies the requested full stay.
9) CLI-98-9 47 NRC 326 (6/5/98)	Hydro Resources, Inc.	Materials License -- Part 40.	LBP-98-11, 47 NRC 302 (5/26/98).	Presiding Officer refers to the Commission his decision not to recuse himself.	Commission affirms LBP-98-11.
10) CLI-98-10 47 NRC 333 (6/5/98)	Transnuclear, Inc. (Export of 93.3% Enriched Uranium)	Export License -- Part 110	N/A	Petitioner seeks intervention rights and a hearing to challenge two applications to export highly-enriched uranium to Canada.	Commission denies the petition to intervene and the request for hearing.
11) CLI-98-11 48 NRC 1 (7/17/98)	Quivira Mining Co.	Materials License -- Part 40	LBP-97-20, 46 NRC 257 (11/4/97).	Envirocare seeks reversal of the Board's ruling denying it standing.	Commission affirms LBP-97-20.
12) CLI-98-12 48 NRC 18 (7/28/98)	Statement of Policy on Conduct of Adjudicatory Proceedings	Procedural Rules --Part 2	N/A	N/A	Commission issues Policy Statement affecting all adjudicatory proceedings conducted under Part 2.
13) CLI-98-13 48 NRC 26 (7/29/98)	Private Fuel Storage (ISFSI)	ISFSI License -- Part 72	LBP-98-7, 47 NRC 142 (4/22/98).	Applicant seeks reversal of the grant of one intervention petition, and unsuccessful petitioner seeks reversal of the denial of its intervention petition.	Commission affirms LBP-98-7 on both matters.
14) CLI-98-14 48 NRC 39 (8/19/98)	Baltimore Gas & Elec. Co. (Calvert Cliffs)	Reactor License Renewal -- Part 50	N/A	N/A	Commission refers the case to the Board and offers both guidance and a suggested schedule for the proceeding.
15) CLI-98-15 48 NRC 45, (8/26/98)	Baltimore Gas & Elec. Co. (Calvert Cliffs)	Reactor License Renewal -- Part 50	CLI-98-14, 48 NRC 39 (8/19/98)	Petitioner seeks reconsideration of CLI-98-14.	Commission denies motion for reconsideration.
16) CLI-98-16 48 NRC 119, (9/15/98)	Hydro Resources, Inc.	Materials License -- Part 40	LBP-98-9, 47 NRC 261 (5/13/98)	N/A	Commission exercises inherent supervisory authority to reverse sua sponte the Board's admission of an area of concern.
17) CLI-98-17 48 NRC 123 (9/15/98)	Duke Energy Corp. (Oconee)	Reactor License Renewal -- Part 50	N/A	N/A	Commission refers the case to the Board and offers both guidance and a suggested schedule for the proceeding.

18) CLI-98-18 48 NRC129 (9/17/98)	North Atlantic Energy Service Corp. (Seabrook) (LA)	Reactor License Amendment - Part 50	LBP-98-23, 48 NRC 157 (9/3/98).	N/A	Commission exercises its inherent supervisory authority to take review of an issue.
19) CLI-98-19 48 NRC 132 (9/17/98)	Baltimore Gas & Elec. Co. (Calvert Cliffs)	Reactor License Renewal -- Part 50	unpublished 9/11/98 Board order.	Petitioner appeals the Board's denial of an extension of time to file contentions.	Commission grants extension of time.
20) CLI-98-20 48 NRC 183 (10/23/98)	Northeast Nuclear Energy Co. (Millstone) (LA-2)	Reactor License Amendment - Part 50	LBP-98-22, 48 NRC 149 (9/2/98).	Petitioner appeals Board's decision denying standing.	Commission summarily affirms LBP-98-22.
21) CLI-98-21 48 NRC 185 (10/23/98)	Yankee Atomic Elec. Co. (Yankee Rowe)	Reactor License Amendment - Part 50 (License Termination Plan)	LBP-98-12, 47 NRC 343 (6/12/98).	Three petitioners appeal the Board's decision denying standing	Commission affirms denial of one petitioner's standing but reverses denials of the remaining two petitioners' standing; remands the case to the Board for further proceedings.
22) CLI-98-22 48 NRC 215 (10/23/98)	Hydro Resources, Inc.	Materials License -- Part 40	unpublished 9/22/98 and 10/13/98 Board orders.	Intervenors challenge Board's bifurcation of the proceeding.	Commission denies a petition for review of the Board's two orders.
23) CLI-98-23 48 NRC ____ (11/24/98)	International Uranium (USA) Corp. (MLA-4)	Materials License Amendment - Part 40	unpublished Board order (8/19/98).	Petitioner challenges the Board's decision that petitioner lacks standing.	Commission affirms the Board's 8/19 order.
24) CLI-98-24 48 NRC ____ (11/24/98)	North Atlantic Energy Service Corp. (Seabrook) (LA and LA-2)	Reactor License Amendment - Part 50	N/A	Licensee requests permission to withdraw license amendment applications.	Commission grants permission to withdraw applications.
25) CLI-98-25 48 NRC ____ (12/23/98)	Baltimore Gas & Elec. Co. (Calvert Cliffs)	Reactor License Renewal -- Part 50	LBP-98-26, 48 NRC 232 (10/16/98).	Licensee appeals the Board's decision to reject contentions for both untimeliness and failure to satisfy the Commission's late-filed standards.	Commission denies the appeal and affirms LBP-98-26.

CHART 2

1) LBP-98-1
47 NRC 1
(1/12/98)

FINAL LICENSING BOARD DECISIONS, ⁽⁴⁾ JANUARY - DECEMBER 1998						
Decision	Case	Referred to	Type of	Nature of	Appeal Taken	Commission Action

Number/Cite/ Date		Board	Proceeding	Decision		
21 st Century Technologies, Inc.	6/19/97	Enforcement Action (civil monetary penalty and immediately effective confirmatory order)	Approved settlement and dismissed proceeding.	No	Commission expressly declined to take sua sponte review of LBP-98-1, but did issue CLI-98-1, 47 NRC 13 (2/19/98) approving a joint motion to terminate.	
2)LBP-98-4, 47 NRC 17 (2/9/98)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Denied one intervention petition.	No	No review (no date)
3)LBP-98-6 47 NRC 140 (4/20/98)	Power Inspection, Inc.	3/12/98	Enforcement Action (civil monetary penalty)	Dismissed proceeding.	No	No review (7/1/98)
4)LBP-98-7 47 NRC 142 (4/22/98)	Private Fuel Storage	9/10/97	ISFSI License -- Part 72	Denied certain intervention petitions.	Yes	Commission affirmed LBP-98-7. CLI-98-13, 48 NRC 26 (7/29/98).
5)LBP-98-9 47 NRC 261 (5/13/98)	Hydro Resources, Inc.	12/14/94	Materials License -- Part 40	Denied certain intervention petitions.	No	Commission exercised inherent supervisory authority to reverse sua sponte the Board's admission of an area of concern. CLI-98-16, 48 NRC 119 (9/15/98).
6)LBP-98-12 47 NRC 343 (6/12/98)	Yankee Atomic Elec. Co.	3/6/98	Reactor license amendment -- Part 50	Denied petitions for hearing and intervention due to lack of standing.	Yes	Commission reversed as to two petitions, affirmed as to a third petition, and remanded to the Board for further proceedings. CLI-98-21, 48 NRC 185 (10/23/98).
7)Unnumbered and unpublished decision (7/6/98)	NDT Services, Inc.	4/28/98	Enforcement Action (immediate suspension of license) - - Subpart G	Licensee defaulted. Board dismissed case for licensee's failure to respond to 6/16/98 order requiring new answer and new stay request.	No	No review (8/17/98)
8)LBP-98-15 48 NRC 57 (8/5/98)	John Boschuk, Jr.	5/15/98	Enforcement Action (prohibiting involvement in NRC-licensed activities)	Approved settlement and dismissed proceeding.	No	No review (9/21/98)
9)LBP-98-16 48 NRC 63 (8/5/98)	Lourdes T. Boschuk	5/15/98	Enforcement Action (prohibiting involvement in NRC-licensed activities)	Approved settlement and dismissed proceeding.	No	No review (9/21/98)

10)LBP-98- 18 48 NRC 78 (8/13/98)	Atlas Corporation (Moab, Utah Facility)	7/21/98	Materials License -- Part 40	Denied sole petition to intervene.	No	No review (no date)
11)Unnumbered and unpublished Board decision (8/17/98)	International Uranium (USA) Corp. (MLA-4)	7/29/98	Materials License Amendment -- Part 40	Denied standing to petitioner Envirocare.	Yes	Commission affirmed unpublished Board decision. CLI-98-23, 48 NRC ____ (11/24/98).
12)LBP-98-22 48 NRC 149 (9/2/98)	Northeast Nuclear Energy Co. (Millstone) (LA-2)	5/28/98	Reactor License Amendment -- Part 50	Denied petition to intervene and terminated proceeding.	Yes	Commission summarily affirmed LBP-98-22. CLI-98-20, 48 NRC 183 (10/23/98).
13)LBP-98- 24 48 NRC 219 (10/5/98)	Commonwealth Edison Co. (Zion) (LA-2)	8/26/98	Reactor License Amendment -- Part 50	Dismissed petition for intervention and terminated the proceeding.	No	No review (11/16/98)
14)LBP-98-25 48 NRC 226 (10/8/98)	Magdy Elamir	10/9/97	Enforcement Action (prohibiting involvement in NRC-licensed activities)	Approved settlement and dismissed proceeding.	No	No review (11/17/98)
15)LBP-98-26 48 NRC 232 (10/16/98)	Baltimore Gas & Elec. Co. (Calvert Cliffs)	8/19/98	Reactor License Renewal -- Part 50	Denied intervention petition and terminated proceeding.	Yes	Commission affirmed LBP-98-26. CLI-98-25, 48 NRC ____ (12/23/98).
16)LBP-98-27 48 NRC (11/5/98)	Commonwealth Edison Co. (Zion) (LA)	6/10/98	Reactor License Amendment --Part 50	Dismissed petition for intervention and terminated the proceeding.	Yes	Appeal pending.
17)LBP-98-28 48 NRC ____ (11/12/98)	Northeast Nuclear Energy Co. (Millstone) (LA)	4/28/98	Reactor License Amendment --Part 50	Rejected contentions as inadmissible and terminated proceeding.	No	No review (12/29/98)
18)LBP-98-30 48 NRC ____ (12/11/98)	Randall L. Herring	6/15/98	Application for Senior Reactor Operator (SRO) License -- Part 55	Rejected candidate's challenge to staff's rejection of SRO license application.	No	Sua sponte period expires 1/20/98
19)LBP-98-31 48 NRC ____ (12/16/98)	Conam Inspection, Inc.	12/10/97	Enforcement Action (Order imposing civil monetary penalty)	Accepted settlement and terminated proceeding.	No	Sua sponte period expires 1/25/98
20)LBP-98-33 48 NRC ____ (12/29/98)	Duke Energy Co. (Oconee)	9/15/98	Reactor License Renewal	Denied petition to intervene.	Appeal due 1/14/99	—

Commission affirms LBP-98-26. CLI-98-25, 48 NRC ____ (12/23/98).

NEW PROCEEDINGS REFERRED TO THE LICENSING BOARD PANEL, JANUARY - DECEMBER 1998				
Date of Referral	Case Name	Type of Proceeding	Status	Commission Action
1) 3/6/98	Yankee Atomic Elec. Co. (Yankee Nuclear Power Station)	Reactor License Amendment -- Subpart G	Pending before the Board. LBP-98-12, 47 NRC 343 (6/12/98) denied petitions for hearing and intervention due to lack of standing. Two petitioners successfully appealed LBP-98-12 to the Commission.	Commission reverses as to two petitions, affirms as to a third petition, and remands to the Board for further proceedings. CLI-98-21, 48 NRC 185 (10/23/98).
2) 3/12/98	Power Inspection, Inc.	Enforcement Action (civil monetary penalty) -- Subpart G	Case closed. LBP-98-6, 47 NRC 140 (4/20/98) approved settlement and terminated proceeding. No appeal.	No sua sponte review (7/1/98).
3) 4/28/98	Northeast Nuclear Energy Co. (Millstone) (LA)	Reactor License Amendment -- Subpart G.	Case closed. LBP-98-28, 48 NRC ____ (11/12/98) rejected contentions as inadmissible and terminated proceeding. No appeal.	No sua sponte review (12/29/98).
4) 4/28/98	NDT Services, Inc.	Enforcement Action (immediate suspension of license) -- Subpart G	Case closed. Licensee defaulted. In an order dated 7/6/98, the Board dismissed case for licensee's failure to respond to 6/16/98 order requiring new answer and new stay request.	No sua sponte review (8/17/98).
5) 5/15/98	John Boschuk, Jr.	Enforcement Action (prohibiting involvement in NRC-licensed activities) -- Subpart G	Case closed. LBP-98-15, 48 NRC 57 (8/5/98) approved settlement and dismissed proceeding. No appeal.	No sua sponte review (9/21/98).
6) 5/15/98	Lourdes T. Boschuk	Enforcement Action (prohibiting involvement in NRC-licensed activities) -- Subpart G	Case closed. LBP-98-16, 48 NRC 63 (8/5/98) approved settlement and dismissed proceeding. No appeal.	No sua sponte review (9/21/98).
7) 5/28/98	Northeast Nuclear Energy Co. (Millstone) (LA-2)	Reactor License Amendment -- Subpart G	Case closed. LBP-98-22, 48 NRC 149 (9/2/98) denied petition to intervene and terminated proceeding.	Commission summarily affirms LBP-98-22. CLI-98-20, 48 NRC 183 (10/23/98). Case closed.

8) 6/10/98	Commonwealth Edison Co. (Zion) (LA)	Reactor License Amendment -- Subpart G	LBP-98-27, 48 NRC ____ (11/5/98) dismissed the petition for intervention and terminated the proceeding.	Appeal pending.
9) 6/15/98	North Atlantic Energy Service Corp. (Seabrook) (LA)	Reactor License Amendment -- Subpart G	Case closed. In LBP-98-23, 48 NRC 157 (9/3/98), the Board granted a petition to intervene and request for hearing, accepted one contention, postponed consideration of three other contentions, and rejected the intervention petition of a second petitioner. Licensee later moved for withdrawal of this license amendment application.	In CLI-98-18, 48 NRC 129 (9/17/98), the Commission exercises its inherent supervisory authority to take review of one issue. In CLI-98-24, 48 NRC ____ (11/24/98), the Commission grants licensee's motion to withdraw this license amendment application.
10) 6/15/98	Randall L. Herring	Senior Reactor Operator License Application -- Subpart L	Case closed. LBP-98-30, 48 NRC ____ (12/11/98) declined to overturn the staff's rejection of SRO license application.	Sua sponte period expires 1/20/99.
11) 7/21/98	Atlas Corp.	Materials License - - Subpart L	Case closed. LBP-98-18, 48 NRC 78 (8/13/98) denied the sole petition for intervention.	No sua sponte review. (no date).
12) 7/29/98	International Uranium (USA) Corp. (MLA-4)	Materials License Amendment -- Subpart L	Unpublished Board order (8/19/98) dismissed Envirocare's petition to intervene. LBP-98-21, 48 NRC 137 (9/1/98) granted State of Utah's petition to intervene. Hearing pending.	CLI-98-23, 48 NRC ____ (11/24/98) affirms Board's unpublished order dismissing Envirocare.
13) 8/19/98	Baltimore Gas & Elec. Co. (Calvert Cliffs)	Reactor License Renewal Application -- Subpart G	Case closed. LBP-98-26, 48 NRC 232 (10/16/98) denied intervention petition and terminated proceeding.	
14) 8/26/98	Commonwealth Edison Co. (Zion) (LA-2)	Reactor License Amendment -- Subpart G	Case closed. LBP-98-24, 48 NRC 219 (10/5/98) dismissed the sole intervention petition and terminated the proceeding.	No sua sponte review (11/16/98).
15) 9/4/98	North Atlantic Energy Service Corp. (Seabrook) (LA-2)	Reactor License Amendment -- Subpart G	Case closed. The licensee moved to withdraw this license amendment application.	In CLI-98-24, the Commission grants licensee's motion to withdraw this license amendment application. CLI-98-24, 48 NRC ____ (11/24/98).
16) 9/15/98	Duke Energy Co. (Oconee)	Reactor License Renewal Application -- Subpart G	Appeal period expires 1/13/99. Sua sponte period expires 2/8/99. LBP-98-33, 48 NRC ____ (12/29/98) denied intervention to the sole petitioner.	The Commission referred the case to the Board and offers both guidance and a suggested schedule for the proceeding. CLI-98-17, 48 NRC 123 (9/15/98). The Commission is currently

JULY - DEC. 1992	6	7	2	3	0	0	1	1	0	5	2	0
JAN. - JUNE 1993	2	5	2	2	0	0	0	0	1	4	0	1
JULY - DEC. 1993	6	6	4	1	0	0	0	1	0	6	0	0
JAN. - JUNE 1994	5	12	7	0	0	0	3	1	1	7	4	1
JULY - DEC. 1994	9	8	4	1	0	0	3	0	0	5	3	0
JAN. - JUNE 1995	5	3	2	0	0	0	1	0	0	2	1	0
JULY - DEC. 1995	8	1	0	1	0	0	0	0	0	1	0	0
JAN. - JUNE 1996	10	6	3	1	0	1	0	1	0	5	1	0
JULY - JUNE 1996	9	3	1	0	0	1	1	0	0	2	1	0
JAN. - JUNE 1997	11	7	1	1	0	1	4	0	0	2	5	0
JULY-DEC 1997	12	6	4	0	0	0	2	0	0	5	1	0
1998	20	24	5	7	2	3	7	0	0	14	10	0

KEY:

- **Enforcement** proceedings include those initiated by orders imposing a civil penalty, orders to modify, suspend, or revoke a license, or orders to individuals.
- **Reactor licensing** proceedings concern applications for a construction permit or operating license, amendments to permits or operating licenses, or applications to transfer a license.
- **Reactor renewal** proceedings involve applications for 20-year renewals of power reactor operating licenses.
- **Reactor Operator** proceedings involve challenges to the staff's rejection of either reactor operator or senior reactor operator license applications.
- **Materials licensing** proceedings involve applications to grant an initial license, or to amend or renew a license for the possession and use of radioactive material in various applications regulated by the NRC.
- **Decommissioning** proceedings involve review and approval of decommissioning plans or related amendments for reactor or materials facilities.
- **Other** proceedings involve NRC claims made under the Program Fraud Civil Remedies Act.
- Proceedings under **Subpart G** and **Part 13** are conducted according to formal, trial-type procedures. **Subpart L** proceedings are

COMMISSION DECISIONS ON ADJUDICATORY MATTERS -- CY-1998

JULY - DEC. '93

PERIOD	REQUESTS FOR RELIEF or SUA SPONTE MATTERS DECIDED	BASIS FOR COMMISSION JURISDICTION					SUBSTANTIVE TYPES OF CASES						
		APPEAL/PETITION FOR REVIEW ON THE MERITS	INTERLOCUTORY APPEAL, AS OF RIGHT (2.714a)	INTERLOCUTORY APPEAL, DISCRETIONARY	ORIGINAL JURISDICTION	SUA SPONTE ACTION	ENFORCEMENT ACTION	REACTOR LICENSING MATTERS	REACTOR LICENSE RENEWAL	REACTOR OPERATOR LICENSE	MATERIALS LICENSE	DECOMMISSIONING	OTHER
JULY - DEC. '91	6	0	2	0	2	2	0	5	0	0	0	1	0
JAN. - JUNE '92	15	2	5	1	5	2	2	5	0	0	1	7	0
JULY - DEC. '92	7	1	1	1	3	1	1	2	0	0	3	1	0
JAN. - JUNE '93	14	1	3	1	8	1	2	6	0	0	2	4	0
JULY - DEC. '93	12	2	2	3	3	4	7	0	0	0	0	1	0
JAN. - JUNE '94	9	2	0	2	5	0	2	2	0	0	1	2	2
JULY - DEC. '94	7	0	4	1	1	1	4	2	0	0	0	1	0
JAN. - JUNE '95	9	3	0	3	3	0	2	2	0	0	3	1	1
JULY - DEC. '95	8	2	1	2	2	1	1	5	0	0	2	0	0
JAN. - JUNE '96	7	3	1	0	2	1	1	1	0	0	1	4	0

JUNE '96													
JULY - DEC. '96	6	6	0	0	0	0	0	1	0	1	1	1	2
JAN - JUNE '97	8	6	1	0	1	0	1	0	0	1	5	0	1
JULY - DEC. '97	7	5	1	0	1	0	2	0	0	1	4	0	0
1998	25	2	7	4	10	2	1	4	5	0	10	0	5

KEY:

- **Original jurisdiction** is exercised by the Commission over, e.g., export licensing matters, motions to quash investigatory subpoenas, reconsideration and some stay motions, requests for hearing in some circumstances, and motions to reopen closed adjudicatory proceedings.
- Commission **sua sponte action** is taken to provide additional guidance to the staff or the ASLBP on matters of policy or procedure in the exercise of the Commission's inherent supervisory authority over adjudications and other agency business.
- **Enforcement** proceedings include those initiated by orders imposing a civil penalty, orders to modify, suspend, or revoke a license, or orders to individuals. Decisions on motions to quash investigatory subpoenas are also included.
- **Reactor licensing** proceedings concern applications for a construction permit or operating license, amendments to permits or operating licenses, or applications to transfer a license.
- **Reactor renewal** proceedings involve applications for 20-year renewals of power reactor operating licenses.
- **Reactor Operator** proceedings involve challenges to the staff's rejection of either reactor operator or senior reactor operator license applications.
- **Materials licensing** proceedings involve applications to grant an initial license or to amend or renew a license for the possession and use of radioactive material in various applications regulated by the NRC.
- **Decommissioning** proceedings involve review and approval of decommissioning plans or related amendments for reactor or materials facilities.
- **Other matters** include requests for hearing or other relief in matters involving export licensing (Part 110) or the U.S. Enrichment Corp. They also include the Commission's Policy Statement on Adjudicatory Proceedings.

1. From last year's group of six charts, we are dropping what used to be Chart 4, entitled "NRC Proceedings Referred to the ASLBP, July 1991 - [present]." We do not intend to update it in the future unless the Commission directs otherwise. As its title indicated, the old Chart 4 offered an historical listing (and description) of all adjudicatory cases since OCAA's inception in July of 1991. As such, its historical focus was different from that of an annual report. While historical information can be useful, the yearly revision of old Chart 4 took considerable OCAA resources each year (several days of attorney effort), and the chart itself was becoming increasingly (and, in our view, unduly) lengthy -- it comprised more than a third of last year's Annual Report. OCAA currently lacks the resources to maintain the old Chart 4.

2. Although the Commission's recent decommissioning rulemaking removes decommissioning itself from the adjudicatory process, the process of decommissioning nonetheless will likely "spin off" adjudications. E.g., Yankee Atomic Elec. Co., LBP-98-12, 47 NRC 343, aff'd in part and rev'd in part, CLI-98-21, 48 NRC 85 (1998).

3. A series of license transfer applications seems likely. For example, Entergy Corp. agreed in November to buy Boston Edison's Pilgrim nuclear power plant -- a move that already is drawing opposition from some in the local area. Entergy also announced in mid-December that there is a "reasonable chance" it will close a deal by the end of the year to acquire another U.S. nuclear power plant. Illinova has been talking with both Entergy and Peco Energy as potential buyers for the Clinton nuclear power plant in Illinois. And Alliant Utilities and three other Midwest utilities announced in late November that they are exploring the advantages of forming a single organization to service or possibly operate seven nuclear power plants in the

region. One challenge to a license transfer, involving the Seabrook plant, is already in-house.

4. Includes all decision or orders deciding the merits of a case, terminating a proceeding, or denying party status to a person.