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INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

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MASTER

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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 (owners 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

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DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

CLI-82-12 METROPOLITAN EDISON COMPANY (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289; RESTART; July 16, 1982; ORDER

- A The Commission denies a request by the Appeal Board for authority to hear three safety issues raised by the Board sua sponte, and decides that the issues will be dealt with by the staff and the Commission outside the context of this adjudicatory proceeding.

CLI-82-12A PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Dockets 50-275-OL, 50-323-OL; OPERATING LICENSE; March 18, 1982; DECLINATION OF REVIEW

CLI-82-13 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island, Unit 1), Docket No. 50-289; RESTART; July 16, 1982; ORDER

- A The Commission denies a motion by the licensee asking the Commission to decide expeditiously whether (1) it intends to prepare a supplemental environmental impact statement (SEIS) on psychological health effects associated with the operation of this facility in accordance with the decision in *PANE v. NRC*, No. 81-1131 (D.C. Cir., May 14, 1982), and if so, (2) to proceed expeditiously with its preparation and circulation, and (3) to decide that no hearing would be permitted on the SEIS. The Commission determines that it does not at present have enough information to decide whether the terms of the court's decision require the preparation of an SEIS.

CLI-82-14 SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-OL, 50-362-OL; OPERATING LICENSE; July 16, 1982; ORDER

- A On the basis of its immediate effectiveness review pursuant to 10 CFR 2.764(f), the Commission concludes that resolution of the issues covered by the Licensing Board's decisions in this operating license proceeding (LBP-82-3, 15 NRC 61 (1982); LBP-82-39, 15 NRC 1163 (1982); LBP-82-46, 15 NRC 1531 (1982)) does not present the type of safety problem which would require a further stay of their effectiveness, and decides that these decisions may go into effect. The license authorized is made subject to the condition that for operation above 5% of rated power to continue beyond six months from the date of issuance of the full-power license, the offsite medical arrangements issue retained by the Licensing Board in LBP-82-39 must be resolved or further operation above 5% must be justified under 10 CFR 50.47(c)(1). The Commission explains that its decision does not authorize issuance of the requested full-power license for Units 2 and 3 of this facility and further that they will not be issued until the staff has briefed the Commission on other, uncontested, issues and the Commission has voted on whether to authorize the licenses.

CLI-82-15 CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point, Unit 2) and **POWER AUTHORITY OF THE STATE OF NEW YORK** (Indian Point, Unit 3), Docket Nos. 50-247, 50-286; SPECIAL PROCEEDING; July 27, 1982; MEMORANDUM AND ORDER

- A Upon consideration of a series of pleadings by licensees concerning the Commission's plan to conduct a discretionary hearing on the possible suspension of Units 2 and 3 of the Indian Point facility, the Commission denies: (1) an appeal by a licensee from the order of the Licensing Board (established at the direction of the Commission to determine, inter alia, the issues which the forthcoming hearing are to address) admitting certain intervenors to the hearing; (2) a petition by a licensee for directed certification of its request for stay or dismissal of the proceeding; and (3) a petition by the two licensees for directed certification of their charges that the Board exceeded or misapplied its jurisdiction in admitting contentions. The Commission, inter alia, provides further guidance on the admission of contentions and the formulation of issues for hearing, and remands the matter to the Board for expeditious reconsideration of its rulings on the admissibility of the contentions in light of the additional guidance.

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- B** There is nothing in 10 CFR 2.714 or the case law interpreting that rule which permits licensing boards to exclude certain groups from a licensing proceeding because of their opinions on nuclear power, either generally or as related to certain plants, or because of their conduct outside the proceeding.
- C** The Commission has an inherent supervisory power over the conduct of its adjudicatory proceedings, including the authority to provide guidance on the admissibility of contentions before licensing boards. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 516-17 (1977); United States Energy Research and Development Administration (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 75-76 (1976).
- CLI-82-16 BOSTON EDISON COMPANY** (Pilgrim Nuclear Power Station), Docket No. 50-293 (EA-81-63); OPERATING LICENSE MODIFICATION; July 30, 1982; ORDER
- A** The Commission denies a petition by the Attorney General of Massachusetts for a hearing and intervention on an order of the NRC Office of Inspection and Enforcement modifying the operating license for this facility, on the ground that the petition presents concerns outside the scope of the proceeding.
- B** Section 189a of the Atomic Energy Act does not provide a non-discretionary right to a hearing on all issues arguably related to an acknowledged enforcement problem without regard to the scope of the enforcement action actually proposed or taken by the Commission. In order to obtain leave to intervene in an NRC proceeding, a petitioner must demonstrate an interest affected by the licensing action, as required by 10 CFR 2.714. *BPI v. Atomic Energy Commission*, 502 F.2d 424 (D.C. Cir. 1974).
- C** The Commission may limit the issues in enforcement proceedings to whether the facts as stated in the order are true and whether the remedy selected is supported by those facts. *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, CLI-80-10, 11 NRC 438, 441-42 (1980).
- CLI-82-17 LONG ISLAND LIGHTING COMPANY** (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL; OPERATING LICENSE; July 30, 1982; ORDER
- A** In response to a request by counsel for the applicant, the Commission directs that applicant's and intervenor's counsel be given access to those portions of the Appeal Board's opinion in the Diablo Canyon operating license (physical security) proceeding (ALAB-653) (Restricted) dealing with the definition of the design basis threat and the interpretation of the Commission's regulations regarding the appropriate number of armed responders, subject to the prior deletion of any classified information contained therein and the execution of appropriate non-disclosure affidavits. In response to a further request by intervenor's counsel for access by intervenor's consultants and for access to the entire Diablo Canyon security file, the Commission: (1) refers the request for access by intervenor's consultants to the Licensing Board with a direction to authorize access only upon a showing of need; and (2) denies access to the other portions of the opinion and the underlying record in the absence of a showing of need for such access.
- CLI-82-18 CONSUMERS POWER COMPANY** (Palisades Nuclear Power Facility), Docket No. 50-255-SP; VACATION OF DECISION; July 30, 1982; MEMORANDUM AND ORDER
- A** The Commission vacates on grounds of mootness the Appeal Board's and the Licensing Board's earlier decisions (ALAB-670, 15 NRC 493 (1982); LBP-81-26, 14 NRC 247 (1981)) concerning the holding of a hearing on a confirmatory order by the Director of the Office of Inspection and Enforcement restricting licensed operator overtime work at Palisades.
- B** Under established NRC practice, unreviewed judgments are vacated when their appellate review becomes unavailable because of mootness. See, e.g., *Boston Edison Company (Pilgrim Nuclear Power Station, Unit 2)*, ALAB-656, 14 NRC 965 (1981); *Rochester Gas & Electric Corp. (Sterling Power Project, Nuclear Unit No. 1)*, ALAB-596, 11 NRC 867 (1980).
- CLI-82-19 PACIFIC GAS AND ELECTRIC COMPANY** (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; PHYSICAL SECURITY; July 30, 1982; ORDER
- A** In response to a motion by the representative of an interested state requesting that portions of ALAB-653 (Restricted) and his petition for review of that decision which do not contain protected information be made public, the Commission releases versions of both documents with all protected information deleted. The Commission determines that the meaning of "several" as used in the design basis threat of 10 CFR 73.1(a)(1) is safeguards information under Section 147 of the Atomic Energy Act.

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CLI-82-20 CINCINNATI GAS AND ELECTRIC COMPANY, et al. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), Docket No. 50-358; OPERATING LICENSE; July 30, 1982; ORDER

A The Commission directs the Licensing Board to dismiss certain contentions from this operating license proceeding which the Board admitted as Board issues pursuant to its sua sponte authority under 10 CFR 2.760a.

B After the record is closed in an operating license proceeding, where parties proffering new contentions do not meet the legal standards for further hearings, that the contentions raise serious issues is insufficient justification to reopen the record to consider them as Board issues when they are being dealt with in the course of ongoing NRC investigation and staff monitoring.

CLI-82-21 KERR-McGEE CORPORATION (West Chicago Rare Earths Facility), Docket No. 40-2061; MATERIALS LICENSE AMENDMENT; August 6, 1982; ORDER

A The Commission delegates to the Director of the Office of Nuclear Material Safety and Safeguards (NMSS), or such NMSS Branch Chief or above as he may designate, the authority to conduct an informal adjudicatory proceeding on petitioner's contentions concerning licensee's application for an amendment to its 10 CFR Part 40 materials license authorizing it to perform certain work at its now-inactive thorium ore milling facility. The Commission additionally sets forth the parties to the informal proceeding and the procedures by which it will be conducted.

B A petitioner is not entitled, under either the Atomic Energy Act or NRC regulations, to a formal, trial-type hearing on materials licensing actions. Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232 (1982).

CLI-82-22 UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY (Clinch River Breeder Reactor Plant), Docket No. 50-537 (Exemption request under 10 CFR 50.12); CONSTRUCTION PERMIT EXEMPTION; August 12, 1982; MEMORANDUM AND ORDER

A The Commission considers a petition by intervenors for investigation into allegations that Applicants attempted to conceal certain crucial safety information from the Commission in connection with their application for a license for the Clinch River Breeder Reactor Plant. Upon review of the response of the Department of Energy to the allegations and to certain questions earlier posed by the Commission, the response of the NRC Staff to questions separately addressed to it, and the response of the intervenors, the Commission concludes that the allegations are without foundation. The Commission, therefore, denies the petition for investigation.

CLI-82-23 UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY (Clinch River Breeder Reactor Plant), Docket No. 50-537 (Exemption request under 10 CFR 50.12); CONSTRUCTION PERMIT EXEMPTION; August 17, 1982; MEMORANDUM AND ORDER

A The Commission grants in part and denies in part the Department of Energy's request for an exemption pursuant to 10 CFR 50.12 from the provision of 10 CFR 50.10(c) prohibiting the commencement of certain site or construction work prior to obtaining a construction permit or Limited Work Authorization. The Commission authorizes the applicants to conduct non-safety related site preparation activities in connection with the Clinch River facility but denies the exemption request as it pertains to safety-related activities.

B 10 CFR 50.10(c) generally prohibits any person from clearing or excavating a nuclear power reactor site or otherwise commencing construction of a nuclear power reactor until a construction permit or a limited work authorization has been obtained following the holding of an adjudicatory hearing.

C 10 CFR 50.12(a) provides for the case-by-case granting of exemptions from the prohibition of 10 CFR 50.10(c) if specified criteria are met.

D The Commission may apply 10 CFR 50.12 to a "first of a kind" project: there is no indication in the regulations or past practice that exemptions for conduct of site preparation activities are to be confined to typical, commercial light water nuclear power reactors or that an exemption can be granted only if a limited work authorization under 10 CFR 50.10(e)(1) and (2) ("LWA-1") can also be granted or only if justified to meet electrical energy needs.

E The common-law rules regarding res judicata do not apply, in a strict sense, to administrative agencies.

F Res judicata need not be applied by an administrative agency where there are overriding public policy interests which favor relitigation.

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- G** When an agency decision involves substantial policy issues, an agency's need for flexibility outweighs the need for repose provided by the principle of res judicata.
- H** A change in external circumstances is not required for an agency to exercise its basic right to change a policy decision and apply a new policy to parties to whom an old policy applied.
- I** An agency must be free to consider changes that occur in the way it perceives the facts, even though objective circumstances remain unchanged.
- J** For there to be any right to a hearing under Section 189a. of the Atomic Energy Act on the grant of an exemption, such a grant must be part of a proceeding for the granting, suspending, revoking, or amending of a license or construction permit under the Atomic Energy Act.
- K** The Atomic Energy Act does not require a license or a construction permit, or an adjudicatory hearing, on site preparation activities.
- L** The Commission is not required by NEPA to hold formal hearings on site preparation activities because NEPA did not alter the scope of the Commission's jurisdiction under the Atomic Energy Act. *Gage v. United States Atomic Energy Commission*, 479 F.2d 1214, 1220 n.19 (D.C. Cir. 1972); 39 Fed. Reg. 14506, 14507 (April 24, 1979).
- M** 10 CFR 50.12(a) provides that any exemption from the licensing requirements of 10 CFR Part 50 must be authorized by law, not endanger life or property or the common defense and security, and be in the public interest. For an exemption from 10 CFR 50.10, the Commission considers the public interest by weighing the factors set out in 10 CFR 50.12(b).
- N** An exemption from Commission regulations must be consistent with the Atomic Energy Act, the National Environmental Policy Act, and other applicable law.
- O** The limited work authorization procedure under 10 CFR 50.10(e)(1) and (2) ("LWA-1") and the 10 CFR 50.12(b) exemption procedure are independent avenues for applicants to begin site preparation in advance of receiving a construction permit.
- P** The National Environmental Policy Act (NEPA) requires that the Commission prepare an environmental impact statement only for major actions significantly affecting the environment.
- Q** A federal agency may consider separately under NEPA the different segments of a proposed federal action under certain circumstances. Where approval of the segment under consideration will not result in any irreversible or irretrievable commitments to remaining segments of the proposed action, the agency may address the activities of that segment separately.
- R** The public interest criterion for granting an exemption from 10 CFR 50.10, under 10 CFR 50.12(b), is a stringent one: exemptions of this sort are to be granted sparingly and only in extraordinary circumstances.
- CLI-82-24 CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point, Unit 2) and POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit 3), Docket Nos. 50-247, 50-286; SPECIAL PROCEEDING; September 15, 1982; ORDER**
- A** Following the resignation of the Chairman of the Licensing Board for this special proceeding, the Commission, pursuant to 10 CFR 2.721(b), by a 3-2 vote, reconstitutes the Licensing Board.
- CLI-82-25 CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point, Unit 2) and POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit 3), Docket Nos. 50-247, 50-286; SPECIAL PROCEEDING; September 17, 1982; ORDER**
- A** The Commission responds to several questions certified to it by the Licensing Board that seek clarification of previous guidance provided by the Commission on the conduct of this special proceeding.
- CLI-82-26 TENNESSEE VALLEY AUTHORITY (Browns Ferry Nuclear Plant, Units 1, 2 and 3), Docket Nos. 50-259-OLA, 50-260-OLA, 50-296-OLA; OPERATING LICENSE AMENDMENT; September 15, 1982; ORDER**
- A** In view of the Appeal Board's declaration in ALAB-677, 15 NRC 1387 (1982), that its previous decision in ALAB-664 (15 NRC 1 (1982)) might have been different had it been timely presented with new information concerning licensee's application to store low-level radioactive waste at Browns Ferry, the Commission (1) dismisses its earlier grant of review of ALAB-664; (2) vacates that decision; and (3) remands the case to the Appeal Board for further proceedings.
- B** The Commission may dismiss its grant of review of an Appeal Board decision even though the parties have briefed the issues. See, e.g., *Jones v. State Board of Education*, 397 U.S. 31 (1970).

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CLI-82-27 SOUTHERN CALIFORNIA EDISON COMPANY, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-OL, 50-362-OL; OPERATING LICENSE; September 24, 1982; ORDER

- A The Commission directs the Appeal Board to certify to the Commission the question whether the phrase "contaminated injured individuals" as used in 10 CFR 50.47(b)(12) requires applicants for nuclear power plants to provide arrangements for medical services only for members of the public who have suffered traumatic injury and are also contaminated with radiation, and if not, to what extent that regulation requires advance and specific arrangements and commitments for medical services for the general public, as opposed to the general knowledge that facilities and resources exist and could be used on an ad hoc basis. The Commission states that it will not review the Appeal Board's decision (ALAB-680, 16 NRC 127 (1982)), denying intervenor's motion for a stay of the issuance of full-power licenses and that the license condition imposed by the Licensing Board concerning medical arrangements for the general public shall remain in effect. LBP-82-40, 15 NRC 1293 (1982); LBP-82-39, 15 NRC 1163 (1982).

CLI-82-28 CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point, Unit 2) and POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit 3), Docket Nos. 50-247, 50-286; SPECIAL PROCEEDING; October 1, 1982; ORDER

- A The Commission requests the newly reconstituted Licensing Board to estimate when it can provide its recommendations concerning certain long-term safety issues relating to Units 2 and 3 of this facility called for in CLI-81-23, 14 NRC 610 (1981).

CLI-82-29 WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS Nuclear Project Nos. 1 & 2), Docket Nos. 50-397, 50-460; CONSTRUCTION PERMIT EXTENSION; October 8, 1982; ORDER

- A In considering petitions for hearings on the licensee's requests for extension of the construction completion dates specified in the construction permits for two units of this facility, the Commission interprets Section 185 of the Atomic Energy Act and 10 CFR §50.55 as limiting contentions that can be raised in a construction permit extension proceeding to those that pertain to the licensee's asserted reasons for "good cause" for the delay or to other reasons showing that the licensee does not have such "good cause." In line with this interpretation, the Commission, inter alia, dismisses all but a single joint contention raised in the pending petitions as outside the scope of the proceeding and refers the remainder of the petitions to the Chairman of the Atomic Safety and Licensing Board Panel for designation of a Board to determine whether the other requirements for a hearing outlined in 10 CFR §2.714 have been met, and, if so, to conduct an appropriate proceeding under 10 CFR Part 2, Subpart G, and 10 CFR Part 50.

- B The focus of any construction permit extension proceeding is to be whether good cause exists for the requested extension. Likewise, this "good cause" requirement is the focal point of any consideration of the scope of the contentions that can be admitted at such a proceeding.

- C A construction permit extension proceeding is not for the purpose of engaging in an unbridled inquiry into the safety and environmental aspects of reactor construction and operation. A contention cannot be litigated in a construction permit extension proceeding when there is a pending operating license proceeding in which the issue can be raised. Prior to the operating license proceeding, a contention having nothing whatsoever to do with the causes of delay or the permit holder's justifications for an extension cannot be litigated in a construction permit proceeding. Indiana and Michigan Electric Company (Donald C. Cook Nuclear Plant, Units 1 and 2), ALAB-129, 6 AEC 414 (1973); Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558 (1980).

- D Where a request for a construction permit extension has been filed and the operating license proceeding for the plant is yet to be held, persons who wish to raise health, safety or environmental concerns may, pursuant to 10 CFR §2.206, petition the Director of Nuclear Reactor Regulation to institute a show-cause proceeding under 10 CFR §2.202. The request must specify the action sought and set forth the facts that constitute the basis for the request.

- E The scope of a construction permit extension proceeding under Section 185 of the Atomic Energy Act and 10 CFR §50.55 is limited to direct challenges that seek to prove that, on balance, delay was caused by circumstances that do not constitute "good cause."

- F The avenue afforded for the expression of health, safety, and environmental concerns in any pending operating license proceeding, or in the absence of such a proceeding, in a petition under 10 CFR §2.202 would be exclusive despite the pendency of a construction permit extension request.

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- G The determination of the sufficiency of a construction permit holder's reasons for delay will be influenced by whether they were the sole important reasons for the delay or whether, instead, the delay was in actuality due in significant part to other causes such as applicant's dilatory conduct of the construction work. Cook, *supra*, 6 AEC at 417.
- CLI-82-30 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; SECURITY; October 8, 1982; ORDER
- A The Commission pursuant to 10 CFR 2.913 directs that all classified National Security Information be expunged from the Appeal Board's security plan decision (ALAB-653) in this proceeding and the record underlying that decision.
- B 10 CFR 2.913 requires that where Restricted Data or other National Security Information has been introduced into a proceeding, such classified information shall be expunged from the record at the close of the reception of evidence "where such expunction would not prejudice the interests of a party or the public interest."
- CLI-82-31 METROPOLITAN EDISON COMPANY (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP; RESTART; October 14, 1982; MEMORANDUM AND ORDER
- A The Commission, pursuant to its immediate effectiveness review of the Licensing Board's July 27, 1982 Partial Initial Decision in this proceeding, (1) determines that the Licensing Board lacked jurisdiction to impose a fine on licensee for failures with respect to the licensee's management of its examination process for reactor operator licenses and refers the matter to the Director, Office of Inspection and Enforcement, for a recommendation on whether a civil penalty proceeding should be instituted against licensee; and (2) adopts a Board recommendation that the NRC investigate a possible material false statement by licensee concerning the test score of an individual certified to the NRC for an operator's license renewal. The Commission also directs that the Appeal Board which is reviewing the Licensing Board's decision is not to consider either of these matters in its review.
- B The NRC's regulations do not contain any provision conferring jurisdiction on licensing boards to impose fines *sua sponte*.
- C The powers granted to a licensing board by 10 CFR 2.718 "to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order" do not include the power to impose a civil penalty.
- D 10 CFR 2.205(a) confers the authority to institute a civil penalty proceeding only upon the NRC's Director of Nuclear Reactor Regulation, the Director of Nuclear Material Safety and Safeguards, and the Director, Office of Inspection and Enforcement. A licensing board becomes involved in a civil penalty proceeding only if the person charged with a violation requests a hearing. (See 10 CFR 2.205(f).)
- E Under Section 234 of the Atomic Energy Act, 42 U.S.C. 2282(b), and 10 CFR 2.205 of the Commission's regulations, a person subject to imposition of a civil penalty must first be given written notice of (1) the specific statutory, regulatory or license violations, (2) the date, facts, and nature of the act or omission with which the person is charged, and (3) the proposed penalty. The person subject to the fine must then be given an opportunity to show in writing why the penalty should not be imposed.
- CLI-82-32 METROPOLITAN EDISON COMPANY (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP; RESTART; October 22, 1982; ORDER
- A The Commission, noting that whether the licensee has satisfactorily completed the various restart requirements will be determined by the NRC Staff and the Commission itself outside of this adjudicatory proceeding, directs the Appeal Board not to concern itself with the current status of licensee's compliance with those requirements.
- CLI-82-33 CINCINNATI GAS & ELECTRIC COMPANY (William H. Zimmer Nuclear Power Station), Docket No. 50-358 (EA 82-129); SHOW CAUSE; November 12, 1982; ORDER TO SHOW CAUSE AND ORDER IMMEDIATELY SUSPENDING CONSTRUCTION
- A The Commission issues an immediately effective order suspending licensee's safety-related construction activities, including rework of previously-identified deficient construction. The Commission also orders licensee to show cause why such construction activities should not remain suspended until licensee has taken certain specified action toward providing reasonable assurance that future construction activities, including correction of existing deficiencies, will be conducted in accordance with the quality assurance criteria of 10 CFR Part 50, Appendix B, and other Commission requirements.

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CLI-82-34 PETITION OF SUNFLOWER COALITION; RECONSIDERATION OF AMENDED STATE AGREEMENT; November 15, 1982; MEMORANDUM AND ORDER

- A The Commission denies a petition for reconsideration of its March 30, 1982 approval of an amended agreement with the State of Colorado that authorized the State to assume regulatory authority over byproduct, source and special nuclear material in quantities less than a critical mass, including uranium mill tailings.
- B Under Section 274b of the Atomic Energy Act of 1954, as amended, the Commission may enter into an agreement with the Governor of any State that provides for discontinuance of certain regulatory authority of the Commission and the assumption of that authority by the Agreement State.
- C Agreement States are not required under either the Atomic Energy Act or the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), to provide their radiation control enforcement agencies with civil penalty authority.
- D Section 274o of the Atomic Energy Act requires, inter alia, of Agreement States only that there be procedures under state law for judicial review of the State's written determination required to be made in licensing actions under Section 274 (o) (3) (A) (iii); Section 274o does not limit the source of those judicial procedures to any particular State statute or other authority.
- E The NRC has the authority under Section 274j of the Atomic Energy Act to terminate or suspend an agreement with a State and to reassert its own licensing authority. An agreement is not, however, to be permanently terminated or revoked for minor technical failures to comply with Section 274 or for single incidents of State inaction, but only in exceptional circumstances.
- F The NRC may temporarily suspend all or part of an agreement with a State entered into under Section 274 without notice or hearing where (1) an emergency situation exists which requires immediate action to protect the public health and safety, and (2) the State has failed to take steps necessary to contain or eliminate the dangers within a reasonable time. The temporary suspension is to remain in effect only for as long as the emergency exists. This authority is to be used only as a last resort.

CLI-82-35 SOUTHERN CALIFORNIA EDISON COMPANY, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-OL, 50-362-OL; OPERATING LICENSE; November 19, 1982; CORRECTED MEMORANDUM AND ORDER

- A The Commission directs the Licensing Board to suspend its proceeding concerning the adequacy of arrangements by offsite response organizations for emergency medical services until further Commission order, and orders that the license conditions imposed by the Board (LBP-82-39, 15 NRC 1163 (1982); LBP-82-40, 15 NRC 1293 (1982)) shall otherwise remain in effect.

CLI-82-36 CINCINNATI GAS AND ELECTRIC COMPANY, et al. (William H. Zimmer Nuclear Power Station, Unit No. 1), Docket No. 50-358; DISQUALIFICATION; November 24, 1982; ORDER

- A The Commission denies an intervenor's petition to disqualify from this proceeding a specified NRC Staff attorney for allegedly attempting to prevent the compilation of a complete record in the proceeding and exhibiting a pro-applicant bias. The Commission finds no grounds in the record for the first allegation and dismisses it. With respect to the second, the Commission determines that the allegation would be appropriately considered by the Executive Director of Operations outside the bounds of this proceeding.
- B Petitions which raise questions about the ethics and reputation of another member of the Bar should only be filed after careful research and deliberation. Moreover, although ill-feeling understandably results from any petition for disciplinary action, retaliation in kind should not be the routine response.
- C The Commission has no interest in general matters of attorney discipline and chooses to focus instead on the means necessary to keep its adjudicatory proceedings orderly and to avoid unnecessary delays. 45 Fed. Reg. 3594 (1980).
- D While the Commission has inherent supervisory power over all agency personnel and proceedings, it is not necessarily appropriate to bring any and all matters to the Commission in the first instance. Under the Commission's rules (10 CFR 2.713), where a complaint relates directly to a specified attorney's actions in a proceeding before a licensing board, that complaint should be brought to the board in the first instance if correction is necessary for the integrity of the proceedings. See 45 Fed. Reg. 3594.

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E A perceived bias in the attorney's view of a proceeding is not a conflict of interest in any accepted legal meaning; it is to be distinguished from the kind of conflict recognized in law in which an attorney has interests that compromise his ability to represent his client, e.g., that he has previously represented another party in the same proceeding, or has financial interests in common with another party, or the like.

CLI-82-37 OFFSHORE POWER SYSTEMS (Manufacturing License for Floating Nuclear Power Plants), Docket No. STN 50-437-ML; MANUFACTURING LICENSE; December 6, 1982; MEMORANDUM AND ORDER

A For reasons different than those set forth by the Appeal Board in ALAB-686, 16 NRC 454 (1982) and ALAB-689, 16 NRC 887 (1982), the Commission finds that the immediate effectiveness review provisions of 10 CFR §2.764(e) do not apply to manufacturing licenses. For this and other reasons, the Commission holds: (1) a licensing board decision authorizing the issuance of a manufacturing license can become effective before it becomes final agency action, and (2) neither the Appeal Board nor the Commission need undertake an immediate effectiveness review of such a decision.

B A licensing board decision on a manufacturing license can become effective pursuant to 10 CFR §2.764(a) pending final Appeal Board or Commission review of that decision.

C The issuance of a manufacturing license does not conclude the construction permit review process and therefore does not present health and safety issues requiring an immediate effectiveness review under 10 CFR §2.764(e) by the Appeal Board or Commission.

CLI-82-38 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit 2) and POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit 3), Docket Nos. 50-247, 50-286; ENFORCEMENT ACTION; December 22, 1982; DECISION

A In its review pursuant to 10 CFR 50.54(s) of the state of offsite emergency preparedness as respects Indian Point Units 1 and 2, the Commission determines that despite the continued existence of certain previously-identified planning deficiencies, sufficient progress has been made in overcoming these deficiencies and progress will continue to be made so as not to warrant shutdown or any other enforcement action against the Indian Point licensees at the present time.

B Under 10 CFR 50.54(s), if the Commission finds after April 1, 1981 that the state of preparedness with respect to an operating nuclear power reactor does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, and if the identified deficiencies are not corrected within 120 days, then a determination must be made whether the reactor should be shut down until the deficiencies are remedied; whether some other enforcement action is appropriate; or whether no enforcement action is needed. Under the regulation, the decision on enforcement action is to be guided by a balancing of factors, including: whether the deficiencies are significant for the plant in question; whether adequate interim compensating actions have been or will be taken promptly; and whether there are other compelling reasons for continued operation.

CLI-82-39 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; December 23, 1982; MEMORANDUM AND ORDER

A The Commission answers three certified questions relating to the Appeal Board's jurisdiction in this operating license proceeding presented by the relationship between the independent design verification program for the Diablo Canyon facility and the licensing proceeding for the plant (see ALAB-681, 16 NRC 146 (1982)). In addition, the Commission denies a request by intervenors for a hearing on applicant's request for an extension of its low-power license.

B Where a motion to reopen a licensing proceeding relates to a previously uncontested issue, the moving party must satisfy both the standards for admitting late-filed contentions (10 CFR 2.714(a)) and the criteria established by case law for reopening the record.

C A request for a low-power license does not give rise to a proceeding separate and apart from a pending full-power operating license proceeding.

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CLI-82-40 CINCINNATI GAS AND ELECTRIC COMPANY, et al. (William H. Zimmer Nuclear Power Station, Unit No. 1), Docket No. 50-358; OPERATING LICENSE; December 23, 1982; ORDER

A The Commission denies a request by intervenors in this operating license proceeding for the Commission to furnish them, at the Commission's or applicants' expense, with the services of a consultant to monitor applicants' compliance with the Commission's November 12, 1982 show-cause order (CLI-82-33, 16 NRC 1489). The Commission also decides that the procedures to be used in the selection of an independent entity to conduct a review of the status of the Zimmer facility pursuant to the show-cause order are adequate; it also declines to institute further procedures for the conduct of the status review.

B The Commission is not empowered to expend its appropriated funds for the purpose of funding consultants to intervenors in a licensing proceeding. See P.L. 97-88, Title V Section 502 (95 Stat. 1148 (1981)) and P.L. 97-276 Section 101(g) (96 Stat. 1135 (1982)).

C The Commission does not have authority to require license applicants to fund consultants or to assess fees for that purpose where the service to be performed is for intervenors' benefit and is not one needed here by the Commission to discharge its own licensing responsibilities. See *Mississippi Power & Light Company v. NRC*, 601 F.2d 223 (5th Cir. 1979), cert. denied 444 U.S. 1102 (1980). See also *National Cable Television Association, Inc. v. United States*, 415 U.S. 336 (1978). *Federal Power Commission v. New England Power Co.*, 415 U.S. 345 (1974).

CLI-82-41 CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point, Unit 2) and POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit 3), Docket Nos. 50-247, 50-286; SCHEDULING; December 23, 1982; ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DIRECT STAFF TO RESCHEDULE MEETING

A The Commission denies in part and grants in part intervenor's motion to direct the NRC staff (1) to reschedule and relocate a planned meeting with its outside consultants and (2) in the future to give notice of such meetings to intervenors at the same time as to other parties.

B Under 10 CFR §2.102, the NRC staff may meet "with any one party" to a proceeding. In scheduling such a meeting, the staff will consider a variety of factors such as the number, location, and schedules of the key participants as well as resource constraints. The intervenor's opportunity to attend should be one of the factors the staff takes into account in determining the location of such meetings.

C All parties, in the interest of fairness, should be notified at the same time of the scheduling of meetings between the NRC staff and one or more parties to a proceeding.



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ALAB-679 NUCLEAR FUEL SERVICES, INC. and NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (Western New York Nuclear Service Center), Docket No. 50-201-OLA; OPERATING LICENSE AMENDMENT; July 8, 1982; MEMORANDUM AND ORDER

A The Appeal Board affirms a Licensing Board order (LBP-82-36, 15 NRC 1075 (1982)) denying an intervenor's request for a hearing on an amendment to the operating license for a spent fuel reprocessing and waste disposal center in light of special statutory provisions governing administration of the center (the amendment had set conditions for the termination of the co-licensee's responsibilities).

B The Appeal Board will allow amicus participation in a hearing where the Board believes it will assist resolution of the issues and will not prejudice the rights of the parties. See, e.g., Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, n.2 (1981).

C Under the West Valley Demonstration Project Act, Pub. L. No. 96-368, 94 Stat. 1347 (1980), the Commission's review of the Department of Energy's (DOE's) demonstration waste solidification plant at West Valley is limited to informal, consultative procedures; the Commission cannot therefore explore DOE's administration of the waste solidification project in a formal evidentiary hearing.

ALAB-680 SOUTHERN CALIFORNIA EDISON COMPANY, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-OL, 50-362-OL; OPERATING LICENSE; July 16, 1982; DECISION

A The Appeal Board denies intervenors' motion for a stay pending appeal of the Licensing Board's initial decision (LBP-82-39, 15 NRC 1163 (1982)) which authorized the issuance of a full power operating license for Units 2 and 3 of this facility.

B The determination whether an application for a stay of a licensing board decision should be granted is governed by the criteria in 10 CFR 2.788(e).

C In deciding whether to allow operation of a plant during appellate review of the pertinent licensing board decision, the standard to be applied is whether operation of the plant over the additional proceedings is consistent with the requirement that there be reasonable assurance that the public health and safety not be endangered. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 46 (1978). That standard does not call upon a party to show that a serious nuclear accident is likely during the pendency of the appeal; it would be enough to show that apparent inadequacies were sufficient to raise the question whether plant operation would present an undue risk to the public in the event of a serious nuclear accident. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 698 (1982).

D Under the Commission's emergency planning regulations, an applicant for a plant operating license has an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the emergency plans for the plant are not significant, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation. 10 CFR 50.47(c)(1).

E In reviewing a licensing board decision in the context of a motion for a stay pending its appeal, the normal deference that an appeal board owes to the trier of facts when reviewing a decision on the merits is even more compelling. See Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-385, 5 NRC 621, 629 (1977).

F An appeal board may disagree with a licensing board's interpretation on an issue even if no party presses an appeal on that issue. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 247 (1978).

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- G** Where a party has not pursued a contention before the Licensing Board in the form of proposed findings of fact, the Appeal Board will not entertain it "for the first time on appeal — absent a 'serious substantive issue.'" *Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1)*, ALAB-650, 14 NRC 43, 49 (1981).
- H** At the operating license stage, the NRC staff generally has the final word on all safety matters not placed into controversy by the parties. *South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1)*, ALAB-663, 14 NRC 1140, 1156 n.31 (1981).
- I** An operating license may not issue unless and until the agency makes the findings specified in 10 CFR 50.57 — including the ultimate finding that such issuance "will not be inimical to . . . the health and safety of the public." As to those aspects of reactor operation not considered in an adjudicatory proceeding (if one is conducted), it is the staff's duty to insure the existence of an adequate basis for each of the requisite Section 50.57 determinations. *South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1)*, ALAB-642, 13 NRC 881, 895-96 (1981), affirmed sub nom. *Fairfield United Action v. Nuclear Regulatory Commission*, No. 81-2042 (D.C. Cir., April 28, 1982).
- J** Before a full power operating license issues for a plant, the Commission must complete its immediate effectiveness review of the pertinent licensing board decision pursuant to 10 CFR 2.764(f)(2).
- ALAB-681** **PACIFIC GAS AND ELECTRIC COMPANY** (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; **OPERATING LICENSE**; July 16, 1982; **MEMORANDUM AND CERTIFICATION TO THE COMMISSION**
- A** Prior to consideration of a motion by the intervenors to reopen the record in this operating license proceeding to hear assertedly new evidence regarding breakdowns on the quality assurance/quality control program for the plant, the Appeal Board seeks Commission guidance (by way of certification) on whether the Commission intended, in its November 19, 1981 order (CLI-81-30) suspending the Diablo Canyon low-power license and establishing an independent verification program, to deprive the adjudicatory boards of jurisdiction to consider quality assurance and quality control issues involving the plant.
- ALAB-682** **ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE** (Cobalt-60 Storage Facility), Docket No. 30-6931 (Renewal of Byproduct Materials License No. 19-08330-03); **BYPRODUCT MATERIALS LICENSE RENEWAL**; July 16, 1982; **DECISION**
- A** The Appeal Board reverses a Licensing Board decision (LBP-82-24, 15 NRC 652 (1982)) that held petitioner did not have standing to intervene in this materials license renewal proceeding. The Appeal Board grants the request to intervene, remands the proceeding to the Licensing Board with instructions to allow the petitioner to supplement its petition in accordance with 10 CFR 2.714(b), and orders the proceeding be consolidated with another proceeding involving renewal of the operating license for a research reactor of the same licensee, housed in the same building, if petitioner can present a litigable contention with regard to the materials license. The Appeal Board discusses the statutory requirements for notice in materials licensing cases and recommends that the Commission consider the issue in a rulemaking.
- B** An intervention petitioner who resides near a nuclear facility need not show a causal relationship between injury to its interest and the licensing action being sought in order to establish standing. *Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2)*, ALAB-522, 9 NRC 54, 57 n.5 (1979).
- C** In a materials license renewal proceeding under 10 CFR Part 30 — as in construction permit and operating license proceedings under 10 CFR Part 50 — proximity to a large source of radioactive material is sufficient to establish the requisite interest for standing to intervene. Whether a petitioner's stated concern is in fact justified must be left for consideration when the merits of the controversy are reached.
- D** Official notice of information in another proceeding is permissible where the parties to the two proceedings are identical, there was an opportunity for rebuttal, and no party is prejudiced by reliance on the information. See *United States v. Pierce Auto Freight Lines*, 327 U.S. 515, 527-30 (1945); 10 CFR 2.743(i).
- ALAB-683** **PUGET SOUND POWER AND LIGHT COMPANY**, et al. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), Docket Nos. 50-522, 50-523; **CONSTRUCTION PERMIT**; July 27, 1982; **MEMORANDUM AND ORDER**
- A** Acting under the authority of 10 CFR 2.787(b), the Appeal Panel Chairman dismisses an interlocutory appeal by intervenors of the Licensing Board's rejection of certain of their contentions.

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- B A person may take an interlocutory appeal from an order entered on his or her intervention petition only where the order has the effect of denying the petition in its entirety. 10 CFR 2.714a.
- ALAB-684 CONSUMERS POWER COMPANY (Midland Plant, Units 1 & 2), Docket Nos. 50-329-OM&OL, 50-330-OM&OL; MODIFICATION ORDER AND OPERATING LICENSE; July 27, 1982; MEMORANDUM AND ORDER
- A The Appeal Board dismisses without prejudice an intervenor's purported appeal from a Licensing Board order, LBP-82-35, 15 NRC 1060 (1982), which authorized certain interim amendments to the Midland construction permits pending subsequent issuance of the Board's partial initial decision. The Appeal Board construes the intervenor's filings as a complaint against staff's compliance with and implementation of the Licensing Board's order, rather than the order itself, and leaves the matter to the intervenor to present to the Licensing Board.
- B Issues relating to compliance with and implementation of a Licensing Board order, rather than the order itself, should be presented to the Licensing Board in the first instance, rather than to the Appeal Board.
- C Although the time limits established by the Rules of Practice with regard to appeals from Licensing Board decisions and orders are not jurisdictional, Appeal Board policy is to construe them strictly. Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 160 (1980). Hence, untimely appeals are not accepted absent a demonstration of "extraordinary and unanticipated circumstances." See 10 CFR Part 2, Appendix A, IX(d)(3).
- ALAB-685 METROPOLITAN EDISON COMPANY (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP; RESTART; August 2, 1982; MEMORANDUM AND ORDER
- A The Appeal Board suspends until further notice licensee's obligation to submit certain information requested as part of the Board's sua sponte review, and clarifies the scope of its appellate jurisdiction in this special proceeding.
- B The fact that the Three Mile Island restart proceeding is a special proceeding not specifically addressed by Commission regulations does not deprive the Appeal Board of its well-established right to review sua sponte an issue that was contested before the Licensing Board but not raised on appeal. See generally Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 247 (1978); Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 n.6 (1981).
- C Authority to review the entire record of a proceeding independently of the parties' position is different from (1) the power in operating license application proceedings to consider serious safety, environmental, and common defense and security matters not otherwise placed in issue by the parties, and (2) seeking Commission approval in cases not involving operating license applications before pursuing new safety questions not previously put in controversy or otherwise raised by the parties.
- ALAB-686 OFFSHORE POWER SYSTEMS (Manufacturing License for Floating Nuclear Power Plants), Docket No. STN 50-437-ML; MANUFACTURING LICENSE; August 11, 1982; MEMORANDUM AND ORDER
- A The Appeal Board (1) considers the applicability of the "immediate effectiveness" regulation (10 CFR 2.764) to the Licensing Board's June 30, 1982 initial decision (LBP-82-49, 15 NRC 1658 (1982)) in this manufacturing license proceeding and concludes that it is not obliged by the regulation to conduct such a review in manufacturing license proceedings; (2) announces that in the absence of exceptions to the initial decision, it has undertaken sua sponte review of it; and (3) reminds the parties that the initial decision shall not constitute final agency action until completion of that review by the Appeal Board and its further order.
- B The Commission's "immediate effectiveness" regulation, 10 CFR 2.764 (1982), as amended, 47 Fed. Reg. 2286 (January 15, 1982), requires in the case of construction permits, certain limited and immediate appeal board and Commission review — and, in the case of operating licenses, Commission review only — of an initial decision before it can become effective.
- C Under the Commission's "immediate effectiveness" regulation, an appeal board is not obliged to conduct an immediate effectiveness review in manufacturing license proceedings.
- D The only time an appeal board — as opposed to the Commission itself — is required to conduct an immediate effectiveness review is within 60 days of an initial decision authorizing the issuance of a reactor construction permit. 10 CFR 2.764(e)(2).

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- E The starting point in interpreting a regulation is the language of the regulation itself. Cf. *Lewis v. United States*, 445 U.S. 55, 60 (1980). Depending on the circumstances, it may be appropriate to consider the underlying history of the regulation as well. Cf. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184-85 (1978).
- ALAB-687 DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414; LIMITED WORK AUTHORIZATION; August 19, 1982; MEMORANDUM AND ORDER
- A The Appeal Board accepts a Licensing Board referral, pursuant to 10 CFR 2.730(f), of a number of interlocutory Licensing Board rulings conditionally admitting certain contentions in this operating license proceeding. The Appeal Board concludes that a licensing board has no authority to admit conditionally, for any reason, a contention that falls short of meeting the specificity requirements of 10 CFR 2.714(a). The Appeal Board provides further interpretation of the governing Rules of Practice relating to contentions and leaves to the Licensing Board the application of that interpretation to the contentions.
- B Appeal boards are empowered to decline the acceptance of licensing board referrals.
- C Regardless of whether presented on "certification" pursuant to 10 CFR 2.718(i) or by referral pursuant to 10 CFR 2.730(f), the question of whether interlocutory appellate review of an issue should be undertaken turns on whether a failure to address that issue would seriously harm the public interest, result in unusual delay or expense, or affect the basic structure of the proceeding in some pervasive or unusual manner. *Consumers Power Co. (Midland Plant, Units 1 and 2)*, ALAB-634, 13 NRC 96,99 (1981).
- D Under 10 CFR 2.714, a licensing board is not authorized to admit conditionally, for any reason, a contention that falls short of meeting the specificity requirements of the Section.
- E Neither Section 189a. of the Atomic Energy Act nor Section 2.714 of the Commission's Rules of Practice permits an intervention petitioner to file a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or the NRC staff. Rather, an intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as a foundation for a specific contention. *Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2)*, ALAB-107, 6 AEC 188, 192, (1973), affirmed CLI-73-12, 6 AEC 241 (1973), affirmed sub nom. *BPI v. AEC*, 502 F.2d 424 (D.C. Cir. 1974).
- F The wording of a regulation generally takes precedence over any contradictory suggestion in its administrative history.
- G The hearing mandate of Section 189a. of the Atomic Energy Act does not confer the automatic right of intervention upon anyone; rather, the Commission may condition the exercise of that right upon the meeting of reasonable procedural requirements. *BPI v. AEC*, 502 F.2d 424, 428 (1974).
- H No procedural requirement can lawfully operate to preclude from the very outset a hearing under Section 189a. of the Atomic Energy Act on an issue both within the scope of the petitioner's interest and germane to the outcome of the proceeding.
- I The determination whether to accept an untimely contention which was susceptible of filing within the period prescribed by the Rules of Practice involves a consideration of all five 10 CFR 2.714(a) factors — and not just the reason (substantial or not as the case may be) why a petitioner did not meet the deadline.
- J In determining whether to accept an untimely contention under 10 CFR 2.714(a), if the contention could not have been asserted with sufficient specificity during the period prescribed by the Rules of Practice due to the non-existence or public unavailability of relevant documents, that factor must be deemed controlling; it is not amenable to being overridden by the other 2.714(a) factors such as that relating to the broadening of the issues.
- ALAB-688 UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY (Clinch River Breeder Reactor Plant), Docket No. 50-537; LIMITED WORK AUTHORIZATION; August 25, 1982; MEMORANDUM AND ORDER
- A The Appeal Board denies a petition for directed certification of an unpublished Licensing Board order (August 5, 1982) which sets forth the scope of and schedule for evidentiary hearings in the limited work authorization proceeding for this facility.

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B A limited work authorization (LWA-1) allows preliminary construction work to be undertaken at the applicant's risk, pending completion of later hearings covering radiological health and safety issues. See 10 CFR 50.10(e)(1); Public Service Co. of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 778 (1979). Before an LWA-1 can be granted, the staff must have issued the final environmental impact statement relating to the construction of the facility. Moreover, the Licensing Board must have made all the environmental findings required for issuance of a construction permit and "determined that . . . there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type proposed from the standpoint of radiological health and safety considerations." 10 CFR 50.10(e)(2).

C Discretionary interlocutory review will be granted only sparingly, and then only when a licensing board's action either (a) threatens the party adversely affected with immediate and serious irreparable harm which could not be remedied by a later appeal, or (b) affects the basic structure of the proceeding in a pervasive or unusual manner. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-588, 11 NRC 533, 536 (1980). Especially in light of the paucity of construction permit applications, legal issues involving the timing of the admission of evidence at LWA hearings cannot be considered recurring issues of great importance to the proper functioning of the licensing process.

D An appeal board will be particularly reluctant to grant a request for directed certification where the question for which certification has been sought involves the scheduling of hearings or the timing and admissibility of evidence, see Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98, 99-100 (1976), and will be inclined to do so only to entertain a claim that a board abused its discretion by setting a hearing schedule that deprives a party of its right to procedural due process. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 188 (1978). See generally Houston Lighting & Power Co., et al. (South Texas Project, Units 1 and 2), ALAB-637, 13 NRC 367, 370-71 (1981).

ALAB-689 OFFSHORE POWER SYSTEMS (Manufacturing License for Floating Nuclear Power Plants), Docket No. STN 50-437-ML; MANUFACTURING LICENSE; September 1, 1982; MEMO-RANDUM AND ORDER

A The Appeal Board grants applicant's motion for clarification of its previous memorandum and order (ALAB-686, 16 NRC 454 (1982)) in which the Appeal Board (1) concluded that it is not obliged by the "immediate effectiveness" regulation (10 CFR 2.764) to conduct such a review in manufacturing license proceedings, and (2) announced that, in the absence of exceptions to the Licensing Board's initial decision (LBP-82-49, 15 NRC 1658 (1982)), it would undertake sua sponte review of it. In granting the motion for clarification, the Appeal Board explains, inter alia, the nature of its sua sponte review authority and its relationship to the effectiveness of licensing board initial decisions.

B An immediate effectiveness review of a licensing board decision is not a substitute for an appeal board's usual sua sponte review of the decision and its underlying record before the decision is accorded finality.

C Sua sponte review by an appeal board is a long-standing Commission-approved practice which is undertaken in all cases, regardless of their nature or whether exceptions have been filed. See 10 CFR 2.760(a), 2.785(a). This type of review extends to "any final disposition of a licensing proceeding that either was or had to be founded upon substantive determinations of significant safety or environmental issues." Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 803 (1981), quoting Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687, 692 (1979). See also Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, 12 NRC 301, 304 (1980), and cases cited.

D Only the administrative finality of a licensing board's decision is deferred pending sua sponte review by an appeal board; the effectiveness of the decision is not stayed.

E If sua sponte review uncovers problems in a licensing board's decision or the record that may require corrective action adverse to a party's interest, the appeal board's consistent practice is to give the party ample opportunity to address the matter, as appropriate. See, e.g., Rancho Seco, supra, 14 NRC at 803-04, 817; Monticello, supra, 12 NRC at 309-13; Virginia Electric and Power Co. (North

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Anna Nuclear Power Station, Units 1 and 2), ALAB-529, 9 NRC 153 (1979); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 249-50 (1978).

ALAB-690 LOUISIANA POWER AND LIGHT COMPANY (Waterford Steam Electric Station, Unit 3), Docket No. 50-382-OL; REMAND; September 7, 1982; MEMORANDUM AND ORDER

A The Appeal Board dismisses without prejudice a petitioner's appeal from a non-final order of the Licensing Board.

B The test of "finality" for appeal purposes before the Nuclear Regulatory Commission (as in the courts) is essentially a practical one. As a general matter, a licensing board's action is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party's right to participate; rulings which do neither are interlocutory. Toledo Edison Co., et al. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975). Where a party has been given an opportunity to file a new petition for leave to intervene, the Licensing Board order that denied the prior petition is non-final and not immediately appealable.

ALAB-691 CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2), Docket Nos. 50-329-CP, 50-330-CP; REMAND; September 9, 1982; DECISION

A The Appeal Board dismisses an intervenor's appeal of the Licensing Board's decision in LBP-81-63, 14 NRC 1768 (1981), not to impose sanctions against the licensee for failure to disclose assertedly significant information in an earlier phase of this construction permit proceeding. The Appeal Board, however, pursuant to sua sponte review of the record affirms the Licensing Board's decision not to impose sanctions, but corrects certain of the Board's underlying legal conclusions.

B Requiring the submission to a licensing board of proposed findings of fact or a comparable document is not a mere formality: it gives that board the benefit of a party's arguments and permits it to resolve them in the first instance — possibly in the party's favor, obviating later appeal.

C Unless there is a serious substantive issue as to which a genuine problem has been demonstrated, an appeal board ordinarily will not entertain an issue raised for the first time on appeal. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 348 (1978). See also Public Service Electric and Gas Co., et al. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981).

D A party that fails to submit proposed findings as requested by a licensing board, relying instead on the submissions of others, assumes the risk that such reliance might be misplaced; it must be prepared to live with the consequence that its further appeal rights will be waived. Cf. Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 644-45 (1977).

E Although parties not adversely affected by the ultimate outcome of a licensing board decision may not appeal that decision, they may defend a result in their favor on any ground presented in the record, including one rejected below. Public Service Co. of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 789 (1979).

F Regardless of whether there is an appeal, it is appeal board practice to review sua sponte any final disposition of a licensing proceeding that either was or had to be founded upon substantive determinations of significant safety or environmental issues. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 803 (1981); Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687, 692 (1979).

G Appeal boards do not ordinarily scrutinize licensing board rulings on economic issues, intervention requests, or procedural matters in the absence of a properly perfected appeal. Louisiana Power and Light Co. (Waterford Steam Generating Station, Unit No. 3), ALAB-258, 1 NRC 45, 48 n.6 (1975); Washington Public Power Supply System (Nuclear Projects No. 1 and No. 4), ALAB-265, 1 NRC 374, 375 n.1 (1975); Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 1), ALAB-231, 8 AEC 633-634 (1974).

H An appeal board may undertake sua sponte review of a licensing board decision concerned with the integrity of the hearing process.

I It is not the appeal board's function in a sua sponte review of a licensing board decision to undertake a detailed scrutiny of the entire record. Rather, the appeal board usually addresses only those portions of the licensing board's opinion that it believes deserve clarification or correction. Further, absence of appeal board comment on a particular licensing board statement should not be construed as either agreement or disagreement with it.

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- J** An applicant or a licensee has an obligation in NRC proceedings to provide accurate and timely information. *Petition for Emergency and Remedial Action*, CLI-78-6, 7 NRC 400, 418 (1978). See also *Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3)*, ALAB-677, 15 NRC 1387 (1982). The source of this obligation is the Atomic Energy Act itself. See Section 186a, 42 U.S.C. 2236a.
- K** Liability of an applicant or licensee for a material false statement in violation of Section 186a of the Atomic Energy Act does not depend on whether the applicant or licensee knew of the falsity. *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, CLI-76-22, 4 NRC 480 (1976), *aff'd sub nom. Virginia Electric and Power Co. v. Nuclear Regulatory Commission*, 571 F.2d 1289 (4th Cir. 1978).
- L** Under Section 186a of the Atomic Energy Act, the test for materiality is whether the information is capable of influencing the decisionmaker — not whether the decisionmaker would, in fact, have relied on it. Determinations of materiality require careful, common-sense judgments of the context in which information appears and the stage of the licensing process involved. *North Anna*, *supra*, 4 NRC at 487, 491.
- M** A "material false statement" under Section 186a of the Atomic Energy Act encompasses omissions as well as affirmative statements. *North Anna*, *supra*, 4 NRC at 489.
- N** In general, if a party has doubts about whether to disclose information, it should do so, as the ultimate decision with regard to materiality is for the decisionmaker, not the parties.
- O** The mere existence of a question or discussion about the possible materiality of information does not necessarily make the information material.
- P** Intent to deceive is irrelevant in determining whether there has been a material false statement under Section 186a of the Atomic Energy Act; a deliberate effort to mislead the NRC, however, is relevant to the matter of sanctions, once a material false statement has been found.
- Q** Information concerning a licensee's or an applicant's intent to deceive may call into question its "character" — a matter the Commission is authorized to consider under Section 182 of the Atomic Energy Act, 42 U.S.C. 2232a — or its ability and willingness to comply with agency regulations, as Section 103b, 42 U.S.C. 2133b, requires.
- R** The Commission's Rules of Practice require parties and their representatives to conduct themselves with honor, dignity, and decorum as they should before a court of law. 10 CFR 2.713(a).
- S** The Commission generally follows the American Bar Association's Code of Professional Responsibility in judging lawyer conduct in NRC proceedings. See, e.g., *Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1)*, ALAB-204, 7 AEC 835, 838 (1974).
- T** Canon 7 of the ABA Code of Professional Responsibility — which exhorts lawyers to represent their clients "zealously within the bounds of the law" — and its associated Ethical Considerations and Disciplinary Rules provide the standards by which attorneys should abide in the preparation of testimony for NRC proceedings.
- U** In judging the propriety of a lawyer's participation in the preparation of testimony of a witness, the key factor is not who originated the words that comprise the testimony, but whether the witness can truthfully attest that the statement is complete and accurate to the best of his or her knowledge.
- V** Gamesmanship and sporting conduct between or among lawyers and parties is not condoned in Nuclear Regulatory Commission proceedings.
- ALAB-692** **METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit No. 2), Docket No. 50-320-OLA; OPERATING LICENSE AMENDMENT; September 14, 1982; DECISION**
- A** Following the conduct of additional evidentiary hearings by the Appeal Board on the probability of a heavy aircraft (one weighing more than 200,000 pounds) crashing into the TMI-2 plant, the Board finds the analyses performed by the NRC Staff and the applicants produced acceptable results based upon data then at hand (pre-1978 data). As to any future return of the plant to service, the Appeal Board requires an updated analysis of the crash probability prior to its operation (and at least once every three years thereafter), and such protective action as the analysis might indicate.
- B** The following technical issues are discussed: Aircraft crash probability; Bayesian Theory; Confidence limits (precision, uncertainty).

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ALAB-693 PENNSYLVANIA POWER AND LIGHT COMPANY and ALLEGHENY ELECTRIC COOPERATIVE, INC. (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387-OL, 50-388-OL; OPERATING LICENSE; September 28, 1982; MEMORANDUM AND ORDER

- A** The Appeal Board dismisses an intervenor's appeal from the Licensing Board's initial decision (LBP-82-30, 15 NRC 771 (1982)) authorizing the issuance of full-power operating licenses for Units 1 and 2 of this facility. The Appeal Board notes that the initial decision does not constitute final agency action until it completes sua sponte review of it.
- B** A party's brief must (1) specify the precise portion of the record relied upon in support of the assertion of error, 10 CFR 2.762(a), and (2) relate to matters raised in the party's proposed findings of fact and conclusions of law. An appeal board will not ordinarily entertain arguments raised for the first time on appeal, absent a serious substantive issue. Public Service Electric and Gas Co., et al. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 348 (1978). See also Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 906-07 (1982).
- C** An appeal may be dismissed when a party's brief contains only conclusory assertions without sufficient information to dispose of its arguments intelligently. Public Service Co. of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 786-87 (1979). See also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 413 (1976).
- D** Prior to issuing an operating license, the Director of Nuclear Reactor Regulation must find that Commission regulations (including those implementing NEPA) have been satisfied and that the activities authorized by the license can be conducted without endangering the health and safety of the public. See 10 CFR 50.4(d), 50.57; Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 44 (1978), remanded on other grounds sub nom. Minnesota v. Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979).
- E** Lay representatives generally are not held to the same standard for appellate briefs that is expected of lawyers. Salem, supra, 14 NRC at 50 n.7. Nonetheless, NRC litigants appearing pro se or through lay representatives are in no way relieved by that status of any obligation to familiarize themselves with the Commission's rules. To the contrary, all individuals and organizations electing to become parties to NRC licensing proceedings can fairly be expected both to obtain access to a copy of the rules and refer to it as the occasion arises. Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-563, 10 NRC 449, 450 n.1 (1979).
- F** An intervenor in NRC licensing proceedings has a basic obligation to "structure [its] participation so that it is meaningful, so that it alerts the agency to [its] position and contentions." Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553 (1978).

ALAB-694 SOUTH CAROLINA ELECTRIC & GAS COMPANY, et al. (Virgil C. Summer Nuclear Station, Unit 1), Docket No. 50-395-OL; OPERATING LICENSE; September 28, 1982; MEMORANDUM AND ORDER

- A** The Appeal Board dismisses exceptions filed by the applicants to the Licensing Board's partial initial decision in this operating license proceeding (LBP-82-55, 16 NRC 225 (1982)). The Appeal Board announces it will undertake sua sponte review of that decision and a later Licensing Board partial initial decision (LBP-82-57, 16 NRC 447 (1982)), authorizing the issuance of an operating license for the plant, and reminds the parties that neither initial decision shall be deemed to have achieved administrative finality pending the completion of that review and further order.
- B** Exceptions are not necessary to defend a decision in one's favor. Only where a party is aggrieved by or dissatisfied with the action taken below and invokes the Appeal Board's jurisdiction to change the result need exceptions be filed — or are they permitted. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 202 (1978). See also Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-478, 7 NRC 772, 773 (1978); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-282, 2 NRC 9, 10 n.1 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-252, 8 AEC 1175, 1177, affirmed, CLI-75-1, 1 NRC 1 (1975); Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-157, 6 AEC 858, 859 (1973).

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ALAB-695 COMMONWEALTH EDISON COMPANY (Dresden Station, Units 2 and 3), Docket Nos. 50-237, 50-249; SPENT FUEL POOL MODIFICATION; September 29, 1982; DECISION

- A On completion of its sua sponte review of the Licensing Board's two initial decisions in this spent fuel pool modification proceeding (LBP-81-37, 14 NRC 708 (1981); LBP-82-65, 16 NRC 714 (1982)) (undertaken in the absence of any exceptions to either decision), the Appeal Board affirms the Licensing Board's decisions permitting (1) the modification of Unit 3's spent fuel pool; and (2) allowing the sought increase in spent fuel pool storage capacity for Units 2 and 3.

ALAB-696 WISCONSIN ELECTRIC POWER COMPANY (Point Beach Nuclear Plant, Unit 1), Docket No. 50-266-OLA; OPERATING LICENSE AMENDMENT; October 1, 1982; DECISION

- A The Appeal Board affirms a Licensing Board order (LBP-81-55, 14 NRC 1017 (1981)) authorizing the issuance of a license amendment permitting Unit 1 of this facility to operate without removing from service six degraded tubes that had been repaired by a sleeving technique. The Appeal Board also discusses the special "show cause" procedure and litigation standard employed by the Licensing Board for expediting the license amendment proceeding and advises that use of similar procedures should be avoided in the future.

- B Exceptions not adequately briefed are waived. Public Service Electric and Gas Company, et al. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49-50 (1981), aff'd sub nom. Township of Lower Alloways Creek v. Public Service Electric and Gas Co., 687 F.2d 732 (3rd Cir. 1982); Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 315 (1978); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-367, 5 NRC 92, 104 n.59 (1977); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 413-14 (1976).

- C When an intervenor is represented by counsel, an appeal board has no obligation to piece together or to restructure vague references in its brief in order to make intervenor's arguments for it. See Salem, supra, 14 NRC at 51.

- D The test of "finality" for appeal purposes is essentially a practical one. As a general matter, a licensing board's action is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party's right to participate; rulings which do neither are interlocutory. Toledo Edison Company, et al. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975).

- E The appealability of a licensing board order is determined by the nature of the order, not the name it bears. Kansas Gas and Electric Company and Kansas City Power and Light Company (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-331, 3 NRC 771, 774 & n.5 (1976).

- F Admission as a party to a Commission proceeding based, inter alia, on the proffering of at least one acceptable contention does not preclude summary disposition or guarantee a party a hearing on its contentions. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980).

- G An appeal board will not reverse a licensing board's scheduling rulings unless the "board abused its discretion by setting a hearing schedule that deprives a party of its right to procedural due process" [footnote omitted]. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 188 (1978).

- H While a licensing board should endeavor to conduct a licensing proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

- I Sua sponte review of a licensing board's decision by an appeal board is a long-standing Commission-approved practice that is undertaken in all cases, regardless of their nature or whether exceptions have been filed. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), ALAB-689, 16 NRC 887, 890 (1982). See Boston Edison Company (Pilgrim Nuclear Power Station, Unit 1), ALAB-231, 8 AEC 633 (1974).

- J In conducting its sua sponte review, an appeal board does not ordinarily examine a licensing board's rulings on procedural matters. See Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 908 (1982); Pilgrim, supra, 8 AEC at 633-34.

- K The procedures set forth in the Rules of Practice are the only ones that should be used (absent explicit Commission instructions in a particular case) in any licensing proceeding.

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- L** A licensing board is not authorized to admit conditionally, for any reason, a contention that falls short of meeting the requirement of reasonable specificity set forth in 10 CFR §2.714. *Duke Power Company, et al.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467 (1982).
- M** The Commission's Rules of Practice do not permit an intervention petitioner to file a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or the NRC staff. *Id.* at 468.
- N** Discovery on the subject matter of a contention in a licensing proceeding can be obtained only after the contention has been admitted to the proceeding. *Id.* at 467 n.12.
- O** In the interest of expedition, a motion for summary disposition may be filed at any time in the course of a proceeding. 10 CFR §2.749(a). See also 46 Fed. Reg. 30328, 30330-31 (June 8, 1981). If the licensing board determines that there are no genuine issues of material fact, it may grant summary disposition even before discovery is otherwise completed if the party opposing the motion cannot identify what specific information it seeks to obtain through further discovery. 10 CFR §2.749(c). See also Fed. R. Civ. P. 56(f); Sec. & Exch. Comm'n v. *Spence & Green Chemical Co.* 612 F.2d 896, 901 (5th Cir. 1980), cert. denied, 449 U.S. 1082 (1981); *Donofrio v. Camp*, 470 F.2d 428, 431-32 (D.C. Cir. 1972).
- P** As a general matter when expedition is necessary, the Commission's Rules of Practice are sufficiently flexible to permit it by ordering such steps as shortening — even drastically in some circumstances — the various time limits for the party's filings and limiting the time for, and type of, discovery. See 10 CFR §2.711. See also Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981). Steps to expedite a case are appropriate only upon a party's good cause showing that expedition is essential. 10 CFR §2.711.
- Q** A licensing board's regulation of a proceeding pursuant to 10 CFR §2.718 should not encompass procedures fundamentally departing from those set forth in the Rules of Practice. See 10 CFR Part 2, Appendix A.
- ALAB-697 METROPOLITAN EDISON COMPANY, et al.** (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP (Emergency Planning); SPECIAL PROCEEDING; October 22, 1982; DECISION
- A** In the first of its appellate decisions in this special proceeding to determine whether Unit 1 of this facility should be permitted to resume operation, the Appeal Board affirms the Licensing Board's disposition of the emergency planning issues raised on appeal by the intervenors pro se from the Licensing Board's second partial initial decision (LBP-81-59, 14 NRC 1211 (1981)), subject to the condition that the Commonwealth of Pennsylvania's agricultural information brochure be distributed to all farmers in the plume exposure pathway emergency planning zone prior to restart.
- B** Under Commission emergency planning regulations, licensees must establish procedures for notification of state and local emergency response organizations and must have the capability to notify responsible state and local governmental agencies within fifteen minutes of declaration of an emergency. 10 CFR 50.47(b)(5); 10 CFR Part 50, Appendix E, Sec. IV.D.3. Provision must also be made for prompt communications among principal response organizations to emergency personnel. 10 CFR 50.47(b)(6).
- C** Commission regulations designate two regions to be used for emergency planning purposes. The "plume exposure pathway emergency planning zone" consists of an area with a radius of approximately 10 miles surrounding a nuclear power facility. The "ingestion exposure pathway emergency planning zone" is an area with a radius of approximately 50 miles surrounding the facility. 10 CFR 50.47(c)(2).
- D** In NRC licensing proceedings, the licensee or applicant generally bears the ultimate burden of proof. 10 CFR 2.732.
- E** Pursuant to 10 CFR 50.47(b)(7), licensees must periodically make information available to members of the public concerning how they will be notified and what their initial actions should be in an emergency. Provisions must be made for yearly dissemination of "basic emergency planning information, such as the methods and times required for public notification and the protective actions planned if an accident occurs, general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an emergency." 10 CFR Part 50, Appendix E, Section IV.D.2. These general standards and the guidelines set out in NUREG-0654, FEMA-Rep-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological

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Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (November 1980) provide a reasonable framework for evaluating the sufficiency of educational material.

- F The Commission's emergency planning regulations do not require any protective measures for livestock unless they are necessary to protect the farmers. See 10 CFR 50.47(b)(10), (c)(2).
- G The exact size and configuration of the ingestion exposure pathway emergency planning zone surrounding a nuclear plant are determined "in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." 10 CFR 50.47(c)(2). Protective actions that are appropriate to the locale must be developed for the ingestion exposure pathway EPZ. 10 CFR 50.47(b)(10).
- H The following technical issues are discussed: Emergency plans; Environmental detection of radioactive iodine following accidental releases of radioactivity.
- ALAB-698 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP (Emergency Planning); SPECIAL PROCEEDING; October 22, 1982; DECISION
- A In the second of its appellate decisions considering emergency planning issues in this special proceeding to determine whether Unit 1 of the facility should be permitted to resume operation, the Appeal Board affirms the Licensing Board's holding in LBP-81-59, 14 NRC 1211, 1455-1707 (1981) not to require the predistribution of thermoluminescent dosimeters (TLDs) to state and local emergency workers, reverses the Licensing Board's holding regarding the staffing of the Emergency Operations Facility (EOF), and adopts the licensee's plan on this matter subject to certain conditions. The Appeal Board also holds that a test of emergency support operations as a condition of restart is unnecessary, and concludes that the state of the licensee's onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of an emergency. The Appeal Board further reviews sua sponte the NRC staff's incident response plan and certain guidelines in the Commonwealth of Pennsylvania's plan regarding protective action, and makes various recommendations to the staff and to the Commission based on that review.
- B The Commission's emergency planning regulations provide generally that no license may be issued unless a finding is made that the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.
- C The distribution of appropriate dosimeters to emergency workers in conjunction with other protective measures may serve to comply with the requirements of the emergency planning regulations relating to the protection of emergency workers in a radiological emergency.
- D Documents such as the Federal Emergency Management Agency (FEMA) findings and determinations, NUREG-0654 and FEMA REP-2, somewhat like the staff's Regulatory Guides, do not rise to the level of regulatory requirements. Neither do they constitute the only method of meeting applicable regulatory requirements. Cf. Fire Protection for Operating Nuclear Power Plants (10 CFR 50.48), CLI-81-11, 13 NRC 778, 782 n.2 (1981); Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772-773 (1977).
- E In the absence of other evidence, adherence to regulatory guidance may be sufficient to demonstrate compliance with regulatory requirements. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406-407 (1978). Generally speaking, however, such guidance is treated simply as evidence of legitimate means for complying with regulatory requirements, and the staff is required to demonstrate the validity of its guidance if it is called into question during the course of litigation. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 811 (1974).
- F Commission regulations, 10 CFR 50.47 and 10 CFR Part 50 Appendix E, require the establishment of two separate facilities — one onsite, the other offsite — for the management of accidents. Licensees must provide for "timely augmentation of response capabilities" and specify "the interfaces among various onsite response activities and offsite support and response activities." 10 CFR 50.47(b)(2). The Emergency Operation Facility (EOF) is expressly referred to as the place where licensees must accommodate state and local emergency response staff. 10 CFR 50.47(b)(3).
- G There is no express emergency planning regulation governing the location from which protective action recommendations must be made.
- H The precise means of implementing the Commission's emergency planning regulations require a high degree of judgment. The mere fact that a licensee's approach is somewhat different from

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the staff guidance does not render it impermissible or necessarily inconsistent with the need to provide adequate protection for the public.

- I The following technical issues are discussed: Dosimetry; Thermoluminescent dosimeters; Emergency Operations Facilities; Emergency Support Operations; Emergency Response Plans.
- ALAB-699 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP (Management Phase); RESTART; October 27, 1982; MEMORANDUM AND ORDER
- A The Appeal Board accepts the Licensing Board's referral of an intervenor's motion to reopen the management phase of the record in this restart proceeding. The motion was filed after the filing of exceptions to the Board's initial decision. The Appeal Board decides that jurisdiction to rule on a motion to reopen filed at that time rests with it rather than the Licensing Board, but defers ruling on the motion until it has achieved greater familiarity with the record.
- B A licensing board is implicitly empowered to reopen a proceeding at least until the issuance of its initial decision, but no later than either the filing of exceptions or the expiration of the period during which the Commission or an appeal board can exercise its right to review the record. See 10 CFR §§2.717(a), 2.760(a), 2.718(j).
- C Jurisdiction to rule on a motion to reopen filed after exceptions have been taken rests with the appeal board rather than the licensing board.
- D An appeal board, unlike other appellate tribunals, has the option of reopening the record and receiving new evidence itself, if necessary, obviating remand to a licensing board. See, e.g., Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 878-79 (1980).
- E The disposition of a motion to reopen turns on whether (1) it is timely, (2) it addresses a significant issue, and (3) a different result might have been reached if the new material had been previously considered. Diablo Canyon, supra, 11 NRC at 879.
- ALAB-700 PUGET SOUND POWER AND LIGHT COMPANY, et al. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), Docket Nos. 50-522, 50-523; CONSTRUCTION PERMIT; October 29, 1982; DECISION
- A The Appeal Board reverses a Licensing Board decision (LBP-82-74, 16 NRC 981 (1982)) that held petitioner (an authorized representative of the collective fishing interests of four Columbia River Indian tribes) did not have standing to intervene in this construction permit proceeding and remands the proceeding to the Licensing Board with instructions to grant the petition subject to its finding of at least one admissible contention proffered by the petitioner.
- B A licensing board is not obliged to grant an intervention petition simply because it is unopposed; the board must still evaluate it for compliance with Commission intervention requirements.
- C An appeal board will not overturn a licensing board's denial of intervention without reviewing that decision on the merits, even if the appeal is unopposed.
- D To obtain standing to intervene in an NRC licensing proceeding, a petitioner must allege (1) an "injury in fact" that has occurred or will probably result from the proposed licensing action, and (2) an interest that is within the "zone of interests" protected by the Atomic Energy Act. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976).
- E An organization is not precluded from intervening in an NRC licensing proceeding merely because one of its constituent members has already intervened.
- F An organization can have standing as a representative of its members' interest. Warth v. Seldin, 422 U.S. 490, 511 (1975); Sierra Club v. Morton, 405 U.S. 727, 739 (1972).
- G An organization specifically empowered by its members to promote certain of their interests has those members' authorization to act as their representative in any proceeding that may affect those interests. See Hunt v. Washington Apple Advertising Commission, 432 U.S. 333, 342-45 (1977); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 n.2 (1979); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 395-96 & n.25 (1979).

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ALAB-701 PHILADELPHIA ELECTRIC COMPANY, et al. (Peach Bottom Atomic Power Station, Units 2 and 3), Docket Nos. 50-277, 50-278; METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit No. 2), Docket No. 50-320; and PUBLIC SERVICE ELECTRIC AND GAS COMPANY (Hope Creek Generating Station, Units 1 and 2), Docket Nos. 50-354, 50-355; OPERATING LICENSE; November 19, 1982; DECISION

A The Appeal Boards for this consolidated proceeding determine that intervenors have failed to demonstrate a need for a further evidentiary hearing on the question of the effects on human health of the annual fuel cycle radon releases attributable to the operation of the Peach Bottom (Unit 3), Three Mile Island (Unit 2), and Hope Creek (Units 1 and 2) reactors; and conclude on the basis of the existing evidentiary record that the health effects of those annual releases are not sufficiently significant to Environmental Policy Act (NEPA) cost-benefit balances against operation of these facilities. The Boards terminate their review of the initial decisions in each of the three proceedings (LBP-74-42, 7 AEC 1022 (1974) (Peach Bottom); LBP-77-70, 6 NRC 1185 (1977) (TMI-2); LBP-78-15, 7 NRC 642 (1978) (Hope Creek)) and affirm each decision except to the extent modified in their previous review on other issues.

B The following technical issues are discussed: Health effects of radon releases from nuclear fuel cycle; Expertise of witnesses; Natural release of radon.

ALAB-702 PENNSYLVANIA POWER & LIGHT COMPANY and ALLEGHENY ELECTRIC COOPERATIVE, INC. (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387-OL, 50-388-OL; OPERATING LICENSE; November 22, 1982; MEMORANDUM AND ORDER

A On sua sponte review of the Licensing Board's initial decision authorizing the issuance of operating licenses for Units 1 and 2 of this facility (LBP-82-30, 15 NRC 771 (1982)), the Appeal Board agrees with the applicants and NRC staff on the need for amending the technical specifications for Unit 1 to include a limiting condition for operation that restricts increases in unidentified leakage in that Unit's reactor coolant system. Finding no other errors requiring corrective action, the Appeal Board announces the completion of its sua sponte review.

ALAB-703 SACRAMENTO MUNICIPAL UTILITY DISTRICT (Rancho Seco Nuclear Generating Station), Docket No. 50-312-SP; SPECIAL PROCEEDING; November 23, 1982; MEMORANDUM AND ORDER

A In the course of sua sponte review of the Licensing Board's initial decision (LBP-81-12, 13 NRC 557 (1981)) in this special proceeding — instituted to determine the adequacy of certain requirements for continued operation ordered by the Commission following the March 1979 accident at Three Mile Island — the Appeal Board decides upon consideration of additional information submitted by the licensee and the NRC staff that, with one exception, the matters identified in its October 7, 1981 order (ALAB-655, 14 NRC 799) as calling for further information are now satisfactorily clarified or resolved. The Appeal Board defers final ruling in the proceeding, pending consideration of information yet to be received on the remaining matter.

B The following technical issues are discussed: Loss-of-coolant (LOCA) analysis; Pump suction line breaks; Auxiliary feedwater (AFW) flow; High pressure injection (HPI) nozzles; Thermal cycles; Pressurizer level indication; Loose thermal sleeves.

ALAB-704 MISSISSIPPI POWER & LIGHT COMPANY, et al. (Grand Gulf Nuclear Station, Units 1 and 2), Docket Nos. 50-416, 50-417; OPERATING LICENSE; December 8, 1982; DECISION

A The Appeal Board affirms, subject to the outcome of pending judicial proceedings, the Licensing Board's decision (LBP-82-92, 16 NRC 1376 (1982)) denying a late-filed petition to intervene in this otherwise uncontested operating license proceeding for failure to meet the late intervention criteria of 10 CFR §2.714(a).

B Absent a showing of good cause for late filing, an intervention petitioner must make a "compelling showing" on the other four factors stated in 10 CFR §2.714(a) governing late intervention. South Carolina Electric and Gas Company, et al. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 886 (1981), aff'd sub nom. Fairfield United Action v. Nuclear Regulatory Commission, 679 F.2d 261 (D.C. Cir. 1982). A licensing board's evaluation of those factors will not be disturbed by an appeal board unless the licensing board has abused its discretion. Id. at 885.

C When an intervention petitioner addresses the 10 CFR §2.714(a) (iii) criterion for late intervention requiring a showing how its participation may reasonably be expected to assist in developing a

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sound record, it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony. See generally Summer, supra, 13 NRC at 894; The Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 764 (1978). Vague assertions regarding petitioner's ability or resources are insufficient.

- D A Commission policy statement is binding on its adjudicatory boards. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 51 (1978), remanded on other grounds sub nom. *Minnesota v. Nuclear Regulatory Commission*, 602 F.2d 412 (D.C. Cir. 1979).
- ALAB-705 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289 (Environmental Issues); RESTART; December 10, 1982; DECISION
- A The Appeal Board affirms the Licensing Board's rejection in its partial initial decision on environmental issues in the TMI-1 restart proceeding (LBP-81-60, 14 NRC 1724), of an intervenor's contention calling for an analysis of the environmental effects of so-called "Class 9 accidents." The Appeal Board rules that neither NEPA, nor Commission policy or instructions applicable to this proceeding, requires further analysis of such accidents.
- B It is well-settled that NEPA does not require an evaluation of environmental impacts that are "deemed only remote and speculative possibilities." *Vermont Yankee Nuclear Power Corp. v. National Resources Defense Council*, 435 U.S. 519, 551 (1978), quoting *NRDC v. Morton*, 458 F.2d 827, 837-38 (D.C. Cir. 1972).
- ALAB-706 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; December 15, 1982; MEMORANDUM AND ORDER
- A The Appeal Board denies applicants' motion for directed certification of the Licensing Board's order (LBP-82-98, 16 NRC 1459 (1982)) admitting three late-filed contentions of intervenors in this operating license proceeding.
- B Appeal board review of an interlocutory licensing board ruling via directed certification is discretionary and granted infrequently. A party invoking review by this means must demonstrate that the board's action either (a) threatens the party adversely affected with immediate and serious irreparable harm which could not be remedied by a later appeal, or (b) affects the basic structure of the proceeding in a pervasive or unusual manner. *Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1)*, ALAB-588, 11 NRC 533, 536 (1980), and cases cited. A ruling that does no more than admit a contention has a low potential for meeting that standard. *Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2)*, ALAB-687, 16 NRC 460, 464 (1982).
- C The admission by a licensing board of more late-filed than timely contentions does not, in and of itself, affect the basic structure of a licensing proceeding in a pervasive or unusual manner warranting interlocutory appeal board review. If the late-filed contentions have been admitted by the board in accordance with 10 CFR §2.714, it cannot be said that the board's rulings have affected the case in a pervasive or unusual manner. Rather, the board will have acted in furtherance of the Commission's own rules.
- D Neither the Commission's Rules of Practice nor the pertinent Statement of Consideration puts an absolute or relative limit on the number of contentions that may be admitted to a licensing proceeding. See 10 CFR §2.714(a), (b); 43 Fed. Reg. 17798, 17799 (Apr. 26, 1978).
- E The fact that applicants will be unable to regroup the time and financial expense needed to litigate late-filed contention is a factor that is present when any contention is admitted and thus does not provide the type of unusual delay that warrants interlocutory appeal board review. *Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2)*, ALAB-675, 15 NRC 1105, 1114 (1982).
- ALAB-707 THE DETROIT EDISON COMPANY, et al. (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341-OL; OPERATING LICENSE; December 21, 1982; DECISION
- A The Appeal Board affirms a Licensing Board decision (LBP-82-96, 16 NRC 1408 (1982)) denying an intervention petition filed after the close of the evidentiary record for failure to meet the criteria governing late intervention specified in 10 CFR §2.714(a). The Appeal Board forwards the petition and accompanying materials to the Director of Nuclear Reactor Regulation with a request that they be treated as a 10 CFR §2.206 petition.

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- B** An appeal board will not overturn a licensing board's denial of a late intervention petition under the criteria specified in 10 CFR §2.714(a) unless the board has abused its direction. *South Carolina Electric and Gas Company, et al. (Virgil C. Summer Nuclear Station, Unit 1)*, ALAB-642, 13 NRC 881, 885 (1981), aff'd sub nom. *Fairfield United Action v. Nuclear Regulatory Commission*, 679 F.2d 261 (D.C. Cir. 1982).
- C** A party seeking to reopen a proceeding for consideration of a newly recognized contention must satisfy an objective test of good cause. Among other things, the party seeking to reopen must show that the issue it now seeks to raise could not have been raised earlier. *Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, ALAB-138, 6 AEC 520, 523 (1973). In addition, the party must show that the matter it wishes to have considered is (1) timely presented, (2) addressed to a significant issue, and (3) susceptible of altering the result previously reached. See *Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*, CLI-81-5, 13 NRC 361, 364-65 (1981); *Kansas Gas and Electric Company and Kansas City Power and Light Company (Wolf Creek Generating Station, Unit No. 1)*, ALAB-462, 7 NRC 320, 338 (1978).
- D** In the absence of good cause, a petitioner must make a "compelling showing" on the other four 10 CFR §2.714(a) factors in order to justify late intervention. *Summer, supra*, 13 NRC at 886. See *Mississippi Power & Light Company, et al. (Grand Gulf Nuclear Station, Units 1 and 2)*, ALAB-704, 16 NRC 1725, 1730 (1982).
- E** In addressing the factor of the extent to which it can assist in developing a sound record, a petitioner "should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony. Vague assertions regarding petitioner's ability or resources . . . are insufficient." *Grand Gulf, supra*, 16 NRC at 1730 (citations omitted).
- F** Until the parties to a proceeding that oppose a late intervention petition suggest another forum that appears to promise a full hearing on the claims petitioner seeks to raise, a petitioner need not identify and particularize other remedies as inadequate.
- G** The Commission's late intervention rules are the kind of reasonable procedural rules it is entitled to establish for participation in its proceedings. *BPI v. Atomic Energy Commission*, 502 F.2d 424 (D.C. Cir. 1974). See generally *Summer, supra*.
- H** In every case, a petitioner that for some reason cannot gain admittance to a construction permit or operating license hearing, but wishes to raise health, safety, or environmental concerns before the NRC may file a request with the Director of Nuclear Reactor Regulation under 10 CFR §2.206 asking the Director to institute a proceeding to address those concerns. The Director can then either institute a show-cause proceeding if he believes one is warranted, or issue a written statement of reasons explaining why no regulatory action is necessary. See *Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 & 2)*, CLI-82-29, 16 NRC 1221, 1228-29 (1982). See also *Porter County Chapter of the Izaak Walton League of America, Inc. v. Nuclear Regulatory Commission*, 606 F.2d 1363, 1369-70 (D.C. Cir. 1979).
- ALAB-708 METROPOLITAN EDISON COMPANY, et al. (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289 (Design Issues); RESTART; December 29, 1982; MEMORANDUM AND ORDER**
- A** The Appeal Board orders a limited reopening of the evidentiary record in this restart proceeding and directs the licensee and the NRC staff to prepare supplemental testimony on specified issues concerning, inter alia, the capability of the "feed and bleed" and two-phase (boiler-condenser) natural circulation processes to remove decay heat from the reactor core in the event of a loss of main feedwater or a small-break loss-of-coolant accident at TMI-1.
- B** The following technical issues are discussed: Decay Heat Removal Methods — Feed and Bleed Cooling; Natural Circulation Cooling with Emergency Feedwater — (Single-phase and two-phase (boiler-condenser) natural circulation flow, Emergency Feedwater System Reliability, Reactor Coolant System Vents).



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LBP-82-51 DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414; SPECIAL PROCEEDING; July 8, 1982; MEMORANDUM AND ORDER

A The Licensing Board overrules various objections to its Order issued following a prehearing conference pursuant to §10 CFR 2.751a. The Board also denies requests for referral of certain issues to the Appeal Board.

B Where an Intervenor seeking to challenge an Applicant's security plan does not produce a qualified expert to review the plan and declines to submit to a protective order, its vague contentions must be dismissed for failure to meet conditions that could produce an acceptably specific contention.

LBP-82-51A CONSUMERS POWER COMPANY (Big Rock Point Plant), Docket No. 50-155-OLA; SPENT FUEL POOL AMENDMENT; July 8, 1982; MEMORANDUM AND ORDER

A The Licensing Board affirms, over objections of the NRC Staff, a phased schedule for the filing of findings of fact and conclusions of law subsequent to an evidentiary hearing. Under the schedule, all parties are required to make simultaneous filings of findings of fact and conclusions of law on each of the contentions and all parties have simultaneous rights of reply.

B A Board may require phased findings of fact and conclusions of law subsequent to an evidentiary hearing in order to expedite the decision process by permitting the Board to begin analyzing the record efficiently. Under a phased schedule, early findings may be required prior to the 30 days allowed for applicants under the procedural regulations. The Board may also require simultaneous filing of these phased findings, in order to expedite the proceeding and to encourage staff to develop an independent position.

LBP-82-52 COMMONWEALTH EDISON COMPANY (Dresden Nuclear Power Station, Unit No. 1), Docket No. 50-10-OLA; OPERATING LICENSE AMENDMENT; July 12, 1982; MEMORANDUM AND ORDER

A Pursuant to a Memorandum and Order of the Commission directing its establishment (CLI-81-25, 14 NRC 616 (1981)), the Licensing Board rules that one individual and two organizations have standing to intervene in this proceeding concerned with chemical decontamination of Dresden Unit 1 but, because it finds that none of the contentions advanced by Petitioners are acceptable under 10 CFR §2.714 and CLI-81-25, the Board denies the petitions.

B An organization petitioning to intervene as a representative of its members must demonstrate that it has at least one member with personal standing who has authorized the organization to represent his or her interest.

C Purely academic interest in a problem is not an interest encompassed by 10 CFR §2.714. In order to satisfy 10 CFR §2.714, an injury in fact must be alleged.

D In order to be admitted for litigation, a contention must inform the Board and the parties of the matters sought to be litigated. Particularly where substantial technical information is available indicating the bases for the applicant's proposal and the Staff's position, Petitioners' contentions must indicate the specific respects in which they quarrel with that information.

LBP-82-53 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; July 12, 1982; MEMORANDUM AND ORDER

A The Board admits late-filed contentions on psychological stress, the degradation of electrical wiring from radiation-induced embrittlement of electrical insulation, and the impropriety of considering local economic effects as benefits for purposes of the Draft Environmental Statement, but requires intervenors to further particularize two of the contentions prior to hearing.

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- B** The Board refuses to admit a late-filed contention that the plant's closed-cycle cooling system should be replaced by a radial well system, such as has been employed at Grand Gulf Nuclear Station, in order to reduce the number of fish, fish eggs and larvae destroyed through impingement and entrainment. The Board also refuses to admit a contention that the environmental analysis must consider the possible use of nuclear fuel for nuclear weapons, should the government subsequently decide to permit the use of laser isotope separation techniques to accomplish this purpose.
- C** In addition, the Board rules that the decision in *Natural Resources Defense Council v. NRC*, Civil Action No. 74-1586 (April 27, 1982), which has not been accompanied by a mandate, does not provide grounds for reconsidering an earlier ruling excluding a contention on the safe disposal and storage of radioactive materials.
- D** Intervenor may be excused for lateness in filing if they keep current with reputable sources of information such as *Science*, *Science News*, and the *Bulletin of the Atomic Scientist*. They need not keep up with all NRC literature and all technical literature concerning nuclear reactors.
- E** The Commission is required to consider psychological stress in its environmental analysis providing that there is proof that a nuclear plant will cause people in the vicinity of the plant to suffer anxieties of such severity as to be medically recognized impairments of psychological health.
- F** A court decision purporting to strike down a portion of the Commission's rules on the consideration of waste disposal issues in NEPA analyses does not invalidate those rules until the court issues its mandate. Prior to the issuance of a mandate, the rule is valid and a contention contradicting the rule cannot be admitted.
- G** A contention that fuel stored in a spent fuel pool might subsequently be used to manufacture nuclear weapons is not cognizable under NEPA because weapons manufacture is not part of the proposed action and would require either federal legislation or further federal administrative action.
- H** When the Commission has decided to implement a rule on the environmental qualification of electrical equipment but has not yet decided when to make the rule effective, it is appropriate to admit a contention on the subject. Provision may be made for applicant or staff to stay discovery on the contention if they wish.
- I** The following technical issues are discussed: Embrittlement of electrical insulation; environmental qualification of electric wiring; radiation, effects on polymers; polymer degradation due to radiation; psychological stress, legal standard for NEPA consideration; impingement of fish, minimum standard for NEPA consideration; entrainment of fish, minimum standard for NEPA consideration.
- LBP-82-53A CLEVELAND ELECTRIC ILLUMINATING COMPANY**, et al. (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; July 19, 1982; MEMORANDUM AND ORDER
- A** The Licensing Board revises its earlier decision (LBP-82-53) and dismisses a psychological stress contention based on a statement of policy issued by the Commission.
- LBP-82-54 CINCINNATI GAS & ELECTRIC COMPANY**, et al. (Zimmer Nuclear Power Station, Unit 1), Docket No. 50-358-OL; OPERATING LICENSE; July 15, 1982; MEMORANDUM AND ORDER
- A** Licensing Board rules that an intervenor proposing eight untimely contentions challenging applicants' quality assurance procedures and character and competence to operate a nuclear facility failed to meet the standards of 10 CFR 2.714. In light of the seriousness of the issues, the Board adopts them sua sponte.
- B** When untimely contentions are advanced on the eve of an initial decision which ordinarily would conclude Licensing Board consideration of an application, the proponent must furnish substantial justification for the delay.
- C** When untimely proposed contentions raise issues so serious that a decision adverse to the applicant might require denial of an operating license, the Licensing Board may exercise its authority under 10 CFR §2.718(j) and 2.760a to reopen the record and admit the contentions as Board-raised issues.
- D** It is a clear requirement for representational standing that an organization seeking to represent the interests of its members submit evidence of authorization to do so from at least one member with standing to participate in the proceeding.

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LBP-82-55 SOUTH CAROLINA ELECTRIC AND GAS COMPANY, et al. (Virgil C. Summer Nuclear Station, Unit 1), Docket No. 50-395-OL; OPERATING LICENSE; July 20, 1982; PARTIAL INITIAL DECISION

A In this Partial Initial Decision the Licensing Board resolves the seismic issues in controversy in favor of plant safety concluding that the seismic safety of the Summer Nuclear Plant will be assured if the operating license is made subject to two conditions: (1) that seismic monitoring be continued at least until December 31, 1983, and that the NRC Staff reevaluate at that time the need for further monitoring; and (2) that Applicants successfully complete within the first year of operation a confirmatory program to demonstrate to the NRC Staff's satisfaction that explicit safety margins exist for each component necessary for shutdown and continued heat removal in the event of the maximum potential shallow earthquake.

B The following technical issues are discussed: Reservoir-induced seismicity — occurrence after impoundment, shallow earthquakes and near-source earthquakes; Ground motion — peak accelerations, amplification from bedrock (soil, topographical, soil-pad interaction), response spectra, theoretical models and empirical data; Magnitude potential — deep vs. shallow earthquakes, source dimension, deviatoric stress; Seismic structural capacity — engineered structures, equipment and components, natural frequencies and reduction of motion (imbedment of foundation).

LBP-82-56 METROPOLITAN EDISON COMPANY (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289; RESTART; July 27, 1982; PARTIAL INITIAL DECISION

A The Licensing Board issues its third and concluding partial initial decision which resolves the special restart proceeding in favor of restarting TMI Unit 1 subject to certain recommendations, conditions and a monetary penalty.

B Technical issues discussed: utility's responsibility to train and examine candidates for NRC operator licenses; utility's responsibility to certify only competent candidates for NRC operator licenses; standards for maintaining and renewing operator licenses; the NRC operator licensing responsibilities; auditing of utility's operator training and examination program; the method of validating NRC operator license examination for specific plants; proctoring and grading NRC operator licensing examinations; quality assurance applied to training and testing operators; redundant assurance of reactor operator competence; reactor coolant chemistry; reactor coolant pump bearing and seals.

C Licensing Board appointed Special Master pursuant to 10 CFR 2.722(a)(2) and specified issues to be heard by Special Master.

D Licensing Board adopts as its own the evidentiary record made before Special Master.

E The Board, not the Special Master, is authorized by Notice of Hearing, regulations and statute to render Administrative Procedure Act initial decision. Special Master's report is advisory only. Board must render decision based on its own understanding of the reliable, probative and substantial evidence.

F Licensing Board affords weight to Special Master's reported direct observations of witness demeanor; but where Special Master's conclusions are materially affected by witness demeanor, Licensing Board must give especially careful consideration to whether or not other more objective witness credibility standards are consistent with Special Master's conclusions.

G Where inferences and factual conclusions depend upon the ethical orientation and expectations of the fact-finder, Licensing Board relies upon its collegial judgment but accepts Special Master's conclusions as informed advice.

H Results of hearing before Special Master and its effect upon the entire proceeding before the Board are exclusively within the jurisdiction of the Board vis-a-vis the jurisdiction delegated to the Special Master.

I Licensing Board does not endorse Special Master's recommendation that NRC examination cheaters be referred for criminal prosecution, because criminal prosecution has not been shown to relate to jurisdiction granted by Notice of Hearing.

J Licensing Board has no jurisdiction and authority to direct the NRC Staff to conduct future investigation into alleged false material statement under ruling of Carolina Power and Light Company (Shearon Harris, Units 1-4), CLI-80-12, 11 NRC 514 (1980).

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- K** Although not presiding over a proceeding noticed as a civil penalty case, Licensing Board nevertheless imposes a monetary penalty on licensed utility of \$100,000 for negligent failure to safeguard the integrity of the utility's operator examination process, failure to instill an attitude of respect for the utility- and NRC-administered examinations, failure to assure the quality of operator training instruction and negligence in the certification of candidates for NRC operator licensing. Board's jurisdiction to impose monetary penalty flows from authority set out in Notice of Hearing to require long-term measures necessary to provide reasonable assurance that Three Mile Island Unit 1 can be operated without endangering the public health and safety.
- L** Upon issuing a partial initial decision, Licensing Board retained jurisdiction over a portion of the subject matter of that decision because of new information on cheating on the NRC operator licensing examination.
- M** NRC investigator's testimony that operator licensing examination candidate told him that another operator licensing examination candidate attempted to cheat, particularly in light of uncertain memories of investigator and the informing candidate, is unreliable hearsay.
- N** Rumors that an employee of Licensee cheated are the worst kind of hearsay (*United States v. Mandel*, 591 F.2d 1347 (4th Cir. 1979); cert. denied, 100 S. Ct. 1647; 445 U.S. 961; 64 L. Ed. 236 (1980)) and not worthy of evidentiary weight as to the truth of the rumors. Rumors may be considered, however, in assessing thoroughness of investigation and may be pursued in the interest of a complete evidentiary record.
- O** The Board finds that it is fair to draw an inference unfavorable to a suspected cheater where, as a voluntary witness, suspected cheater alone has solution to mystery surrounding his activities and fails to explain his activities despite opportunity to do so.
- P** Certification to the NRC's Operator Licensing Branch that licensed operator has requalified based upon the known improper assistance of another operator is a false material statement under the Atomic Energy Act.
- Q** Licensing Board finds that two licensed operators cheated on company-administered license qualification examination but, because operators have not had notice of charges against them or opportunity to confront evidence because of sequestration, no action may be taken against their personal operator licenses without further proceeding. However, findings that the operators cheated are findings against the licensed utility.
- LBP-82-57 SOUTH CAROLINA ELECTRIC AND GAS COMPANY, et al.** (Virgil C. Summer Nuclear Station, Unit 1), Docket No. 50-395-OL; OPERATING LICENSE; August 4, 1982; SUPPLEMENTAL PARTIAL INITIAL DECISION
- A** In this Supplemental Partial Initial Decision the Licensing Board authorizes the issuance of a full-term operating license subject to certain conditions relating to seismic safety, emergency preparedness and steam generator tube problems. The Board considered issues involving anticipated transients without scram (ATWS), emergency preparedness, quality assurance/quality control, and health effects from the operation of the facility and from the uranium fuel cycle.
- B** The following technical issues are discussed: Health effects — risk estimators, linear model, and super linear model
- LBP-82-58 DAIRYLAND POWER COOPERATIVE** (La Crosse Boiling Water Reactor), Docket Nos. 50-409-FTOL, 50-409-SC; OPERATING LICENSE; August 2, 1982; MEMORANDUM AND ORDER
- A** The Licensing Board grants the motions of the NRC Staff and Applicant for summary disposition of all environmental contentions and concludes its consideration of other environmental questions which had arisen during the course of this full-term operating license proceeding.
- B** The Commission and Appeal Board have encouraged the use of summary disposition to resolve contentions where an intervenor has failed to establish that a genuine issue exists.
- C** The Commission's summary disposition procedures have been analogized to Rule 56 of the Federal Rules of Civil Procedure. Decisions arising under the Federal Rules thus may serve as guidelines to licensing boards in applying the Commission's summary disposition procedures.
- D** The burden of proof lies upon the movant for summary disposition, who must demonstrate the absence of any issue of material fact. If a movant fails to make the requisite showing, its motion may be denied even in the absence of any response by the proponent of a contention.

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- E Where a movant for summary disposition fails to include the requisite "separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard," or where the statement is inadequate, a Board may dismiss the motion for summary disposition as procedurally defective or, alternatively, can decline to give the statement the effect it would otherwise be accorded.
- F Compliance with the design objectives set forth in 10 CFR Part 50, Appendix I, establishes that the doses to offsite individuals are as low as reasonably achievable.
- G To warrant consideration of alleged environmental effects of plant operation at an evidentiary hearing, more must be shown than that those effects are theoretically possible.
- H Unless a nuclear plant has environmental disadvantages in comparison to reasonable alternatives, differences in financial costs do not enter into the NEPA process and, hence, into NRC's cost-benefit balance. Only after an environmentally superior alternative has been identified do economic considerations become relevant.
- I Issues concerning alternative energy sources in general may no longer be considered in operating license proceedings.
- J Issues raising need for power in general may no longer be considered in operating license proceedings. Lack of a previous NEPA review would not be the type of "special circumstance" needed to justify such consideration.
- K In proceedings instituted prior to June, 1980, serious (Class 9) accidents may be considered only upon a showing of "special circumstances."
- LBP-82-59 TEXAS UTILITIES GENERATING COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; SHOW CAUSE; August 4, 1982; ORDER TO SHOW CAUSE
- A The Licensing Board orders the NRC Staff to show cause why sanctions should not be imposed for the Staff's refusal to obey a Board order to identify by name individuals interviewed in connection with an investigation and to provide unexpurgated copies of signed statements taken from them. The investigation concerned allegations by a former quality control inspector that he had been wrongfully discharged for reporting defects in construction which he had identified in the performance of his job and the investigation report had been introduced as an exhibit by the Staff.
- B A qualified informer's privilege exists in NRC practice only for informers who have been given promises and pledges of anonymity.
- C Informer's privilege must yield when, in the context of an ongoing hearing on safety issues, a Board needs the protected information to determine the credibility of witnesses on contested matters.
- LBP-82-60 CONSUMERS POWER COMPANY (Big Rock Point Plant), Docket No. 50-155-OLA; SPENT FUEL POOL AMENDMENT; August 6, 1982; INITIAL DECISION
- A This is the first of a series of initial decisions concerning an amendment to permit 441 fuel assemblies to be stored in the spent fuel pool at Big Rock Point, compared to a current authorization for only 193 assemblies. This decision directs that certain changes be made in the emergency planning pamphlet that is distributed within the Emergency Planning Zone for the purpose of informing people about procedures to follow in case of an emergency at the nuclear plant. The decision also finds that there is as yet no adequate plan to distribute the pamphlet in public places or to inform transients, including large numbers of skiers and summer tourists, of appropriate steps to take in an emergency.
- B Applicant must demonstrate that a satisfactory prompt notification system is in place.
- C A satisfactory emergency plan must provide an adequate opportunity for both the permanent and transient adult population to become aware of appropriate steps to take in an emergency.
- D The requirement that there be an emergency planning pamphlet is an intrinsic part of the regulatory scheme requiring a prompt notification system. Its purpose is to give residents and transients the information they need to respond to audible alarm systems and to be sufficiently knowledgeable to understand the importance of responding.
- LBP-82-60A SOUTHERN CALIFORNIA EDISON COMPANY, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-OL, 50-362-OL; OPERATING LICENSE; August 6, 1982; MEMORANDUM AND ORDER
- A The Licensing Board decides that the utility of the further proceedings it had contemplated on the need for medical arrangements in the offsite emergency planning has been called into question by an Appeal Board ruling indicating that such arrangements are not necessary. The Board calls for com-

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ments from the parties on whether further proceedings may actually produce a better record on the question of need for medical services offsite.

LBP-82-61 CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point, Unit No. 2) and **POWER AUTHORITY OF THE STATE OF NEW YORK** (Indian Point, Unit No. 3), Docket Nos. 50-247-SP, 50-286-SP; **SPECIAL PROCEEDING**; August 9, 1982; **MEMORANDUM AND CERTIFICATION**

- A The Licensing Board seeks further Commission guidance concerning the Commission's July 27, 1982 Memorandum and Order (CLI-82-15, 16 NRC 27) directing the Board to reconsider its rulings on contentions.
- B The Licensing Board requests Commission guidance as to whether it should require that any proffered testimony on risk treat both the consequences and the probability of accidents; or whether it may admit testimony on consequences (or probability) alone if testimony on probability (or consequences) is received from some other source.
- C The Licensing Board requests Commission guidance as to whether it should continue to hear evidence on certain emergency planning questions posed by the Commission in light of the decision of the NRC Regional Administrator to require licensees pursuant to 10 CFR §50.54 to cure significant deficiencies in their emergency plans as identified by the Federal Emergency Management Agency.

LBP-82-62 ARIZONA PUBLIC SERVICE COMPANY, et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), Docket Nos. STN-50-528-OL, STN-50-529-OL, STN-50-530-OL; **OPERATING LICENSE**; August 12, 1982; **MEMORANDUM AND ORDER**

- A The Licensing Board issues a Memorandum and Order denying Intervenor's Petition for directed certification of two evidentiary rulings made during the operating license proceeding.
- B The availability of directed certification is an exception to the Commission's general rule against interlocutory appeals (10 CFR 2.730(f)) and, as such, is to be resorted to only in "exceptional circumstances." Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-382, 5 NRC 603, 606 (1977).
- C The D.C. Circuit's opinion in *Natural Resources Defense Council v. NRC*, 685 F.2d 459 (D.C. Cir. 1982) does not affect this proceeding in such a manner as to present a "novel question of policy or law" under 10 CFR Part 2, Appendix A(V) (f) (4).

LBP-82-63 CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OM&OL, 50-330-OM&OL; **MODIFICATION ORDER AND OPERATING LICENSE**; August 14, 1982; **PREHEARING CONFERENCE ORDER**

- A The Licensing Board issues a Prehearing Conference Order ruling on contentions submitted following issuance of the Staff's Safety Evaluation Report (SER) and Draft Environmental Statement (DES).
- B Where contentions are filed after 15 days prior to the special prehearing conference, those contentions are considered as late-filed and may be admitted only upon a balancing of all of the five factors listed in 10 CFR §2.714(a)(1). Where "good cause" for failure to file on time (factor i) has not been demonstrated, a contention may still be accepted, but the burden of justifying acceptance of a late contention on the basis of the other factors is considerably greater.
- C Newly arising information has long been recognized as providing "good cause" for acceptance of a late contention. *Indiana and Michigan Electric Co.* (Donald C. Cook Nuclear Plant, Units 1 and 2), CLI-72-75, 5 AEC 13, 14 (1972); *Cincinnati Gas and Electric Co., et al.* (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 574 (1980), appeal dismissed, ALAB-595, 11 NRC 860 (1980).
- D Where nontimely contentions arise from the Three Mile Island Unit 2 accident, or the Commission's regulatory response to that accident, a Licensing Board must not only balance the factors in 10 CFR §2.714(a)(1) but also must take into account the Commission's December 18, 1980 Statement of Policy on that subject. CLI-80-42, 12 NRC 654.
- E The proponent of a late-filed contention should affirmatively address the five factors in 10 CFR §2.714(a)(1) and demonstrate that, on balance, the contention should be admitted. In considering that showing, a Board may take into account the circumstance that a pro se intervenor is involved.
- F Insofar as timeliness is concerned, the standards for evaluating the acceptability of late-filed contentions are the same as those for evaluating the admissibility of an untimely intervention petition — i.e., the standards appearing in 10 CFR §2.714(a)(1).

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- G** Dissatisfaction with the performance of another party (including the Staff) upon whom one had been relying cannot serve as an acceptable justification for an untimely intervention or for the late filing of a contention.
- H** In considering the admissibility of contentions, a Licensing Board cannot resolve factual questions going to the merits of a contention. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 547-49 (1980).
- I** It is unreasonable to expect an intervenor to examine reports of incidents at various reactors and file contentions based on them at a time when it is not known how or whether the lessons of that incident are incorporated into the reactor under consideration.
- J** When a matter is involved in rulemaking, the Commission may elect to require an issue which is part of that rulemaking to be heard as part of that rulemaking. Where it does not impose such a requirement, an issue is not barred from being considered in adjudications being conducted at that time. Furthermore, rulemaking does not preclude litigation of a contention questioning an applicant's compliance with an interim rule in effect during the pendency of the rulemaking proceeding.
- K** "Sunk costs" are not appropriately considered in an operating license cost-benefit balance.
- L** Effective March 31, 1982, the Commission eliminated entirely requirements for financial qualifications review for, inter alia, electric utilities applying for operating licenses. This amendment is applicable to ongoing proceedings and requires dismissal of previously accepted financial qualifications contentions.
- LBP-82-64 GENERAL ELECTRIC CO. (Vallecitos Nuclear Center — General Electric Test Reactor, Operating License No. TR-1), Docket No. 50-70-SC; SHOW CAUSE; August 16, 1982; INITIAL DECISION**
- A** In this Show Cause proceeding to establish seismic and geologic design bases for the site and to determine whether the shutdown GE test reactor can withstand them, the Licensing Board majority issues an initial decision accepting the design bases proposed by licensee and NRC Staff, and authorizes a restart of the facility as structurally modified. In a separate opinion, the Board Chairman disagrees with the geologic design basis, questions some of the expert evidence offered at hearing, and would authorize a restart of the facility only with a further modification.
- B** The following technical issues are discussed: Ground faulting — evidence of offsets, estimates of surface offset, probability of offset, fault deflection; Ground motion — peak accelerations, effective peak acceleration, combined with surface offset, vertical accelerations; Structural capacity — cantilever loading, lack of containment integrity.
- LBP-82-65 COMMONWEALTH EDISON COMPANY (Dresden Station, Units 2 and 3), Docket Nos. 50-237-SP, 50-249-SP; SPENT FUEL POOL AMENDMENT; August 17, 1982; FINAL INITIAL DECISION**
- A** The Licensing Board's final initial decision authorizes the issuance of appropriate license amendments to permit replacement of the current spent fuel storage racks in each of the Dresden Units 2 and 3 spent fuel pools with 33 high-density storage racks. The conditions and commitments set forth in the partial initial decision (LBP-81-37, 14 NRC 708 (1981)) are carried forward with this decision. At present, reracking is the safest and least costly alternative for meeting requirements for spent fuel storage.
- B** The following technical issues are discussed: Alternatives to reracking; relevance of unresolved safety issues to the spent fuel pool modification; validity of mathematical analyses of loads imparted to pool floor during postulated rocking of racks during seismic events.
- LBP-82-66 LOUISIANA POWER AND LIGHT COMPANY (Waterford Steam Electric Station, Unit 3), Docket No. 50-382-OL; OPERATING LICENSE; August 17, 1982; MEMORANDUM AND ORDER**
- A** The Licensing Board reopens the record in view of applicant's failure to submit as evidence an informational brochure, whose adequacy was in contention.
- B** The pre-emergency public information program (10 CFR §50.47(b)(7)) is neither minor nor insignificant. A proper program will avoid chaotic public response to an emergency and minimize risk to the public. Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163, 1203 (1982).

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- C** The form and content of informational brochures drafted to satisfy the pre-emergency public information requirement of NRC regulations (10 CFR §50.47(b)(7)) are not so clearly established by regulations that compliance therewith is a matter of course. See, e.g., Cincinnati Gas & Electric Company, et al. (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-48, 15 NRC 1549, 1602 (1982); Consumers Power Company (Big Rock Point Plant), LBP-82-60, 16 NRC 540, 545-46 (1982).
- D** The opinions of applicant's witnesses that an informational brochure, not submitted as evidence, would meet the Commission's emergency planning requirements are not an adequate substitute for Licensing Board examination of the actual brochure; such secondary sources, even when bolstered by the NRC Staff's and FEMA's assurance of a subsequent review, do not constitute "reasonable assurance" that the pre-emergency public information program will be properly implemented. See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-580, 11 NRC 227, 228-31 (1980).
- E** The term "reasonable assurance" requires more than a mere checklist comparison against regulatory criteria. Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-81-36, 14 NRC 691, 699 (1981). The term connotes the existence of a reasonable plan. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 18 (1978). The reasonableness of a plan cannot be determined when the essential elements of that plan are indeterminate.
- F** The adequacy of the pre-emergency public information program is a significant issue that calls for subjective evaluation; delegation of this determination would be improper.
- LBP-82-67 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.** (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; August 18, 1981; ORDER
- A** The Licensing Board resolves a motion to compel answers to interrogatories. Applicants are not required to respond to interrogatories concerning the ingestion pathway emergency planning zone, which is not relevant to the admitted contention about the evacuation EPZ. However, applicants are required to respond to all questions relevant to evacuation, including: (1) the use of resources on-site that might also be needed off-site, (2) the ability of responsible individuals promptly to recognize emergency conditions, (3) the assignment of administrative responsibility for maintaining the prompt alert and notification system, (4) meteorological and radiation release monitoring, and (5) the qualification and training of individuals responsible for communicating with off-site agencies about emergency conditions.
- B** Applicants must provide a reasonably complete response to interrogatories. Their answers should not require the sifting of materials to obtain a complete answer but they may describe precisely the portions of documents that contain the requested information.
- C** Questions about applicant utility's financial qualifications for fulfilling its emergency planning responsibilities are beyond the scope of an operating license proceeding.
- D** Under a contention concerning the possible need for an automatic standby liquid control system, applicant must answer questions about the comparative advantages and disadvantages of that system compared to a manual standby liquid control system.
- E** Other interrogatories discussed by the Board concerned various aspects of emergency planning (NUREG-0654 criteria, initiating conditions, administrative responsibility, financial responsibility, meteorological monitoring, radiological monitoring, communications).
- LBP-82-68 THE CINCINNATI GAS & ELECTRIC COMPANY, et al.** (Wm. H. Zimmer Nuclear Power Station, Unit 1), Docket No. 50-358-OL; OPERATING LICENSE; August 24, 1982; MEMORANDUM AND ORDER
- A** Acting on Applicants' Motion for Reconsideration and Clarification of the June 21 Initial Decision, LBP-82-48, 15 NRC 1549 (1982), the Licensing Board: (1) authorizes the issuance of a license permitting fuel loading, low power testing, and operation not in excess of 5% of rated power subject to the condition that the authorization will be revoked should the Commission, on reconsideration, reverse its order in CLI-82-20, 16 NRC 109 (1982), which required the dismissal of eight safety-related contentions; and (2) denied Applicants' relief from further proceedings ordered in the Initial Decision with respect to emergency evacuation of schools and submission of FEMA findings.

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- B** Where a licensing board finds that all matters in contention, other than those relating to NRC and FEMA review of offsite emergency preparedness, have been resolved either favorably to applicant or through the issuance of appropriate license conditions, it may, pursuant to 10 CFR §50.47, as amended (47 Fed. Reg. 30232 (July 13, 1982)), authorize the Director of Nuclear Reactor Regulation to issue a license authorizing fuel loading and low power operations not in excess of 5% of rated power. Authorization of the issuance of such a license by the Director, upon his making all requisite findings, may be made even in the absence of a motion by the applicant pursuant to 10 CFR 50.57(c) for a low power license.
- C** Pursuant to 10 CFR §50.47(a)(1), the NRC must find, prior to the issuance of a license for the full power operation of a nuclear reactor, that the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. In accordance with 10 CFR §50.47(a)(2) the Commission is to base its finding on a review of the Federal Emergency Management Agency's (FEMA's) "findings and determinations as to whether state and local emergency plans are adequate and capable of being implemented," and on a review of the NRC Staff assessment of applicant's onsite emergency plans.
- D** Pursuant to 10 CFR §50.47(a)(2), a FEMA finding as to the status of offsite emergency planning preparedness will constitute a rebuttable presumption on the question of the adequacy of such plans. Based upon existing precedent, it is unclear whether this presumption attaches only to FEMA's final formal findings on the state of offsite emergency preparedness, or whether such a presumption may be accorded to preliminary or interim FEMA findings.
- E** As a rebuttable presumption dissolves in the face of reliable and probative evidence to the contrary, the practical effect of any rebuttable presumption created by 10 CFR §50.47(a)(2) would be of little moment with regards to contested aspects of FEMA's findings, leaving a licensing board free to weigh the testimony of each party on its own merits. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1465 (1981).
- F** A licensing board must base its findings on the status of offsite emergency preparedness, pursuant to 10 CFR §50.47(a)(2), on FEMA's testimony as to its review of those portions of the state and local plans related to the contentions, as viewed in light of other testimony adduced at hearing. While a licensing board may rely on testimony based on FEMA's interim findings in making its own findings, it need not be satisfied with testimony so preliminary and conclusory as to fail to meet the same standards expected of other testimony in Commission proceedings. To do so would deprive both the board and parties of any meaningful opportunity to cross-examine FEMA witnesses as to the bases for the Government's conclusions.
- G** A licensing board may not delegate to the NRC Staff, or to FEMA, its obligation to resolve issues placed into controversy in an operating license proceeding, however conscientiously they may pursue their work. See Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-298, 2 NRC 730, 736-737 (1975); Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59; 14 NRC 1211, 1419 (1981). To do so would be a clear violation of section 189 of the Atomic Energy Act of 1954, as amended, as it would render the hearing process a nullity.
- H** Where FEMA testimony based upon its interim findings as to the state of offsite emergency planning is so preliminary and conclusory as to fail to permit meaningful cross-examination of Government witnesses as to the bases for their conclusions, it is appropriate for a board to permit reopening of the record on offsite emergency planning matters upon a lesser showing of good cause than that which is ordinarily required to reopen a record. Such a showing shall be based upon particular parts of the final FEMA findings and the Staff's final supplement to its Safety Evaluation Report which relate to admitted contentions, and shall demonstrate that an opportunity for cross-examination, as distinguished, for example, from an opportunity for further written comment, is required for a full and true disclosure of the facts.
- I** A motion for reconsideration must state specifically the respects in which an initial decision is erroneous. See 10 CFR §2.771. It will not suffice to allege that a decision has had an unintended effect, without specifying how the board is supposed to have erred in reaching its findings. If reasons now exist justifying a different result, they must be presented on the record, not in the form of an unsworn memorandum of law from counsel, which is not evidence.

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LBP-82-69 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; August 30, 1982; MEMORANDUM AND ORDER

A In this Memorandum and Order the Board rules that it cannot go beyond the Commission's Statement of Policy on psychological stress issues (47 Fed. Reg. 31762, July 16, 1982) because the Statement had the effect of depriving it of jurisdiction over the intervenor's psychological stress contention. It also ruled that certification of the issue to the Commission was not proper because intervenor had failed to show why interlocutory review was necessary rather than review, in due course, upon appeal.

B When a policy statement issued by the Commission orders licensing boards not to consider psychological stress contentions unless they meet specified criteria, boards are deprived of jurisdiction over such issues and are prohibited from inquiring into the procedural regularity of the policy statement.

C A party may not obtain certification of an issue unless it demonstrates that it will suffer substantial harm if it is deprived of interlocutory review and is compelled to await completion of the licensing board's action before it pursues an appeal.

LBP-82-70 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; August 31, 1982; INITIAL DECISION

A In this Initial Decision, the Licensing Board authorizes the issuance of a full power operating license for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, subject to certain conditions specified by the Board and with the caveat that the decision not impinge on the status of the Commission's previously ordered suspension of the plant's low-power license or on the independent design verification program ordered by the Commission.

B Pressurizer heaters are not required to be designed and constructed to "safety-grade" standards by either Commission requirements or by the standards of 10 CFR Part 100, Appendix A, III. (a).

C Power-operated relief valves, when used to protect a system against low-temperature overpressurization, must be designed and constructed to "safety-grade" standards.

D State and local governments have the responsibility to set emergency planning zones around nuclear power plants. The zones may be geographically larger than those specified in the Commission's rules; however, Commission rules govern the test of adequacy of emergency planning.

E An early warning System must be capable of notifying essentially 100 percent of a population within 5 miles of a nuclear power plant within 15 minutes. Essentially 100 percent of the population within the entire EPZ must be notified within 45 minutes.

F Formal FEMA findings on the adequacy of offsite emergency planning are required prior to license issuance but are not required for the hearing.

LBP-82-71 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; OPERATING LICENSE; September 2, 1982; MEMORANDUM AND ORDER

A The Licensing Board denies a motion to admit a contention concerning psychological stress caused by viewing a cooling tower plume because the Licensing Board is not authorized by the Commission to admit such a contention, the contention is without basis, and the motion was not timely.

B As required by the Commission's policy statement of July 22, 1982 (47 Fed. Reg. 31762), a Licensing Board is without authority to admit a contention alleging that psychological stress will result from the operation of a nuclear plant when no serious nuclear accident has occurred at the site.

C A contention alleging that psychological stress will result from operation of a nuclear power plant may not be litigated if it is without basis even if it otherwise satisfied the Commission's criteria for admitting psychological stress contentions.

LBP-82-72 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; OPERATING LICENSE; September 3, 1982; MEMORANDUM AND ORDER

A The Licensing Board reaffirms its holding that a preclusion clause in the Delaware River Basin Compact renders the Licensing Board without jurisdiction to reassess the impacts of an allocation of water from the Delaware River made by the Delaware River Basin Commission.

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- B** Pursuant to section 15.1(s) (1) of the Delaware River Basin Compact, the Licensing Board is precluded from reassessing the impacts of a decision by the Delaware River Basin Commission, concurred in by the Federal member of the Commission, allocating water from the Delaware River for the cooling of a nuclear plant.
- LBP-82-73 LONG ISLAND LIGHTING COMPANY** (Shoreham Nuclear Power Station Unit 1), Docket No. 50-322-OL; OPERATING LICENSE; September 3, 1982; MEMORANDUM AND ORDER
- A** Ruling on the effects of potential conflicts of interest which the Board had noted because applicant's contractor for its probabilistic risk assessment had also served as a subcontractor for the NRC Staff on certain aspects of the Staff's systems interaction program, the Licensing Board concludes that in the interest of fundamental fairness to all parties, the Staff should have noted the existence of such potential conflicts of interest on the record, together with a description of any steps taken to avoid or mitigate their effects. However, in the circumstances of this case, the Board holds that any defects in the fairness of this proceeding were cured by the Board's discovery and disclosure of this potential conflict of interest, which gave all parties the opportunity for cross-examination on this point, and by the Staff's obvious lack of reliance on its subcontractor's views in its testimony in this proceeding.
- B** Parties to Commission proceedings have the obligation to disclose all potential conflicts of interest, whether or not a party believes them to be material and relevant to a licensing proceeding. Such disclosure permits other parties the opportunity to cross-examine opposing witnesses regarding any bias which may be alleged to exist as a result of a potential conflict of interest.
- C** Fundamental fairness dictates that parties to Commission proceedings disclose all potential conflicts of interest, whether or not a party believes them to be material and relevant to a licensing proceeding. While the "materiality and relevance" of new information is required to be considered in determining whether a party has a duty to disclose such new information in an NRC proceeding, Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387 (1982); Duke Power Co. (McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625 (1973), these standards are not applicable in a situation where there is an issue as to the fundamental fairness of the conduct of parties to a proceeding. Fundamental fairness clearly requires the disclosure of potential conflicts of interest, such that, after opposing parties have had an opportunity for cross-examination, the Board may determine the materiality of such information.
- LBP-82-74 PUGET SOUND POWER AND LIGHT COMPANY, et al.** (Skagit/Hanford Nuclear Power Project, Units 1 and 2), Docket Nos. 50-522, 50-523; CONSTRUCTION PERMIT; September 3, 1982; MEMORANDUM AND ORDER
- A** The Licensing Board rules on the disposition of two late-filed petitions to intervene in this proceeding, denying the petition filed by the Columbia River Inter-Tribal Fish Commission (CRITFC) for lack of standing and granting the petition filed by the Yakima Indian Nation, subject to the requirement that at least one contention acceptable under 10 CFR §2.714(b) be filed.
- B** An organization may represent only its own members. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483 (1977). The requirements for standing, injury in fact and an interest "arguably within the zone of interest" protected by the statute, must be fulfilled by the organization itself through its own membership. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976).
- C** An untimely petition to intervene may be granted if it is found that a balancing of the five factors set forth in 10 CFR §2.714(a) (1) favors intervention. Some weight may be attached to the fact that the lateness, though not justified, is not extreme and will not delay the proceeding. Duke Power Company (Amendment to Materials License SNM-1773 — Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150 (1979).
- D** 10 CFR §2.714(b) requires a petitioner for intervention to file a supplement containing at least one admissible contention. Cincinnati Gas and Electric Company, et al. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 571 (1980).

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LBP-82-75 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL; OPERATING LICENSE; September 7, 1982; SUPPLEMENTAL PRE-HEARING CONFERENCE ORDER

- A** The Licensing Board issues its Supplemental Prehearing Conference Order ruling on intervenors' "Phase One Consolidated Emergency Planning Contentions," which primarily relates to Applicant's onsite emergency planning efforts.
- B** Pursuant to 10 CFR §2.707, a licensing board is empowered on the failure of a party to comply with a prehearing conference order to "make such orders in regard to the failure as are just." Based upon the Appeal Board's ruling in Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400 (1982) the out-of-hand dismissal of intervenors' proposed contentions solely for failing to either further particularize certain contentions or to pursue settlement negotiations is unwarranted. A more appropriate course of action in such a case is to simply rule on intervenors' proposed contentions as they now stand, dismissing those which lack adequate bases and specificity.
- C** Pursuant to 10 CFR §2.714, an intervenor must set forth those matters which it seeks to litigate "with reasonable basis and specificity." This power of the Commission to require that intervenors make such a threshold showing prior to the admission of a contention has been upheld by the Federal Courts. See *BPI v. Atomic Energy Commission*, 502 F.2d 424, 428-429 (D.C. Cir. 1973).
- D** A contention alleging an entire emergency response plan to be inadequate, in that it fails to consider certain matters, is required pursuant to 10 CFR §2.714 to specify the way in which identified portions of the plan are alleged to be inadequate. In advancing such a contention, it is intervenors' obligation to assert how the identified portions of an emergency plan are rendered inadequate by its failure to consider such matters.
- E** Pursuant to 10 CFR §50.47(b)(12), emergency response plans for nuclear power reactors must include arrangements for "contaminated injured" individuals. As interpreted by the Appeal Board in *Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3)*, ALAB-680, 16 NRC 127, 137 (1982) "contaminated injured" is a distinct category of injury, encompassing potential patients whose traumatic (i.e., physical) injuries are complicated by radioactive contamination. People who suffer radiation injury, without accompanying traumatic injury, are unlikely to need emergency treatment because the clinical course of radiation injury unfolds over time and is seldom, if ever, life-threatening. Thus, for a serious nuclear accident to result in the hospitalization of large numbers of people, not only must an already unlikely accident be severe, but also the emergency response to protect the public must be ineffectual. But see *Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3)*, CLI-82-27, 16 NRC 883 (1982).

LBP-82-76 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL, 50-444-OL (ASLBP No. 82-471-02-OL); OPERATING LICENSE; September 13, 1982; MEMORANDUM AND ORDER

- A** The Licensing Board rules on petitions to intervene and admission of contentions, and schedules further proceedings.

LBP-82-77 CONSUMERS POWER COMPANY (Big Rock Point Plant), Docket No. 50-155; SPENT FUEL POOL AMENDMENT; September 14, 1982; INITIAL DECISION

- A** In this Initial Decision, the Licensing Board holds that the applicant must carry the burden of proof in demonstrating that the off-site emergency plan has complied with the Commission's emergency planning rules and guidance. It must carry that burden whether or not it is primarily responsible for performing the functions involved in the plan. Because applicant did not carry that burden, it must demonstrate to the Board that the deficiencies in its plan have been remedied, are not serious, or are being remedied through adequate interim compensating actions. The deficiencies include failures of proof related to the training of local officials or school officials, the need for transportation of persons who lack personal vehicles, the availability of a satisfactory method of alerting school bus drivers who are not on duty, that there is adequate transportation for schoolchildren, that there is an adequate list of invalids being maintained and that there is an adequate method of establishing emergency bus routes.
- B** Intervenor's contention that applicant had not implemented adequate administrative controls to prevent cask drops over the spent fuel pool was dismissed for lack of merit.

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- C Applicant has the burden of proof to demonstrate that the off-site emergency plan complies with Commission rules and guidance. The burden must be carried whether or not applicant is primarily responsible for carrying out a particular aspect of the plan.
- D A Licensing Board prescribes procedures by which applicant may remedy deficiencies in its case concerning the adequacy of emergency planning.
- E The following technical issues are discussed: Emergency planning (estimating training needs); emergency planning; administrative controls (cask drops).
- LBP-82-78 CONSUMERS POWER COMPANY (Big Rock Point Plant), Docket No. 50-155; SPENT FUEL POOL AMENDMENT; September 15, 1982; INITIAL DECISION
- A In this Initial Decision, the Licensing Board finds that an environmental impact assessment, prepared with respect to an amendment to expand the capacity of a spent fuel storage pool, was adequate. Intervenor did not successfully challenge its negative findings concerning the lack of any significant environmental impacts.
- B Additionally, the Board finds that the environmental impact assessment adequately treated alternatives to the spent fuel when it found that the pool modification "will not result in any significant change in the commitment of water, land and air resources" and when it also found that the use of stainless steel to fabricate new fuel racks is an "insignificant" use of that resource. Intervenor also failed to make an effective challenge to this Staff's basis for this finding.
- C An environmental impact appraisal prepared with respect to the expansion of the capacity of a spent fuel pool need not discuss further the alternatives to an expansion of the pool if the appraisal has an adequate basis for finding that the expansion would not cause any unresolved conflicts about alternative uses of resources.
- D An environmental impact statement need not be prepared with respect to the expansion of the capacity of a spent fuel pool if the environmental impact appraisal prepared for the project had an adequate basis for concluding that the expansion of a spent fuel pool would not cause any significant environmental impact.
- LBP-82-79 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; September 15, 1982; MEMORANDUM AND ORDER
- A The Licensing Board denies admission of a contention on dose levels to human beings from routine emissions from the Perry plant because the intervenor failed to show good cause for late filing. Intervenor had argued that the issue could be raised because it had appeared for the first time in the Draft Environmental Statement for Perry, but intervenor had no answer for the opposing argument that the same matter had been raised in the Final Safety Analysis Report, issued months earlier.
- B The Board also considered whether to raise this issue sua sponte but it concluded that the Commission had already considered the matter in several earlier proceedings and that sua sponte consideration was not appropriate.
- C Discussion of an issue in the Draft Environmental Statement does not provide good cause for late filing of a contention, if the same material was included in the Final Safety Analysis Report (FSAR) filed by the applicant.
- D If a contention is excluded from a proceeding because there is no good cause for late filing, the Board should nevertheless consider whether to declare the issue to be an important safety or environmental issue and to raise that issue sua sponte.
- LBP-82-80 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-2 (ASLBP No. 82-478-05-OL); SECURITY; September 16, 1982; MEMORANDUM, ORDER AND NOTICE OF SECOND IN CAMERA CONFERENCE OF COUNSEL
- A Upon referral from the Commission, the Licensing Board authorizes the release to two of intervenor's security consultants/experts of two portions of a restricted Appeal Board decision [Diablo Canyon, ALAB-653 (1981) (Restricted)] regarding the definition of design basis threat and interpretation of regulations concerning the appropriate number of armed responders.
- B Intervenor county government established requisite need of two of its security consultants/experts for access to two portions of restricted Appeal Board decision regarding definition of design basis threat and number of armed responders, even though those portions also contain minimal amount of specific information concerning security plan at another nuclear plant.

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- C Where Commission previously authorized release of two portions of restricted Appeal Board decision to attorneys for intervenor county government, the same portions of that decision will be released to intervenor's consultants/experts who have filed testimony on the areas discussed in the Appeal Board decision.
- D Release of portions of restricted Appeal Board decision to intervenor's consultants/experts will be conditioned upon their execution of affidavits of non-disclosure of the plant physical security information contained in that decision.
- E Security plans for nuclear plants are deemed to be commercial or financial information pursuant to 10 CFR §2.790(d) and may only be disclosed to counsel and expert witnesses who have a need to know after application of a balancing of interests test.
- LBP-82-81 DUKE POWER COMPANY** (Perkins Nuclear Station, Units 1, 2 and 3, Docket Nos. STN-50-488, STN-50-489, STN-50-490; CONSTRUCTION PERMIT; September 20, 1982; MEMORANDUM AND ORDER AUTHORIZING WITHDRAWAL OF APPLICATION FOR CONSTRUCTION PERMIT WITHOUT PREJUDICE
- A The Licensing Board authorizes the withdrawal without prejudice of the application for construction permits for the Perkins Nuclear Station, denies Intervenor's motion to dismiss the Perkins application with prejudice, and denies the Intervenor's request for attorney's fees and litigation expenses.
- B Licensing Boards under 10 CFR 2.707(a) may authorize the withdrawal of an application after the notice of hearing has issued on such terms as it may prescribe, but any terms prescribed must be related to any legal harm to parties or the public that a withdrawal would cause.
- C Federal rules favor withdrawal without prejudice where no party will be harmed thereby. The possibility of another hearing on the application standing alone does not constitute legal harm, and does not in itself justify a conditional withdrawal. Fed. R. Civ. P. 41(a)(1), (2); LeCompte v. Mr. Chip, Inc., 528 F.2d 601, 604 (5th Cir. 1976).
- D A Licensing Board may attach reasonable conditions on a withdrawal without prejudice to protect parties and public from legal harm; or if legal harm is unavoidable, the Licensing Board may order a dismissal with prejudice but only to the extent necessary to avoid legal harm.
- E The Applicant would have the option of selecting reasonable conditions on a withdrawal without prejudice, including the payment of intervenors' attorney's fees, or a withdrawal with prejudice as to specific issues. Yoffe v. Keller Indus., Inc., 580 F.2d 126, 131, n.13 (5th Cir. 1978).
- F A distinction must be made between the American rule which bars an award of attorney's fees to the prevailing party absent a specific statute authorizing payment, as reconfirmed in Alyska Pipeline Serv. v. Wilderness Soc., 421 U.S. 240 (1975), and requiring the reimbursement of attorney's fees as a condition of withdrawal of an application without prejudice. The latter is not an award for winning anything, but is to save a party from the expense and effort of preparing a defense twice because of the withdrawal without prejudice.
- G There is nothing about NRC practice and regulations which bars the payment of money as a condition for withdrawal of an application without prejudice.
- H An unusual situation prevails in an NRC proceeding with respect to a dismissal in that (1) it is a mandatory licensing proceeding, not a simple adversary litigation, and (2) the dismissal is sought after a hearing and decision on the merits.
- I Where an intervenor has lost on the merits of an issue, it will suffer no legal harm from a dismissal of an application without prejudice, because the worst that can beset an intervenor in that case is that it will be afforded an unearned second opportunity to prevail on the issue.
- J Intervenor has standing to seek a dismissal with prejudice and attorney's fees. Subsumed in the right to intervene with NRC proceedings is the right to enjoy the benefits of the ensuing litigation; to preserve any victory for later use in a renewed litigation, or to be saved from legal harm if the need arises again to litigate an issue upon which intervenors prevailed.
- LBP-82-82 LONG ISLAND LIGHTING COMPANY** (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL (Emergency Planning); OPERATING LICENSE; September 22, 1982; MEMORANDUM AND ORDER RULING ON LILCO'S MOTION TO COMPEL DISCOVERY OF SUFFOLK COUNTY EMERGENCY PLANNING DOCUMENTS
- A The Licensing Board rules on claims of attorney-client, work product and executive privileges asserted by a governmental intervenor in opposition to two discovery requests from applicant for the production of certain emergency planning documents.

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- B** Pursuant to 10 CFR §2.741(d), the party upon whom a request for the production of documents is served must serve upon the requesting party, within 30 days after service of the request, a response stating either that the requested inspection and copying will be permitted, or stating reasons why the requested discovery is objectionable. Pursuant to 10 CFR §2.740(f)(1), an evasive or incomplete answer or response shall be treated as a failure to answer or respond.
- C** A party opposing a discovery request need not seek a protective order, pursuant to 10 CFR §2.740(c), so long as he does respond to the request by objecting. In ruling upon a motion to compel made in accordance with §2.740(f), however, a board is empowered to make such a protective order as it would make upon a motion made pursuant to §2.740(c). A party objecting to the production of a document on grounds of privilege therefore has the obligation to specify in its response to a document request those same matters which it would be required to set forth in attempting to establish "good cause" for the issuance of a protective order.
- D** What constitutes "good cause" for the issuance of a protective order depends upon the kind of protective order being sought. In order to show good cause for the issuance of a protective order, pursuant to 10 CFR §2.740(c), to avoid the disclosure of documents for which an evidentiary privilege is claimed, a party must specifically designate and describe (1) the documents claimed to be privileged, (2) the privilege being asserted and (3) the precise reasons why the party believes the privilege to apply to such documents.
- E** A party asserting certain documents to be privileged from discovery must bear the burden of proving that it is entitled to such protection, see *In re Fischel*, 557 F.2d 209 (9th Cir. 1977), and this includes pleading such claims adequately in its response. Claims of privilege must be specifically asserted with respect to particular documents, and may not be raised by blanket objection that all matters which could fit a particular document request are privilege. See *United States v. El Paso Company*, No. 81-2484 (5th Cir. August 13, 1982); *United States v. Davis*, 636 F.2d 1028, 1044, n.20 (5th Cir. 1981). This is because discovery privileges are not absolute, and may or may not apply to a particular document, depending upon a variety of circumstances.
- F** It is not sufficient for a party asserting certain documents to be privileged from discovery to await a motion to compel from the party seeking discovery prior to setting forth its assertions of privilege and identifying those matters which it claims to be privileged. Such a practice places an unfair burden upon the party seeking discovery and occasions unnecessary delays. Claims of privilege are untimely unless asserted in the response to the discovery request.
- G** Pursuant to 10 CFR §2.740(b)(1), parties may generally obtain discovery "regarding any matter, not privileged, which is relevant to the subject matter in the proceeding. . . ." While the only discovery privilege codified in the NRC regulations is the work production doctrine, the Commission decision to model §2.740(b) after Rule 26(b) of the Federal Rules of Civil Procedure implicitly adopted those privileges which have been recognized by Federal Courts interpreting Rule 26(b).
- H** While the Federal Rules of Civil Procedure are not themselves directly applicable to practice before the Commission, judicial interpretation of a Federal Rule can serve as guidance for the interpretation of a similar or analogous NRC discovery rule. *Toledo Edison Company, et al.* (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 760 (1975); *Cincinnati Gas & Electric Company, et al.* (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-47, 15 NRC 1538, 1542 (1982).
- I** The purpose of the attorney-client privilege is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). An attorney's involvement in, or recommendation of a transaction does not place a cloak of secrecy around all incidents of such a transaction. *In re Fischel*, 557 F.2d 209, 212 (9th Cir. 1977). The attorney-client privilege does not protect disclosure of the underlying facts communicated to the attorney. *Upjohn*, 449 U.S. at 395. A communication from the attorney to the client should be privileged only if the client had a reasonable expectation in the confidentiality of the statement, if it was necessary to obtain informed legal advice and might not have been made absent the privilege. *Ohio-Sealy Mattress Manufacturing Company v. Kaplan*, 9 F.R.D. 21, 28 (N.D. Ill. 1980).
- J** The fact that a document is authored by in-house counsel, rather than by an independent attorney, is not relevant to a determination of whether such a document is privileged. In such cases, however, the privilege protects only communications revealing confidences of the client or seeking

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legal advice, not matters relating solely to the conduct of the client's business. *O'Brien v. Board of Education of City School District of City of New York*, 86 F.R.D. 548, 549 (S.D.N.Y. 1980); *In re Fischel*, 557 F.2d 209, 211 (9th Cir. 1977).

- K To be privileged from discovery by the work product doctrine, as codified in 10 CFR §2.740(b)(2), a document must be both prepared by an attorney, or by a person working at the direction of an attorney, and prepared in anticipation of litigation. "Ordinary work product," which does not include the mental impressions, conclusions, legal theories or opinions of the attorney or his agents, may be obtained by an adverse party upon a showing of "substantial need of the materials in preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." 10 CFR §2.740(b)(2). Opinion work product is not discoverable, so long as the material was in fact prepared by an attorney or his agent in anticipation of litigation, and not assembled in the ordinary course of business, or pursuant to public requirements unrelated to litigation. *In re Murphy*, 560 F.2d 326, 334-336 (8th Cir. 1977).

- L Cases decided under Exemption 5 of the Freedom of Information Act, which relates to inter-agency or intra-agency letters or memoranda, may be looked to for guidance in resolving claims of executive privilege in NRC proceedings related to discovery. While the discovery rules for claims of executive privilege "can only be applied under Exemption 5 by way of rough analogies," *EPA v. Mink*, 410 U.S. 73, 86 (1973), the similarities between these matters are sufficient such that Exemption 5 cases may be used as guidance, taking a common sense approach which recognizes any differing equities presented in FOIA cases. See *Mink*, 410 U.S. at 91. FOIA cases, for example, do not consider a party's need for requested documents. *NLRB v. Sears*, 421 U.S. 132, 149 n.16 (1975). NRC FOIA cases do consider the public interest of such disclosures, however. See *Consumers Power Company (Palisades Nuclear Power Facility)*, ALJ-80-1, 12 NRC 117, 122-126 (1980) and cases cited therein.

- M A governmental intervenor does not waive its claims of executive privilege by its participation as a litigant in an NRC proceeding. *Consumers Power Company (Palisades Nuclear Power Facility)*, ALJ-80-1, 12 NRC 117, 127-128 (1980).

- N The privilege against disclosure of intragovernment documents containing advisory opinions, recommendations and deliberations is a part of the broader executive privilege. Its purpose is to encourage frank discussions within the government regarding the formulation of policy and the making of decisions. Documents shielded by executive privilege remain privileged even after the decision to which they pertain has been effected, since such disclosure at any time could inhibit the free flow of advice. *Federal Open Market Committee of the Federal Reserve System v. Merrill*, 443 U.S. 340, 360, (1979).

- O The executive privilege is a qualified privilege, and does not attach to purely factual communications, or to severable factual portions of communications, the disclosure of which would not compromise military or state secrets. Furthermore, even communications which fall within the protection of the privilege may be disclosed upon an appropriate showing of need. An objective balancing test is used to determine a party's need for such documents, weighing the importance of the documents to the party seeking their production, and the availability elsewhere of the information contained in the documents, against the government interest in secrecy. *United States v. Leggett & Platt, Inc.*, 542 F.2d 655, 658-659 (6th Cir. 1976), cert. denied, 430 U.S. 945 (1977).

- LBP-82-83 GENERAL ELECTRIC COMPANY (General Electric Morris Operation), Docket No. 70-1308 (Application to Modify License No. SNM-1265 to Increase Spent Fuel Storage Capacity); OPERATING LICENSE AMENDMENT; September 21, 1982; ORDER GRANTING MOTION TO WITHDRAW APPLICATION AND DISMISSING PROCEEDING WITHOUT PREJUDICE

- LBP-82-84 SOUTH CAROLINA ELECTRIC AND GAS COMPANY, et al. (Virgil C. Summer Nuclear Station, Unit 1), Docket No. 50-395-OL; OPERATING LICENSE; September 24, 1982; MEMORANDUM AND ORDER

- A The Licensing Board denies intervenor's request for a stay of the initial decision authorizing the issuance of an operating license, and grants intervenor's further request for leave to reply to NRC Staff's and applicants' oppositions to intervenor's request to reopen proceeding.

- B In determining whether to grant a stay to reopen the proceeding after the initial decision has issued, the Licensing Board will consider the same four factors specified by 10 CFR §2.788(e) relating to stays pending appeal.

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- C If an intervenor cannot present his case, the proper method to institute a proceeding by which the NRC would conduct its own investigation is to request action under 10 CFR §2.206. It is not the Licensing Board's function to assist intervenors in preparing their cases and searching for their expert witnesses.
- LBP-82-85 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OL, 50-323-OL; OPERATING LICENSE; September 27, 1982; MEMORANDUM IN RESPONSE TO NRC STAFF'S MOTION FOR CLARIFICATION OF THE LICENSING BOARD'S INITIAL DECISION DATED AUGUST 31, 1982
- A In response to an NRC Staff motion, the Licensing Board clarifies certain matters pertaining to its Initial Decision of August 31, 1982.
- LBP-82-86 METROPOLITAN EDISON COMPANY (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289; RESTART; September 29, 1982; MEMORANDUM AND ORDER
- A The Licensing Board rules that it is without jurisdiction to rule on intervenor's motion to reopen the record after issuance of the Board's initial decision on the subject of the motion.
- B After the issuance of a licensing board's initial decision on a particular issue, exclusive jurisdiction over the issue lies with the appeal board. Section 2.717(a) of the Rules of Practice is reconcilable with §2.718(j) in that the identity of the presiding officer with exclusive jurisdiction over a particular issue changes as the proceeding moves up the appellate ladder. The parties should not be able to bestow jurisdiction on a presiding officer by selecting the tribunal for the relief sought by a motion.
- LBP-82-87 TEXAS UTILITIES GENERATING COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; OPERATING LICENSE; September 30, 1982; ORDER DENYING RECONSIDERATION
- A The Licensing Board directs the Staff to identify by name individuals identified by letter of the alphabet in an inspection report which the Staff introduced in evidence, and to produce unexpurgated copies of signed statements taken from those individuals. If the Staff fails either to comply with or seek appellate review of this order, the Licensing Board indicates it will impose sanctions upon Staff counsel.
- B Informer's privilege applies only to those who confidentially volunteer information to government officials charged with enforcing a law, not to everyone interviewed during the course of an ensuing investigation.
- C A single request for confidentiality cannot be used to shield an entire investigation from scrutiny in an adjudicatory setting.
- D It is improper for the NRC Staff to attempt to dictate to the Licensing Board what matters it may or may not consider. The Licensing Board is the sole judge of its informational needs and is not required to act merely as an umpire calling balls and strikes.
- E The Licensing Board has the right and duty to develop a full record for decision-making in the public interest. The independence and integrity of licensing boards is fundamental to due process.
- F Congress has authorized the NRC to provide hearings upon the request of any person whose interest may be affected by the licensing process and to establish licensing boards to conduct such hearings.
- G The Rules of Practice in Part 2 of 10 CFR are the method by which NRC ensures that all parties are provided procedural as well as substantive due process.
- H Parties and their representatives are expected to conduct themselves before a licensing board as they would before a court of law.
- I A licensing board is empowered to impose sanctions for a party's failure to obey or seasonably appeal from its order, even if the behavior is based upon the party's belief that the order is invalid.
- LBP-82-88 WISCONSIN ELECTRIC POWER COMPANY (Point Beach Nuclear Plant, Units 1 and 2), Docket Nos. 50-266-OLA, 50-301-OLA; OPERATING LICENSE AMENDMENT; October 1, 1982; MEMORANDUM AND ORDER
- A The Licensing Board grants summary disposition as to all contested issues except whether eddy current testing is sufficiently reliable to detect potentially dangerous through-wall cracks in sleeves inserted within corroded steam generator tubes, and a related issue whether the eddy current tests are necessary to assure the safety of the repaired steam generator.

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- B** Summary disposition is granted with respect to: (1) several contentions found to be irrelevant to the sleeving demonstration program, (2) a contention concerning the unreliability of temporary workers, and (3) a contention concerning the safety of the steam generator during sleeving. These latter two contentions were dismissed because there was no evidence that they presented genuine issues. The temporary workers contention was based on experience at an entirely different nuclear plant and did not directly question sleeving procedures to be used at Point Beach. The loose parts contention was dismissed because all of the planned work will be done on the primary side, so that loose parts cannot be left on the secondary side where they might cause mechanical damage.
- C** When a licensing board directs the filing of a motion for litigable issues in order to offset a procedural advantage enjoyed by an intervenor, that motion is governed by the same procedural rules applicable to a motion for summary disposition, except that the intervenor has the burden of going forward. Intervenor's rights are not prejudiced because it enjoys ample opportunity to demonstrate the existence of genuine issues of fact, including the right to file a reply, under this procedure.
- D** Although the procedural rules require the filing of separate statements of genuine issues of fact in response to a motion for summary disposition, there may be no prejudice to the other parties from failure to follow this precise requirement, under circumstances where intervenor's filings specify its allegations and provide authority for them. Unless the parties are prejudiced by this technical deficiency, it is not appropriate to provide a remedy for this lapse.
- E** Irrelevant contentions must be dismissed in the course of a decision on summary disposition. In an amendment proceeding concerning repair of steam generator tubes, contentions concerning the effect of steam generator tube ruptures (without establishing a basis for believing the ruptures will occur), the possibility of impermissible radiation releases, alleged dangers from pre-existing explosive plugs, and embrittlement of the reactor pressure vessel are irrelevant to the sleeving application.
- F** A letter, purportedly sent on applicant's letterhead stationery by a trusted professional employee, is sufficient basis for establishing the existence of a genuine issue of fact for the purpose of summary disposition. In the absence of a direct challenge to the authenticity of the letter, intervenor need not establish the admissibility in evidence of this letter in order to prevail at the summary disposition stage.
- G** An Atomic Safety and Licensing Board requires the filing of clearly written, logically constructed findings of fact that discuss the proper interpretation of all the testimony in light of applicable law and regulations.
- H** When a substantive issue survives summary disposition, the hearing should not only address the truth of that issue but should explore its implications for relief, either in the form of a license condition or denial of a license.
- I** The following technical issues are discussed: Eddy current testing; steam generator; Stress corrosion cracking — steam generator; Intergranular attack — steam generator; Thermal treatment of stainless steel to retard corrosion; Steam generator tube integrity; Steam generator repair; Steam generator — loose parts; Steam generator — leak before break.
- LBP-82-89 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.** (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; October 6, 1982; MEMORANDUM AND ORDER
- A** When applicant objects to the admission of a late-filed contention, intervenors may file a response. This response should not, however, be an excuse for omitting necessary materials from the initial filing of the late-filed contention. If intervenors raise new issues in their response, the applicant should have an opportunity to respond to those.
- B** Intervenors should be permitted to respond to applicant's objections to their late-filed contentions. Applicant may respond to new material found in the response.
- C** When a party introduces new material into a filing, opposing parties should have an opportunity to comment on the new material.
- LBP-82-90 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.** (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; October 8, 1982; MEMORANDUM AND ORDER
- A** The Licensing Board admits a late-filed contention concerning inadequate consideration of economic consequences of accidents. The contention's basis was found in a recently published study that employed input-output analysis to estimate the effects of a possible nuclear accident at the Perry Nuclear Power Plant. Because this appeared to have been the first time such an analysis had been

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employed, and because the use of the analysis might require amendment of a portion of the Final Environmental Statement, it was considered to contribute to good cause for late filing.

- B The use of a new technique for the economic modelling of nuclear accidents may furnish good cause for late-filing of a challenge to the treatment of economic costs of accidents in the Final Environmental Statement.

- C The following technical issues are discussed: Costs of nuclear accidents (use of input-output analysis); Input-output analysis of costs of nuclear accidents.

LBP-82-91 HOUSTON LIGHTING AND POWER COMPANY, et al. (South Texas Project, Units 1 and 2), Docket Nos. STN 50-498-OL, STN 50-499-OL; OPERATING LICENSE; October 15, 1982; MEMORANDUM AND ORDER

- A The Licensing Board grants the motion of an intervenor to adopt one of the contentions of another intervenor that has withdrawn from the proceeding but denies the motion to adopt four other contentions of the departed intervenor. The Board also dismisses several other proposed contentions.

- B The withdrawal of a party from an operating license proceeding normally serves to remove that party's contentions from the proceeding (at least insofar as those contentions have not yet been heard).

- C Contentions filed later than 15 days prior to the special prehearing conference in an operating license proceeding are considered as late-filed. Except in limited circumstances, they may be admitted only upon a favorable balancing of all of the five factors set forth in 10 CFR §2.714(a)(1). Where "good cause" for failure to file on time (factor (i)) has not been demonstrated, a contention may still be accepted, but the burden of justifying acceptance of a late contention on the basis of the other factors is considerably greater.

- D The "good cause" factors of 10 CFR §2.714(a)(1) apply equally to the admissibility of both late-filed intervention petitions and late-filed contentions.

- E The required balancing of the "lateness" factors of 10 CFR §2.714(a)(1) is not obviated by the circumstance that the proffered contentions are those of a participant that has withdrawn from the proceeding. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 795-98 (1977).

- F Even where the lateness factors of 10 CFR §2.714(a)(1) are balanced in favor of admitting a late-filed contention, a tardy petitioner with no good excuse for lateness may be required to take the proceeding as it finds it.

- G A motion of a pro se intervenor to adopt late-filed contentions is not to be held to those standards of clarity and precision to which a lawyer's filing might reasonably be expected to adhere.

- H The withdrawal of one party does not constitute "good cause" for the belated delay of a petitioner in seeking to substitute itself for the withdrawing party, or in seeking to adopt the withdrawing party's contentions.

LBP-82-92 MISSISSIPPI POWER AND LIGHT COMPANY, et al. (Grand Gulf Nuclear Station, Units 1 and 2), Docket Nos. 50-416-OL, 50-417-OL (ASLBP No. 82-476-04-OL); OPERATING LICENSE; October 20, 1982; MEMORANDUM AND ORDER DENYING STATE OF LOUISIANA'S PETITION FOR INTERVENTION

- A The Licensing Board denies an untimely petition to intervene filed by the State of Louisiana in a previously uncontested matter.

- B A licensing board has jurisdiction pursuant to 10 CFR §2.717(a) to rule on an untimely petition to intervene even though the Office of Nuclear Reactor Regulation already has issued a low power operating license.

- C Where a state seeks to intervene and attain party status pursuant to 10 CFR §2.714(a)(1) rather than participate as an interested state pursuant to 10 CFR §2.715(c), its untimely petition to intervene will be evaluated under the criteria for nontimely petitions to intervene set forth in §2.714(a)(1).

- D In evaluating the factors enumerated in 10 CFR §2.714(a) for late-filed petitions, the Board finds that the State of Louisiana failed to establish good cause for its late-filing, offered no showing of its ability to make a substantial contribution to the record, and sought to expand the issues and delay the proceeding. The Board denies the petition to intervene because the above factors outweighed the finding that no other means were available to protect the State's interest and no other party would represent that interest.

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- E Because the D.C. Circuit Court of Appeals granted a motion to stay the issuance of its mandate in *NRDC v. NRC*, 685 F.2d 459 (D.C. Cir. 1982), (in which it found Table S-3 to be invalid) and subsequently a petition for certiorari was filed in the Supreme Court, Table S-3 remains in force and, pursuant to 10 CFR §2.758, this Board is unable to consider challenges to its validity.
- LBP-82-92A PHILADELPHIA ELECTRIC COMPANY** (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; **OPERATING LICENSE**; October 20, 1982; **CONFIRMATORY MEMORANDUM AND ORDER**
- A The Licensing Board denies a motion by an intervenor to postpone a hearing covering limited environmental issues related to the supplementary cooling water system.
- B A licensing board in an operating license proceeding does not in the first instance control the construction schedule. Nor is a decision by that licensing board necessary before construction can commence when that construction is the subject of a previously issued Final Environment Statement.
- C A licensing board may hold a hearing in advance of issuance of an environmental impact statement on limited environmental issues concerning impacts of operation of an unbuilt part of the plant when such a hearing could facilitate implementation of any measures found necessary to mitigate operational environmental impacts. The licensing board will not address the ultimate cost/benefit balance at that time.
- LBP-82-93 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor)**, Docket No. 50-142-OL; **OPERATING LICENSE RENEWAL**; October 22, 1982; **MEMORANDUM AND ORDER**
- A On consideration of intervenor's motion to summarily dismiss motions for summary disposition of all contentions, or alternative relief, on the grounds that the motions are a misuse of the summary disposition process and a delaying factor under 10 CFR §2.749(a), Licensing Board adopts a bifurcated procedure for consideration of motions for summary disposition. Motion to dismiss motions for summary disposition is denied.
- B The provisions of 10 CFR §2.749(a) which authorize a licensing board to summarily dismiss motions for summary disposition filed shortly before the hearing commences or during the hearing if the other parties on the board would be required to divert substantial resources from the hearing in order to respond is not applicable to such motions filed in advance of the setting of a hearing schedule.
- C Motions for summary disposition resolve, on the merits, contentions which involve no factual disputes. This requires a determination of, first, the facts about which there is no genuine dispute, and second, the legal consequences flowing from those facts.
- D Where motions for summary disposition are filed against essentially all contentions, the summary disposition process can be managed better by requiring the parties to initially address the question of which facts are not in dispute and to defer their arguments as to the legal consequences flowing from those facts.
- LBP-82-94 HOUSTON LIGHTING AND POWER COMPANY** (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-466-CP; **CONSTRUCTION PERMIT**; October 28, 1982; **ORDER**
- LBP-82-95 CONSUMERS POWER COMPANY** (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OM&OL, 50-330-OM&OL; **OPERATING LICENSE AND CONSTRUCTION PERMIT MODIFICATION ORDER**; October 29, 1982; **MEMORANDUM AND ORDER**
- A The Licensing Board accepts a portion of a new contention founded upon information in the Staff's recently issued Final Environmental Statement.
- B Where the cost-benefit balance appearing in the Final Environmental Statement (FES) reflects modifications to the benefit, but not the cost, components of the balance appearing in the Draft Environmental Statement (DES), the entire cost-benefit balance in the FES is considered to be new information for purposes of ruling on contentions assertedly based on new information in the FES.
- C There is no requirement that any quantum of supporting data be provided in the FES.
- D "Sunk costs" are not appropriately considered in an operating license cost-benefit balance. They should not be utilized with respect to either the cost or the benefit side of the balance.
- LBP-82-96 THE DETROIT EDISON COMPANY, et al.** (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341; **OPERATING LICENSE**; October 29, 1982; **INITIAL DECISION**
- A In this Initial Decision, the Director of Nuclear Reactor Regulation is authorized to issue a full-power operating license. The Board found no merit in the intervenor's contentions, which alleged that site security was inadequate during construction, that quality assurance was inadequate, that a prime contractor was improperly replaced, that there were flaws in construction, and that the evacuation

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route was inadequate for residents of a small community near the reactor. The Board denied an untimely petition by Monroe County, Michigan, to intervene in the proceeding.

- B An evacuation route may be adequate despite the fact that persons using it must travel toward the reactor for a short distance before traveling away from the reactor.

- C In judging an untimely petition under 10 CFR §2.714(a), a petition which lacks good cause for delay, will broaden the issues, and will delay the proceeding, will be denied, despite the fact that no other party will represent the petitioner's asserted interest.

LBP-82-97 CONSUMERS POWER COMPANY (Big Rock Point Plant), Docket No. 50-155; SPENT FUEL POOL AMENDMENT; October 29, 1982; INITIAL DECISION

- A The Licensing Board rules that applicant must amend its application to comply with Commission guidance that the neutron multiplication factor (k_{eff}) in the proposed expansion of its spent fuel pool must not under any conditions, including extremely low densities of water, exceed 0.95. In this plant, the spent fuel pool is within the containment, and the Board required a showing that k_{eff} would not exceed 0.95 even after substantial boil-off occurred, as it might during a TMI-2 type incident accompanied by a loss of cooling in the fuel pool. The Board also requires analysis of a very low water density environment, characterized as a "mist," in which there appears to be a possibility that supercriticality might be achieved. Applicant's argument that the mist environment should be governed by regulations permitting a k_{eff} of 0.98 for dry fuel is rejected by the Board.

- B Expansion of racks in a plant in which the spent fuel pool is within the containment must meet the requirement that k_{eff} not exceed 0.95 even under conditions of pool boiling or of very low density water.

- C The following technical issues are discussed: $k_{effective}$ (spent fuel pool); Neutron multiplication factor (spent fuel pool); Spent fuel pool (k_{eff}); Temperature (effect on k_{eff} in spent fuel pool); Void formation (effect on k_{eff} in spent fuel pool); Water density (effect on k_{eff} in spent fuel pool).

LBP-82-98 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; October 29, 1982; MEMORANDUM AND ORDER

- A The Board admits three late-filed contentions, dealing with risks to control systems from turbine missiles, the need for in-core thermocouples to indicate the adequacy of core cooling, and the ability to detect and mitigate steam erosion in valves and piping. One contention, dealing with concerns raised by a former General Electric Company engineer about the integrity of the containment, is denied without prejudice to refiling. Contentions about the thermal-hydraulic response of the core to a seismic event and about the proper fire-suppression system for the control room are excluded.

- B The Board rules that good cause for late-filing may be furnished when the Staff changes a prior position on an issue. Although this may not affect the availability of knowledge about the issue, it does affect an intervenor's reasonable decisions about how to manage its resources.

- C In this case, the Board established the special rule that intervenors must file replies to applicant's arguments concerning the admissibility of late-filed contentions. If an intervenor's required reply does not address sections of the FSAR indicated by the applicant to be dispositive of a late-filed contention, the Board will accept applicant's version of the facts. However, applicant may not shift the burden of going forward in this manner to the intervenor by referring to a document that is not available to the Board.

- D The change of a staff position on an issue can contribute to good-cause for late filing of a contention because it affects intervenor's reasonable management decisions about where to concentrate its resources.

- E The following technical issues are discussed: Containment design (concerns of Mr. John Humphrey); Effect of seismic events on core thermohydraulics; Fire-suppression in the control room; In-core thermocouples; Steam erosion — detection and mitigation; Turbine missiles.

LBP-82-99 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor), Docket No. 50-142-OL; OPERATING LICENSE RENEWAL; November 1, 1982; MEMORANDUM AND ORDER

- A The Licensing Board rules on a discovery dispute between Intervenor Committee to Bridge the Gap (CBG) and the NRC Staff concerning a disagreement on the scope of discovery to be permitted on the subject of the professional associations of the authors of a study on the Argonaut reactor prepared by the Battelle Memorial Institute for the NRC Staff. The Board orders a response to only those interrogatories which need to be answered in order to assess the professional credibility of one of the

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consultants. The Board denies as unlikely to lead to admissible evidence CBG's request to order the authors of the study to reply to those questions which seek to probe the consultants' personal acquaintances.

- B A Staff consultant's opinion may not be disqualified on the ground of bias when the views expressed are formed in the course of performing the advisor's proper functions for the agency. *Rombough v. Federal Aviation Administration*, 594 F.2d 893, 900 (2d Cir. 1979); *Starr v. Federal Aviation Administration*, 589 F.2d 307, 315 (7th Cir. 1978). When the opinion is formed as a result of work performed for an NRC licensee, however, the possibility of bias cannot be automatically dismissed.

LBP-82-100 LOUISIANA POWER AND LIGHT COMPANY (Waterford Steam Electric Station, Unit 3), Docket No. 50-382-OL; OPERATING LICENSE; November 3, 1982; PARTIAL INITIAL DECISION

- A The Licensing Board issues its first of two partial initial decisions on the application for an operating license for the Waterford Steam Electric Station, Unit 3. The Board commends to the Commission the Board's discussion of unresolved generic safety issue A-45, Shutdown Decay Heat Removal.

- B At the operating license stage, a licensing board passes only upon contested matters; however, it has the residual power to delve sua sponte into any serious matter which has not been put into issue by a party. Once an operating license board has resolved any contested issues as well as any issues raised sua sponte, the decision as to all other matters which need to be considered prior to the issuance of the operating license is the responsibility of the NRC Staff and it alone.

- C A licensing board must refrain from scrutinizing the substance of particular explanations in the SER justifying operation of a plant prior to the resolution of an unresolved generic safety issue. The Board should only look to see whether the generic issue has been taken into account in a manner that is at least plausible and that, if proven to be of substance, would be adequate to justify operation. *Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2)*, ALAB-491, 8 NRC 245 (1978).

- D It would be inappropriate for a licensing board to solicit evidence to resolve definitively an unresolved generic safety issue assessed by the NRC Staff, when the issue is also being actively pursued by Advisory Committee on Reactor Safeguards. Cf. *Cincinnati Gas and Electric Company, et al. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1)*, CLI-82-20, 16 NRC 109 (1982).

- E There is no standard for judging the adequacy of evacuation routes; nor has a minimum evacuation time been set. However, estimates are required of the amount of time needed to evacuate the entire population within the plume exposure EPZ over the presently existing roads. Since such estimates form the basis for protective action decisions, the estimates must be reasonably reliable.

- F Emergency planning is a continuous process, and a licensing board's findings are predictive. If plans are sufficiently detailed and concrete to provide a licensing board reasonable assurance that they can and will be implemented in the event of an emergency, then implementation of details can properly be overseen by the NRC Staff.

- G 10 CFR Part 50, App. E., §F.1 requires a periodic full-scale exercise which tests as much of the emergency plans as is reasonably achievable without mandatory public participation. This section precludes a licensing board from requiring public evacuation during an exercise.

- H Other protective measures, such as sheltering and administration of radioprotective drugs, do not obviate plans for timely evacuation of special populations.

- I License conditions that require only a purely objective determination are appropriate for post-hearing ministerial resolution by the NRC Staff; reopening the record is not warranted.

- J Synergistic effects are exceedingly unlikely to occur at the very low levels of radiation calculated to result from releases of gaseous and liquid effluents during normal plant operation. Further, even if synergistic effects did occur, they would be so small as to be clinically undetectable. Therefore, Applicant and the NRC Staff did not err in failing to assess synergistic effects. NEPA's requirement that environmental effects of a proposed agency action be described is subject to a rule of reason. An agency need not foresee the unforeseeable. *Scientists' Institute for Public Information v. Atomic Energy Commission*, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

- K The environmental statement may be deemed amended pro tanto to include our findings and conclusions. *Allied-General Nuclear Services, et al. (Barnwell Nuclear Fuel Plant Separations Facility)*, ALAB-296, 2 NRC 671 (1975); 10 CFR §51.52(b)(3).

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- L The following technical issues are discussed: Consideration of generic safety questions in the safety evaluation report (Shutdown decay heat removal, Seismic qualification of equipment); Emergency plans (Evacuation plans, Protective measures — radioprotective drugs (potassium iodide)); Synergism (Low-level radiation releases, Multiplicative interaction of low-level radiation and chemical carcinogens).

LBP-82-101 CONSUMERS POWER COMPANY (Palisades Nuclear Power Facility), Docket No. 50-255-OLA; OPERATING LICENSE AMENDMENT; November 8, 1982; ORDER OF DISMISSAL

- A The Licensing Board dismisses the operating license amendment proceeding where the sole intervenor defaults in failing to attend a prehearing conference and failing to respond to a show cause order.

- B In an operating license amendment matter, where an intervenor has been admitted as a party and subsequently fails to attend a scheduled prehearing conference or give notice or explanation for such failure and, thereafter, fails to respond to an order to show cause, it will be found to be in default, dismissed as a party, and its previously admitted contentions will be dismissed.

LBP-82-102 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; November 8, 1982; MEMORANDUM AND ORDER

- A The Licensing Board reviews a set of interrogatories addressed to the Staff concerning the Standby Liquid Control System Contention. The Board finds that certain questions are irrelevant because they relate to Anticipated Transient Without Scram generally, and not to the admitted contention. However, the Board decides that intervenor is seeking necessary information and phrases its own questions so that information necessary to a complete record can be obtained in an efficient manner, without unduly burdening Staff.

- B Intervenor may obtain information about other, arguably analogous plants in the course of discovery.

- C When the Board's review of the intervenor's interrogatories persuades it that there may be substantial gaps in the record resulting from these requests, the Board may phrase its own questions to fill the gaps.

- D The following technical issues are discussed: Standby Liquid Control System; Human Error; Anticipated Transient Without Scram.

LBP-82-103 ILLINOIS POWER COMPANY, et al. (Clinton Power Station, Unit No. 1), Docket No. 50-461-OL; OPERATING LICENSE; November 10, 1982; MEMORANDUM AND ORDER

- A The Licensing Board admits two supplemental contentions submitted by the Intervenor, and it denies admission of seven contentions by the Intervenor and two issues proposed for litigation by the State of Illinois. The Board also deletes one previously admitted contention and grants a motion for summary disposition of one contention.

- B Commission guidance in TMI-1 Restart, Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-16, 11 NRC 674 (1980) permits the litigation of hydrogen control in individual cases under 10 CFR Part 100 if it is determined that there is a credible loss of coolant scenario entailing hydrogen generation, hydrogen combustion, containment breach or leaking, and offsite radiation doses in excess of the Part 100 guideline values. See Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), LBP-81-13, 13 NRC 652 (1981) and ALAB-669, 15 NRC 453 (1982); and Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-15, 15 NRC 555 (1982) and ALAB-675, 15 NRC 1105 (1982).

- C Contentions related to financial qualification of the Applicant for a construction permit or an operating license for production or utilization facilities shall not be considered. See 47 Fed. Reg. 13750 et seq. (March 31, 1982) and revised 10 CFR §2.104(b)(1)(iii) and 10 CFR §2.104(c)(4).

- D The Appeal Board provides guidance concerning the litigability of generic issues. In Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 773 (1977) it states:

To establish the requisite nexus between the permit or license application and a TSAR item (or Task Action Plan), it must generally appear both (1) that the undertaken or contemplated project has safety significance insofar as the reactor under review is concerned, and (2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an in-

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sufficient assessment of a specific type of risk for the reactor, or that the short-term solution offered in the application to a problem under staff study is inadequate. (footnote omitted)

- E New paragraph 10 CFR §51.53(c), effective March 22, 1982, prohibits admission of contentions proffered by a party concerning need for power or alternate energy sources for the proposed plant in operating license hearings. See 47 Fed. Reg. 12943 (March 26, 1982).
- F Contentions alleging psychological stress resulting from Commission-licensed activities must meet three criteria: 1) the impact must consist of post-traumatic anxieties, 2) the impact must be accompanied by physical effects, and 3) the post-traumatic anxieties must have been caused by fears of recurring catastrophe. See the Commission's statement of policy issued July 16, 1982, 47 Fed. Reg. 31762 (July 22, 1982).
- LBP-82-104 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; November 15, 1982; MEMORANDUM AND ORDER
- A The Licensing Board excludes intervenors' late-filed contention, based on a Science News article, concerning adverse effects on reactor operator performance caused by shift rotation schedules that failed to account for "circadian rhythms." The Board excludes the contention primarily because there was substantial pre-existing knowledge that improper shift rotations might cause fatigue and adversely affect operator performance and intervenor failed to show the significance of the allegedly new information about "circadian rhythms."
- B The appearance of an article in a popular science publication could provide good cause for late filing, but the intervenor must demonstrate the extent to which new information in the article differs from previously available information. In addition, intervenor's discussion of the article must demonstrate its ability to contribute to the development of a sound record in the proceeding.
- C The following technical issues are discussed: Shift Rotation — Effect on Personnel Performance; Human Factors (Shift Rotation); Circadian Rhythm (Effect on Efficiency of Operator Performance).
- LBP-82-105 CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point, Unit No. 2) and POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit No. 3), Docket Nos. 50-247-SP, 50-286-SP; SPECIAL PROCEEDING; November 15, 1982; MEMORANDUM AND ORDER
- A The Licensing Board sets forth its final decision on the contentions to be litigated in this proceeding (except for emergency planning issues), a schedule, and procedural matters related thereto.
- B Licensees are required to show they have taken steps to provide equivalent or better measures than called for in regulatory guides if they do not, in fact, comply with the specific requirements set forth in the guides.
- C A Commission decision that residual radiation health effects may be litigated in an individual licensing proceeding, even for plants which comply with 10 CFR Part 50, Appendix I, is applicable to this special proceeding. Therefore, the Licensing Board may admit a contention concerning the environmental costs associated with the routine release of radiation from the power plants.
- LBP-82-106 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL, 50-444-OL (ASLBP No. 82-471-02-OL); OPERATING LICENSE; November 17, 1982; MEMORANDUM AND ORDER
- A The Licensing Board denies motions for certification of objections to its Prehearing Conference Order rulings on the admissibility of contentions. The Licensing Board grants in part and denies in part motions for reconsideration of that order.
- B Although interlocutory appeal is generally prohibited, 10 CFR §2.730(f), certification is permitted where it is shown that failure to resolve the issue immediately will cause detriment to the public interest or unusual delay or expense.
- C An interlocutory appeal will only be accepted where a Licensing Board's ruling either (1) threatened appellant with immediate and serious irreparable impact or (2) affected the basic structure of the proceeding in a pervasive or unusual manner. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).
- D Certification is particularly inappropriate where the subject of the interlocutory appeal is a Licensing Board's rejections of contentions. Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant, ALAB-326, 3 NRC 406 (1976)).

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- E A Licensing Board may treat an interlocutory appeal as a motion for reconsideration. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-370, 5 NRC 131 (1977).
- F 10 CFR §2.714 requires a petitioner to set forth the bases for each contention with reasonable specificity. This standard requires that a contention be stated with particularity (Alabama Power Co. (Joseph M. Farley Nuclear Power Plant, Units 1 and 2), ALAB-183, 7 AEC 210, 216 (1974)), and that the petitioner state the "reasons" for its concern (Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980)). The standard does not require the Licensing Board to address the merits of a contention when determining its admissibility (id.) and does not require the petitioner to detail supporting evidence (Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973)).
- G In delineating the reason (i.e., basis) for a contention, an intervenor should establish a nexus between the substance of the contention and the statutory and regulatory scope of a Licensing Board's concern. To do so, an intervenor should allege with particularity that a part of an applicant's plant or operation thereof fails to comply with a specified regulation; or in the case where there is a "regulatory gap," an intervenor should allege that such a regulatory gap exists and allege with particularity facts that if proven would warrant concern. Where there is no allegation of non-compliance with a specified regulation, a Licensing Board must discern whether a reasonably prudent person would be concerned by the contention. Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-5, 7 AEC 19, 32 n.27 (1974), rev'd sub nom., Aeschliman v. NRC, 547 F.2d 622 (D.C. Cir. 1976), rev'd sub nom., Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553-54 (1978).
- H Generic safety issues may be the subject of a contention, but such a contention must establish a nexus between the issue and the license application. In particular, the contention must show that 1) the generic issue has safety significance for the particular reactor and 2) the fashion in which the application deals with the matter is unsatisfactory or the short-term solution offered to the problem under study is inadequate. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977).
- I A Licensing Board's declination to rewrite inadmissible contentions does not constitute error. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974).
- J 10 CFR §50.47(a)(2) precludes a Licensing Board from requiring completed preparedness exercises prior to a licensing decision; the section does not obviate planning requirements.
- LB-82-107 LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL (Emergency Planning); OPERATING LICENSE; November 19, 1982; MEMORANDUM AND ORDER RULING ON LICENSING BOARD AUTHORITY TO DIRECT THAT INITIAL EXAMINATION OF THE PRE-FILED TESTIMONY BE CONDUCTED BY MEANS OF PREHEARING EXAMINATIONS
- A The Licensing Board concludes that it has the authority under the Administrative Procedure Act, the Atomic Energy Act and NRC Regulations to direct that the parties to the Shoreham operating licensing proceeding conduct their initial cross-examination, redirect and recross-examination with the respect to Phase I (primarily onsite) emergency planning issues by means of prehearing examinations in the nature of depositions. The Board orders that such examinations be held to expedite this proceeding and directs that portions of the transcripts of such examinations may be moved into evidence. Follow-up questions from the Board and parties would then be permitted at formal hearings before the Board.
- B The Atomic Energy Act does not itself specify the nature of the hearings required to be held pursuant to Section 189(a), 42 USC §2239; its reference to "a hearing" neither distinguishes between rulemaking and adjudication nor states explicitly whether either must be conducted through formal "on the record" proceedings. However, "[the] Commission has . . . invariably distinguished between the two, and has provided formal hearings in licensing cases, as contrasted with informal hearings in rulemaking proceedings confined to written submissions and non-record interviews." Siegel v. Atomic Energy Commission, 400 F.2d 778, 785 (D.C. Cir. 1968); Citizens For a Safe Environment v. Atomic Energy Commission, 489 F.2d 1018, 1021 (3rd Cir. 1974).
- C By virtue of Section 181 of the Atomic Energy Act, 42 USC §2231, "the provisions of the Administrative Procedure Act shall apply to all agency action taken under this Act." Pursuant to Section 7(c) of the APA, 5 USC §556(d), a party to an administrative adjudicatory hearing does not have an unlimited right to cross-examine witnesses, but is instead entitled only "to conduct such cross-examination as may be required for a full and true disclosure of the facts."

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D Directing that parties to an operating license proceeding conduct their initial cross-examination by means of prehearing examinations in the nature of depositions is not violative of the APA, so long as the procedure employed does not prejudice the rights of any party. Administrative Procedure Act, Section 7(c), 5 USC §556(d).

E A licensing board has the authority to direct that parties to an operating license proceeding conduct their initial cross-examination by means of prehearing examinations in the nature of depositions. Pursuant to 10 CFR §2.718, a board has the power to regulate the course of the hearing and the conduct of the participants, as well as to take any other action consistent with the APA. See also 10 CFR §2.757, 10 CFR Part 2, App. A, IV. In expediting the hearing process using the case management methods contained in Part 2, a board should ensure that the hearings are fair, and produce a record which leads to high quality decisions and adequately protect the public health and safety and the environment. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 453 (1981).

F The fact that a procedure for the conduct of initial cross-examination by means of prehearing examinations in the nature of depositions has not previously been implemented in NRC licensing hearings does not mean that the procedure is invalid. It is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it. Such an exercise of discretion is not reviewable except upon a showing of substantial prejudice to the complaining party. *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 538-539 (1970).

G While use of innovative procedures might be appropriate in highly litigated cases involving sophisticated intervenors represented by a number of competent counsel to expedite those proceedings, the use of the same procedures in a case involving a pro se intervenor unfamiliar with adjudicatory procedures might be fundamentally unfair. Which procedural devices ought to be used in a particular proceeding is a decision best committed to the sound discretion of a licensing board as a part of its general duty to regulate the course of the hearing and the conduct of the participants. See 10 CFR §2.718(e); 5 USC §556(c) (7).

LBP-82-107A DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414 (ASLBP No. 81-463-01-OL); OPERATING LICENSE; December 1, 1982; MEMORANDUM AND ORDER

A The Licensing Board grants the petitions to intervene of six individuals and organizations. The Board admits numerous safety and environmental contentions and defers ruling on certain other contentions for which necessary documentation was not yet available. Rulings on proposed security plan contentions are also deferred pending the Board's review of the qualification of the intervenors' experts.

B A Licensing Board has broad discretion to defer rulings on contentions which may later be made more specific on the basis of information not yet available, or to proceed with rulings on such contentions without waiting for more information.

C Where a contention is advanced on the basis of new information following the original deadline for filing contentions, its proponent has the burden of explaining — in appropriate detail and separate from the contention's text — what is new about the contention and why it could not have been advanced previously.

D A contention concerning a certain accident scenario is barred in an operating license proceeding by the doctrine of collateral estoppel where the same scenario advanced by the same party was found to be not credible in the construction permit proceeding.

E As a general rule, a generic issue should be addressed in a rulemaking proceeding, if one is pending or about to commence, and not in an individual case. However, since simultaneous consideration of a generic issue in litigation and rulemaking is not necessarily precluded, unless the Commission mandates that result, the basic criterion is safety — whether there is a substantial safety reason for litigating the issue as the rulemaking progresses.

LBP-82-108 WISCONSIN ELECTRIC POWER COMPANY (Point Beach Nuclear Plant, Unit 1), Docket No. 50-266-OLA-2; OPERATING LICENSE AMENDMENT; December 10, 1982; SPECIAL PRE-HEARING CONFERENCE ORDER

A The Licensing Board declares intervenor Wisconsin's Environmental Decade to be in default of its hearing obligations and dismisses its petition to intervene. The Board also considers intervenor's contentions and finds each to be irrelevant or without basis.

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- B** When an intervenor failed to appear at a Special Prehearing Conference, the Board applied factors found in the Statement of Policy on Conduct of Licensing Proceedings, 46 Fed. Reg. 28533 (May 27, 1982), in order to determine what sanction was appropriate.
- C** A party wishing to attend an alternate engagement instead of a Special Prehearing Conference must establish the importance of that engagement and that it took reasonable steps to avoid the scheduling conflict. When a party's motion to reorganize the schedule of a hearing fails because it has not met the criteria for rescheduling, it may be warned that it risks default for nonattendance at the scheduled conference. Nonattendance may then properly result in a default.
- D** In an amendment proceeding, contentions concerning the safety of parts of the plant not involved in the amendment are not admissible unless the petitioner first establishes that a grant of the amendment would in some way worsen these safety concerns.
- E** Petitioner cited a source that stated that hydraulic expansion of a steam generator tube would make it susceptible to stress corrosion cracking. This source was found not to be an adequate basis for a contention because the amendment being sought utilized a hydraulic roll rather than hydraulic expansion. The alleged basis was found to be irrelevant and the contention was not admitted.
- LBP-82-109 UNION ELECTRIC COMPANY** (Callaway Plant, Unit 1), Docket No. STN 50-483-OL; OPERATING LICENSE; December 13, 1982; PARTIAL INITIAL DECISION
- A** In a Partial Initial Decision, the Licensing Board rules that isolated construction deficiencies do not show a pattern of a programmatic breakdown in Applicant's quality assurance program. The Board determines that pending a resolution of emergency planning contentions and the making of requisite findings by the Director of Nuclear Regulation, the Director would be authorized to issue an operating license for the Callaway Plant, Unit 1.
- B** A lack of knowledge that quality deficiencies have been recorded by Applicant's construction contractor represents a failure in meeting quality assurance criteria under Commission's regulations in 10 CFR Part 50 Appendix B.
- C** Documented reinspection results where the objective is to discover the extent of a problem that could affect quality is a requirement of the Commission's quality assurance criteria.
- D** Where quality control inspectors provide reports three months after the reported event occurred, under circumstances where the information contained in such reports is similar and only a single inspector noted comments thereon, such documents are considered worthless.
- E** A proof of the adequacy of quality assurance activities can be ascertained by comparing actual performance against functional standards established in the Applicant's program.
- F** The following technical issues are discussed: Construction Deficiencies — Materials Integrity and Safety, Concrete Density, Welding Defects, Substandard Piping, Radiographic Technique, Code Enforcement.
- LBP-82-110 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.** (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; December 13, 1982; MEMORANDUM AND ORDER
- A** The Licensing Board declines to reconsider its earlier decision admitting a hydrogen control contention and reaffirms its earlier decision that petitioners have sufficient basis for the admission of this contention.
- B** Motions for reconsideration ordinarily must be filed within ten days of a Board decision. Thereafter the Board decision becomes the law of the case, subject to untimely reconsideration only upon demonstration of good cause for late filing.
- LBP-82-111 CONSUMERS POWER COMPANY** (Big Rock Point Plant), Docket No. 50-155; SPENT FUEL POOL AMENDMENT; December 14, 1982; MEMORANDUM AND ORDER
- A** The Licensing Board rules that it lacks jurisdiction to reopen the record on an issue that pends before the Appeal Board, or to permit discovery with respect to that issue.
- B** Once an appeal of an issue is taken, the Licensing Board is divested of jurisdiction over that issue and may not order discovery concerning whether or not it is appropriate for the record on the issue to be reopened.
- LBP-82-112 LOUISIANA POWER AND LIGHT COMPANY** (Waterford Steam Electric Station, Unit 3), Docket No. 50-382-OL; OPERATING LICENSE; December 14, 1982; MEMORANDUM AND ORDER
- A** The Licensing Board grants in part and denies in part Applicant's Motion For Reconsideration or Clarification.

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- B** License conditions addressing off-site emergency planning issues need not be met prior to issuance of a fuel loading and low power license. 10 CFR §50.47(d).
- C** Absent a motion filed pursuant to 10 CFR §50.57(c), the issue whether fuel loading and low power operation should be authorized is not before a Licensing Board.
- D** 10 CFR §50.47 requires a finding that there is reasonable assurance that adequate protective measures can and will be taken, and adequate protective measures include a means for evacuating special populations. The regulations do not preclude a Licensing Board from requiring letters of agreement for the provision of drivers to evacuate the special populations.
- LBP-82-113 CONSOLIDATED EDISON COMPANY OF NEW YORK** (Indian Point, Unit No. 2) and **POWER AUTHORITY OF THE STATE OF NEW YORK** (Indian Point, Unit No. 3), Docket Nos. 50-247-SP, 50-286-SP; **SPECIAL PROCEEDING**; December 15, 1982; **MEMORANDUM AND ORDER**
- A** The Licensing Board grants the NRC Staff a protective order regarding an interrogatory requesting the Staff to identify and list its ten most serious criticisms of the Indian Point Probabilistic Safety Study.
- B** Neither 10 CFR §2.741, concerning the production of documents, nor 10 CFR §2.740, concerning discovery in general, requires the NRC Staff to compile a list of criticisms of a document at issue in the proceeding or to formulate a position on those criticisms in response to an interrogatory. It is sufficient for the Staff to provide to the Intervenor those documents containing the Staff criticisms from which the Intervenor itself may compile a list.
- LBP-82-114 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.** (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; **OPERATING LICENSE**; December 22, 1982; **MEMORANDUM AND ORDER**
- A** The Licensing Board denies in part and grants in part the NRC staff's motions for summary disposition of various contentions.
- B** The Board discusses the standards for summary disposition, accepting principles presented to it both by the applicant and by an intervenor.
- C** An affidavit submitted on summary disposition may present an opinion on an ultimate issue of fact, such as whether the quality assurance program has been satisfactory. However, unless the basis for this conclusion is stated, the Board may not grant summary disposition based on such an opinion. The Board must make decisions on ultimate issues of fact based on its own judgment and it may not substitute a staff judgment for its own.
- D** When an intervenor has demonstrated that there is a genuine issue of fact concerning serious deficiencies in the management of a quality assurance program, in violation of NRC regulations, there is a presumption that such deficiencies resulted in safety problems. Applicant may rebut this presumption either by showing that there were no serious management deficiencies or by showing that these deficiencies did not cause safety problems that will affect plant operation.
- E** The following technical issues are discussed: Asiatic clams, Corbicula fluminea, Scram discharge volume (Mark III containment), Mark III containment (scram discharge volume), Quality assurance (control of contractors), LOCA (pipe break in scram discharge volume; Mark III containment).
- LBP-82-115 LONG ISLAND LIGHTING COMPANY** (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL (Emergency Planning); **OPERATING LICENSE**; December 22, 1982; **MEMORANDUM AND ORDER CONFIRMING RULING ON SANCTIONS FOR INTERVENORS' REFUSAL TO COMPLY WITH ORDER TO PARTICIPATE IN PREHEARING EXAMINATIONS**
- A** The Licensing Board issues an order confirming its previous oral rulings finding intervenors to be in default of a previous board order, and stating its reasons for concluding dismissal of intervenors' onsite emergency planning contentions to be an appropriate sanction.
- B** A licensing board is not expected to sit idly by when parties refuse to comply with its orders. Pursuant to 10 CFR §2.718, a licensing board has the power and the duty to maintain order, to take appropriate action to avoid delay and to regulate the course of the hearing and the conduct of the participants. Furthermore, pursuant to 10 CFR §2.707, the refusal of a party to comply with a Board order relating to its appearance at a proceeding constitutes a default for which a licensing board "may make such orders in regard to the failure as are just."

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- C A spectrum of sanctions, from minor to severe, is available to licensing boards to assist in the management of proceedings. In selecting a sanction, boards should consider the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances. Boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance. Statement of Policy on the Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981); Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1416-20 (1982).
- D A licensing board is to be accorded the same respect as a court of law. See 10 CFR §2.713(a).
- E A party may not simply refuse to comply with a board order, even if it believes the board decision to have been based upon an erroneous interpretation of the law. Appropriate sanctions may be imposed for a refusal to comply with a board order, and a party may not be later heard to complain that its rights were unjustly abridged after having willfully refused to participate further in a matter. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244 (1974). Except in the most extraordinary circumstances, a party must comply with an order unless and until it is either stayed or overturned on appeal.
- F An intervenor's intentional waiver of both its right to cross-examine and its right to present witnesses with regard to certain contentions amounts to the effective abandonment of those contentions, in that the party has thus refused to prosecute whatever case it might otherwise have been able to make. In the absence of circumstances which would justify a board's exercise of its sua sponte powers, an intervenor's abandonment of its contentions precludes the board's litigation of these matters in an operating license proceeding, as such issues are no longer "in controversy" among the parties so as to be litigable. See 10 CFR §2.760a.
- LBP-82-116 DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414 (ASLBP No. 81-463-01-OL); OPERATING LICENSE; December 22, 1982; MEMORANDUM AND ORDER
- A The Licensing Board rules on various pending motions related to discovery.
- B A claim of privilege from disclosure, such as the attorney-client privilege, must be made with particularity, including clear identification of documents, or parts thereof, and why each identified document is privileged.
- C A contention is not subject to dismissal merely because the intervenor fails to respond in discovery by supplying its factual basis. The "basis" requirement of 10 CFR §2.714 is a pleading requirement which an intervenor can meet and not yet have any supporting factual basis.
- D A party is entitled to direct answers or objections to each interrogatory posed. General objections are insufficient. The burden is on the objector to show why the question is not proper.
- E An intervenor advancing a truthful claim of lack of knowledge about its contention is entitled to a reasonable opportunity to develop its case on those contentions through discovery against the applicants and NRC Staff before it can be required to provide responsive answers in discovery.
- F Valid safety contentions do not invariably involve alleged noncompliance with a specific safety rule. A contention about a matter not covered by a specific rule need only allege that it poses a significant safety problem.
- G A Licensing Board need not issue a ruling on a motion for a protective order unless a timely motion to compel is filed. In the absence of a timely motion to compel, the motion for protective order will be deemed granted.
- LBP-82-117 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; December 23, 1982; MEMORANDUM AND ORDER
- A The Licensing Board directs the NRC staff to respond to relevant interrogatories propounded by intervenor concerning hydrogen release, and to answer certain questions propounded by the Board itself.
- B When the Staff has done extensive work in an area, such as hydrogen control, it must answer relevant interrogatories covering that area.
- C When the Board's review of the intervenor's interrogatories persuades it that there may be substantial gaps in the record resulting from these requests, the Board may phrase its own questions to

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fill the gaps. It need not wait until the hearing to ask questions. It need not notify the Commission about the questions if they are related to an admitted contention and therefore are not sua sponte.

- D The Board defines "necessary" as used in 10 CFR §2.720(h)(2)(ii). The definition adopted rejects the suggestion of the Commission's staff that intervenors cannot obtain discovery if they only suspect that answers to their questions will be necessary to their case. The Board refused to erect a test that would permit questions to be asked only if the intervenor first knew what the answers would be.

- E An Atomic Safety and Licensing Board need not notify the Commission that it is asking questions that are relevant to an admitted contention. Such questions are not sua sponte.

- F Interrogatories asked by the non-lawyer representative of an intervenor should be answered fully, interpreting the interrogatories reasonably, both in light of their wording and the purpose of the intervenor. Litigation is not a game but is a search for meaningful answers.

LBP-82-117A ARIZONA PUBLIC SERVICE COMPANY, et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), Docket Nos. STN-50-528-OL, STN-50-529-OL, STN-50-530-OL (ASLBP No. 80-447-01-OL); OPERATING LICENSE; December 30, 1982; INITIAL DECISION

- A The Licensing Board issues a Partial Initial Decision authorizing the issuance of an operating license for Palo Verde Unit 1. The Board finds that:

1. There is reasonable assurance that there will be a sufficient supply of effluent from the 91st Avenue and the Tolleson Wastewater Treatment Plants to meet the operational requirements of the three Palo Verde units.
2. There is reasonable assurance that the sources of water available to the Phoenix metropolitan area during the first five years of operation of all Palo Verde units and beyond are sufficient that the occurrence of an event triggering Section 21 of Agreement No. 13904, which could curtail the supply of water to Palo Verde in the event of an emergency, is remote.
3. The estimated requirements of effluent for condenser cooling are not understated.
4. Effluent is not required for the safe shutdown of the Palo Verde units.

- B The Commission is not obligated under NEPA to consider all issues which are currently the subject of litigation in other forums and which one day in the future might have an impact on the amount of effluent available to Palo Verde.

- C Where environmental effects are remote and speculative, agencies are not precluded from proceeding with a project even though all uncertainties are not removed.

- D Although the Commission will take cognizance of activities before other legal tribunals when facts so warrant, it should not delay the licensing proceeding or withhold license merely because some other legal tribunal might conceivably take future action which may later have an impact upon the operation of a nuclear facility.

- E Environmental uncertainties raised by Intervenor in NRC proceedings do not result in a *per se* denial of the license, but rather are subject to a rule of reason.

- F Under NEPA, cost-benefit balancing is now required, but only if the proposed nuclear plant has environmental disadvantages in comparison to possible alternatives. Consumers Power Company (Midland Plants, Units 1 and 2), ALAB-458, 7 NRC 155, 162 (1978).

- G Cost-benefit comparison has been limited further by the Commission's recent amendment to 10 CFR Part 51 which precludes alternative energy source issues from being considered in operating license proceedings. 47 Fed. Reg. 12940 (March 26, 1982).

- H The following technical issues are discussed: Water supply adequacy, Cooling water supply.

LBP-82-117B ARIZONA PUBLIC SERVICE COMPANY, et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), Docket Nos. STN-50-528-OL, STN-50-529-OL, STN-50-530-OL; OPERATING LICENSE; December 30, 1982; MEMORANDUM AND ORDER

- A The Licensing Board grants the petition of West Valley Agricultural Protection Council, Inc. (West Valley) to intervene in this licensing proceeding, and reopens the record for Units 2 and 3 for the limited purpose of considering West Valley's Contention III regarding salt deposition.

- B An untimely petition to intervene in a proceeding may be granted if it is found that a balancing of the factors set forth in 10 CFR 2.714(a)(1) favors intervention.

- C The test for meeting the burden of reopening the record is that stated in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980):

1. Is the motion timely?
2. Does it address significant safety (or environmental) issues?

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3. Might a different result have been reached had the newly proffered material been considered initially?
- LBP-82-118 CONSUMERS POWER COMPANY** (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OM&OL, 50-330-OM&OL (ASLBP Nos. 78-389-03-OL, 80-429-02-SP); OPERATING LICENSE AND CONSTRUCTION PERMIT MODIFICATION ORDER; December 30, 1982; MEMORANDUM AND ORDER
- A The Licensing Board rules on rewritten contentions of an intervenor in the operating license proceeding.
 - B In considering the acceptability of a contention, a Licensing Board may not determine factual questions going to the merits of the contention. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 547-49 (1980).
 - C When a matter is involved in rulemaking, the Commission may elect to require an issue which is part of that rulemaking to be heard as part of that rulemaking. Where it does not impose such a requirement, an issue is not barred from being considered in adjudications being conducted at that time.
 - D During a rulemaking on a particular subject, there shall be no different adjudicatory consideration of an issue (absent Commission direction to the contrary) than there would have been in the absence of the rulemaking.
 - E The question whether an issue should be dealt with through rulemaking or adjudication is one of policy for the Commission to make; it is beyond the scope of authority delegated to Licensing Boards. Where the Commission has not limited the authority of Licensing Boards to hear an issue, a Board cannot decline to hear the issue just because it happens to involve a matter involved in rulemaking.
 - F Where standards appear in the Standard Review Plan and not in a specific regulation, they may be modified, upon proper showing, at the behest of an applicant or other party.
 - G As a result of the Commission's October 29, 1982 policy statement on fuel cycle matters, Licensing Boards are required to consider the current Table S-3 (10 CFR §51.23(c)) as still in effect, despite a Court ruling which raised questions concerning its validity. Fuel cycle matters must be considered only under that Table, and a contention challenging the Table must be dismissed. Any decision or license authorization relying on Table S-3 will be subject to the outcome of pending judicial proceedings in this matter.
- LBP-82-119 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.** (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; December 30, 1982; MEMORANDUM AND ORDER
- A The Licensing Board grants summary disposition on three issues relating to the performance of a 30 degree sector steam test, the improper consideration of local employment and tax levels in the environmental impact statement and failure to consider adequately the economic effects of serious nuclear accidents. In dismissing the 30 degree sector steam test contention, the Board also reviews the evidence and decides that it is not appropriate to raise sua sponte the issue of the adequacy of that test.
 - B The following technical issues are discussed: 30 degree sector steam test; Local economic effects as a NEPA consideration; Class nine accident; Serious nuclear accident, consideration of economic effects; Test for adequacy of core spray in a BWR.
- LBP-82-119A CAROLINA POWER & LIGHT COMPANY AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY** (Shearon Harris Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-400-OL, 50-401-OL (ASLBP No. 82-468-01-OL); OPERATING LICENSE; September 2, 1982; MEMORANDUM AND ORDER



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- DD-82-7** **PACIFIC GAS & ELECTRIC COMPANY** (Humboldt Bay Power Plant, Unit 3), Docket No. 50-133; DECOMMISSIONING; July 7, 1982; DIRECTOR'S DECISION UNDER 10 CFR 2.206
- A** The Director of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 that requests action to revoke the operating license for the Humboldt Bay plant and to decommission the facility.
- DD-82-8** **PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE** (Seabrook Nuclear Station, Units 1 & 2), Docket Nos. 50-443, 50-444; SHOW CAUSE; July 6, 1982; DIRECTOR'S DECISION UNDER 10 CFR 2.206
- A** The Director of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 that requested initiation of show-cause proceedings on the basis of the licensee's alleged lack of financial qualifications.
- B** In light of the elimination of the Commission's financial qualification requirements, the Director of Nuclear Reactor Regulation denies a request for initiation of show-cause proceedings in the absence of a connection between alleged financial constraints and a particular safety problem.
- DD-82-9** **COMMONWEALTH EDISON COMPANY** (LaSalle County Generating Station, Units 1 and 2), Docket Nos. 50-373, 50-374; SHOW CAUSE; July 19, 1982; DIRECTOR'S DECISION UNDER 10 CFR 2.206
- A** The Director of Nuclear Reactor Regulation denies in part petitions filed under 10 CFR 2.206 by the Illinois Attorney General and the Illinois Friends of the Earth regarding deficiencies in construction of LaSalle Unit 1. Remaining matters concerning LaSalle Unit 2 are under investigation.
- DD-82-10** **PACIFIC GAS AND ELECTRIC COMPANY** (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-276; OPERATING LICENSE; September 22, 1982; DIRECTOR'S DECISION UNDER 10 CFR 2.206
- A** The Director of Nuclear Reactor Regulation denies a petition under 10 CFR 2.206 requesting the issuance of an order to Pacific Gas & Electric Co. to show cause why it should not be directed to file amendments to its pending operating license applications concerning the restructuring by PG&E of the Diablo Canyon Project organization and management.
- DD-82-11** **ROCHESTER GAS AND ELECTRIC CORPORATION** (R. E. Ginna Nuclear Power Plant), Docket No. 50-244; OPERATING LICENSE; October 8, 1982; DIRECTOR'S DECISION UNDER 10 CFR 2.206
- A** Acting on a referral from the Commission of the petitioner's request for review of a partial denial (DD-82-3, 15 NRC 1348) of its earlier petition, the Director of Nuclear Reactor Regulation denies the petitioner's request for additional relief with respect to further operation of the R. E. Ginna Nuclear Power Plant.
- B** The following technical issues are discussed: Steam generator tube rupture events and repairs.
- DD-82-12** **CONSOLIDATED EDISON COMPANY** (Indian Point, Unit No. 2) and **POWER AUTHORITY OF THE STATE OF NEW YORK** (Indian Point, Unit No. 3), Docket Nos. 50-247, 50-286; SUSPENSION OF OPERATION; November 26, 1982; DIRECTOR'S DECISION UNDER 10 CFR 2.206
- A** The Director of the Office of Inspection and Enforcement denies a petition filed by the Union of Concerned Scientists and the New York Public Interest Research Group which requested immediate suspension of operation of Indian Point Units 2 and 3 on the basis of inadequate State and local planning and preparedness for radiological emergencies.
- B** In the absence of compelling circumstances requiring such action, licensees are generally permitted 4 months to secure corrective action for emergency planning and preparedness deficiencies before the NRC takes enforcement action for such deficiencies.

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DD-82-13 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; CONSTRUCTION PERMIT SUSPENSION; December 7, 1982; DIRECTOR'S DECISION UNDER 10 CFR 2.206

- A** The Acting Director of Nuclear Reactor Regulation denies a petition filed by Del-Aware which requested suspension or revocation of the construction permits for the Limerick Station unless the licensee submitted an alternative to the planned Supplemental Cooling Water Supply System at Point Pleasant, Pennsylvania.
- B** The scope of the NRC's environmental review of a project may be limited to one segment of a project so long as (1) that portion has independent utility and (2) the approval of that segment does not foreclose alternatives to the part of the project not being considered.
- C** The Director need not consider issues raised in a 10 CFR 2.206 petition which the petitioner is litigating or had an opportunity to raise before a Licensing Board in a pending adjudication or for which the petitioner provides no factual basis for the requested relief.
- D** The Director will not institute proceedings to suspend or revoke construction permits on environmental matters in the absence of a showing of a major change in material facts.
- E** The NRC staff may use environmental impact statements prepared by other agencies as the basis for its own assessment of the environmental impacts of a proposed section.

DIGESTS

ISSUANCES OF DENIALS OF PETITIONS FOR RULEMAKING

DPRM-82-1 GENERAL ATOMIC COMPANY, Docket No. PRM-95-1 (10 CFR Part 95); RULEMAKING; August 26, 1982; DENIAL OF PETITION FOR RULEMAKING

- A The Nuclear Regulatory Commission is hereby denying a petition for rulemaking submitted by the General Atomic Company (GAC) in a letter to the Secretary of the Commission dated May 19, 1981. The petition requested that the Commission amend its regulation relating to the classification guidance provided by sub-topic 112 of Appendix A, "Classification Guide for Safeguards Information," to 10 CFR Part 95 to change the CONFIDENTIAL-National Security Information (CNSI) classification category to unclassified (U) or to delete sub-topic 112 from Appendix A.

DPRM-82-2 WELLS EDDLEMAN, Docket No. PRM-2-11; OPERATING LICENSE; September 30, 1982; DENIAL OF PETITION FOR RULEMAKING

- A The Commission denies a petition requesting that the Commission amend its rules of practice for domestic licensing proceedings to require a separate operating license hearing for each power reactor unit at a nuclear power plant site on the grounds that the requested amendments are unnecessary, contrary to sound administrative practice, and inconsistent with existing law.

- B There is no reason to believe that an amendment to NRC regulations to require an exclusive hearing on each reactor unit will result in or enhance the consideration of any issues which could not also have been considered and considered equally well in a hearing on two or more units.

- C There is no reason to believe that the class of persons who could be included or excluded from participating in an operating license hearing on two or more reactor units constructed on a multiunit site would be different from the class of persons who would be included or excluded from participating in an OL hearing devoted exclusively to any single reactor unit constructed on the same multiunit site.

- D A separate operating license is issued for each reactor unit constructed on a multiunit site even though a consolidated hearing is held on several reactor units. Before an operating license for a reactor unit is issued, the Commission must make the requisite findings and determinations required by the regulations in effect at the time of license issuance.

- E Rules of practice permit the Commission to consider two or more applications in the same licensing review and to consolidate two or more proceedings for hearing.

- F Although used infrequently, the Commission's rules of practice also provide procedures for severing a proceeding dealing with two or more reactor units and for holding a separate operating license hearing on each reactor unit.

- G The requested amendment would, if adopted, have the effect of requiring a mandatory OL hearing in connection with the issuance of an OL for each nuclear power reactor. In this respect, the requested amendment is contrary to the clear intent of Congress which, in 1962, amended section 189a. of the Atomic Energy Act of 1954 to eliminate the requirement for mandatory hearings in OL proceedings and to permit the Commission, in any case in which a hearing was not requested, to issue an OL without a hearing.

- H The OL hearing is limited to examining substantial changes or conditions which have occurred since the issuance of the construction permit and issues which were deferred for consideration at the OL stage of the proceeding.

- I It is inappropriate to consider the issue of sufficient NRC personnel in a licensing proceeding, including a hearing on an OL. Issues relating to Commission personnel involve the internal organization and management of the agency which is subject to Congressional authorization, and for which the Commission, not a license applicant or an intervenor, has sole responsibility.

- J The Commission has amended its regulations in 10 CFR Parts 2 and 50 to eliminate entirely requirements for financial qualifications review and findings for electric utilities that are applying for construction permits or operating licenses for production or utilization facilities.



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