NUREG-1363
Vol. 5

ATOMIC SAFETY AND LICENSING BOARD PANEL
ANNUAL REPORT

FISCAL YEAR 1992

September 1993

U.S. NUCLEAR REGULATORY COMMISSION
Washington, DC 20555-0001

MASTER

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ABSTRACT

In Fiscal Year 1992, the Atomic Safety and Licensing Board Panel ("the Panel") handled 38 proceedings. The cases addressed issues in the construction, operation, and maintenance of commercial nuclear power reactors and other activities requiring a license from the Nuclear

Regulatory Commission. This report sets out the Panel's caseload during the year and summarizes, highlights, and analyzes how the wide-ranging issues raised in those proceedings were addressed by the Panel's judges and licensing boards.

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EXECUTIVE SUMMARY

Overview

The Fiscal Year 1992 caseload focused on issues arising out of the continuing operation of more than 111 nuclear power plants or related facilities, and programs related to 7,000 nuclear materials licensees and other nuclear licenses. Unlike the preceding decades at the NRC where the caseload was dominated by construction and operating license proceedings for new nuclear power reactors, the 1992 cases reflected the kinds of disputes that arise from the regulation of a newly matured industry.

Docket Data

Case Age—The average age of all cases on the docket during the fiscal year (as of September 30, 1992) was 11.7 months. This case age was a substantial improvement over the previous 4-year average of 17.1 months.

Case Filings—The number of new cases filed in Fiscal Year 1992 was less than in 1991, but was about the same as in 1989 and 1990.

Caseload—Of the 38 cases on the Panel's docket for Fiscal Year 1992, 17 involved nuclear power plants or related facilities and 21 involved other Commission licensees.

Caseload per Judge—The average caseload per full-time judge (of 5.3 cases) was about the same as in 3 of the 5 previous years.

Completed Proceedings—Of 38 proceedings on the docket during the year, 24 percent were closed within 6 months from the time they were first docketed and 45 percent were closed in less than 1 year.

Administration

Staffing—During the fiscal year, one full-time judge (legal) left the Panel, one part-time judge (legal) became a full-time judge, and one health physicist was added to the Panel as a full-time judge.

The Panel's Electronic Docket

The Panel has completed a study of a personal computer-based full-text system to replace its INQUIRE system. The new system will be PC LAN-based using Personal Librarian Software and will represent a potential annual cost savings for the Panel of \$30,000 to \$40,000.

I. INTRODUCTION

Adjudicatory hearings under the Atomic Energy Act of 1954, as amended, are conducted by licensing boards or presiding officers drawn from the Atomic Safety and Licensing Board Panel. A total of 628 cases have been filed since the first licensing board case began on November 9, 1962.

Panel hearings often are the principal public administrative vehicle through which individuals, organizations, and State and local governments can exercise an equal voice in the resolution of their concerns about regulated nuclear activities. Panel hearings have been characterized as among the most complex, lengthy and controversial administrative proceedings conducted by the Federal Government, routinely involving difficult interrelated questions of policy, law, engineering, and risk assessment which are often on the cutting edge of science and technology. In these hearings, licensing boards and presiding officers must not only resolve disputes among the parties, but also assure that public health and safety interests are fully explored and effectively preserved.

Construction permit and operating license hearings for commercial nuclear power reactors dominated the Panel's hearing docket from the 1960's through the mid-1980's. In the past decade, licensing boards authorized or facilitated the issuance of full-power operating licenses for 44 commercial nuclear power reactors,¹ rep-

resenting approximately 45,832 net megawatts of electricity or 46 percent of all electrical generation by nuclear means.

During the late 1980's, the Panel began moving away from the construction permit and operating license proceedings for nuclear reactors. The enforcement proceedings, license amendment proceedings, materials license proceedings, and site decontamination proceedings that took their place continued to raise difficult and sometimes unexplored questions of law and science. In the near future, a new influx of complex and highly contested cases is expected involving license renewal, new reactor design certification, license applications for new reactors, and site decommissioning which should be at least as challenging as the earlier reactor cases. In addition, the Department of Energy has begun work on the Yucca Mountain, Nevada site which will lead to the high-level waste repository proceeding that is to be held by the Panel, a case that could become one of the most complex and controversial administrative proceedings ever conducted by the Federal Government.

In Fiscal Year 1992, the Panel handled 38 cases. This report summarizes, highlights, and analyzes how the wide-ranging issues raised in these proceedings were addressed by the boards and the judges of the Panel during the year. This report also addresses the present status of the Panel, recent adjudicatory developments at the NRC, and present and projected future caseloads.

¹These units include Beaver Valley 2, Braidwood, Byron 1 and 2, Callaway 1, Catawba 1 and 2, Clinton 1 and 2, Comanche Peak 1 and 2, Diablo Canyon 1 and 2, Enrico Fermi 2, Grand Gulf 1 and 2, Nine Mile Point 2, Palo Verde 1, 2, and 3, Perry 1 and 2, River Bend 1, San Onofre 1 and 2, Seabrook, Shoreham 1, St. Lucie 2, Vogtle 1 and 2, Waterford 3, and Wolf Creek 1. Shoreham 1 was licensed but not operated, so its output is not included in these total generation figures.

II. PANEL JURISDICTION

Contested hearings at the Nuclear Regulatory Commission are conducted by members of the Atomic Safety and Licensing Board Panel. The agency's regulations provide the opportunity for numerous types of hearings. See, generally, Appendix E. These hearings include:

Reactor Licensing Hearings—The Atomic Energy Act of 1954, as amended by the Energy Reorganization Act of 1974 and the Energy Policy Act of 1992, and its implementing regulations ("the Act") require that a hearing be held on every application for a combined construction permit and operating license for a nuclear facility that produces electric power. The combined hearings provide an opportunity for affected individuals and organizations to raise health, safety, and antitrust issues. Post-construction hearings on combined licenses are allowed under limited circumstances when the facility's acceptance criteria have not been met and there is no reasonable assurance of adequate protection. Prior to the En-

ergy Policy Act, in 1992, formal hearings were required to be held on every application for a construction permit for a nuclear power plant or related facility. Operating license hearings could be held if requested by qualified parties.

License Amendment Hearings—Affected parties may challenge proposed license amendments for nuclear reactors. If the public health and safety warrants, hearings may be required to be held before the license amendment is allowed.

Materials License Hearings—Hearings may be conducted to contest NRC licensing actions involving the commercial use of nuclear materials. Included in this category are licensing actions involving the manufacture, treatment, disposal, or storage of radioactive materials and the commercial use of radioactive source terms used in such fields as nuclear medicine, well logging, and radiography.

Judges Morris, Bollwerk, and Carpenter Presiding at Alabama Power Enforcement Hearing

Enforcement Hearings—Hearings are available to individuals, employees, licensees, contractors, subcontractors, and vendors for contesting penalties (ranging from monetary fines and civil penalties to facility shutdown and license revocation) brought against them by the NRC staff for alleged infractions of NRC regulations.

Commission-Requested Hearings—Hearings can be conducted for any nuclear-related matter that the Commission directs be heard. For example, although hearings are not required under the Administrative Procedures Act for agency rulemaking, recently promulgated Part 52 of the NRC's regulations provides for a hearing opportunity to contest rulemaking for the design certification of new reactors. See 10 C.F.R. 52.51.

Hearings Involving Personnel Matters—Hearing also may be conducted by Panel members for cases involving non-nuclear related activities. These include employee grievance and Equal Employment Opportunity cases concerning employee opposition to agency personnel action. Hearings also are available for individuals to contest agency action involving fraudulent claims brought under the Program Fraud Civil Remedies Act of 1986.

Hearings at the NRC may be either formal or informal. The Panel's formal proceedings are governed by the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, as imple-

mented by the Commission's own rules of practice set out at 10 C.F.R. Part 2. Formal proceedings consist of the traditional procedures used in non-jury Federal court cases including pre-trial discovery between the parties and formal trial procedures at the hearing. Formal procedures traditionally have been used at the NRC in cases involving the licensing of reactors and for enforcement proceedings brought by the agency against individuals and licensees.

Informal hearing procedures are authorized in matters affecting one of the NRC's more than 7,000 materials licensees. While the deliberative process for judges remains the same under either type of hearing, informal hearings involve significantly different procedures for developing the record upon which decisions must be based. The principal differences include the use of a presiding officer (a single administrative judge²), written submittals by the parties instead of a hearing on the record, and, if the presiding officer determines it to be necessary after considering the written submittals, oral presentations by the parties subject to questioning by the presiding officer.

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²As a matter of Panel practice, an Atomic Safety and Licensing Board Panel (ASLBP) judge having expertise (*i.e.*, legal or technical) complementing that of the single presiding officer is routinely assigned to the proceeding as a special assistant to assure that the presiding officer has the expertise necessary for a fully informed decision.

III. SIGNIFICANT DECISIONS

During Fiscal Year 1992, the Panel's boards and presiding officers published 28 decisions and issued several hundred memoranda and orders in connection with the 39 proceedings on the Panel's docket. See Appendix D. Some of the more significant of these formal issuances are summarized below.

Antitrust Decisions

A license amendment application to delete the antitrust license conditions for the Perry Davis-Besse nuclear facility produced several important rulings. One involved the frequently litigated issue of NRC jurisdiction over antitrust matters. The City of Cleveland, Ohio, which was opposing the license amendment application, contended that the NRC does not have jurisdiction to delete antitrust license conditions once they are made part of a license. The licensing board held that although NRC antitrust jurisdiction generally ends after an operating license is issued, the NRC has continuing authority over the life of a license to amend antitrust license conditions, if justified, which are requested by a licensee. The board reasoned that the narrow authority accorded the Commission under AEA section 105c does not circumscribe the Commission's more general authority under AEA section 189a to amend a facility license. *Cleveland Electric Illuminating Company, et al.* (Perry Davis-Besse Nuclear Facility), LBP-91-38, 34 NRC 229 (1991), *aff'd* CLI-92-11 (August 12, 1992).

In another Perry Davis-Besse ruling, the licensing board acted on an untimely petition by the Department of Justice to appear as a party in a license amendment proceeding. The board held that although the Department has an absolute right to participate in antitrust operating license and construction permit proceedings, it must meet the same standards for intervention as any other party in other NRC proceedings. The board found, however, that in this case the Department met the standards for late-filed intervention. *Id.*

Civil Penalties

Several important decisions were issued dealing with escalated enforcement actions against nuclear licensees. One was a \$6,750 civil penalty against an Oklahoma radiography company. The penalty consisted of nine different violations that were aggregated into a Severity Level III violation and then escalated by 75 percent. The escalation was based on the company's alleged prior notice of similar events and prior poor regulatory performance. The licensing board found this escalation to be excessive since the past prior notice and prior poor performance relied on by staff were related to the non-serious violations

(paperwork discrepancies and management inattention to detail) and the more-serious violations were first of a kind. Because the staff failed to differentiate between the seriousness of the different violations and based the penalty's escalation on the wrong violation, the board reduced the penalty from 75 percent to 20 percent. *Tulsa Gamma Ray*, LBP-91-40, 34 NRC 297 (1991).

Another case involved the revocation of a radiography company's license because of the dishonesty of its president. This official had lied to NRC inspectors and participated in document falsification. The licensing board found the extreme sanction of license revocation to be appropriate because of the need for the NRC to rely on the integrity of licensees. The board also concluded that the NRC is authorized to consider a manager's character and integrity in deciding whether to revoke a license, and that candor and honesty are especially important elements of character. *Piping Specialists, Inc.*, LBP-92-25 (September 8, 1992).

Due Process in NRC Enforcement Actions

There were several important decisions during 1992 involving the issue of due process in NRC enforcement actions. One decision concerned the failure of a small radiography company to comply with the prescribed format for NRC adjudicatory proceedings by failing to furnish transcript citations in its proposed findings. The company had not used transcripts due to their high cost. The licensing board allowed the findings to be filed because there was no NRC public document room feasibly located for the company to obtain free transcripts. The board reasoned that there is a difference between those proceedings where intervenors elect, on their own, to participate and proceedings where staff acts against a licensee's property interests. According to the board, licensees must be allowed to participate in proceedings to defend vested property interests, and, if they show that they cannot comply with all of the technical requirements, then boards should use their best efforts to understand and rule on the merits of the claims presented. *Tulsa Gamma Ray, Inc.*, LBP-91-40, 34 NRC 297 (1991).

Another case involved the revocation of a Missouri radiography company's license. An issue was the burden of proof staff must meet to show that license revocation was justified. Historically, the burden of proof in NRC proceedings has been the "preponderance of the evidence" test, although a "clear and convincing" test has been used on at least one occasion. The radiography company claimed that staff's burden here should be a "clear and convincing" test because an extreme sanction (license revocation) was being imposed. The licensing board held

that the "preponderance of the evidence" test was appropriate because the public interest weighs against changing the standard of evidence to protect a licensee whose actions could have serious safety repercussions. *Piping Specialists, Inc.*, LBP-92-25 (September 8, 1992).

In a third proceeding involving due process, a licensing board accepted a settlement agreement between the staff and the New York Power Authority for the FitzPatrick nuclear facility. The settlement established a drug testing schedule for an employee who was not admitted as a party to the proceeding, but who was involved in a separate NRC proceeding brought by the staff against him involving the same matter. Although not a party, the employee challenged the settlement in this proceeding. The licensing board held that it had no authority to alter the provisions of the program agreed to between staff and the licensee. However, the board went on to rule that the employee could try to establish in his own proceeding that a more lenient testing schedule be imposed than that agreed to in the settlement. *New York Power Authority (FitzPatrick Nuclear Power Plant)*, LBP-92-1, 35 NRC 11 (1992).

Intervention in NRC Proceedings

Several significant Fiscal Year 1992 decisions dealt with intervention in NRC proceedings. In a proceeding involving the Millstone facility, a local organization challenged a license amendment application to reduce the storage capacity of a nuclear reactor's spent fuel pool. The amendment would not have increased the risk to nearby residents because the pool's capacity was being reduced. The petitioning organization claimed the license amendment did not go far enough and there would still be an adverse safety risk to the public. The licensee, on the other hand, contended that there was no standing to intervene since standing requires injury in fact, and there was no such injury here because the license amendment was not increasing the risk. The licensing board found there is standing to intervene, even if a license amend-

ment does not increase the risk, if the amendment does not entirely remedy the situation. *Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit 2)*, LBP-92-17 (July 29, 1992); LBP-92-28 (September 30, 1992).

Another standing case during the year involved discretionary standing to intervene. In *Envirocare of Utah, Inc.*, LBP-92-7, 35 NRC 167 (1992), a licensing board found that a potential customer of a Utah uranium and thorium disposal site lacked standing on its own right to intervene. The board next considered whether discretionary standing should be granted. Discretionary standing here would have been precedent setting since such standing had only been granted in the past when there was an ongoing proceeding. Although the board decided that it was not barred from granting discretionary standing, it concluded that some discernible public interest in holding a hearing first must be established. The board found no such public interest in this instance.

A third intervention case pertained to the filing of petitions for intervention and requests for hearings. In a materials license amendment proceeding conducted under the informal rules of 10 C.F.R. Part 2, Subpart L, involving the decommissioning of the Apollo fuel fabrication facility in Pennsylvania, a local organization and several intervenors attempted to supplement their hearing requests. The presiding officer concluded that these petitioners did not have an automatic right to amend or supplement their petitions as they would in a formal proceeding held under Subpart G of 10 C.F.R. Part 2. He found, however, that he had the discretion under Subpart L to permit supplementation, at least until such time as a final decision was made on the sufficiency of the hearing request. He thus allowed the petitions to be supplemented because it materially aided him in determining whether the petitioners had standing to contest the proposed action and whether they had presented litigable issues. *Babcock & Wilcox (Apollo Facility)*, LBP-92-24 (September 4, 1992).

IV. CASELOAD ANALYSIS

Overview

During Fiscal Year 1992, the Panel had 38 proceedings on its docket. Of these 38 proceedings, 17 involved nuclear power plants or related facilities and 21 involved other Commission licensees. The caseload continued to reflect a trend, beginning during the late 1980's, toward more focused proceedings of a greater technical and legal diversity typical of a maturing industry. Unlike earlier years, construction permit and operating license proceedings for nuclear reactors did not dominate the Panel's docket.

The Fiscal Year 1992 Docket

In Fiscal Year 1992, as shown in Table 1, 18 new cases were docketed and 22 cases were closed. For proceedings on the docket that required the submittal of contentions, the Panel or parties resolved 75 percent of all these contentions before hearing.

Table 2 shows the Panel's caseload during the past 5 years. The total number of cases on the docket during Fiscal Year 1992 was approximately the same number as in Fiscal Years 1989 and 1990. However, 1992 had 10 less cases than in 1991 and it had 22 percent less cases than had been projected. The projected 1992 caseload failed to materialize because of a lack of remanded cases during the year (in the 4 previous years, there was an average of 6 remanded cases each year on the docket), 4 less license amendment cases than projected, and the postponement, delay, or cancellation of expected standard design certification and plant license extension cases. The 1992 shortfall is not expected to continue indefinitely.

Even though 1992 had fewer cases than expected, Table 3 shows that the full-time judges' caseloads in 1992 were approximately the same as their caseloads in three of the five previous years.

Table 1. Fiscal Year 1992 docket recapitulation

Status of cases	Date	No. of cases
Pending	10/01/91	20
Docketed	FY92	18
Total	FY92	38
Closed	FY92	22
Pending	10/01/92	16

Table 2. Panel caseload by fiscal year

Fiscal Year	No. of cases
1988	50
1989	40
1990	40
1991	48
1992	38

**Table 3. Average caseload per full-time judge/
full-time panel member**

Fiscal Year	Average no. of cases per judge*
1987	5.4
1988	6.2
1989	5.4
1990	5.9
1991	6.8
1992	5.3

*The figure represents an actual count of cases, including those on which three judges sat and those assigned to a single presiding officer and technical advisor.

Types of Cases

The Panel's 1992 caseload followed the trend, begun in the late 1980's, of cases primarily concerned with NRC enforcement actions, materials licensing actions, and actions pertaining to the regulation of nuclear reactors that have been licensed and operating. This caseload differed significantly from the three previous decades which were dominated by construction permit and operating license proceedings for licensing new reactors. Table 4 sets out the number and types of cases that were on the Panel's 1992 docket.

The difference in cases between the earlier era, dominated by construction permit/operating licensing, and the present era is graphically demonstrated by comparing Figure 1, depicting the caseload mix for 1983, with Figure 2, representing the caseload mix for 1992. In Fiscal Year 1983, construction and operating license proceedings accounted for 62 percent of the Panel's docket. Although license amendment proceedings constituted a significant 26 percent, no significant number of enforcement actions

Table 4. 1992 Panel caseload

Types of cases	No.
Antitrust	1
Decommissioning	3
Enforcement	18
License amendment	7
Materials licenses	6
Personnel matters	1
Other	2

were filed then. In Fiscal Year 1992, in contrast, there were no active operating license or construction permit proceedings, and enforcement actions and license amendment proceedings accounted for 65 percent of the docket. In 1992, enforcement actions, license amendment proceedings, and materials license proceedings together accounted for approximately 82 percent of the docket.

The 1992 caseload pattern is expected to continue over the next 4 years with the possible gradual introduction of proceedings for extending the license of existing reactors from 40 to 60 years, proceedings involving the site selection of new reactors, proceedings for licensing new reactors, and possible renewed proceedings for previously deferred construction permit (CP) and operating license (OL) applications. In addition, beginning in 1994, rule-making proceedings are projected which will be held to certify the design of new reactors presently planned by the nuclear industry.

Figures 3 and 4 forecast the projected near-term Panel caseload mix for Fiscal Years 1993 and 1994, respectively. Just as in Fiscal Year 1992, enforcement and license amendment proceedings are expected to dominate the Panel's near-term docket, with these types of proceedings

Figure 1. Fiscal Year 1983 caseload mix by percent

Figure 2. Fiscal Year 1992 caseload mix by percent

Figure 3. Fiscal Year 1993 projected caseload mix by percent

accounting for approximately 64 percent of the projected Fiscal Year 1993 docket and 53 percent of the projected 1994 docket.

Preliminary projections for Fiscal Years 1995 through 1996 indicate that the Fiscal Year 1992 caseload mix will continue to be the baseload of the Panel's docket. However, its relative importance may diminish with the introduction of projected design certification, decommissioning, and license extension proceedings.

Case Management

An important measure of the success of an adjudicatory program is the speed in which cases move from initial filing to final resolution. This is generally reflected by the average age of the cases on the docket. The average case age for Fiscal Year 1992, as reflected in Table 5, was 11.7 months. This case age was a substantial improvement over the previous 4-year average of 17.1 months. See Table 6.

Historically, the numbers reflected in Table 6 for average number of months on the docket are somewhat misleading because they have been inflated by the presence of a handful of proceedings characterized by late development of new issues, delays in the issuance of critical licensing documents, and delays sought by the parties themselves. If these delayed cases are excluded from the calculations, the average age of cases during the past few years would drop significantly and would be only 8.1 months for Fiscal Year 1992.

The time savings for the recent cases, although in large part owing to a reduction in the number of active operating license proceedings and the long-term period associated with those cases, also can be traced to the employment of appropriate case management tools. In recent years, licensing boards and presiding officers have been particularly effective in focusing on and efficiently resolving disputed issues between parties, expediting schedules, and encouraging the settlement of cases. See Section VI, *infra*.

The effective use of case-management tools is also reflected in Table 7. In Fiscal Year 1992, 24 percent of the Panel's cases on the docket were closed within 6 months from the time they were first docketed and 45 percent were closed in less than 1 year.

Figure 4. Fiscal Year 1994 projected caseload mix by percent

Table 5. Average case age by type/overall in FY 1992*

Types of cases	Average (months)
Antitrust	16.0
Decommissioning	3.0
Enforcement	15.4
Licensing amendments	6.1
Materials licenses	11.7
EEO matter (1)	5.0
Docket average	11.7

*"Average age" means the number of months from the time a licensing board is first appointed (usually 30 to 60 days after a license application is formally docketed) until the case is closed or the end of the fiscal year, whichever is earlier. "Average age" includes waiting time resulting from suspension of work or unavailability of hearing documents (except where a licensee has requested that the entire proceeding be suspended, for example, Washington Public Power Supply System, WPPSS Nuclear Project No. 3). "Average age" does not include the time that a case may be pending on appeal.

Table 6. Average case age for past 5 years

Fiscal Year	Average case age (months)
1988	18.1
1989	17.4
1990	19.2
1991	13.8
1992	11.7

Table 7. Months FY 1992 cases were on docket

Duration of cases	No.	Percent
1 to 3 months	7	18
4 to 6 months	8	21
7 to 9 months	5	14
10 to 12 months	5	13
More than 12 months	13	34

Typical Counsel Table at Panel Hearing

V. PERSONNEL AND SUPPORT

Panel Members

Commission appointment of administrative judges to the Panel is based upon the appointee's recognized experience, achievement, and independence in his or her field of expertise. Once appointed, judges are assigned, as cases arise, to individual licensing boards where their professional expertise will assist in resolving the technical and legal matters likely to be raised during the proceeding.

The Panel has initiated an active program to establish registers of persons qualified for appointment to the Panel in the wide range of disciplines required. The Panel also provides extensive training for its judges in complex technical areas and in the rapidly changing legal areas involved in nuclear law. This training will continue to ensure the necessary expertise to meet the Commission's workload.

During Fiscal Year 1992, Judge John Frye (Law) left the Panel and was replaced as a full-time Panel judge by part-time judge, James P. Gleason (Law). Judge Thomas D. Murphy (Health Physics) also joined the Panel as a full-time judge. As of the end of the fiscal year, the Panel had available a total of 40 judges (16 full-time and 24 part-time). *See Appendix B.*

By profession, Panel judges included 11 lawyers, 10 public health and environment scientists, 9 engineers, 7 physicists, and 3 physicians. Collectively, the Panel's judges held 60 post-baccalaureate degrees in engineering, scientific, or legal disciplines. Several part-time members are or have been heads of departments at major universities or national laboratories. As a group, they represent more than nine centuries of experience in the nuclear field. *See Appendix C.*

Professional and Support Staff

Support for the activities of the Panel, individual licensing boards, and the Panel's judges is structured along functional lines: (1) legal, (2) technical, and (3) administrative. The Chief Administrative Judge of the Panel manages and supervises these interrelated support activities.

Technical and Legal Support Staff

Legal support and advice for the Panel and its 40 full- and part-time judges is provided by the Panel's Legal Support Staff. The staff consists of the Panel's Chief Counsel, a Staff Senior Attorney, and seasonal interns and law clerks who are added as required by the caseload.

Directed by the Chief Counsel, the staff provides legal advice, research capabilities, opinion drafting, editing services, and support at hearings. It also supports the Chief Administrative Law Judge with assistance on a broad range of policy matters; provides legal training and keeps Panel members informed of important nuclear-related activities and legal proceedings; oversees, with the help of the Administrative Support Staff, the Panel's legal/technical library; and participates in the evaluation of computer support appropriate to the conduct of adjudicatory proceedings.

Historically, individual licensing boards have obtained technical support from a Panel reactor safety engineer and an environmental health scientist. However, both positions were vacated in 1984 and have not been filled because of personnel ceiling limitations. During Fiscal Years 1988 through 1990, technical assistance, particularly in physics and computer development, was provided by the Panel's Senior Technical Advisor. This position was vacated in 1991 and has not been filled. Currently, the Panel uses Administrative Judges (Technical), when they are available, to perform these support functions.

Administrative Support Staff

Program Support—The Program Support and Analysis Staff (PSAS) assists management in planning, developing and coordinating policies and programs to support the Panel's mission. The main areas of responsibilities include budget assistance, personnel, management of the NRC court reporting contract (excluding the reporting contract for the Office of the Secretary), labor relations, professional service contracts, paralegal services, travel, hearing space and facilities, legal and technical library support, adjudicatory file requirements, and a wide range of automated data processing (ADP) services. *See Appendix A, "Organizational Chart."* The PSAS has also achieved significant accomplishments in designing and maintaining the Panel's electronic docket using the mini-computer INQUIRE and the PC version, Personal Librarian Software.

Information Processing Section—The Chief of the Information Processing Section reports to the Director of PSAS. The section is responsible for supporting the Panel by developing and implementing the following services: (1) docket management services; (2) adjudicatory database management using ADP systems on the mini-computer and personal computers; (3) general office support services; (4) legal and technical library services; and (5) ADP training, research, development and assistance in the use of specialized full-text database management systems and standard NRC-supported word processing, data processing, and communication software.

VI. ENHANCING THE ADJUDICATORY PROCESS

General

To control costs and prevent delays in the licensing process, the Panel has increasingly relied upon computer support systems. Such equipment has proved to be particularly important for expediting adjudicatory proceedings, managing the Panel's voluminous and complex hearing records, and dealing with important administrative tasks. In addition, the Panel has provided its judges and critical support personnel necessary hardware and software to obtain maximum efficiency from their electronic workstations and the Panel's computerized docket.

The Electronic Docket

The Panel continues to utilize state-of-the-art information technology to expedite the hearing process. Important innovations have included the installation of computerized workstations for the judges and key Panel personnel. To assist in decision writing, judges can access full-text documents from their computers using in-house customized database management systems while simultaneously doing legal research on the computer by utilizing external systems such as LEXIS and WESTLAW. In addition, as presently configured, judges and professional support staff can, from their desks, draft, share, and comment on proposed decisions; access and quickly search either the Panel's electronic docket or the Commission's document-retrieval system; and communicate with each other or other employees of the NRC through the Commission's electronic mail system.

Document availability has also been considerably enhanced by the Panel's electronic docket. For routine hearings, documents received by the Panel are abstracted and routinely entered by the end of each working day into the adjudicatory database. In selected complex cases, the full text of significant documents such as pre-filed testimony and hearing transcripts are electronically indexed and added to the database.

During 1992, the Panel continued to maintain and operate full-text software on the IBM 9370 minicomputer using the INQUIRE software. The INQUIRE system is a sophisticated complex database manager which contains over 200,000 pages of full-text adjudicatory documents and indexes and a companion search and retrieval system. During the year, the Panel also began achieving greater cost benefits for information technology by utilizing the agency's local area network system (AUTOS) implementation plan. The plan designates the Panel for a network in the summer of 1993. The Panel's Information Process-

ing Section had previously completed a study (based on new ADP requirements developed by the Panel's user group) of a personal computer-based full-text system to replace INQUIRE. To take full advantage of the AUTOS project, the Panel designed a PC LAN-based system (now in production on a stand-alone personal computer) using the Personal Librarian Software (PLS). A network version of PLS operating on network file server has potential annual cost savings of \$30,000 to \$40,000.

Hearing Procedures

The Panel explores and implements traditional case management tools and techniques, on an ongoing basis, to streamline, focus, and resolve contested licensing matters. Licensing boards and presiding officers implement these techniques in numerous ways.

Typically, hearings on a particular application for a nuclear facility license (not including the antitrust hearings) have three elements: (1) health, safety, and the common defense and security aspects of the application, as required by the Atomic Energy Act; (2) environmental considerations as required by the National Environmental Policy Act; and (3) emergency planning requirements. Usually, for purposes of efficiency, boards will segregate these topics at hearings. They also will subdivide their hearing schedules into distinct phases so that each phase deals most efficiently with discrete groupings of related issues.

In the case of a complex proceeding that involves numerous issues under several distinct topics, the Panel has periodically created separate, parallel licensing boards to handle one or more topics. Besides the time saved through parallel adjudication, each board can be assigned Panel members whose expertise matches the issues to be resolved.

At the hearing, boards and presiding officers take an active role in shaping the issues before them by such measures, when appropriate, as consolidating the contentions of the parties. In addition, to expedite proceedings, they routinely actively monitor the discovery portions of the hearing.

They also affirmatively attempt to foster an atmosphere conducive to the free exchange of views among the parties and to encourage the possible settlement of disputed issues. Many proposed contentions and adjudicatory matters are thereby resolved before a formal hearing takes place. Additionally, boards and presiding officers continuously encourage the settlement of proceedings.

Example of Panel of Witnesses Testifying Simultaneously at a Hearing

During Fiscal Year 1992, the Panel had substantial success in achieving settlement before final litigation. Settled cases included: *New York Power Authority* (FitzPatrick Nuclear Power Plant), LBP-92-1, 35 NRC 11 (1992); *Jose A. Ruiz Carlo*, LBP-92-5, 35 NRC 128 (1992); *Midwest Inspection Service, Ltd.*, LBP-92-9, 35 NRC 189 (1992); *Chemetron Corporation*, LBP-92-11, 35 NRC 193 (1992); *Patrick K.C. Chun*, LBP-92-12, 35 NRC 195 (1992); *Lafayette Clinic*, LBP-92-13, 35 NRC 199 (1992); *Long Island Lighting Company*, LBP-92-15, 35 NRC 209 (1992); *Randall C. Orem*, LBP-92-18, 36 NRC 93 (1992); *Alabama Power Company* (Farley Nuclear Plants, Units 1 and 2), LBP-92-21, 36 NRC 117 (1992).

The Panel strives to streamline procedures for both formal and informal hearings. Informal hearings, usually involving one of the more than 7,000 materials licensees, are generally conducted by a single presiding officer under the procedures in 10 C.F.R. Part 2, Subpart L. The informality of Subpart L requires that presiding officers be innovative in creating and shaping the record and resourceful in ensuring an expedited proceeding with a just outcome.

In proceedings involving a single judge, the Panel has adopted a procedure of assigning a legal or technical judge from the Panel as an assistant to the designated presiding officer. While obtaining the benefits of the informal procedures, the assignment preserves the cross-expertise of the traditional three-member licensing boards to ensure issuance of fully informed decisions.

Coordination With the Office of the Licensing Support System Administrator

Among its duties, the Panel has various responsibilities regarding the projected high-level-waste repository scheduled to be built at Yucca Mountain, Nevada. Ultimately, the Panel will be the adjudicatory body responsible for making the initial decision on whether this repository satisfies applicable safety and environmental requirements. In the meantime, the Panel already has helped develop procedural rules and support systems for licensing hearings to be held for the facility and it is currently lending legal and technical advice and support to the Office of the Licensing Support System Administrator (LSS) in the development of additional support systems for licensing the facility. The LSS was created by the Commission to oversee the development of a state-of-the-art, full-text and image-computerized document retrieval system for the parties and the Panel to use in conducting the high-level-waste proceeding. Within the next few years, the Panel will adjudicate any discovery disputes after these documents (estimated at up to 20 million pages) are loaded in the Licensing Support System's electronic registry. The electronic registry will eliminate the need for all but a minimal amount of discovery for the licensing proceeding.

Agency Court Reporting Services

During Fiscal Year 1992 the Panel negotiated a new NRC court reporting contract totalling \$1,089,492.20 for all

proceedings, meetings, depositions, public hearings, oral arguments, and investigative interviews held anywhere in the United States, including its protectorates and the countries of Canada and Mexico. In addition to its own adjudicatory needs, the Panel provides for the court reporting service needs for the rest of the NRC except for in-town Commission court reporting. This includes court reporting for meetings of the Advisory Committee on Reactor Safeguards, the Advisory Committee on Nuclear Waste, and the Advisory Committee on Medical Uses of Isotopes; out-of-town meetings of Commissioners in compliance with the Sunshine Act; investigative interviews of the Offices of Investigation and Inspector General; and other meetings or workshops for the Offices of Administration, Analysis and Evaluation of Operational Data, General Counsel, International Programs, Public

Affairs, State Programs, Information Resources Management, Enforcement, Nuclear Materials Safety and Safeguards, Nuclear Reactor Regulation, and Personnel.

The NRC's court reporting contract provides for the preparation of computer-readable diskettes of the transcript of hearings in large, complex cases. This process is also available for other cases, as well as investigations and interviews, where desired. In appropriate cases, parties are directed to file findings of fact, conclusions of law, and pre-filed testimony on computer-readable diskettes. Such filings are prepared in WordPerfect or in ASCII (the American Standard Code for Information Interchange) to overcome the problem of incompatibility among computers and software. Each day's filings are then compiled and fully indexed by the PSAS's Information Processing Section.

Melissa Benson receives Length of Service Certificate for 35 years of service to the U.S. Government

Judge Ivan W. Smith receives Length of Service Certificate for 30 years of service to the U.S. Government

VII. CONCLUSIONS

Fiscal Year 1992, much like the past several years, represented a transitional year between the massive operating license proceedings of the 1970's and 1980's and the more varied discrete enforcement and materials license proceedings of the early 1990's. The current docket reflects a maturing of the nuclear industry from the construction and initial operation era to an operations and waste-handling era. Given this transition, the Fiscal Year 1992 caseload can reasonably be viewed as the Commission's adjudicatory "baseline" (i.e., the number and type of cases likely to occur in any particular year given the current number and operations of the Commission's licensees). So viewed, the Panel's Fiscal Year 1992 docket can be used to gauge future demands on the adjudicatory resources of the Commission in light of the additional caseload that is projected.

The Panel is currently concerned with readying itself for new kinds of proceedings arising out of plant life extensions, the decommissioning of older plants, construction of new facilities (like the Louisiana Energy Services enrichment facility), the approval of new plant designs, and the licensing of new low-level-waste facilities. These new proceedings will ensure a continuing supply of complex questions involving a novel mix of law and science for the Panel to resolve.

Given the economic, energy, and public health and safety costs imposed upon Commission applicants, licensees, and the public at large in the event of unnecessary or avoidable delays in the nuclear licensing and enforcement process, the Panel will continue its endeavors to improve procedures and make the hearing process as efficient as possible.

APPENDICES

ORGANIZATIONAL CHART

APPENDIX A

APPENDIX B
ATOMIC SAFETY AND LICENSING BOARD PANEL
Fiscal Year 1992

I. Panel Members¹

Officers

B. PAUL COTTER, JR.
Chief Administrative Judge

FREDERICK J. SHON
Deputy Chief Administrative Judge (Technical)

DR. ROBERT M. LAZO
Deputy Chief Administrative Judge (Executive)

MORTON B. MARGULIES
Chief Administrative Law Judge

Full-Time Administrative Judges

JUDGE CHARLES BECHHOEFER
Attorney

JUDGE CHARLES N. KELBER
Physicist

JUDGE PETER B. BLOCH
Attorney

JUDGE JERRY R. KLINE
Environmental Scientist

JUDGE G. PAUL BOLLWERK III
Attorney

JUDGE PETER S. LAM
Nuclear Engineer

JUDGE JAMES H. CARPENTER
Oceanographer

JUDGE THOMAS S. MOORE
Attorney

JUDGE RICHARD F. COLE
Environmental Scientist

JUDGE THOMAS D. MURPHY
Health Physicist

JUDGE JAMES P. GLEASON
Attorney

JUDGE IVAN W. SMITH
Attorney

Part-Time Administrative Judges

JUDGE GEORGE C. ANDERSON
Marine Biologist
Seattle, Washington

JUDGE GEORGE A. FERGUSON
Physicist
Shady Side, Maryland

JUDGE GLENN O. BRIGHT
Engineer
Bethesda, Maryland

JUDGE HARRY FOREMAN
Physician
Minneapolis, Minnesota

JUDGE A. DIXON CALLIHAN
Physicist
Oak Ridge, Tennessee

JUDGE RICHARD E. FOSTER
Environmental Scientist
Sunriver, Oregon

JUDGE THOMAS S. ELLEMAN
Nuclear Engineer
Raleigh, North Carolina

JUDGE DAVID L. HETRICK
Physicist
Tucson, Arizona

JUDGE CADET H. HAND, JR.
Marine Biologist
Bodega Bay, California

¹All ASLBP Officer, professional and administrative staff and full-time Panel members are based in Bethesda, Maryland.

JUDGE ERNEST E. HILL
Nuclear Engineer
Danville, California

JUDGE FRANK E. HOOPER
Marine Biologist
Ann Arbor, Michigan

JUDGE ELIZABETH B. JOHNSON
Nuclear Engineer
Oak Ridge, Tennessee

JUDGE WALTER H. JORDAN
Physicist
Pompano Beach, Florida

JUDGE JAMES C. LAMB III
Sanitary Engineer
Chapel Hill, North Carolina

JUDGE EMMETH A. LUEBKE
Physicist
Bethesda, Maryland

JUDGE KENNETH A. McCOLLUM
Electrical Engineer
Stillwater, Oklahoma

JUDGE MARSHALL E. MILLER
Attorney
Daytona Beach, Florida

JUDGE PETER A. MORRIS
Physicist
Potomac, Maryland

JUDGE RICHARD R. PARIZEK
Geologist
University Park, Pennsylvania

JUDGE HARRY REIN
Physician
Longwood, Florida

JUDGE LESTER S. RUBENSTEIN
Nuclear Engineer
Oro Valley, Arizona

JUDGE DAVID R. SCHINK
Oceanographer
College Station, Texas

JUDGE GEORGE E. TIDEY
Physician
Houston, Texas

JUDGE SHELDON J. WOLFE
Attorney
Fairfax, Virginia

II. Professional Staff

LEE S. DEWEY
Director and Chief Counsel
Technical and Legal Support Staff

ROBERT R. PIERCE
Senior Attorney

III. Administrative Officers

JACK G. WHISTINE
Director
Program Support and Analysis Staff

JAMES M. CUTCHIN V
Chief
Information Processing Section

APPENDIX C

BIOGRAPHICAL SKETCHES OF PANEL MEMBERS

ANDERSON, GEORGE C. B.S., University of British Columbia (1947); M.A., University of British Columbia (1949); Ph.D., University of Washington (1954). Dr. Anderson, currently Professor *Emeritus* at the School of Oceanography, University of Washington, has been a part-time member of the Panel since 1973. In addition to authoring over 40 publications in the fields of limnology and oceanography, Dr. Anderson has held numerous teaching, research, and administrative positions over his 40-year career with the University of Washington, the Atomic Energy Commission and the National Science Foundation. He was Director of the School of Oceanography at the University of Washington for several years.

BECHHOEFER, CHARLES. A.B., *magna cum laude*, Harvard College (1955); LL.B., Harvard Law School (1958). Judge Bechhoefer has been a full-time legal member of the Panel since 1978. Before his appointment to the Panel, his Federal service included positions as Counsel to the Atomic Safety and Licensing Appeal Board, attorney with the Office of the General Counsel of the Atomic Energy Commission, and attorney-adviser in the Office of the General Counsel, U.S. Housing and Home Finance Agency. He is currently the editor of the *Administrative Judiciary News and Journal* and a member of the Executive Committee of the National Conference of Administrative Law Judges. He has also held several leadership positions within the Section of Administrative Law of the American Bar Association.

BLOCH, PETER B. B.S., Tufts University (1962); LL.B., Harvard Law School (1965); LL.M., Harvard Law School (1967). Judge Bloch has been a full-time member of the Panel since 1981. His prior positions include: Assistant Director of the Office of Hearings and Appeals, U.S. Department of Energy; attorney-advisor, Office of Opinions and Review, FERC; Executive Director of the Commission on Law and the Economy of the American Bar Association; Senior Research Associate and Project Manager, the Urban Institute; and attorney-adviser, U.S. Securities and Exchange Commission. Judge Bloch has published several articles on the conduct and management of criminal investigations.

BOLLWERK, G. PAUL, III. B.A., University of Notre Dame (1975); J.D., Georgetown University Law Center (1978). Judge Bollwerk has been a full-time legal member of the Panel since July 1991. Before being appointed to the Panel, Judge Bollwerk served as an administrative judge on the Atomic Safety and Licensing Appeal Panel, a senior attorney on the staff of the NRC Office of the General Counsel, a Special Assistant U.S. Attorney with the Department of Justice, and an associate attorney in

the law firm of Gardner, Carton & Douglas in Washington, D.C. After graduating from law school, he clerked for a Federal district court judge and a State supreme court judge.

BRIGHT, GLENN O. B.S., University of Oklahoma (1949); M.S., University of Oklahoma (1950). Judge Bright served as a full-time member of the Panel from 1972 to 1990 and continues as a part-time member at the present. Before his appointment to the Panel, he spent 22 years with the Phillips Petroleum Company or its successor subsidiaries in various technical and management positions overseeing nuclear matters, including one year as a technical consultant to the Government of Venezuela, and several years at the Idaho National Engineering Laboratory in charge of experiments for SPERT I and SPERT II.

CALLIHAN, A. DIXON. A.B., Marshall University (1928); M.A., Duke University (1931); Ph.D., New York University (1933); D.Sc. (Hon.), Marshall University (1961). Dr. Callihan has been a part-time member of the Panel since 1963. In his 59-year career, he has held positions as a physicist with the Union Carbide Corporation and Columbia University, and as assistant professor at the College of the City of New York. Dr. Callihan is currently the chairman or member of several committees concerning nuclear reactor operations for the United States Army and the American Nuclear Society. In 1988, he received the American National Standards Institute's Meritorious Service Award.

CARPENTER, JAMES H. B.A., University of Virginia (1949); M.A., Johns Hopkins University (1951); Ph.D., Johns Hopkins University (1957). Dr. Carpenter has been a member of the Panel since 1981. In addition to numerous publications in the fields of marine science and environmental chemistry and research activities for the Chesapeake Bay Institute, Dr. Carpenter has held teaching and administrative positions with Johns Hopkins University and the University of Miami (Coral Gables). During his 35-year career, Dr. Carpenter has been on the editorial boards of several national journals, held senior positions in several professional associations, and chaired or participated in numerous professional committees on environmental issues, particularly the marine environment. Dr. Carpenter was a member of the committee that issued the BEIR I report (Committee on the Biological Effects of Ionizing Radiation).

COLE, RICHARD F. B.S.C.E., Drexel University (1959); M.S.S.E., Massachusetts Institute of Technology (1961); Ph.D., University of North Carolina (1968). Dr. Cole has been a full-time member of the Panel since 1973. In

addition to publishing numerous articles on water, wastewater treatment, and international training of environmental engineering. Dr. Cole has held teaching, administrative, and engineering positions in the United States and Guatemala with the University of North Carolina, Pennsylvania State University, and the State of Pennsylvania. He has held several leadership positions and committee assignments with numerous professional associations, and is a Diplomat of the American Academy of Environmental Engineers.

COTTER, B. PAUL, JR. A.B., Princeton University (1959); J.D., Georgetown University (1968). Judge Cotter has been the Chief Administrative Judge of the Panel since 1980. Before 1980, Judge Cotter was a member and then Chief Administrative Judge of the Department of Housing and Urban Development Board of Contract Appeals, a trial attorney with the U.S. Department of Transportation, and in private practice for 6 years. He is on the faculty of the National Judicial College, is a member of the American Law Institute, and is a recognized leader in the use of computers in managing complex cases. He is a trustee of the American Inns of Court Foundation, Chair of the Board of Directors of the Supreme Court Opinion Network, holds several leadership positions with the American Bar Association and the Federal Bar Association, and has written extensively in the field of administrative law.

ELLEMAN, THOMAS S. B.S., Denison University (1953); Ph.D., Iowa State University (1957). Dr. Elleman was appointed to the Panel as a part-time member in 1990. Over the course of his 39-year career, Dr. Elleman has conducted research in private industry, including Carolina Power & Light Co. and General Atomics, and at North Carolina State University where he is currently a professor of nuclear engineering, a department he headed from 1974 to 1979. He has published more than 60 articles in the field of nuclear chemistry. Dr. Elleman is also an American Board of Health Physics Board Certified Health Physicist.

FERGUSON, GEORGE A. B.S., Howard University (1947); M.S., Howard University (1948); Ph.D., Catholic University (1965). Dr. Ferguson has been a part-time member of the Panel since 1972. During his 45-year career, he has held teaching, administrative, and research positions with Howard University, the U.S. Naval Research Laboratory, the University of Pennsylvania, and Clark College (where he was Chairman of the Physics Department). Dr. Ferguson is a member of the American Physical Society and several teaching associations.

FOREMAN, HARRY. B.S., Antioch College (1938); Ph.D., Ohio State University (1942); M.D., University of California (1947). Dr. Foreman has been a part-time member of the Panel since 1971. Dr. Foreman's career spans 51 years in three professional fields. In addition to publishing nu-

merous professional papers in the biological and chemical fields, Dr. Foreman has held teaching, administrative, and research positions with the University of Minnesota and the University of California, the latter involving work in the area of radiation and biomedical research at Los Alamos.

FOSTER, RICHARD F. B.S., University of Washington (1938); Ph.D., University of Washington (1948). Dr. Foster has been a part-time member of the Panel since 1981. Dr. Foster is the author of numerous professional papers on the discharge of heat and radionuclides into water pathways, and has headed or participated on several panels and committees on radiation and the environment for, among others, the U.S. Public Health Service, the National Academy of Sciences, the International Atomic Energy Agency, and the NRC Advisory Committee on Reactor Safeguards. During his 51-year career, Dr. Foster has also held research and management positions with the State of Washington, the University of Washington, and numerous laboratories and companies at the Hanford, Washington facility.

GLEASON, JAMES P. B.S.S., Georgetown University (1948); LL.B., Georgetown University (1950). Judge Gleason has been a part-time member of the Panel since 1980 and held a similar appointment from 1967-1970. In 1992, he became a full-time Panel member. During his 42-year career, Judge Gleason has held numerous elective and appointive offices at the county, State, and Federal level; taught at the University of Maryland and Harvard University; maintained a private law and consultant practice; and served as an aide to two U.S. Senators.

HAND, CADET H., JR. B.S., University of Connecticut (1946); M.A., University of California, Berkeley (1948); Ph.D., University of California, Berkeley (1951). Dr. Hand has been a part-time member of the Panel since 1971. Currently *Emeritus* Professor and *Emeritus* Director of the University of California Bodega Marine Laboratory, Dr. Hand has held teaching, research, and administrative positions with Mills College, the Scripps Institution of Oceanography, the University of California at Berkeley, and the University of California at Davis.

HETRICK, DAVID L. B.S., Rensselaer Polytechnic Institute (1947); M.S., Rensselaer Polytechnic Institute (1950); Ph.D., University of California, Los Angeles (1954). Dr. Hetrick became a part-time Panel member in 1972. During his career as a physicist, Dr. Hetrick has worked as a private consultant to General Atomics, Hughes Research Laboratories, the Marquardt Corporation, and Brookhaven National Laboratory. He has taught physics at California State University at Northridge, the University of Bologna in Italy, Rensselaer Polytechnic Institute, and at the University of Arizona. Dr. Hetrick has also worked on nuclear projects at the United Kingdom Atomic Energy Agency in Aldermaston, England, the International Atomic Energy Agency in Cuernavaca, Mexico, and at the Los Alamos National Laboratory.

HILL, ERNESTE B.S., University of California, Berkeley (1943); M.S., University of California, Berkeley (1959). Judge Hill has been a part-time member of the Panel since 1972. Currently the president of Hill Associates, a nuclear engineering consulting company, Judge Hill has held numerous nuclear engineering and management positions in the private sector, with the Atomic Energy Commission, and at the Lawrence Livermore National Laboratory.

HOOPER, FRANK F. B.A., University of California (1939); Ph.D., University of Minnesota (1948). Dr. Hooper has been a part-time member of the Panel since 1973. Currently a Professor *Emeritus* at the University of Michigan, Dr. Hooper has held teaching and administrative positions at the University of Michigan, the Institute for Fisheries Research, and the University of Minnesota. In 1962-63 and again in 1966, Dr. Hooper was an aquatic ecologist with the Atomic Energy Commission. From 1979 to 1988, he was chairman of the Ecology, Fisheries and Wildlife Program in the School of Natural Resources at the University of Michigan.

JOHNSON, ELIZABETH B. B.S., Western Kentucky University (1943); M.S., Vanderbilt University (1952). Judge Johnson has been a part-time member of the Panel since 1975. Currently on the staff of the Instrumentation & Controls Division of the Oak Ridge National Laboratory, Judge Johnson has held physicist and engineer positions on various Union Carbide Corporation nuclear projects at Oak Ridge and elsewhere, and was a research assistant with the Manhattan Project. During her 49-year career, Judge Johnson published numerous Atomic Energy Commission and other professional papers, principally concerned with reactor experiments and nuclear criticality.

JORDAN, WALTER H. A.B., University of Oklahoma (1930); M.S., University of Oklahoma (1931); Ph.D., California Institute of Technology (1934). Dr. Jordan has been a part-time member of the Panel since 1970. Dr. Jordan is the author of numerous articles, professional papers, and books in the nuclear and radar fields, and is a Fellow of the American Nuclear Society and the American Physical Society. In addition to holding teaching positions at the University of South Dakota and the University of Tennessee, Dr. Jordan spent 27 years at the Oak Ridge National Laboratory in various research and management positions, ending his long tenure there as its Deputy Director.

KELBER, CHARLES N. B.A., University of Minneapolis (1947); Ph.D. University of Minnesota (1951). Before joining the Panel as a full-time member in 1990, Dr. Kelber was the Panel's Senior Technical Advisor from 1988 to 1990. He also served in various senior technical positions in the Division of Nuclear Regulatory Research

at the Atomic Energy Commission and at the NRC. Before joining the Commission in 1973, Dr. Kelber was a senior scientist at Argonne National Laboratory for 18 years. He is a Fellow of the American Nuclear Society and the American Physical Society.

KLINE, JERRY R. B.S., University of Minnesota (1957); M.S., University of Minnesota (1960); Ph.D., University of Minnesota (1964). Dr. Kline has been a full-time member of the Panel since 1980. Before he was appointed to the Panel, Dr. Kline held various research and management positions with the Puerto Rico Nuclear Center, the Argonne National Laboratory, the Atomic Energy Commission, and the NRC. He is the author of numerous scientific papers and reports in the fields of radioecology and soil science.

LAM, PETER S. B.S., Oregon State University (1967); M.S., Stanford University (1968); Ph.D., Stanford University (1971). Dr. Lam was appointed to the Panel as a full-time judge in 1990. He joined the Nuclear Regulatory Commission as a reactor systems engineer in 1983 and became Chief of the Reactor Systems Section of the NRC Office for Analysis and Evaluation of Operational Data, in 1986. Before coming to the Commission, Dr. Lam held various positions with General Electric and the Argonne National Laboratory. He has taught engineering courses at San Jose State University and George Washington University.

LAMB, JAMES C., III. B.S.C.E., Virginia Military Institute (1947); M.S., Massachusetts Institute of Technology (1952); Sc.D., Massachusetts Institute of Technology (1953). Dr. Lamb has been a part-time member of the Panel since 1974. Currently a distinguished visiting professor of civil engineering at George Washington University and professor of sanitary engineering at the University of North Carolina, Dr. Lamb has also held teaching, engineering, management, and research positions in private industry, at Newark College of Engineering, University of North Carolina, and Massachusetts Institute of Technology.

LAZO, ROBERT M. B.S., University of Alberta (1946); M.A., University of British Columbia (1950); Ph.D., University of Notre Dame (1954); J.D., Rutgers University (1958). Dr. Lazo has been a member of the Panel since 1970, first in a part-time capacity and, since 1972, in a full-time capacity. Between 1977-80, he served as the Executive Secretary of the Panel, and since 1980, as its Deputy Chief Administrative Judge. Before joining the Panel as a full-time member, Dr. Lazo maintained a private legal practice and was a member of the Patent Departments of both Standard Oil of New Jersey and Bell Telephone Laboratories.

LUEBKE, EMMETH A. B.A., Ripon College (1936); Ph.D., University of Illinois (1941). Dr. Luebke became a part-time member of the Panel in 1987 following 15 years of service as a full-time member. A Fellow of the American Nuclear Society and recipient of a Presidential Certificate of Merit for Microwave Radar Research, Dr. Luebke spent 27 years in private industry involved in the design, testing, and operation of nuclear power plants for submarines. Before that, he taught at the University of Illinois and was a research leader at Massachusetts Institute of Technology.

McCOLLUM, KENNETH A. B.S., Oklahoma State University (1948); M.S., University of Illinois (1949); Ph.D., Iowa State University (1964). Dr. McCollum has been a part-time member of the Panel since 1972. He is currently Dean and Professor *Emeritus* of the College of Engineering, Architecture and Technology, Oklahoma State University. During his 44-year career, he has held teaching, research, and administrative positions with Oklahoma State University, Iowa State University, and the Atomic Energy Division of Phillips Petroleum Company. In addition, he has held numerous leadership positions with several professional associations and the Oklahoma Board of Registration for Engineers and Land Surveyors.

MARGULIES, MORTON B. B.A., Brooklyn College (1953); J.D., Brooklyn Law School (1954). Judge Margulies has been a full-time member of the Panel since 1982. Before his appointment to the Panel, Judge Margulies served as an Administrative Law Judge (1969–1982), Regional Counsel, and trial attorney for the Interstate Commerce Commission, and as a member of the Army Judge Advocate General's Corps.

MILLER, MARSHALL E. A.B. with honors, University of Illinois (1935); LL.B., University of Illinois (1937). Judge Miller was a full-time member of the Panel (1974–1985) and has been a part-time member since 1985. Judge Miller was an Administrative Law Judge for the U.S. Department of Labor for 11 years and previously a partner for 15 years in the Washington, D.C., law firm of Danzansky & Dickey. He is the author of several books on legal practice.

MOORE, THOMAS S. B.A., Miami University (Ohio) (1968); J.D., Ohio State University (1972). Judge Moore was appointed to the ASLBP in 1991 after a distinguished 10-year career as an administrative judge on the Commission's Atomic Safety and Licensing Appeal Board. Judge Moore was in private practice in the firm of Volpe, Boskey and Lyons, worked in the Civil Division of the Department of Justice, served as administrative assistant to the Governor of Ohio, and clerked for Judge Miller on the Sixth Circuit before joining the Nuclear Regulatory Commission in 1980.

MORRIS, PETER A. B.A., Swarthmore College (1943); Ph.D., University of Virginia (1951). Dr. Morris served as a full-time administrative judge with the Panel from 1981 to 1987. He was appointed as a part-time judge in 1991. Before serving on the Panel, Judge Morris worked as Operational Physics Supervisor with E.I. duPont de Nemours and Co. from 1951 to 1957, and served the Nuclear Regulatory Commission as Director, Office of Operations, and Director, Division of Reactor Licensing.

MURPHY, THOMAS D. B.S., Union College (1956); M.S., University of Rochester (1957); M.S., Rensselaer Polytechnic Institute (1972). Prior to his appointment as a full-time member of the Panel in 1992, Judge Murphy held various management positions with the Department of the Navy, the private sector, and on the Nuclear Regulatory Commission staff. He is a member of the Health Physics Society, the American Nuclear Society, and is certified by the American Board of Health Physics.

PARIZEK, RICHARD R. B.A., University of Connecticut (1956); M.S., University of Illinois (1960); Ph.D., University of Illinois (1961). Dr. Parizek was appointed as a part-time administrative judge in 1990. He has been a professor in the Geology Department at Pennsylvania State University since 1961 and is president of his own consulting firm. Dr. Parizek holds several positions in professional associations and has authored or co-authored more than 120 scientific and technical papers.

REIN, HARRY B.S., New York University (1953); M.D., State University of New York (1957); J.D., University of Florida (1982). Dr. Rein was appointed to the Panel as a part-time administrative judge in 1990. Dr. Rein is an active trial lawyer and has 23 years of active clinical medical experience. Currently, Dr. Rein's trial work is limited to medically related cases. Dr. Rein has published several medical papers and texts, including two on medical malpractice. He has also conducted seminars and courses for lawyers across the United States pertaining to the discovery and trial processes related to cases involving medical questions.

RUBENSTEIN, LESTER S. B.S., University of Arizona (1953); M.S., Carnegie Institute of Technology (1962). Judge Rubenstein was appointed to the Panel as a part-time member in 1990. Before joining the Panel, he served in various leadership capacities with the Nuclear Regulatory Commission, including Assistant Director for Region IV Reactors, NRR; Director, Systems Division and Standardization, NRR; and Assistant Director, Division of Systems Integration, NRR. Before joining the Atomic Energy Commission in 1967, he worked for the National Aeronautics and Space Administration as a researcher and for the TRW and Westinghouse corporations. Judge Rubenstein has written several articles and papers and lectured on the policies and licensing procedures of the Nuclear Regulatory Commission.

SCHINK, DAVID R. B.A., Pomona College (1952); M.S., University of California, Los Angeles (1953); M.S., Stanford University (1958); Ph.D., University of California, San Diego (1962). Dr. Schink has been a part-time member of the Panel since 1974. Currently a professor of oceanography and formerly the Associate Dean of the College of Geosciences at Texas A&M University. Dr. Schink has written monographs and professional papers on marine geochemistry, silicon, radium, radon, and early diagenesis. Dr. Schink has also held teaching and research positions at the Palo Alto Laboratory, Teledyne Isotopes, the University of Rhode Island, Scripps Institute of Oceanography, and Stanford University. In addition, Dr. Schink has served on several advisory panels for the National Science Foundation and the United Nations.

SHON, FREDERICK J. B.S., Columbia University. Judge Shon has been a full-time member of the Panel since 1972 and currently serves as its Deputy Chief Administrative Judge (Technical). Before his appointment to the Panel, Judge Shon held management positions with the Atomic Energy Commission, and worked as a physicist with the Lawrence Radiation Laboratory and several corporations within the nuclear industry. Judge Shon has also served as a consultant on reactor safety to the Spanish and Danish Atomic Energy Commissions, and taught nuclear engineering at the University of California at Berkeley.

SMITH, IVAN W. Pre-Law, Ohio State University, Mexico City College, Kent State University (1946-48); J.D., Wm. McKinley School of Law (1952). Judge Smith served the

Panel as Chief Administrative Law Judge from 1978 through 1992, and he has been a full-time member of the Panel since 1975. Before his appointment to the Panel, Judge Smith served as an Administrative Law Judge for the Social Security Administration and as a trial attorney in the Antitrust Division of the Federal Trade Commission. He also served as a county prosecutor, Deputy Director of the Ohio Department of Liquor Control, and engaged in the private practice of law.

TIDEY, GEORGE FRANCIS. B.A., University of Virginia (1980); M.D., University of Virginia (1984). Dr. Tidey was appointed to the Panel as a part-time member in 1990. He is currently an assistant professor in obstetrics and gynecology at the University of Texas Medical School. He taught in the same field at George Washington University and is engaged in a private practice in these areas. Dr. Tidey has co-authored several articles on female fertility. He is a member of the American College of Obstetrics and Gynecology, the American Fertility Society, and the American Medical Association.

WOLFE, SHELDON J. A.B., Harvard University (1942); LL.B., Georgetown University (1956). Judge Wolfe was a full-time member of the Panel from 1976 to 1988, when he assumed part-time status. Before his appointment to the Panel, Judge Wolfe was a partner in Coal Mines Equipment Sales Company of Terre Haute, Indiana, an attorney with the Civil Aeronautics Board, and, for 20 years, a trial attorney with the Civil Division of the U.S. Department of Justice.

APPENDIX D **SELECTED ISSUANCES OF THE** **ATOMIC SAFETY AND LICENSING BOARDS** **October 1, 1991 to September 30, 1992**

ALABAMA POWER COMPANY (Joseph M. Farley Nuclear Plant, Units 1 and 2), Docket Nos. 50-348-CivP, 50-364-CivP (ASLBP No. 91-626-02-CivP)

Memorandum and Order, LBP-92-21, 36 NRC 117 (August 12, 1992)

ARIZONA PUBLIC SERVICE COMPANY, et al., (Palo Verde Nuclear Generating Station, Units 1, 2, and 3) Docket Nos. 50-528-OLA-3, 50-529-OLA-3, 50-530-OLA-3 (ASLBP No. 92-654-01-OLA-3)

Memorandum and Order, LBP-92-3, 35 NRC 107 (March 4, 1992)

BABCOCK AND WILCOX (Apollo, Pennsylvania Fuel Fabrication Facility), Docket No. 70-135-DCOM (ASLBP No. 92-667-03-DCOM)

Memorandum and Order, LBP-92-24, 36 NRC 149 (September 4, 1992)

CERTIFIED TESTING LABORATORIES, INC., Docket No. 030-12145-CivP (ASLBP No. 91-622-01-CivP)

Initial Decision, LBP-92-2, 35 NRC 20 (January 29, 1992)

CHEMETRON CORPORATION, Docket No. 040-08724 (ASLBP No. 92-661-05-OM)

Memorandum and Order, LBP-92-11, 35 NRC 193 (May 12, 1992)

CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al., (Perry Nuclear Power Plant, Unit 1), Docket No. 50-440-OLA-3 (ASLBP No. 91-650-13-OLA-3)

Memorandum and Order, LBP-92-4, 35 NRC 114 (March 18, 1992)

DAVID M. MANNING, Docket No. 030-29626-OM (ASLBP No. 92-653-02-OM)

Memorandum and Order, LBP-92-6, 35 NRC 130 (March 31, 1992)

ENVIROCARE OF UTAH, INC., Docket No. 040-08989-ML (ASLBP No. 91-638-01-ML)

Prehearing Conference Order, LBP-92-8, 35 NRC 167 (April 30, 1992)

JOSE A. RUIZ CARLO, Docket No. 030-20541-OM (ASLBP No. 92-658-04-OM)

Memorandum and Order, LBP-92-5, 35 NRC 128 (March 24, 1992)

LAFAYETTE CLINIC, Docket No. 030-13204-OM (ASLBP No. 92-655-03-OM)

Memorandum and Order, LBP-92-13, 35 NRC 199 (May 27, 1992)

LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OLA-2 (ASLBP No. 91-631-03-OLA-2)

Memorandum and Order, LBP 91-39, 34 NRC 273 (November 15, 1991)

LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OLA-3 (ASLBP No. 91-642-10-OLA-3)

Memorandum and Order, LBP-92-14, 35 NRC 207 (June 17, 1992)

LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-DCOM (ASLBP No. 92-660-01-DCOM)

Memorandum and Order, LBP-92-15, 35 NRC 209 (June 17, 1992)

LOUISIANA ENERGY SERVICES, L.P. (Clairborne Enrichment Center), Docket No. 70-3070-ML (ASLBP No. 91-641-02-ML)

Memorandum and Order, LBP-91-41, 34 NRC 332 (December 19, 1991)

Memorandum and Order, LBP-92-15A, 36 NRC 5 (July 8, 1992)

MIDWEST INSPECTION SERVICE, LTD., Docket No. 30-10749-CivP&OM (ASLBP Nos. 91-649-04-CivP, 92-652-01-OM)

Memorandum and Order, LBP-92-9, 35 NRC 189 (May 6, 1992)

NEW YORK POWER AUTHORITY (James A. Fitzpatrick Nuclear Power Plant), Docket No. 50-333-OM (ASLBP No. 91-645-02-OM)

Memorandum and Order, LBP-92-1, 35 NRC 11 (January 21, 1992)

NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 2), Docket No. 50-336-OLA (ASLBP No. 92-665-02-OLA)

Memorandum and Order, LBP-92-17, 36 NRC 23 (July 29, 1992)

Memorandum and Order, LBP-92-26, 36 NRC 191 (September 17, 1992)

OHIO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1) and CLEVELAND ELECTRIC ILLUMINATING COMPANY and TOLEDO EDISON COMPANY (Perry Nuclear Power Plant, Unit 1 and Davis-Besse Nuclear Power Station, Unit 1), Docket Nos. 50-440-A, 50-346-A (ASLBP No. 91-644-01-A)

Prehearing Conference Order, LBP-91-38, 34 NRC 229 (October 7, 1991)

Memorandum and Order, LBP-92-19, 36 NRC 98 (August 6, 1992)

PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-OLA-2, 50-323-OLA-2 (ASLBP No. 92-669-03-OLA-2)

Memorandum and Order, LBP-92-27, 36 NRC 196 (September 24, 1992)

PATRICK K.C. CHUN, M.D., Docket No. 30-31570-EA (ASLBP No. 92-657-02-EA)

Memorandum and Order, LBP-92-12, 35 NRC 195 (May 26, 1992)

PIPING SPECIALISTS, INC., Docket No. 030-29626-OM (ASLBP No. 92-653-02-OM)

Memorandum and Order, LBP-92-7, 35 NRC 163 (April 17, 1992)

PIPING SPECIALISTS, INC., and FORREST L. ROUDEBUSH d.b.a. PSI INSPECTION, and d.b.a. PIPING SPECIALISTS, INC. (Kansas City, Missouri), Docket Nos. 030-29626-OM&OM-2 (ASLBP Nos. 92-653-02-OM, 92-662-06-OM-2)

Memorandum and Order, LBP-92-16, 36 NRC 15 (July 10, 1992)

Final Initial Decision, LBP-92-25, 36 NRC 156 (September 9, 1992)

RANDALL C. OREM, Docket No. 030-31758-EA (ASLBP No. 92-656-01-EA)

Memorandum and Order, LBP-92-18, 36 NRC 93 (August 6, 1992)

SACRAMENTO MUNICIPAL UTILITY DISTRICT (Rancho Seco Nuclear Generating Station), Docket No. 50-312-DCOM (ASLBP No. 92-663-02-DCOM)

Prehearing Conference Order, LBP-92-23, 36 NRC 120 (August 20, 1992)

SAFETY LIGHT CORPORATION, et al., Docket Nos. 030-05980, 030-05981, 030-05982, 030-08335, 030-08444 (ASLBP Nos. 89-590-01-OM, 90-598-01-OM-2)

Memorandum and Order, LBP-92-3A, 35 NRC 110 (March 16, 1992)

SAFETY LIGHT CORPORATION, et al., Docket Nos. 030-05980-ML&ML-2, 030-05982-ML&ML-2 (ASLBP Nos. 92-659-01-ML, 92-664-02-ML-2)

Memorandum and Order, LBP-92-13A, 35 NRC 205 (June 11, 1992)

Memorandum and Order, LBP-92-16A, 36 NRC 18 (July 17, 1992)

TULSA GAMMA RAY, INC., Docket No. 30-12319-CivP (ASLBP No. 90-618-03-CivP)

Initial Decision, LBP-91-40, 34 NRC 297 (December 10, 1991)

APPENDIX E

MAJOR FEDERAL STATUTES AND REGULATIONS RELEVANT TO ASLBP ADJUDICATIONS

Federal Statutes

1. The Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 *et seq.*, Pub.L. 83-703, 68 STAT. 919.
2. The Energy Reorganization Act of 1974, as amended, 42 U.S.C. §§ 201-401, Pub.L. 93-438, 88 STAT. 1233.
3. Uranium Mill Tailings Radiation Control Act of 1978, as amended, 42 U.S.C. §§ 7901 *et seq.*, Pub.L. 95-604, 92 STAT. 3021.
4. Administrative Procedure Act, 5 U.S.C. §§ 551-559.
5. Transportation Safety Act of 1974, 49 U.S.C. §§ 1801 *et seq.*, Pub.L. 93-633, 88 STAT. 2156.
6. National Environmental Policy Act of 1969, as amended, Pub.L. 91-190, 83 STAT. 852.
7. Clean Air Act Amendments of 1977, Pub.L. 95-95, 91 STAT. 685.
8. Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101 *et seq.*, Pub.L. 97-425, 96 STAT. 2201.

Regulations

Title 10, Code of Federal Regulations (24 Parts):

Part 0, Conduct of Employees

Part 2, Rules of Practice for Domestic Licensing Proceedings

Part 19, Notices, Instructions, and Reports to Workers; Inspections

Part 20, Standards for Protection Against Radiation

Part 21, Reporting of Defects and Noncompliance

Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material

Part 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material

Part 33, Specific Domestic Licenses of Broad Scope for Byproduct Material

Part 34, Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations

Part 35, Medical Use of Byproduct Material

Part 39, Licenses and Radiation Safety Requirements for Well Logging

Part 40, Domestic Licensing of Source Material

Part 50, Domestic Licensing of Production and Utilization Facilities

Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions

Part 53, Criteria and Procedures for Determining Adequacy of Available Spent Nuclear Fuel Storage Capacity

Part 55, Operators' Licenses

Part 60, Disposal of High-Level Radioactive Wastes Geologic Repositories

Part 61, Licensing Requirements for Land Disposal of Radioactive Waste

Part 70, Domestic Licensing of Special Nuclear Material

Part 71, Packaging and Transportation of Radioactive Material

Part 72, Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI)

Part 73, Material Control and Accounting of Special Nuclear Materials

Part 100, Reactor Site Criteria

Part 140, Financial Protection Requirements and Indemnity Agreements

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
(Assigned by NRC. Add Vol., Supp., Rev.,
and Addendum Numbers, if any.)

NUREG-1363
Vol. 5

2. TITLE AND SUBTITLE

Atomic Safety and Licensing Board Panel Annual Report:
Fiscal Year 1992

3. DATE REPORT PUBLISHED

MONTH YEAR
September 1993

4. FUNDING OR GRANT NUMBER

5. AUTHOR(S)

B. Paul Cotter, Jr.

6. TYPE OF REPORT

Annual

7. PERIOD COVERED (inclusive Dates)

FY 1992

8. PERFORMING ORGANIZATION - NAME AND ADDRESS (If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above." If contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)

Same as 8, above

10. SUPPLEMENTARY NOTES

Eleventh Annual Report

11. ABSTRACT (300 words or less)

In Fiscal Year 1992, the Atomic Safety and Licensing Board Panel ("the Panel") handled 38 proceedings. The cases addressed issues in the construction, operation, and maintenance of commercial nuclear power reactors and other activities requiring a license from the Nuclear Regulatory Commission. This report sets out the Panel's caseload during the year and summarizes, highlights, and analyzes how the wide-ranging issues raised in those proceedings were addressed by the Panel's judges and licensing boards.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

ASLBP Annual Report
Fiscal Year 1992
Five-Year Projections
Contentions Filed

13. AVAILABILITY STATEMENT

Unlimited

14. SECURITY CLASSIFICATION

(This Page)

Unclassified

(This Report)

Unclassified

15. NUMBER OF PAGES

16. PRICE

END

**DATE
FILMED**

11/22/93