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INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

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U.S. NUCLEAR REGULATORY COMMISSION

MASTER

Prepared by the
Office of Information Resources Management
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(301-415-6844)

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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 Decisions on 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 (operating license, operating license amendment, 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. Headers and Digests

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 Judges (ALJ), the Directors' Decisions (DD), and the Decisions on 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 alpha-numerical 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

This 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-96-8 LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; October 2, 1996; ORDER

A The Commission considers a petition for review of an Atomic Safety and Licensing Board Partial Initial Decision, LBP-96-7, 43 NRC 142 (1996). The Petitioner requested review of only that section in the decision that resolved all contentions on emergency planning in favor of the Applicant. The Commission grants the petition for review in part and denies the petition in part. The Commission grants the petition only on a single issue: whether the Applicant's emergency plan clearly describes the intended role and training of the Applicant's onsite fire brigade. Finding that the Applicant has adequately clarified the role of the onsite fire brigade, the Commission finds no need to remand this question to the Board. The Commission orders that appropriate revisions be made to the Safety Analysis Report (SAR) and Safety Evaluation Report (SER) to reflect the clarified understanding of the onsite fire brigade's role.

B Established NRC practice permits the licensing board, where appropriate, both to refer minor safety matters to the NRC Staff for posthearing resolution, and to make predictive findings on emergency planning that will be subject to posthearing verification. But only those matters not material to the basic findings necessary for issuance of a license may be referred to the NRC Staff for posthearing resolution — e.g., minor procedural or verification questions.

CLI-96-9 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM; DECOMMISSIONING; October 18, 1996; ORDER

A The Atomic Safety and Licensing Board issued a decision and order granting Yankee Atomic Electric Company's Motion for Summary Disposition in this decommissioning proceeding. LBP-96-18, 44 NRC 86 (1996). The Intervenor (Citizens Awareness Network and New England Coalition on Nuclear Pollution) filed with the Commission a Petition for Review of LBP-96-18 and also sought to stay the effectiveness of LBP-96-18 pending Commission consideration of their Petition for Review. The Commission concludes that the Intervenor's Petition for Review raises no substantial questions calling for Commission review of the Board's grant of summary disposition, and therefore denies the Petition for Review and dismisses the Stay Motion as moot. However, the Commission imposes an administrative stay to permit a reviewing court to consider in an orderly way any request for judicial stay that the Intervenor may file.

CLI-96-10 U.S. ENRICHMENT CORPORATION (Paducah, Kentucky, and Piketon, Ohio), Docket Nos. 70-7001, 70-7002; REQUEST FOR ACTION; MEMORANDUM AND ORDER

A The Commission considers four petitions for review of an initial Director's decision approving certificates for compliance for the U.S. Enrichment Corporation's gaseous diffusion plants in Piketon, Ohio, and Paducah, Kentucky. For failure to meet the requirements of 10 C.F.R. Part 76, the Commission denies two petitions for review, and refers these petitions to the NRC Staff for review and response. On the ground that no "good cause" was shown, the Commission denies a request for an extension of the time period for seeking Commission review of, and submitting comments on, the Director's decision. The Commission also denies a request that any interested party be permitted to file a petition for review; only those parties that participated in the initial comment stage may petition for review of the Director's decision under Part 70.

B To be eligible to petition for review of a Director's Decision on the certification of a gaseous diffusion plant, an interested party must have either submitted written comments in response to a prior

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Federal Register notice, or provided oral comments at an NRC meeting held on the application or compliance plan. 10 C.F.R. § 76.62(c).

- C Part 76 contemplates a Commission decision on petitions for review of certification decisions within a relatively short (60-day) time period. See 10 C.F.R. § 76.62(c). Extending the Part 76 petition deadline in the absence of a strong reason is not compatible with the contemplated review period.

CLI-96-11 EMERICK S. McDANIEL (Denial of Application for Reactor Operator License), Docket No. 55-21849-OT; REACTOR OPERATOR LICENSE; November 13, 1996; ORDER

- A On September 11, 1996, Mr. Emerick S. McDaniel filed a Petition for Review of the Initial Decision in this case, LBP-96-17, 44 NRC 79 (1996), in which the Presiding Officer rejected Mr. McDaniel's challenge to the NRC Staff's rejection of his claim that he had passed his reactor operator examination. The Commission denies the Petition for Review because it fails to raise any substantial question justifying Commission review as provided under 10 C.F.R. § 2.786(b)(4), incorporated into Subpart L in 10 C.F.R. § 2.1253.

CLI-96-12 U.S. ENRICHMENT CORPORATION (Paducah, Kentucky, and Piketon, Ohio), Docket Nos. 70-7001, 70-7002; REQUEST FOR ACTION; November 22, 1996; MEMORANDUM AND ORDER

- A The Commission denies two motions for reconsideration of CLI-96-10, 44 NRC 114 (1996), which rejected two petitions for review of an Initial Director's Decision approving certificates of compliance for the United States Enrichment Corporation's gaseous diffusion plants in Piketon, Ohio, and Paducah, Kentucky. The Commission also denies two petitions for review of the initial Director's decision and rejects a third petition for review as late-filed.

- B To be eligible to petition for review of a Director's Decision on the certification of a gaseous diffusion plant, an interested party must have either submitted written comments in response to a prior Federal Register notice or provided oral comments at an NRC meeting held on the application or compliance plan. 10 C.F.R. § 76.62(c).

- C Individuals who wish to petition for review of an initial Director's decision must explain how their "interest may be affected." 10 C.F.R. § 76.62(c). For guidance, petitioners may look to the Commission's adjudicatory decisions on standing. See, e.g., Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115-17 (1995).

- D No environmental assessment or environmental impact statement is required for the issuance, amendment, modification, or renewal of a certificate of compliance of gaseous diffusion enrichment facilities pursuant to 10 C.F.R. Part 76. 10 C.F.R. § 51.22(c)(19). Although NRC regulations do not require a general review of the environmental impacts associated with the issuance of certificates of compliance, an environmental assessment of the impacts of compliance plan approval is required.

- E An analysis of potential accidents and consequences is required by 10 C.F.R. § 76.85 and should include plant operating history that is relevant to the potential impacts of accidents.

CLI-96-13 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 1), Docket No. 50-440-OLA-3; OPERATING LICENSE AMENDMENT; December 6, 1996; MEMORANDUM AND ORDER

- A The Commission reviews an Atomic Safety and Licensing Board decision that concluded that any change to the Perry Nuclear Power Plant's withdrawal schedule for reactor vessel material specimens must be treated as a license amendment, and granted the Intervenor's motion for summary disposition. LBP-95-17, 42 NRC 137 (1995). The Commission reverses and vacates the Licensing Board's decision. The Commission finds that not all agency approvals granted to licensees constitute license amendments.

- B Section II.B.3 of 10 C.F.R. Part 50, Appendix H, requires licensees to seek prior NRC Staff approval for all material specimen withdrawal schedule changes.

- C In evaluating whether an NRC authorization represents a license amendment within the meaning of section 189a of the Atomic Energy Act, courts repeatedly have considered whether the NRC approval granted the licensee any greater operating authority or otherwise altered the original terms of a license.

- D Where an NRC approval does not permit the licensee to operate in any greater capacity than originally prescribed and all relevant regulations and license terms remain applicable, the authorization does not amend the license.

- E Any changes to the material specimen withdrawal schedule that conform to the ASTM standard referenced in Appendix H will not exceed the operating authority already granted under the licensee's

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license and therefore will not represent a license amendment. That the NRC Staff may wish to verify in advance that a proposed withdrawal schedule revision conforms to the required technical standard does not make the Staff approval a license amendment.

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LBP-96-13 EMERICK S. McDANIEL (Denial of Application for Reactor Operator License), Docket No. 55-21849-OT (ASLBP No. 96-716-01-OT) (Re: License Amendment) (Transfer to Southern Nuclear); REACTOR OPERATOR LICENSE; July 12, 1996; MEMORANDUM AND ORDER (Scheduling)

LBP-96-14 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM (ASLBP No. 96-718-01-R); DECOMMISSIONING; July 12, 1996; MEMORANDUM AND ORDER (Granting Motion to Videotape Prehearing Conference)

A The Licensing Board grants a participant request to videotape a prehearing conference, finding that, although language in a 1978 policy statement appears to restrict television and still camera coverage of Board proceedings to accredited news media, it is apparent under current agency practice there is no such limitation.

B The Commission's general statement of policy on camera coverage of Licensing Board hearings sets conditions for the use of television and still cameras "by accredited news media." 43 Fed. Reg. 4294 (1978). However, under current agency practice, any individual or organization may videotape a Commission-conducted open meeting so long as their activities do not disrupt the proceeding. See U.S. Nuclear Regulatory Commission, "A Guide to Open Meetings," NUREG/BR-0128, Rev. 2 (4th ed.) ("Conduct in the Meeting Room . . . e. You may . . . film, photograph or video tape meetings using cameras in designated fixed positions without additional lighting." (emphasis in original)). As a consequence, the general policy statement on cameras at Board hearings, which was adopted in 1978 on a "trial basis," no longer appears to reflect agency practice to the degree it would preclude anyone other than the news media from videotaping Board proceedings.

C Videotaping of a Board proceeding must be done in a manner that does not present an unacceptable distraction to the participants or otherwise disrupt the proceeding. To this end, anyone videotaping a proceeding held in the Atomic Safety and Licensing Board Panel Hearing Room must abide by the following conditions: (1) Cameras must remain stationary in the designated camera area of the Licensing Board Panel Hearing Room. (2) No additional lighting is permitted. (3) No additional microphones will be permitted outside of the designated camera area. A connection is available in the designated camera area that provides a direct feed from the hearing room audio system.

D As was noted in the 1978 policy statement, 43 Fed. Reg. 4294, in instances when a Licensing Board is using other facilities, such as a state or federal courtroom, the Board generally will follow the camera policy governing that facility, even if it is stricter than the agency's camera policy. Nonetheless, the Board reserves the right to impose restrictions beyond those generally used at the facility to prevent disruption of the proceeding and maintain an appropriate judicial atmosphere.

E The Board may terminate videotaping at any time it concludes a videotape-related activity is being carried out in a manner that interferes with the good order of the proceeding.

LBP-96-15 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM (ASLBP No. 96-718-01-R); DECOMMISSIONING; July 31, 1996; MEMORANDUM AND ORDER (Admitting Contention and Establishing Litigation Schedule Regarding "New Dose Argument")

A In this proceeding concerning citizen group challenges to the decommissioning plan for the Yankee Nuclear Power Station, acting pursuant to the Commission's directive in CLI-96-7, 43 NRC 235 (1996), to consider whether information filed with the Commission after the Licensing Board dismissed the proceeding for want of any litigable contentions will now provide for an admissible contention, the Board concludes that (1) a balancing of the five "late-filing" factors in 10 C.F.R. § 2.714(a)(1) establishes the Petitioners'

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- new information should not be stricken, and (2) a portion of the Petitioners' new information provides a sufficient basis to admit a contention.
- B** Contentions play a vital role in agency licensing adjudications by framing the issues for consideration. See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-25, 14 NRC 241, 243 (1981).
- C** A lack of precision about what is a contention and what are its bases serves to obfuscate the general principle that contentions, not bases, are litigated in NRC adjudications.
- D** Exercising his or her general authority to simplify and clarify the issues, see 10 C.F.R. § 2.714(f), a presiding officer can recast what a petitioner sets out as two contentions into one.
- E** A Commission direction to the presiding officer to consider the admissibility of a particular late-filed matter does not preclude the presiding officer from giving the same consideration to other late-filed information submitted by a petitioner relevant to that matter. Cf. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979) (in remand proceeding on management capability issue, additional petitioners' attempt to seek late intervention to participate on that issue must be assessed under late-intervention criteria).
- F** Although a presiding officer must assess all five factors in determining whether to admit a late-filed issue, all the factors need not be given equal weight. In this connection, considerable importance generally has been attributed to factor one — "good cause" for late filing — in that a failure to meet this factor enhances considerably the burden of justifying the other factors. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 397 (1983); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-82-91, 16 NRC 1364, 1367 (1982); see also Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 22 (1977) (when good cause is demonstrated, other factors are given less weight).
- G** Among the other four "late-filing" factors, factors three and five — contribution to a sound record and broadening issues/delay in the proceeding — generally have been considered as having the most significance in proceedings in which there are no other parties or ongoing related proceedings. See Shoreham, ALAB-743, 18 NRC at 399, 402; see also South Texas, LBP-82-91, 16 NRC at 1368.
- H** Generally a "good cause" finding based on "new information" can be resolved by a straightforward inquiry into when the information at issue was available to the petitioner. In some instances, however, the answer to the "good cause" factor may involve more than looking at the dates on the various documents submitted by the petitioners. Instead, the inquiry turns on a more complex determination about when, as a cumulative matter, the separate pieces of the new information "puzzle" were sufficiently in place to make the particular concerns espoused reasonably apparent.
- I** The technical nature of the issues involved in a proceeding cuts against an assertion that the legal acumen of counsel in NRC proceedings should be given weight under the "late-filing" factor regarding assistance in developing a sound record. And, notwithstanding the fact an intervenor is entitled to make its case through cross-examination, that factor cannot be weighed favorably when the presiding officer has no reason to anticipate that cross-examination by counsel will be the sole means, or even the central method, for establishing the petitioner's case. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 NRC 912, 926 (1987).
- J** In assessing the "late-filing" factor of assistance in developing a sound record, the need to conduct discovery no doubt may excuse a lack of specificity about potential witnesses' testimony in those nontechnical cases where any testimonial evidence likely will come from licensee employees or contractors. See Comanche Peak, ALAB-868, 25 NRC at 925-26.
- K** An assertion that the "late-filing" factor regarding broadening the issues and delaying the proceeding takes on added significance because of the impact of delay on the applicant's ability to conduct activities for which it needs authorization does not comport with the established rule that "a licensing board [is] to determine whether the proceeding — not license issuance or plant operation — will be delayed." Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 NRC 13, 23 (1986) (footnote omitted).
- L** Because a petitioner who otherwise has standing can put forth any contention that would entitle that petitioner to the relief it seeks, see CLI-96-1, 43 NRC 1, 6 (1996), in deciding whether to admit a late-filed contention the petitioner otherwise would be entitled to litigate, the fact the petitioner's contentions

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focus primarily on matters that will protect the interests of others does not mean the petitioner's "interest" should be afforded short shrift in assessing the late-filing factors of whether other means or other parties will protect the petitioner's interests.

M A presiding officer cannot consider a motion for summary disposition, with supporting affidavits, in connection with a determination about the admissibility of a contention.

N One possible answer to a motion for summary disposition is the assertion that discovery is needed to respond fully to the motion. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-92-8, 35 NRC 145, 152 (1992). Such a request generally should be made in a pleading supported by an affidavit. See *id.* The functional equivalent of such a filing may be the statements of counsel during a prehearing conference outlining the discovery needed to support the party's case.

LBP-96-16 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 19, 1996; MEMORANDUM AND ORDER (Motions: Reconsideration, Termination of the Proceeding)

A The case was dismissed after the sole intervenor withdrew his petition and contention pursuant to a settlement with Georgia Power Company, et al. The Licensing Board determined that the withdrawal could be permitted after reviewing the effect of the withdrawal on the issues pending in the proceeding. It determined, without reviewing the settlement agreement, that it was in the public interest to accept the withdrawal of the petition and the contention.

B When a party requests to withdraw a petition pursuant to a settlement, it is appropriate for a licensing board to review the settlement to determine whether it is in the public interest. 10 C.F.R. § 2.759. When the board has held extensive hearings and has analyzed the record, it may not need to see the settlement agreement in order to conclude that the withdrawal of the petition is in the public interest.

C Intervenor requested to withdraw his petition. The Licensing Board, knowing that the withdrawal was pursuant to a settlement agreement, reviewed the settlement to determine if it was in the public interest. 10 C.F.R. § 2.759.

D The Board had held extensive hearings and had analyzed the record. It was convinced, even without seeing the settlement agreement, that the withdrawal of the petition was in the public interest.

LBP-96-17 EMERICK S. McDANIEL (Denial of Application for Reactor Operator License), Docket No. 55-21849-OT (ASLBP No. 96-716-01-OT) (Re: License Amendment) (Transfer to Southern Nuclear); REACTOR OPERATOR LICENSE; September 3, 1996; INITIAL DECISION

A After reviewing in detail each of the claims made in this informal proceeding, conducted under 10 C.F.R. Part 2, Subpart L, the Presiding Officer sustained the Staff of the Nuclear Regulatory Commission in its determination that the applicant did not pass the written portion of his examination to become a licensed operator of a nuclear power plant.

LBP-96-18 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM (ASLBP No. 96-718-01-R); DECOMMISSIONING; September 27, 1996; MEMORANDUM AND ORDER (Granting Motion for Summary Disposition)

A In this proceeding concerning citizen group challenges to the decommissioning plan for the Yankee Nuclear Power Station, the Licensing Board grants Licensee Yankee Atomic Electric Company's (YAEC) motion for summary disposition. The Board concludes the Intervenor failed to establish any genuine disputed material factual issues regarding YAEC's showing that the differential between the total occupational doses associated with facility decommissioning under its chosen DECON decommissioning option and the alternative SAFSTOR option would not fall outside of the generic DECON/SAFSTOR differential "envelope" previously recognized by the Commission as significant in assessing whether a licensee's choice of the DECON decommissioning option would transgress either the principle that radiation doses should be kept "as low as reasonably achievable" (ALARA) or the dictates of the National Environmental Policy Act of 1969 (NEPA).

B The party filing a summary disposition motion has the burden of demonstrating the absence of any genuine issue of material fact. See Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993). In this regard, 10 C.F.R. § 2.749(a) requires that the moving party include a statement of material facts about which there is no genuine issue to be heard. In contrast, the opposing party must append to its response a statement of material facts about which there exists a genuine

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issue to be heard. If the responding party does not adequately controvert material facts set forth in the motion, the party faces the possibility that those facts may be deemed admitted. If, however, the evidence before the Board does not establish the absence of a genuine issue of material fact, then the motion must be denied even if there is no opposing evidence. See *Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2)*, ALAB-443, 6 NRC 741, 753-54 (1977). Nevertheless, a party opposing a motion cannot rely on a simple denial of the movant's material facts, but must set forth specific facts showing there is a genuine issue of material fact. See 10 C.F.R. § 2.749(b).

C A presiding officer need consider only those purported factual disputes that are "material" to the resolution of the issues raised in a summary disposition motion. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (factual disputes that are "irrelevant or unnecessary" will not preclude summary judgment).

D In opposing summary disposition by seeking to establish the existence of a genuine dispute regarding a material factual issue, a party must present sufficiently probative evidence. See *Anderson*, 477 U.S. at 249 (evidence that is "merely colorable" or is "not significantly probative" will not preclude summary judgment).

E In opposing summary disposition by seeking to establish the existence of a genuine dispute regarding a material factual issue, a party that had discovery following the filing of the dispositive motion generally cannot interpose claims based on a lack of information as the valid basis for a genuine material factual dispute.

F In opposing summary disposition by seeking to establish the existence of a genuine dispute regarding a material factual issue, a party's bald assertion, even when supported by an expert, will not establish a genuine material factual dispute. See *United States v. Various Slot Machines on Guam*, 658 F.2d 697, 700 (9th Cir. 1981) (in the context of a summary judgment motion, an expert must back up his opinion with specific facts); see also *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 807 (9th Cir. 1988) (expert's study based on "unsupported assumptions and unsound extrapolation" cannot be used to support summary judgment motion).

G The following technical issues are discussed: Proportionality between occupational exposure rate for completed decommissioning activities and exposure rate for additional radioactive inventory.

LBP-96-19 JAMES L. SHELTON (Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)), Docket No. IA 95-055 (ASLBP No. 96-712-01-EA), and TESTCO, INC. (Order Imposing Civil Monetary Penalty; General License), Docket No. 150-00032-EA (ASLBP No. 96-719-04-EA) (EA 95-101); ENFORCEMENT ACTION; October 1, 1996; MEMORANDUM AND ORDER (Approving Settlement Agreement)

A The Atomic Safety and Licensing Board approves a settlement agreement in a consolidated enforcement proceeding.

LBP-96-20 JUAN GUZMAN (Order Prohibiting Unescorted Access or Involvement in NRC-Licensed Activities), Docket No. IA 96-020 (ASLBP No. 96-715-03-EA); ENFORCEMENT ACTION; October 16, 1996; MEMORANDUM AND ORDER (Approving Settlement Agreement and Dismissing Proceeding)

LBP-96-21 WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS Nuclear Project No. 3), Docket No. 50-508-OL (ASLBP No. 83-486-01-OL); OPERATING LICENSE; October 16, 1996; MEMORANDUM AND ORDER (Withdrawal of Application)

A The Atomic Safety and Licensing Board grants the Applicant's motion to withdraw its operating license application and to terminate the proceeding.

B The NRC cannot delegate to a local group the responsibility under the National Environmental Policy Act (NEPA) to prepare an environmental assessment (EA). The EA must be prepared by NRC, not a local agency, although in preparing an EA the Staff may take into account site uses proposed by a local agency.

C Termination of an operating license application gives rise to a need, pursuant to 10 C.F.R. § 51.21, for an EA to consider the impacts of the termination.

D Because a construction permit termination would appear to have impacts that encompass operating license termination impacts, one EA would appear to suffice for both actions.

LBP-96-22 NORTHERN STATES POWER COMPANY (Independent Spent Fuel Storage Installation), Docket No. 72-18-ISFSI (ASLBP No. 97-720-01-ISFSI); INDEPENDENT SPENT FUEL STORAGE INSTALLA-

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TION; October 24, 1996; MEMORANDUM AND ORDER (Schedules for Further Filings and for Prehearing Conference)

- A In a proceeding in which a license for an independent dry cask spent fuel storage installation is being sought, the Atomic Safety and Licensing Board describes standards for intervention and establishes dates for amending petitions and for the initial prehearing conference.
- B State agencies may choose to participate either as a party under 10 C.F.R. § 2.714 or as an interested state under 10 C.F.R. § 2.715(c). To participate under 10 C.F.R. § 2.714, a state agency must satisfy the same standards as an individual petitioner.
- C To participate under 10 C.F.R. § 2.714, a petitioner must establish its standing, must indicate the aspects of the proceeding in which it seeks to participate, and must proffer at least one acceptable contention.
- D In determining whether a petitioner has the requisite standing, the Commission uses contemporaneous judicial concepts of standing. Under those standards, the petitioner must demonstrate (1) that it has suffered or will likely suffer "injury in fact" from the proposed licensing action; (2) that the injury is arguably within the zones of interest sought to be protected by the statute being enforced; and (3) that the injury is redressable by a favorable decision in the proceeding.
- E A group may demonstrate that it has suffered or will likely suffer injury in fact either through organizational injury or injury to a member that it represents.
- F Indian Tribes have been permitted to intervene as an entity, without demonstrating that a particular tribe member has an interest and wishes to be represented by the tribe. They also have participated in the more routine manner of identifying a tribe member who has individual standing but wishes tribe representation.

LBP-96-23 GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Oyster Creek Nuclear Generating Station), Docket No. 50-219-OLA (ASLBP No. 96-717-02-OLA); OPERATING LICENSE AMENDMENT; October 25, 1996; MEMORANDUM AND ORDER (Ruling on Intervention Petition)

- A In this proceeding concerning citizen group challenges to a proposed technical specification change regarding heavy load handling over the Oyster Creek Nuclear Generating Station spent fuel pool, the Licensing Board rules (1) Petitioners Nuclear Information Resource Service (NIRS) and the Oyster Creek Nuclear Watch (OCNW) have established representational standing as of right; (2) Petitioner Citizens Awareness Network has failed to show either that it is entitled to standing as of right or that it should be given discretionary standing, but nonetheless will be permitted to participate as an amicus curiae; and (3) Petitioners NIRS and OCNW have put forth an admissible legal contention regarding validity of the proposed technical specification revision under the agency's "defense-in-depth" policy.
- B A technical specification is a license condition, and a licensee request to change that condition constitutes a request to amend the license that creates adjudicatory hearing rights under Atomic Energy Act § 189a, 42 U.S.C. § 2239(a). See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 91 n.6, 93 (1993).
- C To have standing to participate as of right in a proceeding regarding an agency licensing action, a petitioner must demonstrate that (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury in fact within the zone of interests arguably protected by the governing statute; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. In addition, when an organization seeks to intervene on behalf of its members, that entity must show it has an individual member who can fulfill all the necessary elements and who has authorized the organization to represent his or her interests. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).
- D In making a standing determination, a presiding officer is to "construe the [intervention] petition in favor of the petitioner." Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).
- E Relative to a threshold standing determination, even minor radiological exposures resulting from a proposed licensee activity can be enough to create the requisite injury in fact. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 70, aff'd, CLI-96-7, 43 NRC 235, 246-48 (1996).
- F If individuals relied upon to establish representational standing for an organization fail to indicate they are members of that organization, their proximity to the facility cannot be used as a basis for

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representational standing. See Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 530-31 (representational standing not present when individual relied on for standing is not organization member, but only representative of another organization), *aff'd*, CLI-91-13, 34 NRC 185 (1991).

G Concern that "bad precedent" may be set in proceeding that could impact the petitioner's ability to contest similar matters in another proceeding is "generalized grievance" that is "too academic" to provide the requisite injury in fact needed for standing as of right. See Ohio Edison Co. (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 248-49 (1991), *aff'd* as to another ruling, CLI-92-11, 36 NRC 47 (1992), petition for review dismissed, *City of Cleveland v. NRC*, 68 F.3d 1361 (D.C. Cir. 1995).

H Under the six-factor test for discretionary intervention, a primary consideration is the first factor of assistance in developing a sound record. See Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 617 (1976).

I Although requests for amicus curiae participation do not often arise in the context of Licensing Board hearings — in which factual questions generally predominate — because an amicus customarily does not present witnesses or cross-examine other parties' witnesses, this happenstance "does not preclude the granting of leave in appropriate circumstances to file briefs or memoranda amicus curiae (or to present oral argument) on issues of law or fact that still remain for Licensing Board consideration." Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 150 (1987). Thus, in the context of a proceeding in which a legal issue predominates, permitting a petitioner that lacks standing to file an amicus pleading addressing that issue is entirely appropriate.

J Particularly in the context of dealing with pro se petitioners, a finding regarding a contention's specificity should include consideration of the contention's bases. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988) (both contention and stated bases should be considered when question arises regarding admissibility of contention).

K If clear regulatory constraint mandates that a licensee take (or not take) a particular action, to gain the admission of a contention founded on the premise the licensee will not follow that requirement, a petitioner must make some particularized demonstration that there is a reasonable basis to believe the licensee would act contrary to the explicit terms of that regulatory requirement.

L In responding to a summary disposition motion, a party can assert, with appropriate supporting affidavits, that it needs discovery to answer the dispositive motion. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-92-8, 35 NRC 145, 152 (1992).

LBP-96-24 **SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS** (Gore, Oklahoma Site Decontamination and Decommissioning Funding), Docket No. 40-8027-EA (ASLBP No. 94-684-01-EA) (Source Material License No. SUB-1010); **ENFORCEMENT ACTION**; November 5, 1996; **MEMORANDUM AND ORDER** (Approval of Settlement Agreement and Dismissal of Case)

A This decision approves a settlement agreement between the Nuclear Regulatory Commission Staff and General Atomics, thereby terminating this proceeding.

B The licensing board's function in reviewing settlement agreements, as delineated in 10 C.F.R. § 2.203, calls for settlements to be approved by the board and an adjudication of any issues that may be required in the public interest to dispose of the proceeding.

C The rationale for providing due weight to the position of the Staff may be grounded on the merited understanding that, in the end, the Staff is responsible for maintaining protection for the health and safety of the public and, in the absence of evidence substantiating challenges to the exercise of that responsibility, the Staff's position should be upheld.

D The issue is not whether the matter before the Board presents the best settlement that could have been obtained. The Board's obligation instead is merely to determine whether the agreement is "within the reaches of the public interest." *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (1975).

LBP-96-25 **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**; December 3, 1996; **PARTIAL INITIAL DECISION** (Resolving Contentions J.4, K, and Q)

A In this Partial Initial Decision in the combined construction permit-operating license proceeding for the Claiborne Enrichment Center, the Licensing Board resolves in favor of the Intervenor environmental contentions J.4 and K concerning the adequacy of the NRC Staff's treatment in the final environmental

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impact statement of the need for the facility and the no-action alternative and contention Q concerning the Applicant's financial qualifications to construct the proposed facility.

- B The NRC, not the Applicant, has the burden of complying with NEPA. *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, CLI-83-19, 17 NRC 1041, 1049 (1983). But the label of a contention as an environmental or NEPA contention does not automatically allocate the burden of proof. Rather, it is the subject matter of the contention that determines upon whom the burden technically falls.
- C The study and description of alternatives is the "linchpin" of the environmental impact statement process. *Monroe County Conservation Council, Inc. v. Volpe*, 472 F.2d 693, 697-98 (2d Cir. 1972).
- D NEPA's requirement of a "detailed statement" serves a number of purposes. First, it requires the agency to compile a reviewable environmental record demonstrating the agency has made a good faith effort to consider the environmental values NEPA seeks to safeguard and taken a hard look at the environmental consequences of its action. Second, the detailed statement serves as an environmental full disclosure law providing agency decisionmakers, as well as the President, the Congress, the Council on Environmental Quality, and the public the environmental cost-benefit information that Congress thought they should have about each qualifying federal action. Third, "the requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug." *Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973).
- E Although the action-forcing procedures of NEPA "are almost certain to affect the agency's substantive decision, it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).
- F It is clear that 10 C.F.R. § 51.45(c) requires the Applicant to include in its Environmental Report (ER) a cost-benefit analysis of the proposed facility. In the words of the regulation, that analysis must "consider[] and balance[]" the various environmental effects or costs of the proposal against the various "environmental, economic, technical and other benefits" of the project. The "need" for the facility is simply a catchword for the principal or primary benefit of the proposed facility that goes on the benefit side of the cost-benefit ledger. A cost-benefit analysis cannot be performed consistent with the Commission's regulations and section 102(2) of NEPA without weighing the benefits or need for the project on one side of the equation with the costs or environmental effects of the project on the other side.
- G The Commission's regulations specifically direct that the Staff's final environmental impact statement address the need for the proposed facility. See 10 C.F.R. Part 51, Appendix A; 10 C.F.R. §§ 51.70(b), 51.90.
- H Labeling the regulatory requirement as the "need" for the proposed facility is merely a shorthand expression to describe the principal beneficial factor that is to be weighed against the various costs of the proposal in striking the cost-benefit balance required by NEPA and the Commission's implementing regulations.
- I Whatever the principal benefit provided by the proposed facility, it must be addressed in the final environmental impact statement as the need for the facility and, "to the fullest extent practicable," the benefit must be quantified.
- J Because the need for the proposed facility is definitionally the primary benefit against which the various costs of the project are weighed in the cost-benefit analyses and NEPA does not dictate any substantive outcome for the cost-benefit balancing process, the principal benefit of the project does not have to arise to any minimum level or meet any other prescribed standard.
- K Because NEPA and the Commission's implementing regulations require the Staff to address the no-action alternative in the final environmental impact statement, and the Commission's regulations, in turn, require the Applicant to discuss in the ER the alternatives to the proposed action that will help the Staff to develop and explore the alternatives that must be discussed under section 102(2)(E) of NEPA, section 51.45(b) necessarily requires the Applicant to address the no-action alternative in its environmental report.
- L The adequacy of the Staff's treatment of the no-action alternative in the final environmental impact statement must be judged by the rule of reason. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991).
- M Pursuant to the general interpretational rule that statutory or regulatory provisions that relate to the same subject matter should be construed in *pari materia* (see 2B Sutherland Stat. Const. §§ 51.01, 51.03 (5th ed. 1992)), 10 C.F.R. § 50.33(f), as the other agency regulatory provision dealing with financial

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qualifications, is the likely source for obtaining insight about how to interpret the general language of the Note following 10 C.F.R. § 70.22(a)(8).

- N The history of the Commission's Part 50 and Part 70 financial qualifications requirements fully supports a parallel construction of those regulations in terms of the showing necessary to establish that an applicant "appears to be financially qualified" under 10 C.F.R. § 70.23(a)(5).

LBP-96-26 NORTHERN STATES POWER COMPANY (Independent Spent Fuel Storage Installation), Docket No. 72-18-ISFSI (ASLBP No. 97-720-01-ISFSI); INDEPENDENT SPENT FUEL STORAGE INSTALLATION; December 3, 1996; MEMORANDUM AND ORDER (Motion to Suspend Proceeding)

- A In a proceeding involving a proposed license for an independent dry-cask spent fuel storage installation, the Atomic Safety and Licensing Board grants the Applicant's motion to suspend the proceeding, pending resolution in state court of a state agency's determination concerning site suitability. The Licensing Board also denies a cross motion to dismiss the application without prejudice. The Board imposes quarterly reporting requirements on the Applicant during the suspension period.

- B In a situation where a particular course of action by an Applicant is being challenged under state law, whether or not that action is a violation of state law is not a question for which a Licensing Board is an appropriate arbiter but rather is a question for state authorities to determine.

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DD-96-9 CHEMETRON CORPORATION, INC. (Cleveland, Ohio), Docket No. 040-08724; REQUEST FOR ACTION; July 3, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Material Safety and Safeguards grants, in part, Petitioner's request under 10 C.F.R. § 2.206 that NRC compel Chemetron to commence action to decontaminate the Harvard Avenue site to the extent this is required by the License Amendments of May 25, 1993, and June 7, 1996, and the Orders dated May 5, 1992, and October 26, 1993; to the extent these actions were not taken in the time originally specified by Petitioner, this request is denied. In addition, the Director denies Petitioner's second request that NRC impose sanctions against Chemetron for failing to comply with its November 14, 1988 Confirmation of Commitment to decontaminate the Harvard Avenue site. On March 22, 1989, the Director formally acknowledged receipt of the petition and denied the Petitioner's request for immediate relief because NRC considered that Chemetron's actions demonstrated minimally sufficient progress toward decontamination.

B For violations of NRC requirements relating to sites on the Site Decommissioning Management Plan, the NRC will consider civil penalties where (1) the licensee or responsible party fails to comply with an order compelling payment into an escrow account; or (2) the licensee or responsible party fails to comply with a requirement or an order compelling cleanup when there is already sufficient decommissioning funding. "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites" (April 10, 1992).

DD-96-10 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant), Docket No. 50-390; REQUEST FOR ACTION; July 9, 1996; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denied Petitioner's request under 10 C.F.R. § 2.206 that the NRC rescind the operating license of the Watts Bar Nuclear Plant (WBNP) due to what Petitioner claimed was a previously unreviewed problem related to radioactive sediments in the "Watts Bar Lake" (Lower Watts Bar Reservoir (LWBR)). The Director found that sediment from the LWBR could not be drawn into WBNP's cooling water as the LWBR is downstream from the plant. The Director also noted, with regard to Petitioner's claim that no action is being considered to remove radioactive material from the LWBR or restrict use of that body of water, that a DOE report on the reservoir describes selected remedial action to be taken with regard to the LWBR. Finally, the Director noted controls in place at WBNP to prevent radioactive material from being discharged into the environment and that the facility meets applicable NRC requirements sufficient to allow it to operate.

DD-96-11 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 1), Docket No. 50-390; August 15, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By a letter dated January 25, 1996, and supplemented by a letter dated January 30, 1996, Ms. Jane A. Fleming (Petitioner) requested a fair and impartial review of the entire licensing process for the Watts Bar Nuclear Plant, Unit 1 (Watts Bar), operated by the Tennessee Valley Authority (TVA) and further requested that the low-power license for Watts Bar be suspended or revoked until such review is completed and the issues in dispute are resolved. The request was considered as a petition submitted pursuant to 10 C.F.R. § 2.206.

B In a Director's Decision issued on August 15, 1996, the Director of Nuclear Reactor Regulation denied the relief sought by Petitioner. The Director concluded that Petitioner had failed to provide a basis to warrant a review of the Watts Bar licensing process and has failed to raise any safety concerns that would warrant suspension or revocation of the operating license for Watts Bar.

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DD-96-12 ALL NUCLEAR POWER PLANTS, All Dockets (All Licenses); REQUEST FOR ACTION; September 26, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By petition dated March 5, 1996, Petitioner Charles Morris requested that the operating licenses of all nuclear power plants be immediately suspended, and remain suspended due to what Petitioner saw as a need to correct repeated errors in the plants' undervoltage relay setpoints and electrical distribution system designs. Petitioner provided a number of reasons to support his request.

B In a Director's Decision dated September 26, 1996, the Director of Nuclear Reactor Regulation denied the relief sought by Petitioner, concluding that no substantial health and safety issues had been raised by Petitioner to warrant the action requested, as the NRC Staff had adequately addressed Petitioner's concerns. With regard to the request for immediate suspension, the Director concluded that licensees had to a large degree also already addressed the issues raised by Petitioner.

DD-96-13 FLORIDA POWER CORPORATION (Crystal River Nuclear Generating Plant, Unit 3), Docket No. 50-302; REQUEST FOR ACTION; October 7, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director grants a petition filed by Mr. Louis D. Putney, Esq., on behalf of Barry L. Bennett, to the extent that it requested the NRC to determine the validity of alleged security deficiencies at Crystal River Nuclear Generating Plant, Unit 3 (CR3). Most of the allegations were not substantiated. The Acting Director denies the petition to the extent that it requested the Acting Director to institute a proceeding to suspend or revoke the operating license of CR3, pursuant to 10 C.F.R. § 2.202, upon confirmation of the validity of the allegations. The Acting Director determines that with respect to the Petitioner's substantiated concerns and other security concerns identified by the NRC Staff, the Licensee took appropriate action to correct the deficiencies and no further action is warranted.

B There is no regulatory requirement to report the results of drills to the NRC unless certain safeguards system weaknesses are discovered during the drills that could allow unauthorized or undetected access to protected or vital areas of the reactor. See 10 C.F.R. §§ 73.55 and 73.71.

DD-96-14 DUKE POWER COMPANY, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414 (License Nos. NFP-35, NPF-52); REQUEST FOR ACTION; October 10, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By a petition dated February 13, 1996, Charles Morris (Petitioner) requested that the U.S. Nuclear Regulatory Commission (NRC) suspend the operating licenses for the Catawba Nuclear Station (Catawba) and ten other unidentified licensees due to these plants lacking circuit breaker coordination. On May 1, 1996, Petitioner submitted an addendum to his petition, listing a number of cases involving nine other nuclear power plants for which lack of protective device coordination had been identified.

B In a Director's Decision dated October 10, 1996, the Acting Director of Nuclear Reactor Regulation denied the relief sought by Petitioner. With regard to Catawba's lack of circuit breaker coordination, the Director concluded that the Licensee had documented adequate technical justification for the lack of such coordination. With regard to the other plants mentioned in the petition and addendum, the Director concluded that those cases had already been addressed by way of the NRC's inspection report item closeout process.

DD-96-15 CLEVELAND ELECTRIC ILLUMINATING COMPANY (Perry Nuclear Power Plant, Unit 1; Davis-Besse Nuclear Power Station, Unit 1), Docket Nos. 50-440-A, 50-346-A; ANTITRUST; October 17, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A In a petition, dated January 23, 1996, and supplemented by letters dated May 31, and August 13, 1996, the City of Cleveland, Ohio, which owns and operates Cleveland Public Power, requested the Executive Director for Operations to take enforcement action against the Cleveland Electric Illuminating Company for allegedly violating the antitrust license conditions applicable to its nuclear units. The petition, which raised four specific issues, was referred to the Director, Office of Nuclear Reactor Regulation, for review pursuant to 10 C.F.R. § 2.206.

B In a Director's Decision issued on October 17, 1996, the Acting Director of Nuclear Reactor Regulation determined that no NRC proceeding should be instituted and no further regulatory action by the NRC is required regarding the issues raised by Petitioner. The Acting Director concluded that the matters raised were either effectively resolved by the Federal Energy Regulatory Commission (FERC) or are pending before FERC and are within its jurisdiction to decide; and the Petitioner otherwise failed to show it had been harmed.

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DD-96-16 NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 1), Docket No. 50-245 (License No. DPR-21); REQUEST FOR ACTION; October 31, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director of Nuclear Reactor Regulation has denied a petition by Anthony J. Ross that enforcement action be taken against Northeast Utilities and certain managers for violations involving the gas turbine battery, harassment and intimidation, and falsification of nuclear documents. Following his assessment of the petition, the Acting Director concluded that appropriate enforcement action had already been taken for certain of the Petitioner's concerns while other concerns were not substantiated so that additional enforcement action was not warranted and the petition should be denied.

B Technical issue discussed: maintenance and surveillance.

DD-96-17 NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 1), Docket No. 50-245 (License No. DPR-21); REQUEST FOR ACTION; October 31, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director of Nuclear Reactor Regulation has denied a petition by Anthony J. Ross that the NRC require Northeast Utilities to review all existing work orders for the past 10 or 12 years to ensure that Quality Assurance motor and connection work does not have certain deficiencies and take enforcement action against NU and its managers, based upon the Petitioner's assertions of intimidation and harassment and inadequate work control and procedure compliance. Following his review, the Acting Director has determined that none of the technical issues raised by the Petitioner reflect a lack of procedural compliance or warrant additional action by the Staff, and that the Petitioner's assertion of harassment and intimidation does not warrant any action.

B Technical issue discussed: quality assurance.

DD-96-18 ALL POWER REACTOR LICENSEES; REQUEST FOR ACTION; November 6, 1996; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director of the Office of Nuclear Reactor Regulation denies in part and grants in part a petition dated April 13, 1994, submitted to the Nuclear Regulatory Commission (NRC) by Mr. Paul M. Blanch (Petitioner) requesting that the NRC take immediate action with regard to all power reactor licensees concerning the potential failure of the fuel in spent fuel pools for all reactors in the United States.

B Petitioner requested that the NRC immediately issue an information notice or other appropriate notification forwarding all information in its possession to all power reactor licensees regarding the potential failure of fuel in spent fuel pools and reminding licensees of their responsibilities to perform timely operability determinations. This request was granted in part based on issuance by the NRC of generic communications to licensees on failure of spent fuel.

C Petitioner also requested that the NRC direct each licensee to immediately perform an evaluation of the potential failure of spent fuel in spent fuel pools to determine compliance with its current licensing basis. This request was granted in part based on evaluations performed by the NRC Staff of both the design and operational aspects of spent fuel pool storage issues for all operating reactors.

D Finally, Petitioner seemed to suggest that the exercise of enforcement discretion by issuance of a Notice of Enforcement Discretion (NOED) may be appropriate concerning spent fuel pool issues raised in the petition. Based upon the review of the information provided in the petition, the NRC Staff has not identified any circumstance warranting the issuance of a NOED.

DD-96-19 FLORIDA POWER AND LIGHT COMPANY (St. Lucie Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-335, 50-389 (License Nos. DPR-67, NPF-16); REQUEST FOR ACTION; November 18, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director of the Office of Nuclear Reactor Regulation denies a petition dated June 12, 1996, filed with the Nuclear Regulatory Commission (NRC) pursuant to 10 C.F.R. § 2.206 by Thomas J. Saporito on behalf of himself and the National Litigation Consultants (Petitioners). The Petitioners requested the NRC (1) to issue a confirmatory order requiring that the Florida Power & Light Company (Licensee) not operate the St. Lucie Plant, Unit 1, above 50% of its power-level capacity, (2) to require the Licensee to specifically identify the "root cause" for the premature failure of the steam generator tubing, and (3) to require the Licensee to specifically state what corrective measures will be implemented to prevent recurrence of steam generator tube failures in all the steam generators in Unit 1 and Unit 2. The Petitioners' requests were based on assertions that (1) the Licensee's Unit 1 steam generator tubes have degraded to the extent

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that more than 2500 of the tubes have been plugged, (2) the Licensee has not identified the root cause for the premature failure of the steam generator tubing, (3) the Licensee will most likely experience similar tube ruptures on other generators at the station, and (4) the Licensee's "FSARs [Final Safety Analysis Reports] and the NRC's CFRs [Code of Federal Regulations] require that the integrity of the primary systems on Unit 1 and Unit 2 not be breached."

DD-96-20 MAINE YANKEE ATOMIC POWER COMPANY (Maine Yankee Atomic Power Station), Docket No. 50-309; REQUEST FOR ACTION; November 20, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director of the Office of Nuclear Reactor Regulation (NRR) denies a petition filed with the Nuclear Regulatory Commission (NRC or Commission) by letter dated January 20, 1996, by Anne D. Burt on behalf of the Friends of the Coast — Opposing Nuclear Pollution (Petitioner), requesting that actions be taken regarding the Maine Yankee Atomic Power Station (Maine Yankee) operated by the Maine Yankee Atomic Power Company (the Licensee). The petition is denied based on the Acting Director's analysis of the technical issues, set forth in the Decision, which analysis showed no technical basis warranting granting the petition. Petitioner's requests for immediate action and for an informal hearing were denied by the Director, NRR, by letter dated May 13, 1996, for the reasons stated in that letter.

B The following technical issues are discussed: Adequacy of containment design at or above originally authorized power level; Microfissuring of low-ferrite stainless steel weldments.

DD-96-21 NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant, Units 1 and 2), Docket Nos. 50-282, 50-306, 72-10; REQUEST FOR ACTION; November 27, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director of the Office of Nuclear Reactor Regulation denies a petition dated June 5, 1995, submitted to the Nuclear Regulatory Commission (NRC) by the Prairie Island Coalition Against Nuclear Storage (PICANS), now known as the Prairie Island Coalition, and the Nuclear Information and Resource Service (Petitioners) requesting that the NRC immediately suspend the operating licenses for Prairie Island Nuclear Generating Plant, Units 1 and 2, operated by the Northern States Power Company.

B Petitioner presented four concerns. Prairie Island steam generators are suffering from tube degradation and may rupture unless proper testing is conducted and corrective actions are taken. The Prairie Island reactor vessel head penetrations have stress-corrosion cracks which, if not found and corrected, may result in a catastrophic accident involving the reactor control rods. Plans for unloading dry cask storage units in an emergency were not properly reviewed by the NRC and do not satisfy NRC requirements. Finally, the physical integrity of the Prairie Island crane requires physical testing and a safety analysis before future crane use following its handling of a heavy load for an extended period of time.

C For the reasons explained in the Director's Decision, the Acting Director concludes that inadequate bases exist for granting Petitioners' request.

DD-96-22 GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Oyster Creek Nuclear Generating Station), Docket No. 50-219; REQUEST FOR ACTION; December 11, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director of the Office of Nuclear Reactor Regulation denies petitions dated May 11 and June 14, 1996, filed with the Nuclear Regulatory Commission (NRC) by Mr. William deCamp, Jr., on behalf of Oyster Creek Nuclear Watch (Petitioner) requesting the NRC to investigate statements made by GPU Nuclear Corporation (GPU) in the April 1996 publication Neighborhood Update (the Licensee's news magazine) and during sworn testimony on March 7, 1996, before the Lacey Township Zoning Board of Adjustment and take appropriate disciplinary action. The statements are that GPU and the Commission agree that a Licensee amendment request that involves the movement of spent fuel from the Oyster Creek Nuclear Generating Station spent fuel pool to the storage facility while the plant is at power "is not a safety issue but a procedural one" and that it is unsafe to operate the Oyster Creek reactor without full-core offload capacity. The Petitioner asserts that the statements are false, referencing language in an NRC Bulletin stating that the NRC Staff determined that the Licensee's proposal involved an unreviewed safety question and that the NRC ruled in February 1985 in 10 C.F.R. Part 53 that reactors may safely be run without full-core offload capacity.

B When the NRC receives an amendment application, it is required to follow specific procedures set forth in 10 C.F.R. § 50.91.

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- C While a full-core reserve capability is not an NRC licensing or safety requirement, maintenance of full-core reserve would enhance safety to some extent, and would also be needed to prevent extended reactor outages in the event a core must be discharged in order to inspect the reactor pressure vessel and perform other routine and unscheduled maintenance operations.

DD-96-23 NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 1), Docket No. 50-245 (License No. DPR-21); REQUEST FOR ACTION; December 26, 1996; PARTIAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A By a petition dated August 21, 1995, and supplemented on August 28, 1995, from Mr. George Galatis and We the People, Inc. (Petitioners), Petitioners raised issues regarding the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1), operated by Northeast Nuclear Energy Company (NNECO or Licensee). Petitioners asserted that the Licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendments No. 39 and No. 40. Specifically, Petitioners assert that NNECO has offloaded more fuel assemblies into the Millstone Unit 1 spent fuel pool (SFP) during refueling outages than permitted under these license amendments. Petitioners also asserted that License Amendments No. 39 and No. 40 for Millstone Unit 1 are based on material false statements made by the Licensee in documents submitted to the NRC.
- B Based on their assertions, Petitioners requested a variety of actions. Petitioners requested institution of a proceeding under 10 C.F.R. § 2.202 to suspend the license for the Millstone Unit 1 facility for a period of 60 days after the unit is brought into compliance with the license and the design basis and to revoke the operating license for the Millstone Unit 1 facility until it is in full compliance with the terms and conditions of its license. Petitioners also requested that, before reinstatement of the license, a detailed independent analysis of the offsite dose consequences of the total loss of SFP water be conducted.
- C In a Partial Director's Decision issued on December 20, 1996, the Acting Director of the Office of Nuclear Reactor Regulation noted that Petitioners had asserted wrongdoing on the part of the Licensee and that the NRC Staff has not yet completed its review of this issue.
- D However, as the NRC Staff had completed its technical assessment of core offloading practices at Millstone Units 1, 2, and 3 and Seabrook Unit 1, the Acting Director considered it appropriate to issue a Partial Director's Decision discussing this issue and describing actions taken by the NRC which, in part, address Petitioners' requests.

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