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Foreword

Digests and indexes for issuances of the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Denials of Petitions for Rulemaking (DPRM) are presented in this document. These digests and indexes are intended to serve as a guide to the issuances.

Information elements common to the cases heard and ruled upon are:

- Case name (owner(s) of facility)
- Full text reference (volume and pagination)
- Issuance number
- Issues raised by appellants
- Legal citations (cases, regulations, and statutes)
- Name of facility, Docket number
- Subject matter of issues and/or rulings
- Type of hearing (for construction permit, operating license, etc.)
- Type of issuance (memorandum, order, decision, etc.).

These information elements are displayed in one or more of five separate formats arranged as follows:

1. Case Name Index

The case name index is an alphabetical arrangement of the case names of the issuances. Each case name is followed by the type of hearing, the type of issuance, docket number, issuance number, and full text reference.

2. Digests and Headers

The headers and digests are presented in issuance number order as follows: the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judge (ALJ), the Directors' Decisions (DD), and the Denials of Petitions for Rulemaking (DPRM).

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

The index consists of an alphabetical arrangement of facility names from the issuance. The name is followed by docket number, type of hearing, date, type of issuance, issuance number, and full text reference.

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CLI-94-9 SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site), Docket No. 40-8027-EA (Decontamination and Decommissioning Funding); ENFORCEMENT; July 21, 1994; ORDER

- A The Commission denies General Atomics' motion seeking to stay discovery in this proceeding until (1) the Commission determines whether it will grant General Atomics' Petition for Review of LBP-94-17 and/or Motion for Directed Certification; and (2) assuming that the Commission grants the Petition/Motion, the Commission determines with finality the jurisdictional issues raised in General Atomics' previously filed Motion for Summary Disposition or for an Order of Dismissal.
- B Where a party files a stay motion with the Commission pursuant to 10 C.F.R. § 2.730 (which contains no standards by which to decide stay motions), the Commission will turn for guidance to the general stay standards in section 2.788.
- C Interlocutory appeals or petitions to the Commission are not devices for delaying or halting licensing board proceedings. The stringent four-part standard set forth in section 2.788(e) makes it difficult for a party to obtain a stay of any aspect of a licensing board proceeding. Therefore, only in unusual cases should the normal discovery and other processes be delayed pending the outcome of an appeal or petition to the Commission. Cf. 10 C.F.R. § 2.730(g).
- D The Commission does not consider the incurrence of litigation expenses to constitute irreparable injury in the context of a stay decision. "Mere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-17, 20 NRC 801, 804 (1984), quoting Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-395, 5 NRC 772, 779 (1977), in turn quoting Renegotiation Board v. Bannerkraft Co., 415 U.S. 1, 24 (1974). "[I]njuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough" to render an injury irreparable. Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958). Accord Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-385, 5 NRC 621 (1977).
- E Were a party subjected to overly burdensome discovery, the licensing board has full authority to prevent or modify unreasonable discovery demands. 10 C.F.R. § 2.740(c).
- F Under normal circumstances, motions for a stay of discovery should be filed with the licensing board rather than the Commission. See 10 C.F.R. § 2.730(a).
- G The Commission has the authority to exercise its "inherent supervisory powers over adjudicatory proceedings" and to address the stay motion itself, rather than either dismiss it or refer it to the licensing board. Ohio Edison Co. (Perry Nuclear Power Plant, Unit 1), CLI-91-15, 34 NRC 269, 271 (1991), reconsideration denied, CLI-92-6, 35 NRC 86 (1992).
- H Irreparable injury is the most important of the four factors set forth in section 2.788(e). Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-90-3, 31 NRC 219, 258 (1990), aff'd on other grounds sub nom. Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir.), cert. denied, 112 S. Ct. 275 (1991). Consequently, where a movant (as here) fails to show irreparable harm, then it must make an overwhelming showing that it is likely to succeed on the merits. See, e.g., Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), ALAB-928, 31 NRC 263, 269 (1990) (absent a showing of irreparable harm, movant must demonstrate that the reversal of the licensing board is a "virtual certainty").

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- I The importance and novelty of significant jurisdictional issues of first impression are, in and of themselves, insufficient to justify a stay. Cf. *Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility)*, ALAB-928, 31 NRC 263, 270 (1990).
- J Where the party seeking a stay has failed to meet its burden on the two most important factors (irreparable injury and likelihood of success on the merits), the Commission need not give lengthy consideration to the other two factors (public interest and harm to other parties). *Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility)*, ALAB-928, 31 NRC 263, 270 (1990).
- K The mere possibility that a stay would save other parties from incurring significant litigation expenses is insufficient to offset the movant's failure to demonstrate irreparable injury and a strong likelihood of success on the merits.
- CLI-94-10 GULF STATES UTILITIES COMPANY, et al. (River Bend Station, Unit 1), Docket No. 50-458-OLA; OPERATING LICENSE AMENDMENT; August 23, 1994; MEMORANDUM AND ORDER
- A The Commission considers the appeal of a Licensing Board decision, LBP-94-3, 39 NRC 31 (1994), which granted a request for intervention and for hearing on two applications submitted by the Gulf States Utilities Company (GSU). In one application, GSU sought to transfer its operating control over the River Bend nuclear power plant to a new licensee. GSU's second application sought a license amendment to reflect a change in the ownership of GSU. The Commission denies the appeal and affirms the Licensing Board's order, finding that the Petitioner has met the threshold requirements for standing and an admissible contention.
- B To determine whether a petitioner has alleged the requisite interest to intervene, the Commission applies judicial concepts of standing.
- C For standing, a petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision.
- D In the absence of a clear misapplication of the facts or misunderstanding of law, the Licensing Board's judgment at the pleading stage that a party has crossed the standing threshold is entitled to substantial deference.
- E The Atomic Energy Act authorizes the Commission to accord protection from radiological injury to both health and property interests. See AEA, §§ 103b, 161b, 42 U.S.C. §§ 2133(b), 2201(b).
- F Commission regulations recognize that underfunding can affect plant safety. Under 10 C.F.R. § 50.33(f)(2), applicants — with the exception of electric utilities — seeking to operate a facility must demonstrate that they possess or have reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. Behind the financial qualifications rule is a safety rationale.
- G Commission regulations mandate that a contention include a specific statement of the issue of law or fact to be raised or controverted, a brief explanation of the bases of the contention, and a concise statement of the alleged facts or expert opinion that support the contention, together with references to those specific sources and document on which the petitioner intends to rely to prove the contention. The petitioner must also demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact.
- H At the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in formal evidentiary form, nor be as strong as that necessary to withstand a summary disposition motion.
- CLI-94-11 SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site), Docket No. 40-8027-EA (Decontamination and Decommissioning Funding); ENFORCEMENT; August 23, 1994; ORDER DENYING PETITION FOR INTERLOCUTORY REVIEW AND/OR MOTION FOR DIRECTED CERTIFICATION
- A General Atomics ("GA") filed with the Commission a pleading styled "Petition for Review and/or Motion for Directed Certification" of an interlocutory order (LBP-94-17, 39 NRC 359 (1994)) issued by the Licensing Board. In that pleading, GA challenged the Licensing Board's denial of GA's motion seeking either an order granting summary disposition in its favor regarding all issues in this proceeding or an order of dismissal. The issue on appeal is whether, pursuant to 10 C.F.R. § 2.786(g), the Commission should exercise its discretion to review the Licensing Board's interlocutory order. The Commission denies GA's Petition on the ground that it fails to satisfy either of the two conditions for interlocutory review set forth in 10 C.F.R. § 2.786(g).

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- B** The Commission in this proceeding treats a challenge to an interlocutory order as a Petition for Review under 10 C.F.R. § 2.786 rather than as a Motion for Directed Certification under 10 C.F.R. §§ 2.718(i) and 2.730(f).
- C** The Commission has a longstanding policy disfavoring interlocutory review (other than appeals pursuant to 10 C.F.R. § 2.714a), and will undertake such review only in the most compelling circumstances.
- D** A licensing board decision refusing to dismiss a party from a proceeding does not, without more, constitute a compelling circumstance justifying interlocutory review.
- E** The Commission, under its present appellate system, has entertained petitions for review of an otherwise interlocutory order — akin to a motion for directed certification — if the petitioner can satisfy one of the criteria under section 2.786(g).
- F** Section 2.786(g) of the Commission's regulations allows interlocutory review only where the question presented either: "(1) Threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or (2) Affects the basic structure of the proceeding in a pervasive or unusual manner."
- G** The Commission abolished the Atomic Safety and Licensing Appeal Board Panel in 1991, but its decisions still carry precedential weight.
- H** It is well established in Commission jurisprudence that the mere commitment of resources to a hearing that may later prove to have been unnecessary does not constitute sufficient grounds for an interlocutory review of a licensing board order.
- I** A party may not obtain interlocutory review merely by asserting potential delay and increased expense attributable to an allegedly erroneous ruling by the licensing board.
- J** Mere generalized representations by counsel or unsubstantiated assertions regarding "immediate and serious irreparable impact" are insufficient to satisfy movant's burden of proof.
- K** The Commission sees no "substantial harm" arising from a party's continued involvement in a proceeding until the licensing board can resolve factual questions pertinent to the Commission's jurisdiction.
- L** Although a definitive ruling by the licensing board that the Commission actually has jurisdiction might rise to the level of a pervasive or unusual effect upon the nature of the proceeding, a preliminary ruling that mere factual development is necessary does not rise to that level.
- M** The fact that an appealed ruling touches on a jurisdictional issue does not, in and of itself, mandate interlocutory review.
- N** The mere issuance of a ruling which is important or novel does not, without more, change the basic structure of a proceeding, and thereby justify interlocutory review.
- CLI-94-12** SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site), Docket No. 40-8027-EA (Decontamination and Decommissioning Funding); ENFORCEMENT; August 23, 1994; MEMORANDUM AND ORDER
- A** In an enforcement proceeding involving funding for decontamination and decommissioning of the Sequoyah Fuels Facility near Gore, Oklahoma, the Commission denies appeals of the Atomic Safety and Licensing Board's orders LBP-94-5, 39 NRC 54 (1994), and LBP-94-8, 39 NRC 116 (1994), which granted intervention to a petitioner who favors the enforcement action. The Commission affirms LBP-94-5 which granted standing and affirms LBP-94-8 only to the extent that it relied upon this finding of standing.
- B** The Commission has authority to define the scope of public participation in its proceedings beyond that which is required by statute. Consistent with this authority the Commission permits participation by those who can show that they have a cognizable interest that may be adversely affected if the proceeding has one outcome rather than another, including those who favor an enforcement action.
- C** Intervention by interested persons who support an enforcement action does not diminish the agency's discretion in initiating enforcement proceedings because the Commission need not hold a hearing on whether another path should have been taken. The Commission may lawfully limit a hearing to consideration of the remedy or sanction proposed in the order.
- D** In enforcement proceedings, settlements between the Staff and the licensee, once a matter has been noticed for hearing, are subject to review by the presiding officer. 10 C.F.R. § 2.203. Thus, once an enforcement order has been set for hearing at a licensee's request, the NRC Staff no longer has untrammelled discretion to offer or accept a compromise or settlement.

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- E At the heart of the standing inquiry is whether the petitioner has alleged such a personal stake in the outcome of the controversy as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues. To demonstrate such a "personal stake," the Commission applies contemporaneous judicial concepts of standing. Accordingly, a petitioner must (1) allege an "injury in fact" that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision.
- F The alleged injury, which may be either actual or threatened, must be both concrete and particularized, not "conjectural" or "hypothetical." As a result, standing has been denied when the threat of injury is too speculative.
- G An organization seeking representational standing on behalf of its members may meet the "injury-in-fact" requirement by demonstrating that at least one of its members, who has authorized the organization to represent his or her interest, will be injured by the possible outcome of the proceeding.
- H To meet the "injury in fact" requirement the petitioner need only show a realistic threat of sustaining a direct injury to the petitioner as a result of the challenged action.
- I It must be demonstrated that the injury is fairly traceable to the proposed action. Such a determination is not dependent on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.
- J It must be likely as opposed to merely speculative that the injury will be redressed by a favorable decision.
- CLI-94-13 SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site), Docket No. 40-8027-EA (Decontamination and Decommissioning Funding); ENFORCEMENT; August 23, 1994; MEMORANDUM AND ORDER
- A In an enforcement proceeding involving funding for decontamination and decommissioning of the Sequoyah Fuels Facility near Gore, Oklahoma, the Commission denies appeals of LBP-94-19, 40 NRC 9 (1994), in which the Atomic Safety and Licensing Board granted intervention to the Cherokee Nation. Relying on the analysis contained in a companion decision, CLI-94-12, 40 NRC 64 (1994), the Commission finds that otherwise qualified petitioners are not barred from participation in hearings simply because they seek to support an enforcement order.
- CLI-94-14 SACRAMENTO MUNICIPAL UTILITY DISTRICT (Rancho Seco Nuclear Generating Station), Docket No. 50-312-DCOM (Decommissioning Plan); DECOMMISSIONING; September 2, 1994; ORDER
- A The Commission lifts its earlier restriction on the Nuclear Regulatory Commission Staff's ability to issue a decommissioning order, given that no issue remains for adjudication and the Licensing Board terminated the proceeding.
- CLI-94-15 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3; OPERATING LICENSE AMENDMENT; December 21, 1994; MEMORANDUM AND ORDER
- A The Commission denies a petition for interlocutory review filed by the Intervenor. The petition requested interlocutory review of an Atomic Safety and Licensing Board order, LBP-94-37, 40 NRC 288 (1994), which granted in part the Georgia Power Company's motion for summary disposition of one of the Intervenor's allegations. The Commission finds that the Intervenor did not demonstrate a need for interlocutory review.
- B The Commission has long disfavored interlocutory review.
- C A Licensing Board decision rejecting or admitting particular issues for consideration does not in and of itself indicate that a proceeding will be affected in a pervasive or unusual manner. The basic structure of an ongoing adjudication is not changed merely because an interlocutory Licensing Board ruling is incorrect, even if it conflicts with case law or Commission regulations.
- D The Commission will step into interlocutory situations only when a licensing board ruling creates immediate irreparable injury or fundamentally impacts the course of a proceeding.

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LBP-94-19 SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site), Docket No. 40-8027-EA (ASLBP No. 94-684-01-EA) (Source Material License No. SUB-1010) (Decontamination and Decommissioning Funding); ENFORCEMENT; July 7, 1994; MEMORANDUM AND ORDER (Granting Intervention Motion)

A In this proceeding concerning an NRC Staff enforcement order issued in accordance with 10 C.F.R. § 2.202, the Licensing Board concludes that a Native American tribe wishing to participate in the proceeding to support the Staff's enforcement order has established its standing and presented two litigable contentions.

B In order to grant an intervenor party status in a proceeding, the presiding officer must find that the petitioner meets the contemporaneous judicial concepts of standing. This requires that the intervenor establish that it will suffer injury in fact relative to its interests in the proceeding and that those alleged interests are within the zone of interests protected by the statutes and regulations under which the petitioner seeks to participate in the proceeding. See, e.g., Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993).

C To represent the interests of its members, a Native American tribe must identify at least one member who will be injured and obtain authorization to represent that individual. See, e.g., Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-96 (1979).

D Longstanding Commission practice suggests that the benefit of the doubt should be given to the potential intervenor in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural pleading defects. See, e.g., Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633-34 (1973). See also LBP-94-8, 39 NRC 116, 120 & n.7 (1994), appeals pending.

LBP-94-20 CHEMETRON CORPORATION (Bert Avenue, Harvard Avenue, and McGean-Rohco Sites, Newburgh Heights and Cuyahoga Heights, Ohio), Docket No. 40-8724-MLA (ASLBP No. 94-695-03-MLA) (Source Material License No. SUB-1357); MATERIALS LICENSE AMENDMENT; July 7, 1994; MEMORANDUM AND ORDER (Request for Hearing)

LBP-94-21 INDIANA REGIONAL CANCER CENTER, Docket No. 030-30485-EA (ASLBP No. 94-685-02-EA) (EA 93-284) (Order Modifying and Suspending Byproduct Material License No. 37-28179-01); ENFORCEMENT; July 12, 1994; MEMORANDUM AND ORDER (Ruling on Prediscovery Dispositive Motions)

A In this license suspension and modification enforcement proceeding, the Licensing Board rules on prediscovery dispositive motions regarding ten issues specified by the parties for litigation.

B Under Atomic Energy Act provisions such as subsections (b) and (i) of section 161, 42 U.S.C. § 2201(b), (i), the agency's authority to protect the public health and safety is uniquely wide-ranging. That, however, is not the same as saying that it is unlimited. In exercising that authority, including its prerogative to bring enforcement actions, the agency is subject to some restraints. See, e.g., Hurley Medical Center (One Hurley Plaza, Flint, Michigan), ALJ-87-2, 25 NRC 219, 236-37 & n.5 (1987) (NRC Staff cannot apply a comparative-performance standard in civil penalty proceedings absent fair notice to licensees about the parameters of that standard). One of those constraints is the requirement of constitutional due process.

C A party responding to an agency enforcement complaint has been accorded due process so long as the charges against it are understandable and it is afforded a full and fair opportunity to meet those charges. See *Citizens State Bank v. FDIC*, 751 F.2d 209, 213 (8th Cir. 1984). Put somewhat differently, "[p]leadings in administrative proceedings are not judged by standards applied to an indictment at common

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law,' but are treated more like civil pleadings where the concern is with notice" Id. (quoting Aloha Airlines, Inc. v. CAB, 598 F.2d 250, 262 (D.C. Cir. 1979)).

- D When there is no claim of a lack of understanding regarding the nature of the charges in an NRC Staff enforcement order, the fact that the validity of the Staff's assertions have not been litigated is no reason to preclude the Staff from utilizing those charges as a basis for the order. The adjudicatory proceeding instituted pursuant to 10 C.F.R. § 2.202 affords those who are adversely affected by the order with an opportunity to contest each of the charges that make up the Staff's enforcement determination, an opportunity intended to protect their due process rights. The "unlitigated" nature of the Staff's allegations in an enforcement order thus is not a constitutional due process deficiency that bars Staff reliance on those allegations as a component of the enforcement order.

- E Issue and claim preclusion principles (i.e., res judicata and collateral estoppel) are applicable in NRC adjudicatory proceedings. See, e.g., Ohio Edison Co. (Perry Nuclear Power Plant, Unit 1), LBP-92-32, 36 NRC 269, 283 & n.27 (1992) (citing cases), petitions for review pending, Nos. 92-1665, 93-1665, 93-1672, 93-1673 (D.C. Cir.).

- F The fact that the NRC Staff's charges in support of an enforcement order may be "hearsay" allegations does not provide sufficient reason to dismiss those claims ab initio. See Oncology Services Corp., LBP-93-20, 38 NRC 130, 135 n.2 (1993) (hearsay evidence generally admissible in administrative hearing if reliable, relevant, and material). Rather, so long as those allegations are in dispute, the validity and sufficiency of any "hearsay" information upon which they are based generally is a matter to be tested in the context of an evidentiary hearing in which the Staff must provide adequate probative evidence to carry its burden of proof.

- G One or more of the bases put forth by the NRC Staff as support for an enforcement order may be subject to dismissal if it is established they lack a sufficient nexus to the regulated activities that are the focus of the Staff's enforcement action.

- H In a proceeding regarding an NRC Staff enforcement order, consistent with the analogous agency rules regarding contentions filed by intervenors, see 10 C.F.R. § 2.714(d)(2)(ii), if it can be established that there is no set of facts that would entitle a party to relief relative to a proposed issue, then dismissal of that issue is appropriate. See Oncology Services Corp., LBP-94-2, 39 NRC 11, 23 n.8 (1994).

- I As is evident from the Commission's enforcement policy statement, regulatory requirements — including license conditions — have varying degrees of public health and safety significance. See 10 C.F.R. Part 2, App. C, § IV & n.5. Consequently, as part of the enforcement process, the relative importance of each purported violation is evaluated, which includes taking a measure of its technical and regulatory significance, as well as considering whether the violation is repetitive or willful. See id. §§ IV.B, IV.C. Although, in contrast to civil penalty actions, there generally is no specification of a "severity level" for the violations identified in an enforcement order imposing a license termination, suspension, or modification, see id. § VI.C, this evaluative process nonetheless is utilized to determine the type and severity of the corrective action taken in the enforcement order.

- J In making a determination about whether a license suspension or modification order should be sustained, a presiding officer must undertake an evaluative process that may involve assessing, among other things, whether the bases assigned in the order support it both in terms of the type and duration of the enforcement action. And, just as with the NRC Staff's initial determination about imposition of the enforcement order, a relevant factor may be the public health and safety significance of the bases specified in the order.

- K As the Commission recently noted, "the choice of sanction is quintessentially a matter of the agency's sound discretion." Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 312 (1994) (footnote omitted). In this regard, a presiding officer's review of an NRC Staff enforcement action would be limited to whether the Staff's choice of sanction constituted an abuse of that discretion.

LBP-94-22 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment; Transfer to Southern Nuclear); OPERATING LICENSE AMENDMENT; July 28, 1994; MEMORANDUM AND ORDER (Motion to Accept Additional Factual Basis)

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- A The Licensing Board determines that an Intervenor may move to admit into the proceeding a new basis for an already admitted contention. When it does so, the requirements for a late-filed contention are not applicable, but the Intervenor must show that it is timely to consider the new basis, in light of its seriousness and of the timeliness with which it has been raised. The Licensing Board also permitted Intervenor to file a reply to Applicant's response to his motion to add a new basis to his contention.
- B Once a contention has been admitted, Intervenor may litigate a new basis for the admitted contention (falling within the scope of the contention) without meeting the five-pronged test for a late-filed contention. The test for admitting the new basis is whether it is timely to consider the new basis, in light of its seriousness and of the timeliness with which it has been raised. The more serious the safety implications of the proposed new basis, the less important delay in presenting the basis.
- C There is no regulatory requirement that an intervenor supply all the bases known at the time he files a contention. What is required is the filing of bases that the intervenor intends to rely on. 10 C.F.R. § 2.714(b)(2)(ii).
- D Intervenor may reply to Applicant's Response to Intervenor's Motion for a new basis for its contention. In that reply, Intervenor should demonstrate, with particularity: (1) that he understands the answers that have been filed and that (despite those answers) there is an important, genuine issue of fact that Georgia Power has materially misled the Staff of the Commission concerning the public safety and health, and (2) that he did not unnecessarily delay the filing of this new basis for its contention.
- LBP-94-23 SACRAMENTO MUNICIPAL UTILITY DISTRICT (Rancho Seco Nuclear Generating Station), Docket No. 50-312-DCOM-R (ASLBP No. 93-677-01-DCOM-R) (Decommissioning Plan) (Facility Operating License No. DPR-54); DECOMMISSIONING REMAND; August 11, 1994; MEMORANDUM AND ORDER (Terminating Proceeding)
- A The Licensing Board, in response to a notice of withdrawal with prejudice of the only intervenor in the proceeding, grants the withdrawal and terminates the proceeding.
- LBP-94-24 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment; Transfer to Southern Nuclear); OPERATING LICENSE AMENDMENT; August 18, 1994; MEMORANDUM AND ORDER (Deposition of Mr. Bill Shipman)
- A This Memorandum and Order weighs whether or not to order the deposition of a person who is seriously ill. The Board declined to order the deposition. It determined that Intervenor had failed to demonstrate that the benefit of the proposed discovery outweighs the burden, given the importance of the issues at stake in the litigation and the importance of the proposed discovery in resolving the issues.
- B However, the Board also noticed that the proposed deponent was willing to be deposed. It therefore established conditions under which a voluntary deposition might be taken.
- C Intervenor has the burden of demonstrating that the benefit of a deposition of a seriously ill person outweighs the burden, given the importance of the issues at stake in the litigation and the importance of the proposed discovery in resolving the issues.
- D The lawyer of an ill individual sought as subject of a deposition may not assert that the deposition would impose an undue burden unless the proposed subject seeks to be protected or there is some reason to question the rationality behind the person's willingness to be deposed.
- E The Licensing Board establishes conditions under which a voluntary agreement may be reached concerning the deposition of a seriously ill individual.
- LBP-94-25 NUCLEAR SUPPORT SERVICES, INC. (Order Requiring the Removal of an Individual from NRC-Licensed or Regulated Activities and Order Directing Review of Personnel Security Files (Effective Immediately)), Docket No. EA 93-236 (ASLBP No. 94-692-05-EA); ROBERT C. DAILEY (Order Prohibiting Involvement in Certain NRC-Licensed or Regulated Activities (Effective Immediately)), Docket No. IA 94-003 (ASLBP No. 94-691-04-EA); ENFORCEMENT; August 18, 1994; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Proceeding)
- A The Licensing Board grants a joint motion of the parties to approve a settlement agreement, approves the agreement, and terminates the proceeding.
- LBP-94-26 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment; Transfer

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- to Southern Nuclear); OPERATING LICENSE AMENDMENT; August 22, 1994; MEMORANDUM AND ORDER (Staff Responses to Intervenor's First Request for Admissions, Second Set of Interrogatories)
- A The Board held that the Staff stands on the same footing as any party with respect to requests for admissions. Neither 10 C.F.R. § 2.742 nor any other section of the regulations provides for any different treatment of the Staff. The Board also found that Rule 36 of the Federal Rules of Civil Procedure is helpful in interpreting the Commission's rules concerning admissions. The Board said that the Staff would not be held to its admissions if new information causes it to change its view of the public interest.
- B With respect to interrogatories asked of the Staff, the Board held that the Staff is not required to answer interrogatories unless this Licensing Board finds: (1) answers to the interrogatories are necessary to the determination of this case, and (2) answers to the interrogatories are not reasonably attainable from any other source. 10 C.F.R. § 2.720(h)(2)(ii); compare 10 C.F.R. § 2.740b(a).
- C With respect to requests for admissions addressed to the Staff, the Board held that the Staff stands on the same footing as any party. Neither 10 C.F.R. § 2.742 nor any other section of the regulations provides for any different treatment of the Staff. The Board also found that Rule 36 of the Federal Rules of Civil Procedure is helpful in interpreting the Commission's rules concerning admissions. The Board also said that the Staff would not be held to its admissions if new information causes it to change its view of the public interest.
- D With respect to interrogatories asked of the Staff, the Board held that the Staff is not required to answer interrogatories unless this Licensing Board finds: (1) answers to the interrogatories are necessary to the determination of this case, and (2) answers to the interrogatories are not reasonably attainable from any other source. 10 C.F.R. § 2.720(h)(2)(ii); compare 10 C.F.R. § 2.740b(a).
- LBP-94-27 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment; Transfer to Southern Nuclear); OPERATING LICENSE AMENDMENT; August 26, 1994; MEMORANDUM AND ORDER (Denying Motion to Accept Additional Factual Basis)
- A The test to be applied to determine whether to admit for litigation a new basis for an admitted contention is "whether the motion [to admit the contention] was timely and whether it presents important information regarding a significant issue." Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1296 (1984). Applying this test, Intervenor's motion to admit a new basis for an admitted contention is denied.
- B To determine whether technical specifications have been violated, the wording of the specifications must be carefully examined to determine the precise meaning of those specifications.
- C The Board rejected an allegation that Licensee had breached a commitment to the NRC that went beyond its technical specifications. The alleged commitment related to keeping the containment hatch closed. Yet opening of the hatch was an open and obvious action and the Board does not accept the argument that the action reflected adversely on the character and competence of the Licensee.
- D The following technical issues are discussed: Action statements: technical specifications; Containment equipment hatch; Emergency mode: diesel operation; Emergency power; Limiting conditions of operation: technical specifications; Loss of all electrical power; Operable: definition in technical specifications; Residual heat removal system: operability; Site area emergency.
- LBP-94-28 INDIANA UNIVERSITY SCHOOL OF MEDICINE (Indianapolis, Indiana), Docket No. 030-09792-CivP (ASLBP No. 94-689-02-CivP) (EA 93-111) (Byproduct Material License No. 13-02752-08); ENFORCEMENT; August 29, 1994; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Proceeding)
- LBP-94-29 ONCOLOGY SERVICES CORPORATION, Docket No. 030-31765-EA (ASLBP No. 93-674-03-EA) (EA 93-006) (Order Suspending Byproduct Material License No. 37-28540-01); ENFORCEMENT; August 31, 1994; MEMORANDUM AND ORDER (Dismissing Proceeding)
- LBP-94-30 CHEMETRON CORPORATION (Bert Avenue, Harvard Avenue, and McGean-Rohco Sites, Newburgh Heights and Cuyahoga Heights, Ohio), Docket No. 40-8724-MLA (ASLBP No. 94-695-03-MLA) (Source Material License No. SUB-1357); MATERIALS LICENSE AMENDMENT; September 1, 1994; MEMORANDUM AND ORDER (Motion to Dismiss Proceeding)
- LBP-94-31 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment; Transfer

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to Southern Nuclear); OPERATING LICENSE AMENDMENT; September 9, 1994; MEMORANDUM AND ORDER (Motion for Reconsideration: Admissions; Second Order)

A The Board denied a Staff motion for reconsideration, setting forth standards for motions for reconsideration. Such motions must be filed within 10 days of the date of issuance of the motion being challenged. The Board also adopted the substantive standard that a motion for leave to reargue or rehear a motion will not be granted unless it appears that there is some decision or some principle of law that would have a controlling effect and that has been overlooked or that there has been a misapprehension of the facts.

B The Board said that it is appropriate to require the Staff to answer requests for admissions concerning the truth of findings in its own report, which contains important collateral facts. It also is appropriate to require the Staff to release segregable facts on which decisions have been made, even if those facts are contained in predecisional documents. Facts that are inextricably intertwined with opinions in predecisional documents need not be released.

C It is appropriate to require the Staff to reveal the names of individuals involved in completing important Staff work. Intervenors may only call as witnesses Staff members who are necessary to their case, but an important step in helping them to determine if testimony is necessary is to find out who was involved. For the same reason, it is appropriate to require the Staff to disclose the name of an individual who may have filed a formal differing professional opinion.

D A stay shall not be granted when the only harm to a party is a strategic loss through complying with a request for admissions. However, a party may delay the need to respond by filing a motion for an extension of time.

E Motions for reconsideration must be filed within 10 days of the date of issuance of a challenged order.

F A motion for leave to reargue or rehear a motion will not be granted unless it appears that there is some decision or some principle of law that would have a controlling effect and that has been overlooked or that there has been a misapprehension of the facts.

G It is appropriate to require the Staff to answer requests for admissions concerning the truth of findings in its own report, which contains important collateral facts.

H It also is appropriate to require the Staff to release segregable facts on which decisions have been made, even if those facts are contained in predecisional documents. Facts that are inextricably intertwined with opinions in predecisional documents need not be released.

I The Staff must respond to interrogatories requesting the names of Staff involved in issuing a key report or involved in issuing a formal differing professional opinion.

J A stay shall not be granted when the only harm to a party is a strategic loss through complying with a request for admissions. However, a party may delay the need to respond by filing a motion for an extension of time.

LBP-94-32 KELLI J. HINDS (Order Prohibiting Involvement in Licensed Activities), Docket No. IA-94-012 (ASLBP No. 94-697-06-EA); ENFORCEMENT; October 3, 1994; MEMORANDUM AND ORDER (Approving Settlement Agreement and Dismissing Proceeding)

LBP-94-33 ENERGY FUELS NUCLEAR, INC., Docket No. 40-8681-MLA-3 (ASLBP No. 94-693-02-MLA-3) (Source Materials License No. SUA-1358); MATERIALS LICENSE AMENDMENT; October 21, 1994; MEMORANDUM AND ORDER (Petition for Hearing)

LBP-94-34 CAMEO DIAGNOSTIC CENTRE, INC., Docket No. 30-29567-CivP (ASLBP No. 94-686-01-CivP) (Byproduct Material License No. 20-27908-01) (EA 93-005); ENFORCEMENT; November 1, 1994; DECISION (Granting NRC Staff Motion for Summary Disposition)

LBP-94-35 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) (Construction Period Recovery) (Facility Operating License Nos. DPR-80, DPR-82); OPERATING LICENSE AMENDMENT; November 4, 1994; INITIAL DECISION (Construction Period Recovery/Recapture)

LBP-94-36 INDIANA REGIONAL CANCER CENTER, Docket No. 030-30485-EA (ASLBP No. 94-685-02-EA) (EA 93-284) (Order Modifying and Suspending Byproduct Material License No. 37-28179-01); ENFORCEMENT; November 4, 1994; MEMORANDUM AND ORDER (Approving Settlement Agreement and Dismissing Proceeding)

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LBP-94-37 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3 (ASLBP No. 93-671-01-OLA-3) (Re: License Amendment; Transfer to Southern Nuclear); OPERATING LICENSE AMENDMENT; November 8, 1994; MEMORANDUM AND ORDER (Summary Disposition: Illegal Transfer Allegation)

A Applicant's motion for summary disposition is granted in part. After viewing all evidence favorably toward Intervenor, the Board assumed that Applicant had indirectly transferred control of its operating license without appropriate written permission from the NRC. However, the Board held that even if Licensee had made such a transfer, that without more would not demonstrate that the requested license amendment (to transfer operating authority to a new licensee) should be conditioned.

B For transfer of the license to be restricted, Intervenor would need to show that the recipient of the license is lacking in character or integrity. This could be demonstrated in this case only by showing material misrepresentations to the Nuclear Regulatory Commission. Consequently, the hearing in this case will be restricted to questions related to alleged misrepresentations.

C This Memorandum and Order grants in part "Georgia Power Company's Motion for Summary Disposition of Intervenor's Illegal Transfer of License Allegations" (Motion). The consequence is that there will be a hearing limited to the issue of whether Georgia Power Company, et al. (Georgia Power) has misled the Nuclear Regulatory Commission with respect to the control of licensed operations of the Vogtle Electric Generating Plant (Vogtle).

D A company must retain actual control of licensed activities. Even indirect transfers of a license are prohibited. If all that was prohibited was a transfer of the right to control licensed activities, then there would be no need to specify that "indirect" transfers also were prohibited. What is important is that the licensed entity, which has been approved by the Nuclear Regulatory Commission, should not enter into a new relationship that permits individuals who are not included in the license to control licensed activities, directly or indirectly.

E Once Applicant has submitted a motion that makes a proper showing for summary disposition, the litmus test of whether or not to grant the summary disposition motion is whether Intervenor has presented a genuine issue of fact that is relevant to its allegation and that could lead to some form of relief.

F In the case of a license amendment application that would result in the transfer of an operating license, the transfer may be restricted if the proposed recipient of the license is lacking in character and integrity. Not every previous defect on the part of the recipient would require that the license transfer be conditioned or denied. For example, merely showing that the license had previously been illegally transferred to the recipient would not bar the granting of the amendment unless the illegal transfer was accompanied by material omissions of fact or misstatements to the Nuclear Regulatory Commission.

G A licensee may not transfer an operating license for a nuclear power plant either directly or indirectly. Even if formal authority is maintained in an acceptable form, if people not included in the license have substantial influence over the operation of the nuclear power plant, the omission of their names from the license may be improper. Only appropriate consent in writing by the Nuclear Regulatory Commission may validate an unauthorized transfer of influence to operate the plant.

H For each allegation of a misrepresentation, the Board will need to know as precisely as we can: (1) what was said, (2) in what context the statement existed, (3) the proof that the statement was inaccurate or incomplete, (4) when (if applicable) the statement was corrected, and (5) why we should be concerned about the length of delay between the statement and when it was corrected. This will require proof of a time line of actual events, demonstrating not only that they occurred but also when they occurred.

I The Board also will require that the proof offered will make some allowance for inaccuracies in expression, understanding, and memory. So the Board will need to know also how much time passed before the alleged misstatement was made.

J It would be helpful to us if time lines and charts were used to communicate Intervenor's points clearly. Such simple and easy-to-grasp devices would be appreciated in the filings of all the parties.

LBP-94-38 LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML (ASLBP No. 91-641-02-ML) (Special Nuclear Material License); MATERIALS LICENSE; November 18, 1994; MEMORANDUM AND ORDER

A Section 2.740(f) like its counterpart in the last sentence of Rule 37(d) of the Federal Rules of Civil Procedure from which the Commission's provision was copied, applies exclusively to situations where a

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person or party totally fails to respond to a set of interrogatories or document requests. See 8 Charles A. Wright et al., *Federal Practice and Procedure* § 2291 at 809-10 (1970). See, e.g., *Laclede Gas Co. v. Warnecke Corp.*, 604 F.2d 561, 565 (8th Cir. 1979).

- B Where a party has filed objections to one or more interrogatories or document requests or set forth partial, albeit incomplete, answers in a discovery response, the last sentence of section 2.740(f) has no applicability. The proper procedure in such a situation is for the party opposing the discovery to await the filing of a motion to compel and then respond to that motion.

LBP-94-39 SEQUOYAH FUELS CORPORATION, Docket No. 40-8027-MLA-3 (ASLBP No. 94-700-04-MLA-3) (Source Materials License No. Sub-1010); MATERIALS LICENSE AMENDMENT; November 22, 1994; MEMORANDUM AND ORDER (Ruling on Motion for Reconsideration)

- A While the threshold showing at the intervention stage of a Subpart L proceeding is exceedingly low, a statement of concern must be plead with enough specificity to allow a presiding officer the ability to ascertain whether or not what the intervenor seeks to litigate is truly relevant to the subject matter of the proceeding.

- B A proponent of a motion does not have the right to reply to an answer to the motion; parties who do not seek leave to file a reply are expressly denied the opportunity to do so.

LBP-94-40 DR. JAMES E. BAUER (Order Prohibiting Involvement in NRC-Licensed Activities), Docket No. IA-94-011 (ASLBP No. 94-696-05-EA); ENFORCEMENT; December 9, 1994; MEMORANDUM AND ORDER (Ruling on Prediscovery Dispositive Motions)

- A In this proceeding concerning an NRC Staff enforcement order prohibiting the involvement of Dr. James E. Bauer in NRC-licensed activities, the Licensing Board rules on prediscovery dispositive motions regarding a number of the issues specified by the parties for litigation.

- B Claiming a constitutional deprivation arising from a delayed adjudication generally requires some showing of prejudice. See *Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 50-51 (1993).

- C The pendency of a related criminal investigation can provide an appropriate basis for postponing litigation on a Staff enforcement order. See *id.* at 53-56.

- D The Staff will not be precluded, as a matter of law, from relying on allegations as the basis for an enforcement order if there is a "sufficient nexus" between the allegations and the regulated activities that formed the focus of the Staff's order. *Indiana Regional Cancer Center*, LBP-94-21, 40 NRC 22, 31 (1994).

- E If it can be shown there is no set of facts that would entitle a party to relief relative to proposed issue in an enforcement proceeding, then dismissal of that issue is appropriate. See *Indiana Regional Cancer Center*, LBP-94-21, 40 NRC at 33 & n.4; *Oncology Services Corp.*, LBP-94-2, 39 NRC 11, 23 & n.8 (1994).

- F Consistent with the analogous agency rules regarding contentions filed by intervenors, see 10 C.F.R. § 2.714(d)(2)(ii), issues that would constitute "defenses" to an enforcement order are subject to dismissal under the appropriate circumstances. See *Indiana Regional Cancer Center*, LBP-94-21, 40 NRC at 33 n.4.

- G In assessing whether the bases assigned support an order in terms of both the type and duration of the enforcement action, a relevant factor may be the public health and safety significance, including the medical appropriateness, of the specified bases. See *id.* at 33-34.

- H In proceedings involving challenges to Staff enforcement orders, the overarching matter for consideration is whether the order should be sustained and the presiding officer's authority regarding this question "is to consider 'whether the facts in the order are true and whether the remedy selected is supported by those facts.'" *Oncology Services Corp.*, LBP-94-2, 39 NRC at 25 (quoting *Boston Edison Co. (Pilgrim Nuclear Power Station)*, CLI-82-16, 16 NRC 44, 45 (1982), *aff'd*, *Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983)). The bases asserted in an enforcement order thus do provide the principal framework for the proceeding. As a consequence, any legal or factual issue a party wants to propose in challenging (or supporting) an enforcement order must bear some relationship to those bases by tending to establish, either alone or with other issues, that some explicit or implicit legal or factual predicate to the order should not (or should) be sustained. Further, a party called upon to demonstrate this relationship must be able to do so by more than a bald pronouncement that the issue is "relevant." Cf. *Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041)*, CLI-94-6, 39 NRC 285, 308 (1994) (mere assertions of dispute over material facts do not invalidate grant of summary disposition).

LBP-94-41 SAFETY LIGHT CORPORATION, et al. (Bloomsburg Site Decontamination, Decommissioning, License Renewal Denials, and Transfer of Assets), Docket Nos. 030-05980-OM&OM-2, 030-

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05981-OM&OM-2, 030-05982-OM&OM-2, 030-08335-OM&OM-2, 030-08444-OM&OM-2, 030-05980-ML&ML-2, 030-05982-ML&ML-2, 030-05980-EA, 030-05982-EA (ASLBP Nos. 89-590-01-OM, 90-598-01-OM-2, 92-659-01-ML, 92-664-02-ML-2, 93-675-04-EA); ENFORCEMENT; December 28, 1994; ORDER (Approving Settlement Agreement and Terminating Proceedings)

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DD-94-8 ARIZONA PUBLIC SERVICE COMPANY (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), Docket Nos. 50-528, 50-529, 50-530; REQUEST FOR ACTION; August 12, 1994; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Enforcement denies a Petition dated February 1, 1994, filed with the Nuclear Regulatory Commission (NRC) by Thomas J. Saporito, Jr., and supplemented on May 18, 1994, requesting enforcement action pursuant to 10 C.F.R. § 2.206 (Petition). The Petition requested that the NRC: (1) require a show-cause proceeding pursuant to 10 C.F.R. § 2.202 to modify, suspend, or revoke the Licensee's operating licenses for Palo Verde Generating Station; (2) initiate "appropriate actions" to require the Licensee to recognize the Buckeye, Arizona Regional Office of the National Whistleblower Center (Buckeye) as an agency to which Licensee employees may raise safety concerns about operations at Palo Verde without fear of retaliation by the Licensee; (3) request the Licensee to encourage employees at Palo Verde to contact Buckeye to identify safety concerns about operations at Palo Verde to ensure a working environment that is free of hostility and promotes the raising of safety concerns by employees without fear of retaliation; and (4) cause the Licensee to encourage employees at Palo Verde to contact the NRC in the same way as it would Buckeye.

B On May 18, 1994, Petitioner supplemented his Petition and requested that the NRC require Licensee contractors to: (1) provide information regarding filing complaints with the Department of Labor to their employees "as part of their normal employment package"; and (2) properly post the NRC Form 3 in and around the contractor's place of business and site business trailers and offices.

C After an evaluation of the Petition, the Director concluded that Petitioner did not raise any issues that would warrant granting the requested actions.

DD-94-9 CAROLINA POWER AND LIGHT COMPANY, et al. (Brunswick Steam Electric Plant, Units 1 and 2), Docket Nos. 50-325, 50-324; REQUEST FOR ACTION; October 19, 1994; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation granted in part and denied in part a Petition dated October 14, 1994, submitted by the National Whistleblower Center (NWC), the Coastal Alliance for a Safe Environment, and Charles A. Webb (Petitioners) requesting that the Nuclear Regulatory Commission take action with regard to the Brunswick Steam Electric Plant (Brunswick), Units 1 and 2, of the Carolina Power & Light Company (Licensee). The Petition requested that: the NRC Staff enter into a confidentiality agreement with NWC to facilitate the release of additional information; the NRC immediately require the Licensee to state whether it has, in fact, known about cracks in the reactor shroud since at least 1984; the NRC's Office of Investigations (OI) determine whether Licensee management engaged in criminal wrongdoing, commencing in 1984, when Licensee management initially failed to report the existence of cracks in the core shroud to the NRC; and immediate suspension of the operating license for Brunswick pending the criminal investigation. The Petitioners alleged that the Licensee had falsely asserted to the NRC that cracks in the reactor shroud had been recently discovered, but that, in fact, the Licensee had discovered the cracks 9 years earlier and the Licensee's management instructed the engineers who detected the cracks to prepare paperwork that would ensure that no report would be made to the NRC; the unwillingness to report a significant safety problem to the NRC demonstrates that the Licensee does not have the character or integrity to operate a nuclear facility; and the Licensee is willing to take unreasonable risks with the public health and safety. After evaluation of the Petition and an OI investigation, the Director concluded that

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Petitioners failed to raise a substantial health or safety concern regarding either the presence of core shroud cracks or the Licensee's knowledge of and reporting of core shroud cracking at the Brunswick facility.

DD-94-10 ENERGY FUELS NUCLEAR, INC., Docket No. 40-8681 (License No. SUA-1358); REQUEST FOR ACTION; December 14, 1994; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Honorable Michael O. Leavitt, Governor of the State of Utah, and the Utah Legislature requested, by a letter dated May 2, 1994, and Utah Senate concurrent Resolution No. 11, "Resolution Regarding NRC Action Regarding Disposal of Uranium By-Product 1994 General Session," that the Nuclear Regulatory Commission modify Umetco Minerals Corporation Source Material License No. SUA-1348 (now held by Energy Fuels Nuclear, Inc.), to reflect the original request of the Licensee for authority to dispose of 5000 cubic yards of 11e(2) byproduct material per in situ leach facility at the White Mesa Uranium Mill facility. Petitioners also requested that the Commission confer with the State of Utah and provide opportunity for comment prior to the issuance of license amendments involving uranium mill tailings disposal in Utah, and that the NRC obtain the concurrence of the Governor and Legislature before issuing license amendments involving disposal of uranium mill tailings in Utah. After careful consideration of Petitioners' requests, the Director of the Office of Nuclear Material Safety and Safeguards grants the request to modify Source Materials License No. SUA-1348 and the request to confer with the State of Utah insofar as the NRC shall provide direct and Federal Register notice of significant materials licensing actions in the State of Utah, and denies the request to obtain concurrence of Petitioners before issuing license amendments involving disposal of uranium mill tailings in Utah.

DD-94-11 BATTELLE MEMORIAL INSTITUTE COLUMBUS OPERATIONS (Columbus, Ohio), Docket No. 70-08; REQUEST FOR ACTION; December 14, 1994; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director, Office of Nuclear Material Safety and Safeguards, grants a petition filed by the Battelle Permit Opposition Committee for an investigation of certain audit findings involving Battelle Memorial Institute (BMI) and for enforcement action, as appropriate. Petitioner asserted that BMI appears to be a facility out of control in its handling of radioactive material, that a potential threat exists to the surrounding neighborhood through BMI's operations, and that the level of NRC oversight of BMI activities is of concern. The Director grants the petition in that the NRC Staff has investigated the audit findings and has taken appropriate enforcement and other actions and has taken appropriate action to address the concerns regarding NRC's oversight of BMI's licensed activities.

DD-94-12 ROSEMOUNT NUCLEAR INSTRUMENTS, INCORPORATED (formerly Rosemount, Incorporated) (Eden Prairie, Minnesota), Docket No. 99900271; REQUEST FOR ACTION; December 15, 1994; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director of Nuclear Reactor Regulation grants, in part, petitions filed by Paul M. Blanch requesting immediate enforcement action against Rosemount Nuclear Instruments, Inc., for failing to notify the Commission of defects in pressure transmitters as required by 10 C.F.R. Part 21, and asking the NRC to notify all users of Rosemount transmitters and trip devices of "significant safety problems" found during an NRC inspection.

DD-94-13 HOUSTON LIGHTING AND POWER COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498, 50-499; REQUEST FOR ACTION; December 20, 1994; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director of the Office of Nuclear Reactor Regulation grants in part and denies in part a petition submitted pursuant to 10 C.F.R. § 2.206 by Mr. Thomas J. Saporito (Petitioner) requesting action with regard to the South Texas Project (STP), Units 1 and 2, of the Houston Power and Lighting Company (HL&P or the Licensee).
- B Petitioner requested the NRC to issue civil penalties against the Licensee and/or Licensee management personnel at STP for discrimination. This request has been granted insofar as the NRC on October 26, 1994, issued HL&P a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$100,000 for a violation of 10 C.F.R. § 50.7.
- C With regard to the Petitioner's request for the NRC to institute a show-cause action pursuant to 10 C.F.R. § 2.202 to modify, suspend, or revoke HL&P's NRC operating licenses authorizing the operation of STP, Units 1 and 2, and that the NRC take appropriate actions to cause the immediate shutdown of the two

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reactor cores at STP, the Director finds that the Petitioner has not raised substantial health or safety issues in the petition and denies those portions of the petition.

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