

ADJUDICATORY ISSUE INFORMATION

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SECY-04-0011

FOR: The Commissioners

FROM: John F. Cordes, Director /RA/
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 from January through December 2003.

1. **Introduction:**

At the NRC, only the Commission is authorized to review the decisions of Presiding Officers and the Atomic Safety and Licensing Boards. The Office of Commission Appellate Adjudication (OCAA) assists the Commission in its adjudicatory role. The Commission may exercise its appellate authority to review a Presiding Officer or Licensing Board decision either when a dissatisfied party to an NRC adjudicatory proceeding seeks review, or when the Commission, on its own initiative, determines that review is warranted. The Commission also has authority to offer guidance to the Licensing Board on significant novel questions raised in a proceeding, or to resolve preliminary questions arising before a Licensing Board has been established. In addition, the Commission resolves those legal matters that appropriately should be resolved in the first instance by the Commission. For example, the Commission itself directly handles license transfer adjudications.

As part of OCAA's monitoring role over adjudicatory matters I am providing the Commission this report on agency adjudications for calendar year 2003. This report updates information contained in the last report (SECY-03-0015, Jan. 31, 2003), and is based upon the information in the attached charts. For the calendar year 2003, the attached charts list the Commission decisions (CLIs) issued, the final Licensing Board or Presiding Officer decisions issued, the new proceedings that were established and their current status, and a numerical breakdown of the types of proceedings that were the subject of Commission, Licensing Board, or Presiding Officer decisions during 2003.

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2. General Observations:

In terms of adjudications, the year 2003 was noteworthy in several ways. One, this was an especially busy year for the Atomic Safety and Licensing Board Panel. There were 24 published final decisions issued by Presiding Officers or Boards -- significantly more than the number of decisions issued in each of the past three years (*i.e.*, 13, 15, and 13, respectively). Indeed, this year's total of 24 Licensing Board or Presiding Officer decisions does not even include three major, very lengthy financial qualifications-related decisions issued in the Private Fuel Storage (PFS) case, which were not published due to proprietary information, and also were not ripe for Commission review in 2003 because of a pending motion for reconsideration and clarification before the Licensing Board.¹

The past year also was an unusual year for Commission decisions. Unlikely previous years, a majority of the CLIs issued in 2003 -- 10 out of the 18 issued -- did not involve the review of a Presiding Officer or Licensing Board decision. Instead, these 10 decisions can be sorted into four categories: (1) decisions on questions certified by the Board; (2) license transfer decisions; (3) decisions responding to requests made directly to the Commission (*e.g.*, requests to suspend a proceeding pending consideration of rulemaking petition, or to enjoin construction of a facility pending National Environmental Policy Act (NEPA) review); or (4) decisions initiated by the Commission itself in an effort to expedite long-pending proceedings (Catawba/McGuire and Private Fuel Storage).

OCAA had expected 2003 to be a busier year for adjudications at the Commission level, but instead there were fewer CLIs issued in 2003 than in the past few years -- 18 CLIs in 2003, compared to 29 issued in 2002 and 28 in 2001. There does not appear to be any clear reason behind the lower number of CLIs. In the highly technical *PFS* proceeding, the Licensing Board was immersed in resolving complex contentions. As a result, several issues that OCAA earlier had expected might come before the Commission in 2003 have yet to be resolved at the Board level, or only recently became appealable; this likely played a role in the lower number of Commission decisions. In any event, the lower number appears more of an aberration than a trend, and OCAA fully expects that in 2004 the Commission will have a busy adjudicatory docket.

3. Commission Adjudicatory Decisions in 2003

Commission decisions in 2003 spanned a variety of proceedings. Independent Spent Fuel Storage Installation (ISFSI) cases continue to make up a relatively large portion of Commission decisions. There were 6 ISFSI-related decisions, 3 in PFS and 3 in Diablo Canyon. The year also included 3 license transfer decisions, 3 decisions in materials licensing cases, 2 reactor license renewal decisions, 2 reactor license amendment decisions, 1 decision in an enforcement case, and 1 involving a reactor license termination plan.

¹ Early this month (01/05/04), the Licensing Board ruled on the Private Fuel Storage motion for reconsideration/clarification.

There were no striking changes in the types of proceedings that resulted in Commission adjudication. While there were fewer materials licensing decisions than the Commission typically issues (3 last year compared to 10 the year before), materials licensing proceedings certainly are not decreasing. Since 1999, materials cases have made up the largest single category of new cases referred to the Licensing Board panel. The year 2003 was no exception, with 7 out of 10 of the new proceedings involving materials licensing actions. The other 3 new cases consist of one materials decommissioning, one enforcement, and one reactor license amendment (MOX lead test assemblies). We continue to see relatively few decommissioning cases, and many fewer license transfer proceedings than three or four years ago.

Commission decisions continue to interpret and clarify NRC regulations, the AEA, and NEPA. Significant Commission decisions in 2003 included the following:

- **CLI-03-1, Pacific Gas & Elec. Co. (Diablo Canyon)(ISFSI):**

In this ISFSI proceeding, the Commission reaffirmed principles outlined in four previous terrorism-related decisions in 2002, holding that NEPA does not require a terrorism review.
- **CLI-03-2, Pacific Gas & Elec. Co. (Diablo Canyon)(license transfer):**

In denying requests for hearing in this license transfer proceeding, the Commission ruled on the scope of the NRC's antitrust authority, stating that legal and policy considerations preclude the transfer to a new generating company of antitrust license conditions imposed decades ago.
- **CLI-03-03, Nuclear Fuel Services, Inc. (Erwin, TN)(materials license am.):**

The Commission responded to a request that the licensee be ordered to stop all construction of a facility until the NRC staff completes its environmental review. The Commission emphasized that our regulations discourage construction prior to the NEPA review by raising the possibility that a license ultimately may be denied should an applicant have moved forward precipitously despite open environmental issues. The Commission nonetheless drew a distinction between those licensee actions that we can discourage and those we have the clear authority to prevent outright.
- **CLI-03-05, Private Fuel Storage (ISFSI):**

The Commission declined to immediately review the Licensing Board's air crash probability finding, given that the Board would hold a hearing on air crash consequences, the result of which could render the probability finding insignificant.

- **CLI-03-08, Private Fuel Storage (ISFSI):**

The Commission rejected the State of Utah's petition for review of a Licensing Board decision ruling against the state's seismic-related challenges. The Commission noted that Utah nowhere challenged ultimate bottom-line safety findings. The Commission also found no clear error warranting review in the Board's interpretation of the 5-rem accident dose limit in Part 72, or the Board's approval of the staff decision to exempt PFS from the regulatory requirement of using a deterministic standard in establishing a design basis earthquake. The Commission further clarified that PFS's commitments in its Safety Analysis Report are already part of the licensing basis and therefore would require a license amendment to change.

- **CLI-03-15, Sequoyah Fuels Corp. (Gore, Oklahoma)(MLA-5):**

The Commission held that front-end waste at SFC's site may be considered byproduct material under section 11e.(2) of the AEA.

- **CLI-03-12, Pacific Gas and Elec. Co. (Diablo Canyon)(ISFSI):**

In denying petitions for review, the Commission clarified that while PG&E is in bankruptcy, it is still a rate-regulated utility and entitled to a presumption of financial qualification.

- **CLI-03-7, Connecticut Yankee Atomic Power Co. (Haddam Neck)(LTP):**

The Commission clarified that the appropriate way to request a new regulatory safety standard is to petition for rulemaking, unless special circumstances exist at the site at issue warranting a request for a rule waiver in the particular proceeding.

- **CLI-03-17, Duke Energy Corp. (McGuire/Catawba)(license renewal):**

In denying a petition for review, the Commission stressed that under NEPA mitigation need only be discussed in sufficient detail to ensure that the environmental consequences of the proposed action have been fairly evaluated, and that NEPA does not require a fully developed mitigation plan.

Notably, the Commission in 2003 took effective action to expedite long-pending proceedings:

- **CLI-03-11, Duke Energy Corp. (McGuire/Catawba)(license renewal):**

The Commission directed the Licensing Board to explain why the proceeding was delayed, and to inform the Commission when it

expected to issue a decision on remaining contentions. Within weeks of the Commission's order, the Board resolved the remaining issues and terminated the proceeding.

- **CLI-03-16, Private Fuel Storage (ISFSI):**

The Commission directed all parties to file petitions for review of any interlocutory Licensing Board orders that they wished to challenge. The parties' petitions for review have been filed and are now before the Commission. In addition, the Commission in an earlier decision, CLI-03-05, directed the Board to resolve the air crash consequences issue as promptly as possible.

4. Speed in Resolving Cases:

Both by taking sua sponte action to expedite proceedings (in *Catawba/McGuire and PFS*), and by resolving certified questions and other issues brought before the Commission early on in proceedings, the Commission's actions in 2003 helped to move cases forward. OCAA remains committed to assisting the Commission in monitoring the timeliness of proceedings, and looking for ways to avoid or obviate delay.

As to OCAA's work, we seek to review, research, and resolve the issues before us as quickly as possible, with a goal of providing the Commission with a draft decision within 60 days of the final appellate document. That 60-day goal may not be achievable in some very complex proceedings with an extensive case record, however. In 2003, OCAA submitted draft decisions to the Commission well before our 60-day goal in all proceedings except the *Diablo Canyon* license transfer proceeding. In most proceedings, our turnaround time was under 30 days. Complex proceedings averaged under 45 days for OCAA to complete its review and draft a Memorandum and Order.

5. Future Agency and Commission Caseload:

OCAA expects 2004 to be a busy year for adjudications, with several major proceedings, including *PFS*, *Louisiana Energy Services (LES)*, *Hydro Resources*, and *Nuclear Fuel Services*, as well as proceedings on the first NRC early site permit applications.

Early Site Permit Applications: Requests for hearing already have been filed regarding the *North Anna* and *Clinton* early site permit applications. In a related matter, Dominion has filed a motion before the Commission to have the new Part 2 adjudicatory rules apply in the *North Anna* early site permit proceeding. Another early site permit application that may be challenged is Entergy's application for *Grand Gulf*. In a recent "Nuclear News Flashes" report, the Nuclear Information & Resource Service (NIRS) and Public Citizen indicated an intent to challenge the *Grand Gulf* application.

License Renewal: We can expect new license renewal proceedings this year. Dominion recently submitted a license renewal application for Millstone Units 2 and 3. Licensing actions

involving the *Millstone* facility typically are contentious and result in adjudicatory proceedings. Given other recent license renewal applications, (e.g., *Browns Ferry*) and expected applications (*Point Beach*), we may see an increase in the number of license renewal proceedings in 2004.

New Part 2 Regulations: This year will also prove significant as the first year using the new Part 2 procedures for adjudicatory proceedings, which go into effect on February 13, 2004. The novelty of the Part 2 rules is likely, in the short run, to result in Board-certified questions and other requests for Commission guidance. OCAA expects that one or more Commission decisions in 2004 will involve such requests for clarification of the new rules.

The new Part 2 requires petitioners to submit contentions (not simply areas of concern) in materials licensing cases. Significantly, it will require petitioners to include contentions with the original hearing requests, instead of waiting first for a ruling on standing. These requirements likely will make it easier to dispose of insubstantial cases promptly. In many instances, proceedings have dragged on following an initial finding of standing, only to be dismissed for failure to submit an admissible contention. Elimination of the two-phased hearing request will help to weed out ill-prepared petitioners sooner.

In addition to any early site permit or license renewal proceedings, significant proceedings in 2004 are likely to include:

Private Fuel Storage (ISFSI): Currently before the Commission are the parties' petitions for review of interlocutory Board decisions and of partial initial decisions on financial qualifications and decommissioning.

Later this year the Board will hold a hearing and issue a decision on air crash consequences, a major decision that is likely to be the subject of a petition for review. In addition, depending upon the Board's air crash consequence finding, the Board's earlier decision on air crash probability may return before the Commission on a petition for review.

Louisiana Energy Services (LES)(enrichment facility): The last *LES* proceeding culminated in 1998 after LES withdrew its application for a facility in Louisiana, and was among the lengthiest and most contentious hearings at the NRC. On December 15, 2003, LES filed an application for a centrifuge enrichment facility in Lea County, New Mexico. The Office of General Counsel's proposed notice and order, dated January 8, 2004, sets forth an aggressive two-year schedule for a final agency decision on the LES application. That schedule makes several assumptions, however, including a "quality application," reduced time for LES to respond to requests for additional information, and 15 months for the staff to complete its review. In any event, there will be considerable interest in how smoothly and efficiently the LES proceeding is handled.

Under the procedures set forth in the just-issued notice of hearing, several issues would be decided directly by the Commission, including petitioner standing and the admissibility of any Environmental Justice contentions. The Commission therefore may need to become immersed in fact-specific details of the LES case early on.

In addition, the draft notice and order provides that the Commission “will provide early guidance and direction” on any novel and legal policy questions that may arise. The notice directs the Licensing Board to certify such questions promptly to the Commission.

It still remains to be seen if the LES application in fact will be contested. But if we do see a challenge to the application, the Commission will likely see one or more LES-related issues come before it in 2004.

Hydro Resources, Inc. (HRI)(in situ leach uranium mining):

This complex and highly technical proceeding was held in abeyance from late 2000 until summer 2003 pending settlement discussions. Given the collapse of the settlement talks, remaining issues will now proceed to hearing.

The HRI license, issued in 1998, involves four sites. Issues involving the first site -- termed “Section 8 at Church Rock” -- have been resolved except for one: the adequacy of HRI’s restoration action plan. Once the proceeding actively resumed last summer, the Presiding Officer began work on a decision on the restoration action plan. That decision is expected any day now. This will be a “partial initial decision,” subject to a petition for review. Therefore, the Commission may see this *Hydro* issue come before it in early 2004.

The Presiding Officer is expected imminently to issue an order scheduling the rest of the proceeding on the other three mining sites covered by the license. There are approximately 10 major safety or environmental issues involving the last three sites that have yet to be litigated.

Nuclear Fuel Services, Inc.: NFS seeks three related license amendments. The three amendments are associated with NFS’s plans to downblend and convert high-enriched uranium to low-enriched uranium oxides. After the first license amendment application and related hearing requests, the Presiding Officer granted the petitioners’ request that the proceeding be held in abeyance pending the third license amendment application. The NRC staff issued a hearing notice on the third license amendment application last month, and petitions for hearing on the third application are due by February 2, 2004. The proceeding will then resume and cover all three amendment applications. In the meantime, petitioners are seeking a stay of the NRC staff decision to issue the second license amendment.

ATOMIC SAFETY AND LICENSING BOARD PANEL

- Issued 24 decisions.
- Established 10 new proceedings, 2 of which have terminated.

Cases pending before the Licensing Board Panel:

- *Dominion Nuclear* (North Anna)(early site review)(ASLBP not yet designated as of date of this paper).
- *Duke Energy* (Catawba)(MOX LTA amendment requests)

- *CFC Logistics* (Materials/Part 36 irradiator)
- *Fansteel, Inc.* (MLA-3/decommissioning)
- *Hydro Resources, Inc.* (in situ leachate mining)
- *Savannah River MOX Fuel Fabrication* (Duke, Cogema, Stone & Webster)
- *Nuclear Fuel Services* (BLEU Project)(MLA, MLA-2)(MLA-3 yet to be established)
- *Private Fuel Storage, LLC* (ISFSI)
- *Sequoyah Fuels Corp.* (Gore, OK)(MLA-4/onsite disposal cell)
- *U.S. Dept. of the Army* (Jefferson Proving Ground)(MLA-2)

PENDING COMMISSION APPEALS/PETITIONS FOR REVIEW

OCAA is currently working on appeals or petitions for review in the following proceedings:

- *Private Fuel Storage, LLC*: (ISFSI):

Parties have filed their petitions for review of interlocutory Board decisions and appeals of financial qualifications and decommissioning decisions.
- *Tennessee Valley Authority* (enforcement proceeding):

Appeal of Licensing Board decision sustaining monetary civil penalty but reducing monetary amount of penalty.
- *Maine Yankee Atomic Power Co.* (order modifying license)(interim ISFSI-related security measures):

Appeal of denial of Maine's intervention petition.

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.

CHART 1

COMMISSION ADJUDICATORY DECISIONS, JANUARY - DECEMBER 2003					
Decision Number/Cite/Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
1) CLI-03-1 57 NRC 1 (1/23/03)	Pacific Gas and Electric (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	ISFSI License -- Part 72 (adjudicated under Subpart K)	LBP-02-23, 56 NRC 413 (12/02/02)	Petitioners sought admission of particular environmental contentions. In LBP-02-23, the Licensing Board rejected environmental contentions involving sabotage and terrorism claims, but referred its rulings to the Commission.	The Commission accepted the referral of terrorism issues and affirmed LBP-02-23, declining to consider terrorism within the context of NEPA.
2) CLI-03-2 57 NRC 19 (2/14/03)	Pacific Gas and Electric Co. (Diablo Canyon Power Plant, Units 1 and 2)	Reactor License Transfer-- Part 50 (adjudicated under Subpart M)	None.	Petitioners sought intervention in license transfer proceeding.	The Commission found petitioners' technical and financial qualifications issues inadmissible; found that petitioners' antitrust issues lacked substantive merit; denied petitioners' requests for hearing; terminated proceeding; and instructed NRC staff not to include anti-trust conditions if it otherwise approves the PG&E transfer application.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
3) CLI-03-3, 57 NRC 239 (4/29/03)	Nuclear Fuel Services, Inc. (Erwin, Tennessee)	Materials License Amendment -- Part 70 (Subpart L)	None.	Petitioners sought to stop construction by Nuclear Fuels Services, Inc. of any buildings intended for use as part of the Blended Low-Enriched Uranium ("BLEU") project at NFS's Erwin, Tennessee site.	The Commission reviews and denies petitioners' request to enjoin construction of buildings by the licensee.
4) CLI-03-4 57 NRC 273 (05/16/03)	Pacific Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	ISFSI License-- Part 72 (Subpart K)	None.	Intervenor who filed rulemaking petition sought suspension of proceeding pending consideration of rulemaking petition.	The Commission denies request for suspension of proceeding pending consideration of rulemaking petition.
5) CLI-03-5, 57 NRC 279 (05/28/03)	Private Fuel Storage (ISFSI)	ISFSI License -- Part 72 (Subpart G)	LBP-03-4 57 NRC 69 (03/10/03)	Licensee and staff petitioned for review and reversal of Board's finding on air crash probability. Licensing Board referred its decision to Commission.	The Commission declines, for the time being, to review Board's air crash probability finding, given that Board will review air crash consequences.
6) CLI-03-6, 57 NRC 547 (06/13/03)	Sequoyah Fuels Corp. -- MLA-5 (Gore, Oklahoma Site)	Materials License Amendment -- Part 40 (Subpart L)	None.	State of Oklahoma sought to raise 11e.(2) issue in proceeding. Licensing Board certified to the Commission two questions regarding whether the decommissioning waste at the Gore site qualifies as byproduct material within the scope of section 11e(2) of AEA.	The Commission accepted the certified questions, ruled that state may raise the section 11e(2) issue in this proceeding, and set a briefing schedule. The Commission stated that it would itself resolve the 11e(2) issue.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
7) CLI-03-7 58 NRC 1 (07/02/03)	Connecticut Yankee Atomic Power Co. (Haddam Neck Plant)	License Termination Plan -- Part 50 (Subpart G)	None.	Intervenor petitions Commission to consider whether the rule-based decommissioning dose standard ensures that decommissioning activities are not “inimical” to children’s health. Intervenor also requests Commission to direct Board to accept late-filed contention on residual radiation exposure to children (a challenge to decommissioning dose standard).	The Commission denies Intervenor’s petition to reconsider the dose standard set out in section 20.1402, and directs the Board to reject late- filed Amended Contention.
8) CLI-03-8 58 NRC 11 (08/15/03)	Private Fuel Storage, LLC (ISFSI)	ISFSI License -- Part 72 (Subpart G)	LBP-03-8 (05/22/03) 57 NRC 293 (05/22/03)	State petitioned for review (under § 2.786) of Licensing Board Partial Initial Decision that ruled against state’s seismic-related challenges to facility.	The Commission denies the state’s petition for review, noting no “clear error” in the Board’s findings.
9) CLI-03-9 58 NRC 39 (8/28/03)	Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3)	Civil Penalty (Subpart G)	LBP-03-10 57 NRC 553 (06/26/03)	TVA petitioned for review (under § 2.786) of Licensing Board decision which found that TVA had discriminated against a whistleblower employee, but also reduced the civil monetary penalty assessed by the staff.	The Commission grants review of the Board’s decision, and sets a briefing schedule.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
10) CLI-03-10, 58 NRC 127 (09/08/03)	Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	License Transfer -- Part 50 (Subpart M)	None.	San Luis Obispo County and California Public Utilities Commission request a stay of an NRC license transfer order; Licensee requests that adjudicatory proceeding be held in abeyance.	The Commission grants licensee's motion to hold the proceeding (including the stay request) in abeyance, in light of tentative bankruptcy settlement between licensee and CPUC, which if approved would render moot the license transfer controversy.
11) CLI-03-11, 58 NRC 130 (09/08/03)	Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2)	Reactor License Renewal - - Part 50 (Subpart G)	None.	Commission seeks to expedite pending Board decision on admissibility of intervenor contentions.	The Commission directs the Licensing Board to inform the Commission when it expects to issue a decision on the remaining contentions in this proceeding and to explain why the proceeding has been delayed.
12) CLI-03-12, 58 NRC 185 (10/15/03)	Pacific Gas and Elec. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	ISFSI License -- Part 72 (Subpart K)	LBP-02-23 (12/02/02); LBP-03-11 (08/05/03)	Intervenors petitioned for Commission review (under § 2.786) of two Licensing Board decisions which rejected challenges to a PG&E application to construct and operate an ISFSI in San Luis Obispo, CA.	The Commission denies the petition for review.
13) CLI-03-13, 58 NRC 195 (10/23/03)	Fansteel, Inc. (Muskogee, Oklahoma)	License Transfer -- Part 40 (Subpart M)	None.	State of Oklahoma seeks hearing on license transfer application.	The Commission denies request for hearing for failure to raise an admissible issue, and terminates the proceeding.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
14) CLI-03-14, 58 NRC 207 (10/23/03)	Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station)	Reactor License Amendment -- Part 50 (Subpart G)	LBP-03-12, 58 NRC 75 (08/18/03)	Petitioner's appeal seeks reversal of Licensing Board decision that rejected the petitioner's contention and request for hearing on license amendment application.	The Commission affirms the Licensing Board's decision.
15) CLI-03-15, 58 NRC 349 (11/13/03)	Sequoyah Fuels Corp. -- MLA-5 (Gore, Oklahoma Site)	Materials License Amendment -- Part 40 (Subpart L)	None.	Oklahoma seeks a hearing and intervention to challenge license amendment.	The Commission responds to certified question by the Licensing Board on whether waste at licensee's site qualifies as 11e(2) byproduct material under the AEA. The Commission finds that the licensee's front-end waste may be considered byproduct material under section 11e(2) of the AEA.
16) CLI-03-16, 58 NRC 360 (11/13/03)	Private Fuel Storage (Independent Spent Fuel Pool Installation)	ISFSI License -- Part 72 (Subpart G)	None.	Commission seeks to expedite the final stages of this proceeding.	The Commission directs all the parties to file petitions for review of any interlocutory Licensing Board orders that they wish to challenge, and sets a schedule for the petitions for review.
17) CLI-03-17, 58 NRC ____ (12/09/03)	Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2)	Reactor License Renewal - - Part 50 (Subpart G)	LBP-03-17, 58 NRC 221 (10/02/03)	Intervenor petitions for review (under § 2.786) of Licensing Board decision that dismissed intervenor's sole remaining admitted contention (challenging EISs' Severe Accident Mitigation Alternatives).	The Commission denies the intervenor's petition for review.

Decision Number/Cite/ Date	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action
18) CLI-03-18, 58 NRC ____ (12/18/03)	Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station)	Reactor License Amendment -- Part 50 (Subpart G)	CLI-03-14, 58 NRC ____ (10/23/03)	Petitioner seeks reconsideration of Commission decision which affirmed Licensing Board's dismissal of petitioner's contention.	The Commission denies the petition for reconsideration because it merely repeated arguments already considered and rejected by the Commission.

CHART 2

FINAL LICENSING BOARD DECISIONS,¹ JANUARY - DECEMBER 2003						
Decision Number/Cite/ Date	Case	Board Established or PO Designated	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
1) LBP-03-03, 57 NRC 45 (02/14/03)	Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2)	01/06/03	Reactor License Amendment -- Part 50 (Subpart G)	Found that petitioner Connecticut Coalition Against Millstone has standing to intervene but not petitioner the STAR Foundation. Sets schedule for filing contentions.	No.	None.
2) LBP-03-04, 57 NRC69 (03/10/03)	Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)	09/15/97	ISFSI License -- Part 72 (Subpart G)	Partial Initial Decision addressing probability of accidental military aircraft crash into facility and finding accident risk "credible." Board refers its finding to Commission.	Yes.	CLI-03-05, 57 NRC 279 (05/28/03). The Commission declines, for the time being, to review Board's aircraft crash probability finding given that Board will have hearing on aircraft crash consequences (which could render probability finding inconsequential).

¹ Includes all decisions or orders subject to an appeal or petition for review, including decisions on the merits of part or all of a case, decisions terminating a proceeding, and decisions denying party status to a petitioner. Also includes decisions certifying a question to the Commission.

Decision Number/Cite/ Date	Case	Board Established or PO Designated	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
3) LBP-03-06, 57 NRC 251 (04/01/03)	Earthline Technologies (previously RMI Environmental Services) (Ashtabula, Ohio)	03/06/02	Enforcement – Civil Penalty (Subpart G)	Licensing Board notes protective actions implemented by Licensee, grants NRC staff and Licensee request for rescission of civil penalty, and terminates proceeding.	No.	None.
4) LBP-03-07, 57 NRC 287 (05/01/03)	Sequoyah FuelsCorp. -- MLA- 5 (Gore, Oklahoma Site)	12/31/02	Materials License Amendment-- Part 40 (Subpart L)	The Presiding Officer certifies two questions to the Commission regarding whether state may raise AEA section 11e(2) issue in this proceeding, and whether the Presiding Officer or the Commission should resolve the § 11e(2) interpretation.	No.	CLI-03-06, 57 NRC 547 (06/13/03). The Commission accepts certified questions, rules that state of Oklahoma may raise the section 11e(2) issue in this proceeding, and that Commission itself will resolve issue of whether decommissioning waste at site qualifies as § 11e(2) material. In CLI- 03-15 (11/13/03), Commission finds that SFC's front-end waste may be considered byproduct material under § 11e(2).

Decision Number/Cite/ Date	Case	Board Established or PO Designated	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
5) LBP-03-08, 57 NRC 293 (05/22/03)	Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)	09/15/97	ISFSI License -- Part 72 (Subpart G)	Partial Initial Decision on geotechnical/seismic issues, resolving contention in favor of applicant.	Yes.	CLI-03-08, 58 NRC 11 (08/15/03). The Commission denies the state's petition for review, noting no "clear error" in Board's findings.
6) LBP-03-09, 57 NRC546 (05/29/03)	High Mountain Inspection Service (Mills, Wyoming)	11/12/02	Enforcement Proceeding -- Part 30 (Subpart G)	Granted licensee request to terminate proceeding, (following licensee's withdrawal of hearing request)	No.	None.
7) LBP-03-10, 57 NRC 553 (06/26/03)	Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, & 3.	06/26/01	Enforcement Proceeding -- Part 50 (Subpart G)	Licensing Board majority sustains NRC staff Order Imposing Civil Monetary Penalty, but reduces the amounts of the monetary penalty.	Yes.	Commission decision pending. (RF)

Decision Number/Cite/ Date	Case	Board Established or PO Designated	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
8) LBP-02-11, 58 NRC 47 (08/05/03)	Pacific Gas and Elec. Comp. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	05/31/02	ISFSI License Application -- Part 72 (Subpart K)	Licensing Board resolves financial qualifications contention in favor of applicant and terminates the proceeding.	Yes.	CLI-03-12 (10/15/03). The Commission denies petition for review.
9) LBP-03-12, 58 NRC 75 (08/18/03)	Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2)	01/06/03	Reactor License Amendment -- Part 50 (Subpart G)	Licensing Board dismisses sole contention and terminates proceeding.	Yes.	CLI-03-14 (10/23/03). The Commission affirms the Licensing Board's decision.
10) LBP-03-13, 58 NRC 96 (08/20/03)	Fansteel, Inc. (MLA-2) (Muskogee, Oklahoma Facility)	07/09/03	Materials License Amendment -- Part 40 (Subpart L)	Presiding Officer terminated proceeding because (1) he lacked jurisdiction over state's premature hearing request, and (2) the licensee withdrew the particular decommissioning plan on which the state of Oklahoma had requested a hearing.	No.	None.

Decision Number/Cite/ Date	Case	Board Established or PO Designated	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
11) LBP-03-15, 58 NRC 133 (09/22/03)	Advanced Medical Imaging and Nuclear Services (Easton, PA)	04/08/03	Enforcement Proceeding -- Part 30 (Subpart G)	Licensing Board approved settlement agreement and terminated proceeding.	No.	None.
12) LBP-03-16, 58 NRC 136 (09/23/03)	CFC Logistics, Inc.	07/14/03	Materials License Application -- Part 30 (Subpart L)	Presiding Officer denied petitioners' motion for a stay of the effectiveness of license issued by NRC staff.	No.	None.
13) LBP-03-17, 58 NRC 221 (10/02/03)	Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2)	10/05/01	Reactor License Renewal - - Part 50 (Subpart G)	Licensing Board majority dismisses remaining admitted contention.	Yes.	CLI-03-17, 58 NRC ____ (12/09/03) affirms Licensing Board decision.
14) LBP-03-18, 58 NRC 262 (10/15/03)	Connecticut Yankee Atomic Power Co. (Haddam Neck Plant)	01/31/01	Reactor License Amendment (License Termination) -- Part 50 (Subpart G)	Licensing Board majority orders that licensee's license termination plan (LTP) be approved and terminates proceeding.	No.	None.

Decision Number/Cite/ Date	Case	Board Established or PO Designated	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
15) LBP-03-19, 58 NRC 302 (10/16/03)	Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2)	10/05/01	Reactor License Renewal-- Part 50 (Subpart G)	The Licensing Board denies the intervenor's request to reinstate a previously dismissed contention on mixed oxide fuel (MOX) and terminates proceeding.	No.	None.
16) LBP-03-20, 58 NRC 311 (10/29/03)	CFC Logistics, Inc.	07/14/03	Materials License Application -- Part 30 (Subpart L)	The Presiding Officer finds that some petitioners have standing and have submitted germane areas of concern, and grants a hearing.	No.	None.
17) LBP-03-22, 58 NRC 363 (11/03/03)	Fansteel, Inc. (Muskogee, Oklahoma Facility)	10/02/03	Materials License Amendment -- Part 40 (Subpart L)	The Presiding Officer finds that the petitioner has standing and germane areas of concern and grants the hearing request.	No.	None.
18) LBP-03-23, 58 NRC 372 (11/05/03)	Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station)	12/03/02	Order Modifying License -- Part 50 (interim ISFSI- related security measures for reactor licensees) (Subpart G)	Licensing Board denies petitioner Friends of the Coast's request for hearing.	No.	None.

Decision Number/Cite/ Date	Case	Board Established or PO Designated	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
19) LBP-03-24, 58 NRC 383 (11/19/03)	Sequoyah Fuels Corp. -- MLA-7 and 8 (Gore, Oklahoma)	10/17/03	Materials License Amendment -- Part 40 (Subpart L)	The Presiding Officer denies two requests for hearing on grounds of unexcused lateness.	Yes.	CLI-04-02, 59 NRC ____ (01/14/04). The Commission affirms the Licensing Board's decision.
20) LBP-03-25, 58 NRC 392 (11/21/03)	Sequoyah Fuels Corp. -- MLA- 5 (Gore, Oklahoma)	12/31/02	Materials License Amendment -- Part 40 (Subpart L)	The Presiding Officer denies petitioners' hearing request and terminates the proceeding.	Yes.	CLI-04-01, 59 NRC ____ (01/08/04). The Commission affirms the Licensing Board's decision.
21) LBP-03-26, 58 NRC 396 (11/25/03)	Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station)	12/03/02	Order Modifying License -- Part 50 (interim ISFSI- related security measures for reactor licensees) (Subpart G)	The Licensing Board majority denies the state of Maine's intervention petition, and terminates proceeding.	Yes.	Commission decision pending. (JS)
22) LBP-03-27, 58 NRC 408 (11/26/03)	Hydro Resources, Inc. (Crownpoint, New Mexico)	02/04/03	Materials License Renewal -- Part 40 (Subpart L)	The Licensing Board denies petitioner's request for hearing for lack of area of concern, and terminates proceeding.	No.	None.

Decision Number/Cite/ Date	Case	Board Established or PO Designated	Type of Proceeding	Nature of Decision	Appeal Taken	Commission Action
23) LBP-03-28, 58 NRC ____ (12/10/03)	U.S. Army (Jefferson Proving Ground)	02/09/00	Materials License Amendment -- Part 40 (license termination plan) (Subpart L)	The Presiding Officer dismisses the proceeding without prejudice, given that licensee has submitted a substitute proposal that is the subject of a new proceeding.	No.	None.
24) LBP-03-29, 58 NRC ____ (12/23/03)	Sequoyah Fuels Corp. -- MLA-6 (Gore, Oklahoma Site)	06/09/03	Materials License Amendment -- Part 40 (Subpart L)	The Presiding Officer grants two hearing requests (Oklahoma and Cherokee Nation) but denies third hearing request	No.	<i>Sua sponte</i> review time expires 02/01/04.

CHART 3

NEW PROCEEDINGS REFERRED TO THE LICENSING BOARD PANEL, JANUARY - DECEMBER 2003				
Date Board Established or PO Designated	Case Name	Type of Proceeding	Status	Commission Action
1) 02/04/03	Hydro Resources, Inc. (Crownpoint Uranium Project)	Materials License Renewal -- Subpart L.	Closed per LBP-03-27 (11/26/03)	None.
2) 02/13/03	Nuclear Fuel Services, Inc. - MLA-2	Materials License Amendment -- Subpart L	In abeyance pending expiration of time for filing hearing request on third (related) NFS license amendment application re: BLEU project. Hearing requests due 02/02/04.	--
3) 04/08/03	Advanced Medical Imaging and Nuclear Services	Enforcement (CP) -- Subpart G	Closed per LBP-03-15 (09/22/03)	None.
4) 06/09/03	Sequoyah Fuels Corp. -- MLA-6	Materials License Amendment - Subpart L	Hearing pending before Presiding Officer. Presiding Officer granted two hearing requests in LBP-03-29 (12/23/03).	--
5) 07/14/03	CFC Logistics, Inc.	Materials License Application (cobalt 60 irradiator) -- Subpart L	Hearing pending before Presiding Officer. Hearing granted in LBP-03- 20 (10/29/03).	--
6) 09/17/03	Duke Energy Corp. (McGuire/Catawba)	Reactor License Amendment (to allow four MOX lead assemblies) -- Subpart G	Licensing Board decision on intervention pending.	--
7) 10/02/03	Fansteel, Inc. -- MLA-3 (Muskogee, Oklahoma)	Materials License Amendment (decommissioning plan) -- Subpart L	Hearing pending before Presiding Officer. Presiding Officer granted hearing request in LBP-03-22 (11/03/03).	--

Date Board Established or PO Designated	Case Name	Type of Proceeding	Status	Commission Action
8) 10/17/03	Sequoyah Fuels Corp. -- MLA-7 (Gore, Oklahoma) (consolidated with MLA-8)	Materials License Amendment - Subpart L (groundwater corrective action plan)	The Presiding Officer denied two requests for hearing on grounds of unexcused lateness, and terminated proceeding. LBP-03-24 (11/19/03). Appealed.	CLI-04-02, 59 NRC ____ (01/14/04). The Commission affirmed the Licensing Board's decision.
9) 10/17/03	Sequoyah Fuels Corp. -- MLA-8 (Gore, Oklahoma) (consolidated with MLA-7)	Materials License Amendment -- Subpart L (groundwater monitoring plan)	The Presiding Officer denied two requests for hearing on grounds of unexcused lateness, and terminated proceeding. LBP-03-24 (11/19/03). Appealed.	CLI-04-02, 59 NRC ____ (01/14/04). The Commission affirmed the Licensing Board's decision.
10) 12/16/03	United States Army -- MLA-2 (Jefferson Proving Ground, Madison Indiana)	Materials License Amendment -- Subpart L (For five year possession only license)	Pending before Presiding Officer	--

PERIOD	FINAL ASLBP DECISIONS	NEW PROCEEDINGS REFERRED TO THE ASLBP	SUBSTANTIVE TYPES OF NEW PROCEEDINGS							PROCEDURAL RULES GOVERNING NEW PROCEEDINGS			
			ENFORCEMENT	REACTOR LICENSE AMENDMT	REACTOR LICENSE RENEWAL	REACTOR OPERATOR	MATERIALS LICENSING MATTERS	DECOMMISSIONING	OTHER	SUBPT G	SUBPT K	SUBPT L	PART 13
JULY - DEC. 1991	6	6	4	2	0	0	0	0	0	6		0	0
1992	17	18	6	5	0	0	2	5	0	16		2	0
1993	8	11	6	3	0	0	0	1	1	10		0	1
1994	14	20	11	1	0	0	6	1	1	12		7	1
1995	13	4	2	1	0	0	1	0	0	3		1	0
1996	19	9	4	1	0	2	1	1	0	7		2	0
1997	23	13	5	1	0	1	6	0	0	7		6	0
1998	20	24	5	7	2	3	7	0	0	14		10	0
1999	21	12	1	2	0	0	9	0	0	3		9	0
2000	13	11	2	1	1	0	6	1	0	4	1	6	0
2001	15	8	1	0	1	1	4	1	0	3	0	5	0
2002	13	14	3	4	0	0	6	0	0	7	1	5	0
2003	24	10	1	1	0	0	7	1	0	2	0	8	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 conducted under informal procedures and involve either materials licenses or reactor operator licenses.

COMMISSION DECISIONS ON ADJUDICATORY MATTERS -- CY-2003

CHART 5

PERIOD	REQUESTS FOR RELIEF or SUA SPONTE MATTERS DECIDED	BASIS FOR COMMISSION JURISDICTION					SUBSTANTIVE TYPES OF CASES									
		APPEAL/PETITION FOR REVIEW ON THE MERITS	INTER-LOCUTORY APPEAL, AS OF RIGHT (§ 2.714a)	INTER-LOCUTORY APPEAL, DISCRETIONARY + BOARD REFERRALS OR CERTIFNS	ORIG. JURISDICTION	SUA SPONTE ACTION	Enforcem't Actions	Reactor License Amendm'ts	Reactor License Renewal	Reactor Operator License	Spent Fuel Storage License or ISFSI	Materials License	Decommissioning/LTP	Reactor License Transfer	Other	
JULY - DEC. '91	6	0	2	0	2	2	0	5	0	0		0	1		0	
1992	22	3	6	2	8	3	3	7	0	0		4	8		0	
1993	26	3	5	3	11	4	6	13	0	0		2	4		1	
19'94	16	2	4	3	6	1	6	4	0	0		1	3		2	
1995	17	5	1	5	5	1	3	7	0	0		5	1		1	
1996	13	9	1	0	2	1	1	2	0	1		2	5		2	
1997	15	11	2	0	2	0	3	0	0	2		9	0		1	
1998	25	2	7	4	10	2	1	4	5	0	2	10	0		5	
1999	30	4	5	3	17	1	1	3	1	0	1	10	0	11	4	
2000	25	6	1	2	16	0	0	0	1	1	5	6	0	8	8	
2001	28	7.5 (fn ²)	2.5	8	10	0	0	1	3	0	11	5	2	4	9	
2002	29	1	2.5	15.5	10	0	0	1	5	0	11	10	0	3	13	
2003	18	5	2	5	4	2	1	2	2	0	6	3	1	3	0	

KEY: " **Original jurisdiction** is exercised by the Commission over, e.g., reactor license transfer applications, export licensing applications, motions to quash investigatory subpoenas, reconsideration and some stay motions, requests for hearing in some circumstances, and motions to reopen closed adjudicatory proceedings.

² Several CLIs fall within two categories rather than just one. We have therefore divided each of these Memoranda and Orders evenly between the categories into which it falls.

" 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 applications for either a reactor operator license or a senior reactor operator license.

" **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.

" **Reactor license transfer** proceedings involve requests by owners of interests in commercial nuclear reactors for authorization to sell their financial interests.

" **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 1998 Policy Statement on Adjudicatory Proceedings and cases involving fuel fabrication facilities.

NOTE: In this report, the 2000 and 2001 numbers for the Subpart K, Subpart L and "Other" categories have been revised.