

NUREG-0750
Vol. 43
Index 2

INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January - June 1996



U.S. NUCLEAR REGULATORY COMMISSION

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Prepared by the
Division of Freedom of Information and Publications Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(301/415-6844)

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-96-1 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029;
DECOMMISSIONING; January 16, 1996; MEMORANDUM AND ORDER

- A The Commission refers to the Atomic Safety and Licensing Board, for a ruling on standing and contentions and with guidance on several novel issues and a suggested expedited schedule, pleadings filed regarding Petitioners' intervention in a proceeding to consider approval of a plan to decommission the Yankee Nuclear Power Station ("Yankee NPS").
- B The matter now before the Commission follows the Commission's recent reinstatement, in light of a decision by the First Circuit Court of Appeals, of its pre-1993 policy of providing an opportunity for an adjudicatory hearing on nuclear power reactor decommissioning plans.
- C Where a petitioner has not expressly requested a hearing on its petition, but where it seems clear from the petition as a whole that a hearing is what the petitioner desires, the Commission will not dismiss that petition solely on the basis of such a technical pleading defect.
- D In order to establish standing to intervene in a proceeding, a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.
- E As the Commission has noted on other occasions, a prospective intervenor may not derive standing to participate in a proceeding from another person who is not a party to the action or is not a member of its organization.
- F Once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing.
- G The Commission construes the provision in 10 C.F.R. § 2.714(g), in accordance with the relevant case law, i.e., that an intervenor's contentions may be limited to those that will afford it relief from the injuries asserted as a basis for standing.
- H A fair reading of the Commission's decommissioning rules at 10 C.F.R. § 50.82 is that it is for the licensee in the first instance to choose the decommissioning option and that neither the DECON nor the SAFSTOR option can be deemed unacceptable a priori.
- I The principal criterion for judging a decommissioning alternative is the proposed time required for decommissioning completion. 10 C.F.R. § 50.82(b)(1)(i). Both the SAFSTOR and the DECON alternatives would, in general, meet the criterion in that section and in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (GEIS).
- J In addition to meeting the "time" requirement in 10 C.F.R. § 50.82(b)(1)(i), decommissioning plans must also meet other applicable NRC regulations, including the "as low as is reasonably achievable" (ALARA) requirement in 10 C.F.R. § 20.1101(b).
- K One of the purposes of revising 10 C.F.R. Part 20 was to change the status of ALARA from the hortatory suggestion in old 10 C.F.R. § 20.1(c) to the mandatory requirement in the current 10 C.F.R. § 20.1101(b); thus, ALARA is an essential part of Federal Radiation Protection Guidance.
- L While a licensee's choice of decommissioning options is not beyond all challenge, such a challenge to a licensee's choice of alternative decommissioning procedures cannot be based solely on differences in estimated collective occupational doses on the order of magnitude of the estimates in the GEIS.
- M A licensee's actions do not violate the ALARA principle simply because some way can be identified to reduce radiation exposures further. The practicality and the cost of the measures required to achieve these

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reductions as well as "other societal and socioeconomic considerations" must also be taken into account. See 10 C.F.R. § 20.1003 (definition of ALARA).

N The Commission will generally find that exposures are ALARA when further dose reductions would cost more than \$1000 or \$2000 for each person-rem reduction achieved. See generally "Regulatory Analyses Guidelines," NUREG/BR-0058, Rev. 2 (1995).

O The essential purpose of the requirement in 10 C.F.R. § 50.82 is to provide "reasonable assurance" of adequate funding for decommissioning. Thus, to be entitled to relief, a petitioner needs to show not only that a licensee's decommissioning cost estimate is in error, but that there is not reasonable assurance that the correct amount will be paid.

P To the extent that a petitioner's contention alleges "illegal" past conduct in violation of NRC regulations, those allegations are more properly the subject of a separate enforcement action.

CLI-96-2 KERR-McGEE CHEMICAL CORPORATION (West Chicago Rare Earths Facility), Docket No. 40-2061-ML; MATERIALS LICENSE; February 21, 1996; ORDER

A The Commission considers a request by the Licensee to terminate this proceeding as moot and to vacate the proceeding's underlying decisions. Because this proceeding solely concerns the Licensee's request for onsite disposal of mill tailings, and all parties concur that the Licensee no longer seeks onsite disposal, the Commission terminates the proceeding as moot. The Commission chooses as a policy matter to vacate and thereby eliminate as precedent all three underlying decisions in this proceeding.

B The Commission is not bound by judicial practice and need not follow judicial standards of vacatur.
CLI-96-3 SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site), Docket No. 40-8027-EA (Decontamination and Decommissioning Funding); ENFORCEMENT ACTION; February 27, 1996; MEMORANDUM AND ORDER

A The Commission grants the Intervenor's petition for review of the Atomic Safety and Licensing Board's Memorandum and Order approving a joint settlement agreement between the Licensee, Sequoyah Fuels Corp., and the NRC Staff. The Commission also permits the State of Oklahoma to file a brief amicus curiae to aid the Commission in its review of the Board's order.

B A state that does not seek party status or to participate as an "interested state" in the proceedings below is not permitted to file a petition for Commission review of a licensing board ruling. If the Commission takes review, the Commission may permit a person who is not a party, including a state, to file a brief amicus curiae. 10 C.F.R. § 2.715(d).

CLI-96-4 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 1), Docket No. 50-440-OLA-3; OPERATING LICENSE AMENDMENT; March 7, 1996; ORDER

A The Commission grants the Cleveland Electric Illuminating Company's petition for review of the Atomic Safety and Licensing Board order, LBP-95-17, 42 NRC 137 (1995). The Board's order granted the Intervenor's motion for summary disposition and terminated the proceeding.

CLI-96-5 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM; DECOMMISSIONING; March 7, 1996; MEMORANDUM AND ORDER

A The Commission declines to disqualify two Commissioners or the NRC Staff from participating in the case; indicates that it plans to review the Licensing Board's March 1 decision (LBP-96-2, 43 NRC 61 (1996)); suggests appropriate areas of inquiry for the parties' briefs; and keeps in place the current stay of the Board decision, pending Commission review of LBP-96-2.

B It is Commission practice that the Commissioners who are subject to a recusal motion will decide that motion themselves, and may do so by issuing a joint decision.

C A prohibited communication is not a concern if it does not reach the ultimate decision maker.

D Where a prohibited communication is not incorporated into advice to the Commission, never reaches the Commission, and has no impact on the Commission's decision, it provides no grounds for the recusal of Commissioners.

E Commission guidance does not constitute factual prejudgment where the guidance is based on regulatory interpretations, policy judgments, and tentative observations about dose estimate data derived from the public record.

F Where there are no facts from which the Commission can reasonably conclude that a prohibited communication was made with any corrupt motive or was other than a simple mistake, and where a Report of the Office of the Inspector General confirms that an innocent mistake was made and that the Staff was

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not guilty of any actual wrongdoing, and where the mistake did not ultimately affect the proceeding, the Commission will not dismiss the Staff from the proceeding as a sanction for having made the prohibited communication.

G Where the Commission issues a stay wholly as a matter of its own discretion, it does not need to address the factors listed in 10 C.F.R. § 2.788.

CLI-96-6 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029 (For Relief Under 10 C.F.R. § 2.206); DECOMMISSIONING, April 1, 1996; MEMORANDUM AND ORDER

A The Commission reviews, sua sponte, the denial by the Director of the Office of Nuclear Reactor Regulation, under 10 C.F.R. § 2.206, of two emergency motions filed by Petitioners challenging activities by the Licensee in decommissioning the Yankee Nuclear Power Station. These petitions follow the Commission's reinstatement of its pre-1993 interpretation of NRC decommissioning regulations, which prohibit a licensee from undertaking "major" decommissioning activities pending NRC approval and prior to the opportunity for a hearing.

B The Commission affirms the Director's Decisions, finding no abuse of discretion. The Commission issues this Memorandum Opinion to describe the reasons why it has decided not to disturb the Director's denial of the two petitions. The two decisions now become final agency action in this matter.

C The Commission retains plenary authority to review Director's decisions. 10 C.F.R. § 2.206(c)(1).

D NRC regulations specifically provide that the Commission will not entertain appeals from the Director's decision, see 10 C.F.R. § 2.206(c)(2) (1995); however, the Commission may undertake sua sponte review of each denial of a 2.206 petition to ensure that the Director has not abused his discretion. See 10 C.F.R. § 2.206(c)(1) (1995).

E If the Commission takes no action to reverse or modify a Director's decision within twenty-five (25) days of issuance of the decision, it becomes final agency action. 10 C.F.R. § 2.206(c)(1).

F The Commission can extend sua sponte review time to consider whether it will take review of a Director's decision.

G Where there is no evidence that potential small occupational exposures will violate Commission regulations in 10 C.F.R. Part 20, the Commission cannot find public health and safety hazards justifying an enforcement action to halt a licensee's decommissioning activities.

H It is clear from past Commission statements and from prior NRC Staff practice that some "preliminary" or "minor" activities have always been permitted in advance of NRC approval of a decommissioning plan.

I Although the Commission did not explicitly limit, in its Statement of Considerations accompanying the 1988 decommissioning rule changes, the scope of decontamination allowed, it is clear that a licensee may not complete decommissioning prior to NRC approval by simply "decontaminating" the entire facility. But, it is equally clear that some decontamination is allowed.

J While the Commission has not had occasion to define terms such as "major" dismantling in prior contested decommissioning cases, such as Shoreham and Rancho Seco, the Commission has consistently contemplated that a licensee could conduct a range of activities that were not "major" in advance of decommissioning plan approval.

K Actual pre-1993 practice at shutdown plants was the undertaking of some minor disassembly and decontamination prior to decommissioning plan approval, and the NRC elected not to interfere with those activities.

L Agency practice, of course, is one indicator of how an agency interprets its regulations. See *Power Reactor Development Co. v. International Union*, 357 U.S. 396, 408 (1961).

M The NRC's Statement of Considerations for the 1988 decommissioning rule and its pre-1993 decisions and practice contemplated that a licensee would be able to conduct some minor or preliminary work prior to approval of a decommissioning plan. Clearly, however, at some point such work is no longer "minor" or may vitiate decommissioning alternatives. At that point a licensee must cease work pending NRC approval of the decommissioning plan following any hearing that has been requested on the plan.

N Further Commission action to develop and enforce more precise guidelines on what activities can or cannot be done prior to decommissioning plan approval would not be an effective use of limited NRC

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resources, based on a single case and given the likely issuance in the near future of a new decommissioning rule.

- O Where the estimated person-rem exposure from a licensee's minor decommissioning activities represents a reasonably small portion of the total estimated dose originally available for possible SAFSTOR treatment, the undertaking of those decommissioning activities does not compromise a meaningful SAFSTOR option or the hearing process in which petitioners are participating.

- P The Commission will halt decommissioning activities, "minor" or not, that individually or cumulatively threaten the continued viability of the SAFSTOR decommissioning alternative when it is the subject of an adjudicatory hearing.

CLI-96-7 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM, DECOMMISSIONING; June 18, 1996; MEMORANDUM AND ORDER

- A In LBP-96-2, 43 NRC 61 (1996), the Board granted standing to two Petitioners but declined to admit any of their contentions, denied their request for an administrative hearing, and terminated the instant proceeding. Petitioners appealed, and sought reversal of the Board's rejection of their contentions, and also challenged for a third time certain guidance given by the Commission in CLI-96-1, 43 NRC 1 (1996), earlier in this proceeding. YAEC and the NRC Staff opposed Petitioners' arguments on appeal and urged affirmance of LBP-96-2. Alternatively, YAEC challenged Petitioners' standing to seek a hearing. The Commission grants in part and denies in part Petitioners' appeal, rejects YAEC's arguments regarding standing, and remands the case to the Licensing Board for further proceedings consistent with this opinion.

- B Once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing.

- C Under Commission jurisprudence, proximity alone normally does not establish standing (outside the nuclear power reactor construction permit or operating license context) absent an obvious potential for offsite consequences.

- D Where the Licensing Board rests its finding of standing on a combination of (a) the petitioners' proximity to the licensed facility, (b) petitioners' everyday use of the area near the reactor, and (c) the decommissioning effects described in the Commission's 1988 GEIS, the Commission defers to the Board's finding "that some, even if minor, public exposures can be anticipated" and "will be visited" on petitioners' members.

- E Under the Commission's "Contention Rule," 10 C.F.R. § 2.714, a petitioner not only must demonstrate standing but also must proffer with specificity at least one admissible contention. For a contention to be admissible, a petitioner must refer to the specific portion of the license application being challenged, state the issue of fact or law associated with that portion, and provide a "basis" of alleged facts or expert opinions, together with references to specific sources and documents that establish those facts or expert opinions. The basis must be sufficient to show that a genuine dispute exists on a material issue of fact or law.

- F Although 10 C.F.R. § 2.714 imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from the applicant to the petitioner.

- G Section 50.82(e) of 10 C.F.R. expressly requires that decommissioning be performed in accordance with the regulations, including the ALARA rule in 10 C.F.R. § 20.1101.

- H ALARA may not be invoked to restrict licensee decisions on, for example, whether to decommission an operating nuclear power reactor or whether to build one in the first place (as opposed, say, to a coal plant). ALARA comes into play only after such basic choices are made and requires a licensee to carry out its activity in a manner calculated to maximize radiation exposures as much as is practical consistent with the purpose for which the licensed activity is undertaken.

- I A licensee's choice between DECON and SAFSTOR (or their variants) is presumptively reasonable under the ALARA principle.

- J It would be unreasonable to require the Commission continually to relitigate issues that may be established fairly and efficiently in a single rulemaking proceeding. This principle applies also to environmental issues raised under the National Environmental Policy Act.

- K The fact that a very small portion of a site may not be releasable does not preclude the release of the overwhelming remainder of the site.

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- L Petitioners are not absolutely barred from litigating the DECON-SAFSTOR choice on ALARA grounds. It is, however, petitioners' burden to show "extraordinary circumstances" rebutting the presumption that the licensee's choice is reasonable.
- M The fact that petitioners raise an argument for the first time late in a proceeding is not necessarily fatal where the argument rests significantly on a document prepared only shortly before the argument is proffered and where petitioners promptly bring it to the adjudicator's attention.
- N The Licensing Board, rather than the Commission itself, traditionally develops the factual record in the first instance.
- O A decommissioning plan by its very nature deals with a myriad of uncertainties, and the Commission's regulations cannot be construed to require the plan to predict the future with precision.
- P The Commission's regulations do not require a licensee, at the time it seeks approval of its decommissioning plan, to decide whether it will move spent fuel into dry cask storage.
- Q A contention challenging the reasonableness of a decommissioning plan's cost estimate is not litigable if reasonable assurance of decommissioning costs is not in serious doubt and if the only available relief would be a formalistic redraft of the plan with a new estimate.
- R To obtain a hearing on the adequacy of the decommissioning plan, petitioners must show some specific, tangible link between the alleged errors in the plan and the health and safety impacts they invoke.
- S The standard for determining that the funds for decommissioning the plant will be forthcoming is whether there is "reasonable assurance" of adequate funding, not whether that assurance is "ironclad."
- T A decommissioning funding mechanism is external in nature where its collections are made through Power Contracts and are deposited in an independent and irrevocable trust at a commercial bank and where the trust is executed in compliance with 10 C.F.R. § 50.75(e)(1)(ii).
- U Petitioners must submit more than speculation in order for a contention to be admitted for litigation.
- V Although the Commission has a general responsibility to ensure that decommissioning operations do not jeopardize public health and safety, no statute or regulation grants the Commission authority to require the licensee to pay (in effect) compensatory damages to private individuals.
- W Completed decommissioning activities are beyond the scope of a decommissioning proceeding that deals solely with the propriety of a decommissioning plan and future decommissioning activities.
- X The standard for issuing an SEIS is set forth in 10 C.F.R. § 51.92: There must be either substantial changes in the proposed action that are relevant to environmental concerns, or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- Y If parties believe that the agency's prior generic review reached the wrong conclusions, the proper remedy is a petition for rulemaking, not a litigation contention challenging the basis for a Commission rule.
- Z Pursuant to 10 C.F.R. § 2.743(i), the Commission may take official notice of publicly available documents filed in the docket of a Federal Energy Regulatory Commission proceeding.
- AA The following technical issues are discussed: Decommissioning; ALARA.

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LBP-96-1 NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 1), Docket No. 50-245-OLA (ASLBP No. 96-711-01-OLA); OPERATING LICENSE AMENDMENT; February 7, 1996; MEMORANDUM AND ORDER (Ruling on Intervention Petition)

LBP-96-2 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM (ASLBP No. 96-713-01-DCOM); DECOMMISSIONING; March 1, 1996; MEMORANDUM AND ORDER (Denying Petition to Intervene)

A In this proceeding concerning challenges to various aspects of the decommissioning plan for the Yankee Nuclear Power Station, based on guidance furnished by the Commission in CLI-96-1, 43 NRC 1 (1996), the Licensing Board concludes that the citizen groups petitioning to intervene have established their standing but have failed to present a litigable contention, which requires that the proceeding be dismissed.

B To comply with the basic standing requirements, a petitioner must demonstrate that (1) it has suffered or will suffer a distinct and palpable harm 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. See CLI-96-1, 43 NRC at 6.

C When an organization seeks to intervene on behalf of its members, that entity must show that it has an individual member who can fulfill the necessary elements to establish standing and who has authorized the organization to represent his or her interests. See CLI-96-1, 43 NRC at 6.

D Intervenor organizations established their standing to intervene and seek relief regarding alleged health and safety or environmental injuries that may be visited upon their members who reside and engage in various activities in the area within 30 miles of a nuclear facility to be decommissioned. Because some, even if minor, public exposures can be anticipated from the decommissioning process, the Licensing Board is not "in a position at this threshold stage to rule out as a matter of certainty the existence of a reasonable possibility" that decommissioning might have an adverse impact to those, such as petitioners members, who live or recreate in such close proximity to the facility, or use local waste transportation routes. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

E Petitioners who have established their standing to present a contention that seeks modification or rejection of a nuclear facility decommissioning plan so as to avoid health and safety or environmental injury to the public also can pursue any contention alleging such modification/rejection relief based on circumstances such as purported occupational exposure to facility workers from decommissioning activities. See CLI-96-1, 43 NRC at 6.

F Under 10 C.F.R. § 2.714(b)(2)(ii)-(iii), to be admissible a contention must contain a specific statement of an issue of fact or law raised or controverted in a proceeding that is supported by a "basis" of alleged facts or expert opinions, together with references to specific sources and documents that establish those facts or opinions. The basis must be sufficient to show that a genuine dispute exists with the applicant on a material issue of fact or law. Moreover, while the intervenor need not prove its case at the contention stage or present factual support in affidavit or evidentiary form sufficient to withstand a summary disposition motion, it nonetheless must make a minimal showing that material facts are in dispute such that a further inquiry is appropriate. And, of course, any contention must fall within the scope of the issues set forth in the notice of opportunity for hearing on the proposed licensing action. See Georgia Institute of Technology (Georgia Tech. Research Reactor), CLI-95-12, 42 NRC 111, 117-18 (1995).

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- G In challenging the contents of a decommissioning plan fashioned pursuant to 10 C.F.R. § 50.82(b)(1), (2), a contention not only must allege some content deficiency in the decommissioning plan, but that this purported deficiency has some health and safety significance for the decommissioning process as a whole. Put another way, to craft a litigable contention faulting a decommissioning plan for a deficiency in content, besides providing a basis sufficient to question the plan's accuracy, there must also be a showing that a genuine disputed material issue of fact or law exists about whether the purported shortcoming has some tangible negative impact on the overall ability of the decommissioning process outlined in the plan to protect the public health and safety. Cf. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 414 (1990) (contention that purported emergency planning exercise deficiency precludes a finding of reasonable assurance that protective measures can and will be taken must show that exercise revealed more than minor or isolated flaw in plan and that plan flaw can only be remedied through significant plan revision).
- H A litigable contention asserting that a reactor decommissioning plan does not comply with the funding requirements of 10 C.F.R. § 50.82(b)(4) and (c), must show not only that one or more of a plan's cost estimate provisions are in error, "but that there is not reasonable assurance that the amount will be paid." CLI-96-1, 43 NRC at 9. A petitioner must establish that some reasonable ground exists for concluding that the licensee will not have sufficient funds to cover decommissioning costs for the facility.
- I A petitioner should be permitted to respond to challenges to a contention before the contention is dismissed. See Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 525 (1979).
- J The "rule of reason" governing National Environmental Policy Act (NEPA) interpretation provides that an agency need not consider "remote and speculative risks." Limerick Ecology Action v. NRC, 869 F.2d 719, 739 (3d Cir. 1989).
- K A contention basis concerning a transportation cask accident that relies on a report postulating an accident scenario with conditions that fall within the parameters of 10 C.F.R. § 71.73(c) governing cask accident test conditions is not subject to dismissal under 10 C.F.R. § 2.758 as improperly challenging that accident test condition regulation.
- L A document put forth by an intervenor as supporting the basis for a contention is subject to scrutiny both for what it does and does not show. When a report is the central support for a contention's basis, the contents of that report are what are before the Board and, as such, is subject to Board scrutiny, both as to those portions of the report that support an intervenor's assertions and those portions that do not.
- M Because only accident scenarios that are not "remote and speculative" need be the subject of a NEPA analysis, if the information in any intervenor-proffered document regarding such a scenario fails to indicate that this threshold has been crossed, then a contention challenging NEPA compliance based on a failure to analyze that scenario need not be admitted. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44-47 (1989), remanded for additional findings, CLI-90-4, 31 NRC 333 (1990).
- LBP-96-3 ONCOLOGY SERVICES CORPORATION (Harrisburg, Pennsylvania), Docket No. 030-31765-CivP (ASLBP No. 95-708-01-CivP) (EA 94-006) (Byproduct Materials License No. 37-28540-01); CIVIL PENALTY; March 28, 1996; MEMORANDUM AND ORDER (Approving Settlement Agreement and Dismissing Proceeding)
- LBP-96-4 RADIATION ONCOLOGY CENTER AT MARLTON (ROCM) (Marlton, New Jersey), Docket No. 30-32493-CivP (ASLBP No. 95-709-02-CivP) (EA 93-072) (Byproduct Materials License No. 29-28685-01); CIVIL PENALTY; March 28, 1996; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Proceeding)
- A The Licensing Board approves a joint settlement agreement governing both this civil penalty proceeding and a related proceeding and terminates this proceeding. (Simultaneously, the Licensing Board in the other civil penalty proceeding approved the joint agreement with respect to that proceeding. See LBP-96-3, 43 NRC 93 (1996).
- LBP-96-5 GULF STATES UTILITIES COMPANY, et al. (River Bend Station, Unit 1), Docket No. 50-458-OLA (ASLBP No. 93-680-04-OLA); OPERATING LICENSE AMENDMENT; March 29, 1996; MEMORANDUM AND ORDER (Grant of Motion to Terminate Proceeding)

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- A The Licensing Board grants a motion of the bankruptcy trustee of the Intervenor, Cajun Electric Cooperative, to terminate its litigation, without prejudice, contesting a license amendment requested by Gulf States Utilities.
- B Under Rule 41 of the Federal Rules of Civil Procedure, a voluntary dismissal of a court action is generally without prejudice to the action being reinstituted at a later date. Although there is no provision in the Commission's Rules of Practice that corresponds to the voluntary dismissal procedure in Rule 41, the Board found that those provisions were applicable in this case, especially since the public interest theoretically would be served if Cajun could later establish that additional financial assurances were needed. Moreover, the Board found that it was unfair to impose a form of punishment, such as a bar of future action, against an Intervenor whose decisions were being directed by a person (the bankruptcy trustee) with legal responsibilities other than those that supported the original petition.
- LBP-96-6 NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 1), Docket No. 50-245-OLA (ASLBP No. 96-711-011-OLA); OPERATING LICENSE AMENDMENT; April 15, 1996; ORDER (Terminating Proceeding)
- LBP-96-7 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; April 26, 1996; PARTIAL INITIAL DECISION (Resolving Contentions H, L, and M)
- 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 Applicant Intervenor's contentions H concerning the adequacy of the Applicant's emergency plan and L and M concerning the sufficiency of the Applicant's safeguards measures.
- B The Commission's rules of practice for the conduct of formal adjudicatory hearings provide in 10 C.F.R. § 2.732 that the applicant has the burden of proof in the proceeding. Thus, in order for the applicant to prevail on each contested factual issue, the applicant's position must be supported by a preponderance of the evidence. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 720 (1985); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 577 (1984). See 1 Charles H. Koch, Jr., *Administrative Law and Practice* § 6.44 (1985).
- C Under the Commission's regulatory scheme for emergency planning at certain facilities possessing and using special nuclear material or source and byproduct material, an emergency plan for responding to the hazards of an accidental release constitutes one of the Applicant's procedures that must be found adequate under 10 C.F.R. §§ 40.32(c) and 70.23(a)(4) to protect health and minimize danger to life or property.
- D A regulatory guide, however, only presents the Staff's view of how to comply with the regulatory requirements. Such a guide is advisory, not obligatory and, as the guide itself states at the bottom of the first page: "Regulatory Guides are not substitutes for regulations, and compliance with them is not required."
- E The Commission's material control and accounting regulations require that the licensee of an enrichment facility "shall establish, implement, and maintain a NRC-approved material control and accounting system," 10 C.F.R. § 74.33(a), through the creation of a fundamental nuclear material control plan. 10 C.F.R. § 74.33(b).
- F The following technical issues are discussed: Emergency plan; safeguards procedures.
- LBP-96-8 GEORGIA INSTITUTE OF TECHNOLOGY (Georgia Tech Research Reactor, Atlanta, Georgia), Docket No. 50-160-Ren (ASLBP No. 95-704-01-Ren) (Renewal of Facility License No. R-97); OPERATING LICENSE RENEWAL; April 30, 1996; THIRD PREHEARING CONFERENCE ORDER
- A The Atomic Safety and Licensing Board issues a Prehearing Conference Order setting forth determinations made at a prehearing conference on April 24, 1996, including witness schedules and other matters bearing on the evidentiary hearing scheduled to commence on May 20, 1996.
- B The Rules of Practice do not permit particular Staff witnesses to be subpoenaed. But a licensing board, pursuant to 10 C.F.R. § 2.720(h)(2), may, upon a showing of exceptional circumstances, require the attendance and testimony of named NRC personnel. Where an NRC employee has taken positions at odds with those espoused by witnesses to be presented by the Staff, on matters at issue in a proceeding, exceptional circumstances exist. The Board determined that differing views of such matters are facts differing from those likely to be presented by the Staff witnesses and, on that basis, required the attendance and testimony of the named NRC personnel.

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LBP-96-9 EASTERN TESTING AND INSPECTION, INC., Docket Nos. 030-05373-EA, 030-32163-EA (ASLBP No. 96-714-02-EA) (EA 96-085) (Order Suspending Byproduct Material License Nos. 29-09814-01 and 29-09814-02); ENFORCEMENT ACTION; May 10, 1996; MEMORANDUM AND ORDER (Denying Licensee Motion to Set Aside Immediate Effectiveness)

- A Ruling on a Licensee request to rescind an NRC Staff determination to make immediately effective an enforcement order suspending two Licensee byproduct materials licenses, the Licensing Board denies the Licensee's motion, concluding that for certain bases in the order, the Staff had met its burden under 10 C.F.R. § 2.202(c)(2)(i) to establish by "adequate evidence" that (1) those charges are not based on "mere suspicion, unfounded allegations, or error," and (2) there is a need to make the order effective immediately.
- B The movant challenging a Staff determination to make an enforcement order immediately effective bears the burden of going forward to demonstrate that the order, and the Staff's determination that it is necessary to make the order immediately effective, are not supported by "adequate evidence" within the meaning of 10 C.F.R. § 2.202(c)(2)(i), but the Staff has the ultimate burden of persuasion on whether this standard has been met. See 55 Fed. Reg. 27,645, 27,646 (1990). See also St. Joseph Radiology Associates, Inc. (d.b.a. St. Joseph Radiology Associates, Inc., and Fisher Radiological Clinic), LBP-92-34, 36 NRC 317, 321-22 (1992).
- C When the character and veracity of the source for a Staff allegation are in doubt, a presiding officer will be unable to credit the source's information as sufficiently reliable to provide "adequate evidence" for that allegation absent sufficient independent corroborating information.
- D In considering whether there is probable cause for an arrest, courts have held that information supplied by an identified ordinary citizen witness may be presumed reliable. See, e.g., *McKinney v. George*, 556 F. Supp. 645, 648 (N.D. Ill. 1983) (citing cases), *aff'd*, 726 F.2d 1183 (7th Cir. 1984). In determining whether there is "adequate evidence" within the meaning of 10 C.F.R. § 2.202(c)(2)(i) to support the immediate effectiveness of an enforcement order, applying this presumption to a witness who is corroborating a family member's allegations may be inappropriate because that relationship creates a possible bias that also brings the corroborating witness' reliability into substantial question.
- E Under 10 C.F.R. § 30.10(c)(2), an intentional act that a person knows causes a violation of a licensee procedure is considered "deliberate misconduct" actionable under section 30.10(a)(1). As a consequence, an assertion that a person who created a document containing false information did not intend to mislead the agency (or did not actually mislead the agency) appears irrelevant. Instead, the focus is on whether the person's action was a knowing violation of a licensee procedure that could have resulted in a regulatory violation by the submission to the agency of materially incomplete or inaccurate information. See 56 Fed. Reg. 40,664, 40,670 (1991) (stating that "[f]or situations that do not actually result in a violation by a licensee, anyone with the requisite knowledge who engages in deliberate misconduct as defined in the rule has the requisite intent to act in a manner that falls within the NRC's area of regulatory concern. The fact that the action may have been intercepted or corrected prior to the occurrence of an actual violation has no bearing on whether, from a health and safety standpoint, that person should be involved in nuclear activities.").
- F Absent a showing that provides some reasonable cause to believe that, because of bias or mistake, an agency inspector cannot be considered a credible observer, inspector's direct personal observations should be credited in considering whether allegations based on those observations are supported by "adequate evidence" within the meaning of 10 C.F.R. § 2.202(c)(2)(i). This is based on the accepted presumption that a government officer can be expected faithfully to execute his or her official duties. See *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926).
- G Under 10 C.F.R. § 2.202(c)(2)(i), to support an immediate effectiveness determination for an enforcement order, besides showing that the bases for the order are supported by "adequate evidence," the Staff must show there is a need for immediate effectiveness that is supported by "adequate evidence." That need can be established by showing either that the alleged violations or the conduct supporting the violations is willful or that the public health, safety, or interest requires immediate effectiveness.

LBP-96-10 GEORGIA INSTITUTE OF TECHNOLOGY (Georgia Tech Research Reactor, Atlanta, Georgia), Docket No. 50-160-Ren (ASLBP No. 95-704-01-Ren) (Renewal of Facility License No. R-97); OPERATING LICENSE RENEWAL; May 16, 1996; MEMORANDUM AND ORDER (Telephone Conference Call, 5/15/96)

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- A In a Memorandum and Order setting forth rulings of the Atomic Safety and Licensing Board during a telephone conference call on May 15, 1996, the Licensing Board granted (with one limited exception) the NRC Staff's motion to exclude the prepared testimony of Ms. Glenn Carroll, the Intervenor's representative. The Board determined that Ms. Carroll lacked personal knowledge of the matters in the testimony (with one exception), as well as expertise to discuss matters in her testimony (which for the most part had been derived from documentary evidence). The Board concluded in this regard that the underlying documents themselves were the "best evidence" of what they stated. The Board ruled that the Intervenor could seek to introduce the underlying documents to the extent relevant and that the testimony could be entered into the record as an opening statement of position.
- B The Licensing Board also denied Georgia Tech's motion to bar Ms. Carroll as a witness for any purpose, but granted Georgia Tech's motion to exclude Ms. Carroll's prepared testimony to the same extent as it had excluded this testimony in response to the Staff motion.
- C Prepared testimony may be struck where the witness lacks personal knowledge of the matters in the testimony and lacks expertise to interpret facts contained therein.
- LBP-96-11 EASTERN TESTING AND INSPECTION, INC., Docket Nos. 030-05373-EA, 030-32163-EA (ASLBP No. 96-714-02-EA) (EA 96-08*) (Order Suspending Byproduct Material License Nos. 29-09814-01 and 29-09814-02); ENFORCEMENT ACTION; June 11, 1996; MEMORANDUM AND ORDER (Approving Settlement Agreement and Dismissing Proceeding)
- A Ruling on a joint request by Licensee Eastern Testing and Inspection, Inc., and the NRC Staff to approve an agreement settling this license suspension enforcement proceeding, the Licensing Board approves the parties' accord and dismisses the case.
- B As is true with court proceedings requiring judicial approval of settlements, see, e.g., *Evans v. Jeff D.*, 475 U.S. 717, 727 (1986); *Jeff D. v. Andrus*, 899 F.2d 753, 758 (9th Cir. 1989); *In re Warner Communications Sec. Litig.*, 798 F.2d 35, 37 (2d Cir. 1986), a presiding officer does not have the authority to revise the parties' settlement agreement without their consent. A presiding officer thus must accept or reject the settlement with the provisions proposed by the parties.
- C When the parties agree to settle an enforcement proceeding, the Licensing Board loses jurisdiction over the settlement agreement once the Board's approval under 10 C.F.R. § 2.203 becomes final agency action. See *Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4)*, CLI-80-12, 11 NRC 514, 517 (1980); *Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2)*, ALAB-726, 17 NRC 755, 757-58 (1983). Thereafter, supervisory authority over such an agreement rests with the Commission.
- LBP-96-12 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; June 21, 1996; INITIAL DECISION (License Amendment Application)
- A In this Decision, the Presiding Officer finds that Intervenor's fail to prove deficiencies in a management reorganization and sustains a Staff issuance of a license amendment for that purpose.

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DD-96-1 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029 (License No. DPR-3); REQUEST FOR ACTION; February 22, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies in part and grants in part a petition dated January 17, 1996, submitted to the Nuclear Regulatory Commission (NRC) by Citizens Awareness Network and New England Coalition on Nuclear Pollution (Petitioners), requesting that the NRC take action with respect to five activities conducted by Yankee Atomic Electric Company (YAEC or Licensee) at the Yankee Nuclear Power Station in Rowe, Massachusetts (Yankee Rowe or the facility). The petition was also moot in part. The petition requests that the NRC comply with Citizens Awareness Network Inc. v. United States Nuclear Regulatory Commission and Yankee Atomic Electric Co., 59 F.3d 284 (1st Cir. 1995) and immediately order: (A) YAEC not to undertake, and the NRC Staff not to approve, further major dismantling activities or other decommissioning activities, unless such activities are necessary to ensure the protection of occupational and public health and safety; (B) YAEC to cease any such activities; and (C) NRC Region I to reinspect Yankee Rowe to determine whether there has been compliance with the Commission's Order in CLI-95-14, 42 NRC 130 (1995), and to issue a report within 10 days of the requested order to Region I.

B The Petitioners' request that shipments of low-level radioactive waste be prohibited is denied because that activity is permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations. Petitioners' request that four other activities be prohibited is moot, although the activities would have been permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations. Additionally, Petitioners' request for an inspection of Yankee Rowe to determine compliance with CLI-94-14 and an inspection report was granted.

DD-96-2 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029; REQUEST FOR ACTION; March 18, 1996; SUPPLEMENTAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a supplemental petition dated February 9, 1996, filed with the Nuclear Regulatory Commission by Citizens Awareness Network and New England Coalition on Nuclear Pollution. The supplemental petition requests that the Commission: (1) reverse the February 2, 1996 decision of the NRC Staff on the emergency aspects of a January 17, 1996 petition filed pursuant to 10 C.F.R. § 2.206, and (2) require Yankee Atomic Electric Company to cease six unlawful decommissioning activities and to direct the Staff to cease approving or acquiescing to such unlawful decommissioning activities. By Order dated February 15, 1996, the Commission declined to reverse the February 2, 1996 decision of the NRC Staff on the emergency aspects of the January 17, 1996 petition, and directed the NRC Staff to address the arguments advanced by Petitioners at page 13 of the supplemental petition in a supplementary section 2.206 decision.

B The Director denied the request to prohibit the conduct of six activities identified at page 13 of the supplemental petition because they are permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the NRC's decommissioning regulations, and thus under Citizens Awareness Network Inc. v. U.S. Nuclear Regulatory Commission and Yankee Atomic Electric Co., 59 F.3d 284 (1st Cir. 1995).

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DD-96-3 ALL REACTOR LICENSEES WITH INSTALLED THERMO-LAG FIRE BARRIER MATERIAL; April 3, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By petitions dated September 26, 1994, from the Citizens for Fair Utility Regulation and the Nuclear Information and Resource Service, dated October 6, 1994, from the Maryland Safe Energy Coalition, dated October 21, 1994, from the GE Stockholders' Alliance and Dr. D.K. Cinquemani, dated October 25, 1994, from the Toledo Coalition for Safe Energy, dated October 26, 1994, from R. Beujan, dated November 14, 1994, from B. DeBolt, and dated December 8, 1994, from the Nuclear Information and Resource Service and the Oyster Creek Nuclear Watch, Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the use of Thermo-Lag material by reactor licensees as fire barriers. Petitioners requested a variety of actions including immediate shutdown of reactors where Thermo-Lag material is used.

B In a Director's Decision issued on April 3, 1996, the Director of Nuclear Reactor Regulation denied the relief sought by Petitioners. With regard to the requested shutdown of operating facilities using Thermo-Lag material, the Director concluded that fire watches permitted by the NRC requirements applicable to the facilities in question provided reasonable assurance of adequate protection of public health and safety. With regard to the remaining issues raised by Petitioners, the Director concluded that they are being addressed by licensees in a manner that ensures adequate protection of public health and safety.

DD-96-4 ARIZONA PUBLIC SERVICE COMPANY (Palo Verde Nuclear Generating Station), Docket Nos. 50-528, 50-529, 50-530; REQUEST FOR ACTION; June 3, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A With the exception of granting the request that the Nuclear Regulatory Commission (NRC) take escalated enforcement action against the Licensee, Arizona Public Service (APS) Company, the Director of the Office of Enforcement denies the requests set forth in the petitions dated May 12, 1993 (as supplemented on May 28, 1993, October 26, 1993, and January 15, 1994), May 27, 1994 (as supplemented on July 8, 1994), and November 14, 1994, filed by Thomas J. Saporito, Jr., Florida Energy Consultants, and Linda Mitchell (Petitioners). The Petitioners requested that the NRC (1) initiate a proceeding pursuant to 10 C.F.R. § 2.202 to modify, suspend, or revoke the Palo Verde operating licenses; (2) initiate actions to immediately shut down Palo Verde; (3) issue escalated enforcement action against the Licensee and/or Licensee management personnel; (4) take immediate actions to survey Palo Verde employees to ascertain any chilling effect and discover any management actions effective in limiting the chilling effect; (5) issue a notice of violation to APS for continuing to employ The Atlantic Group (TAG) as a labor contractor at Palo Verde; (6) investigate alleged material false statements made by William F. Conway and require that he be relieved of his duties; (7) investigate comments about Mr. Saporito appearing in an APS letter dated August 10, 1993; (8) investigate the termination of Joseph Straub; (9) initiate a "chilling-effect letter" to APS regarding Mr. Straub's termination; (10) issue an order requiring APS to bring the Palo Verde units to 0% power until APS can demonstrate that corrective actions have been taken to obviate any inference of a hostile work environment at Palo Verde; (11) issue a demand for information requesting specified information from APS concerning the work environment at Palo Verde and the effect that the employment of certain named individuals has on the work environment and why the NRC should have confidence that the named individuals will comply with NRC regulations; (12) take escalated enforcement action against TAG and any of its employees found to have engaged in wrongdoing; (13) require APS to provide Mr. Saporito a make-whole remedy for terminating him and failing to rehire him; and (14) require actions by APS to abate and obviate the chilling effect caused by the failure to provide employee protection for Mr. Saporito. The Director has reviewed the Petitioners' requests and concerns and concluded that the need for further action has not been substantiated. The reasons for the partial denial are fully set forth in the Director's Decision.

DD-96-5 PECO ENERGY COMPANY (Peach Bottom Atomic Power Station, Units 2 and 3), Docket Nos. 50-277, 50-278; REQUEST FOR ACTION; June 10, 1996; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a petition dated October 6, 1994, filed by the Maryland Safe Energy Coalition (Petitioner). The petition requests the Nuclear Regulatory Commission (NRC) to immediately shut down both reactors at Peach Bottom, stating that (1) the risk of fire near electrical control cables due to combustible insulation could cause a catastrophic meltdown;

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(2) cracks were found in the structural support (core shroud) of the reactor fuel in Peach Bottom Unit 3, indicating possible cracks in other parts of the reactor vessel; (3) the NRC discovered that both reactors had no emergency cooling water for an hour on August 3, 1994; and (4) other chronic problems exist at Peach Bottom according to an August 16, 1994 NRC report. In addition, the Petitioner raises a concern about the lack of an analysis of the synergistic effects of cracks in multiple reactor vessel components. After a review of the Petitioner's concerns, the Director concluded that the Petitioner's concerns do not raise substantial health or safety issues warranting the requested actions. The reasons for the denial are fully set forth in the Director's Decision.

- B Nuclear power reactor licensees are required by 10 C.F.R. § 50.55a to implement inservice inspection programs that meet requirements set forth in the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The scope of the inservice inspection programs for reactor pressure vessels and their internal components is prescribed by ASME Code § XI, Division 1, subsections IWA and IWB. Licensees are required by the ASME Code § XI, art. IWA-6000, to submit the results of the inspections to the NRC within 90 days of completion.

DD-96-6 CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point, Units 2 and 3), Docket Nos. 50-247, 50-286 (License Nos. DPR-26, DPR-64); REQUEST FOR ACTION; June 10, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director of the Office of Nuclear Reactor Regulation denies a petition filed on May 18, 1995, requesting that the operating license for Indian Point Units 2 and 3 be suspended until the Licensees have completed the actions requested by Generic Letter 95-03, "Circumferential Cracking of Steam Generator Tubes." The Petitioner also requested that the NRC hold a public meeting to explain its response to this request.

DD-96-7 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029 (License No. DPR-3); SACRAMENTO MUNICIPAL UTILITY DISTRICT (Rancho Seco Nuclear Generating Station), Docket No. 50-312 (License No. DPR-54); PORTLAND GENERAL ELECTRIC COMPANY (Trojan Nuclear Plant), Docket No. 50-344 (License No. NPF-1); SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Unit 1), Docket No. 50-206 (License No. DPR-13); REQUEST FOR ACTION; June 14, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director of the Office of Nuclear Reactor Regulation denies a petition dated April 1, 1996, submitted to the Nuclear Regulatory Commission by Citizens Awareness Network, Nuclear Information and Resource Service, and nine other organizations. The petition requests that the NRC: (1) suspend the current plan by Yankee Atomic Electric Company to remove, transport, and bury the Yankee Nuclear Power Station (or Yankee Rowe) reactor pressure vessel (RPV); (2) require licensees of Yankee Rowe, Rancho Seco Nuclear Generating Station, Trojan Nuclear Plant, and San Onofre Nuclear Generating Station, Unit 1, who are now developing plans to remove, transport, and bury their respective RPVs, to suspend such operations; and (3) require the owners of the four nuclear power plants to present substantial metal and weld specimens from their respective RPVs to the NRC for analysis in order to study and materially archive the radiation embrittlement phenomenon.

- B The Director denies the petition because the Petitioners did not provide sufficient bases to warrant the suspension of decommissioning plans or activities at the four nuclear power plants, and because sufficient information is available to the Staff to address such radiation embrittlement phenomenon in a manner that protects public health and safety without the issuance of an order.

DD-96-8 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; June 25, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director of the Office of Nuclear Reactor Regulation partially denies a petition dated May 27, 1994, as supplemented on July 8, 1994, filed by Thomas J. Saporito, Jr., for himself and on behalf of Florida Energy Consultants, Inc. (Petitioners). Specifically, Petitioners' requests 1, 2, 3, 5, and 6, submitted in the July 8, 1994 Supplement, were addressed and denied on the basis that the concerns raised have been satisfactorily addressed and do not raise substantial health and safety concerns warranting the requested action. The Petitioners requested that the Nuclear Regulatory Commission (1) institute a proceeding pursuant to 10 C.F.R. § 2.206 for the modification, suspension, or revocation of the Palo Verde operating licenses for Units 1, 2, and 3; (2) modify the Palo Verde operating licenses to require operation at 86% power or less;

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(3) require the Licensee to submit a no significant hazards safety analysis to justify operation above 86% power; (5) require the Licensee to analyze a design-basis steam generator tube rupture event to show that the offsite radiological consequences do not exceed the limits of 10 C.F.R. Part 100; and (6) require the Licensee to demonstrate that its emergency operating procedures for steam generator tube rupture events are adequate and that the plant operators are sufficiently trained in the procedures. The remaining issues were addressed in the Director's letter dated July 26, 1994, acknowledging receipt of the petition and in a Director's Decision (DD-96-4, 43 NRC 309), issued on June 3, 1996. The reasons for the partial denial are fully set forth in the Director's Decision.

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